

TITLE 40 HEALTH AND HUMAN SERVICES
PART 1 HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 9 INTELLECTUAL DISABILITY SERVICES--MEDICAID STATE
OPERATING AGENCY RESPONSIBILITIES
SUBCHAPTER N TEXAS HOME LIVING (TXHML) PROGRAM AND COMMUNITY
FIRST CHOICE (CFC)

EMERGENCY RULE ADOPTION PREAMBLE

The Executive Commissioner of the Health and Human Services Commission (HHSC or Commission) adopts on an emergency basis in Title 40, Texas Administrative Code, Chapter 9, Intellectual Disability Services – Medicaid State Operating Agency Responsibilities, new §9.597, concerning an emergency rule in response to COVID-19 in order to reduce the risk of spreading COVID-19 to individuals in the Texas Home Living program. 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 can be effective for not longer than 120 days and can 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 Program Provider Response to COVID-19 Emergency Rule.

To protect individuals receiving Texas Home Living services 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 COVID-19 to individuals in the Texas Home Living program. This new rule describes the requirements that Texas Home Living providers must immediately put into place and identifies changes to survey procedures in response to COVID-19.

STATUTORY AUTHORITY

The emergency rule is adopted under Texas Government Code §§2001.034, 531.0055, and 531.021 and Human Resources Code §32.021. 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 HHSC. Texas Government Code §531.021 provides HHSC with the authority to administer federal Medicaid funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program. Texas Human Resources Code §32.021 provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

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

The agency hereby certifies that the emergency adoption 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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§9.597. Program Provider Response to COVID-19 Emergency Rule.

(a) Based on state law and federal guidance, HHSC finds COVID-19 to be a health and safety risk and requires a program provider to take the following measures. The screening required by this section does not apply to emergency services personnel in an emergency situation.

(b) In this section:

(1) Providers of essential services include, but are not limited to, contract doctors, contract nurses, hospice workers, and people operating under the authority of a local intellectual and developmental disability authority (LIDDA) or a local mental health authority (LMHA) whose services are necessary to ensure an individual's health and safety.

(2) Persons with legal authority to enter include, but are not limited to, law enforcement officers, representatives of Disability Rights Texas, and government personnel performing their official duties.

(3) Persons providing critical assistance include providers of essential services, persons with legal authority to enter, and family members or friends of individuals at the end of life.

(4) Probable case of COVID-19 meets the clinical criteria and epidemiologic evidence as described and posted by the Council of State and Territorial Epidemiologists.

(c) Screening requirements.

(1) A program provider must inform service providers of Centers for Disease Control and Prevention (CDC) and the Department of State Health Services (DSHS) recommendations regarding screening protocols, and at a minimum use the following screening criteria:

(A) fever, defined as a temperature of 100.4 Fahrenheit and above, or other 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 CDC in Symptoms of Coronavirus at cdc.gov;

(D) 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

(E) international travel within the last 14 days.

(2) A program provider must require service providers to notify the program provider of a fever, symptoms, or other criteria listed in paragraph (1) of this subsection prior to the start of the shift. Service providers must not provide services to an individual if they meet any of the criteria in paragraph (1) of this subsection.

(3) Service providers must screen individuals for the criteria identified in paragraph (1) above before providing services . If the individual fails screening, the service provider must not provide services and must immediately notify the program provider.

(d) Communication.

(1) A program provider must contact the local health department, or DSHS if there is no local health department, if the program provider becomes aware an individual served in the program or a staff member has COVID-19.

(2) Within 24 hours of becoming aware of an individual or staff member with confirmed COVID-19, a program provider must notify HHSC via encrypted or secure email to waiversurvey.certification@hhsc.state.tx.us. If a program provider is not able to send a secure or encrypted email, the program provider should notify HHSC by emailing waiversurvey.certification@hhsc.state.tx.us. A program provider is not required to provide identifying information of a staff member to HHSC when reporting a positive COVID-19 test result, and must comply with applicable law regarding patient privacy. A program provider must comply with any additional HHSC monitoring requests.

(3) Upon becoming aware of an individual or staff member with confirmed or probable COVID-19, a program provider must notify the following of the actual or potential presence of COVID-19, without disclosing personally identifiable information:

(A) the individual; and

(B) the legally authorized representative of the individual.

(e) Infection control.

(1) A program provider must educate staff and individuals on infection prevention, including hand hygiene, social distancing, the use of personal protective equipment (PPE) and cloth face coverings, and cough etiquette.

(2) A program provider must encourage social distancing during service delivery to the extent possible, by maintaining six feet of separation between persons and avoiding physical contact, and encourage the use of masks and gloves if more direct support is needed.

(3) A service provider with a confirmed or probable case of COVID-19 must not provide services until eligible to return to work in accordance with the CDC guidance document, "Criteria for Return to Work for Healthcare Personnel with Suspected or Confirmed COVID-19." The program provider must activate the service backup plan.

(f) Day habilitation. A program provider may contract with a day habilitation site only if the day habilitation site agrees to comply with the most current guidance from DSHS for day habilitation sites. In addition:

(1) The program provider must facilitate and document informed decision making for an individual's decision to return to outside day habilitation, including discussion of:

(A) available options and alternatives;

(B) risks of attending day habilitation; and

(C) PPE, hygiene, and social distancing.

(2) The program provider must include in its contract with a day habilitation site a requirement for the day habilitation site to communicate with individuals, program providers, staff, and family when the day habilitation site is aware of a probable or confirmed case of COVID-19 among day habilitation site staff or individuals. The requirement must prohibit a day habilitation site from releasing personally identifying information regarding confirmed or probable cases.

(g) If this emergency rule is more restrictive than any certification principle relating to Texas Home Living, this emergency rule will prevail so long as this emergency rule is in effect.

(h) 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 emergency rule or any certification principle relating to Texas Home Living, the Texas Home Living program provider must comply with the executive order or other direction.