



August 7, 2020

REQUEST FOR PUBLICATION OF EMERGENCY RULES

MEMORANDUM FOR THE EXECUTIVE COMMISSIONER

THROUGH: Karen Ray
Chief Counsel

Victoria Ford
Chief Policy and Regulatory Officer

David Kostroun
Deputy Executive Commissioner of Regulatory Services

FROM: Michelle Dionne-Vahalik
Associate Commissioner for Long-term Care Regulation

SUBJECT: HHSC-20-0061 –Assisted Living Facility COVID-19 Response
Emergency Rule

Purpose

To request your approval, as soon as possible, to adopt a new emergency rule in Texas Administrative Code, Title 26, Part 1, Chapter 553, Licensing Standards for Assisted Living Facilities. Upon filing this new rule with the *Texas Register*, the rule will become effective immediately on filing.

Background/Summary

The purpose of this 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 Emergency Rule for Assisted Living Facility COVID-19 Response.

To protect assisted living facility residents 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 the coronavirus (COVID-19) to residents. The purpose of the new rule is to describe the requirements assisted living facilities must put into place in order to be able to move to a Phase 1 reopening with limited visitation.

Discussion

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.

Karen Ray, HHSC Chief Counsel, has reviewed the new rule and determined that the rule meets all legal requirements for publication.

Recommendation

I recommend that you approve the emergency rule for adoption as soon as possible. The preamble and new rule that will be submitted to the *Texas Register* are attached for your review.

<u>Executive Commissioner's Decision</u>			
Approved	<input checked="" type="checkbox"/> _____	Date	08/07/2020
Not Approved	<input type="checkbox"/> _____	Date	_____
Modify	<input type="checkbox"/> _____	Schedule Briefing	<input type="checkbox"/> _____
Comments/Acknowledgment:			
			

Attachments: Emergency Rule Adoption Preamble
 Emergency Rule Text

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cc: Vacant, Chief of Staff



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THROUGH: Karen Ray
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Victoria Ford
Chief Policy and Regulatory Officer

David Kostroun
Deputy Executive Commissioner of Regulatory Services

FROM: Michelle Dionne-Vahalik
Associate Commissioner for Long-term Care Regulation

SUBJECT: HHSC-20-0060 –Assisted Living Facility COVID-19 Response
Emergency Rule

Purpose

To request your approval, as soon as possible, to adopt a new emergency rule in Texas Administrative Code, Title 26, Part 1, Chapter 553, Licensing Standards for Assisted Living Facilities. Upon filing this new rule with the *Texas Register*, the rule will become effective immediately on filing.

Background/Summary

The purpose of this 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 Emergency Rule for Assisted Living Facility COVID-19 Response.

To protect assisted living facility residents 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 the coronavirus (COVID-19) to residents. The purpose of the new rule is to describe the requirements assisted living facilities must put into place in order to be able to move to a Phase 1 reopening with limited visitation.

Discussion

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.

Karen Ray, HHSC Chief Counsel, has reviewed the new rule and determined that the rule meets all legal requirements for publication.

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cc: Vacant, Chief of Staff

TITLE 26 HEALTH AND HUMAN SERVICES
PART 1 HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 553 LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES
SUBCHAPTER K COVID-19 EMERGENCY RULE

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 553, Licensing Standards for Assisted Living Facilities, new §533.2003, concerning an emergency rule in response to COVID-19 and permitting limited visitation in assisted living facilities. 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. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this Emergency Rule for Facility Response to COVID-19.

To protect assisted living facility residents 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 the coronavirus (COVID-19) to residents. The purpose of the new rule is to describe the requirements assisted living facilities must put into place in order to be able to move to a Phase 1 reopening with limited visitation.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055, and Texas Health and Safety Code §247.025 and §247.026. 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 & Safety Code §247.026 requires the Executive Commissioner of HHSC to adopt

rules prescribing minimum standards to protect the health and safety of assisted living residents. Texas Health & Safety Code §247.025 requires the Executive Commissioner of HHSC to adopt rules necessary to implement Texas Health and Safety Code Chapter 247 concerning assisted living facilities.

The new section implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 247.

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

TITLE 26 HEALTH AND HUMAN SERVICES
PART 1 HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 553 LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES
SUBCHAPTER K COVID-19 EMERGENCY RULE

§553.2003. Assisted Living Facility COVID-19 Response – Phase 1 Visitation.

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

(1) Compassionate care visit--A personal visit between one permanently designated visitor and a resident experiencing a failure to thrive.

(2) 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.

(3) Outbreak--One or more laboratory confirmed cases of COVID-19 identified in either a resident or paid/unpaid staff.

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

(5) Plexiglass indoor visit--A personal visit between a resident and one or more personal visitors, during which the resident and the visitor are both inside the facility but within a booth separated by a plexiglass barrier and the resident remains on one side of the barrier and the visitor remains on the opposite side of the barrier.

(6) Vehicle parade--A personal visit between a resident and one or more personal visitors, during which the resident remains outdoors on the assisted living facility campus, and a visitor drives past in a vehicle.

(7) Window visit--A personal visit between a visitor and a resident during which the resident and personal visitor are separated by an open or closed window.

(b) An assisted living facility with a Phase 1 facility designation approved by HHSC may allow limited personal visitation as permitted by this section.

(c) To request a Phase 1 facility designation, an assisted living facility submits a completed LTCR Form 2192, 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, an assisted living 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; and

(3) if an assisted living 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 facility has adequate staffing to continue care for all residents and monitor visits permitted by this section; and

(C) the facility is in compliance with infection control requirements and emergency rules related to COVID-19.

(e) An assisted living facility with a Phase 1 facility designation may allow outdoor visits, window visits, vehicle parades, limited indoor visits, 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 assisted living facility prior to being allowed to visit, except visitors participating in a vehicle parade and closed window visits. Visitors who meet any of the following screening criteria must leave the assisted living 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 assisted living facility must ensure social distancing of at least six feet is maintained between visitors and residents and limit the number of visitors and residents in the visitation area as needed.

(8) The assisted living 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 assisted living facility must ensure a comfortable and safe outdoor visiting area (e.g., considering outside air temperatures and ventilation).

(11) For outdoor visits, the assisted living 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, plexiglass indoor visits, and compassionate care visits.

(1) An assisted living 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 assisted living facility must ensure social distancing of at least six feet is maintained between residents throughout the parade.

(3) The assisted living 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 plexiglass indoor visits.

(1) The plexiglass booth must be installed in an area of the facility that does not impede a means of egress, does not impede or interfere with any fire safety equipment or system, and prevents the movement of visitors through the facility and their contact with other residents.

(2) The facility must submit, for approval, a photo of the plexiglass visitation booth and its location in the facility to the Life Safety Code Program Manager in the LTCR Region in which the facility is located prior to use.

(3) The visit must be supervised by facility staff for the duration of the visit.

(4) The resident must wear a facemask or face covering (if tolerated) throughout the visit.

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

(6) The facility shall limit the number of visitors and residents in the visitation area as needed.

(i) 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 assisted living 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 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.

(j) 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.