

TITLE 26 HEALTH AND HUMAN SERVICES  
PART 1 HEALTH AND HUMAN SERVICES COMMISSION  
CHAPTER 551 INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN  
INTELLECTUAL DISABILITY OR RELATED CONDITIONS  
SUBCHAPTER C STANDARDS FOR LICENSURE

EMERGENCY RULE ADOPTION PREAMBLE

The Executive Commissioner of the Health and Human Services Commission (HHSC or Commission) adopts on an emergency basis in Title 26, Texas Administrative Code, Chapter 551, Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions, new §551.46, concerning an emergency rule for ICF/IID provider response to COVID-19 and requiring intermediate care facilities for individuals with an intellectual disability (ICF/IID) actions to mitigate and contain COVID-19. As authorized by 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 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 ICF/IID COVID-19 Response.

To protect individuals receiving ICF/IID services and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to require ICF/IID actions to mitigate and contain COVID-19. The purpose of the new rule is to describe these requirements.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code, §§2001.034 and 531.0055, and Texas Health and Safety Code §§252.031, 252.032, 252.033 and 242.043. 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 §§252.031, 252.032, and 252.033 require the Executive Commissioner of HHSC to establish rules prescribing the minimum standards and process for licensure as an intermediate care facility. Texas Health and Safety Code §252.043 establishes HHSC's authority to conduct an inspection, survey or investigation at an intermediate care facility to determine if the intermediate care facility is in compliance with the minimum acceptable levels of care for individuals who are living in an intermediate care facility, and the minimum acceptable life safety code and physical environment requirements.

The new section implements Texas Government Code §531.0055 and §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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§551.46. ICF/IID Provider Response to COVID-19 – Mitigation.

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

(1) Cohort—A group of individuals placed in rooms, halls, or sections of an intermediate care facility with others who have the same COVID-19 status or the act of grouping individuals with other individuals who have the same COVID-19 status.

(2) 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.

(3) COVID-19 positive—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.

(4) 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.

(5) Individual—A person enrolled in the ICF/IID Program.

(6) 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.

(7) PPE—Personal protective equipment means specialized clothing or equipment worn by intermediate care facility staff for protection against transmission of infectious diseases such as COVID-19, including masks, goggles, face shields, gloves, and disposable gowns.

(8) Quarantine—The separation of people with unknown COVID-19 status from those who are COVID-19 positive and those who are COVID-19 negative.

(9) Unknown COVID-19 status—A person who is a new admission, readmission, or 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) An intermediate care facility must have a protocol in place included in their COVID-19 response plan that describes how the facility will transfer a COVID-19

positive individual to another facility capable of isolating and caring for the COVID-19 positive individual, if the facility cannot successfully isolate the individual.

(1) An intermediate care facility must have contracts or agreements with alternative appropriate facilities to ensure care for COVID-19 positive individuals.

(2) An intermediate care facility must assist the individual and family members as needed to transfer the individual to the alternate facility.

(c) An intermediate care facility must have a COVID-19 response plan that includes:

(1) Designated space for:

(A) COVID-19 negative individuals;

(B) Individuals with unknown COVID-19 status; and

(C) COVID-19 positive individuals, when the facility is able to care for an individual at this level or until arrangements can be made to transfer the individual to a higher level of care.

(2) Spaces for staff to don and doff PPE that minimize the movement of staff through other areas of the facility.

(3) Individual transport protocols.

(4) Plans for obtaining and maintaining a two-week supply of PPE, including surgical facemasks, gowns, gloves, and goggles or face shields.

(5) If the facility houses COVID-19 positive individuals, an individual recovery plan for continuing care after an individual is recovering from COVID-19.

(d) An intermediate care facility must screen all individuals, staff, and people who come to the facility in accordance with 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) other 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 the CDC in Symptoms or Coronavirus at [cdc.gov](https://www.cdc.gov);

(4) 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, unless the person is entering the facility to provide critical assistance; and

(5) international travel within the last 14 days.

(e) An intermediate care facility must screen individuals according to the following timeframes:

(1) for the criteria in subsection (d)(1)-(5), upon admission or readmission to the facility; and

(2) for the criteria in subsection (d)(1)-(3), at least twice a day.

(f) An intermediate care facility must screen each employee or contractor for the criteria in subsection (d)(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.

(g) An intermediate care facility must assign each individual to the appropriate cohort based on the individual's COVID-19 status.

(h) An individual with unknown COVID-19 status must be quarantined and monitored for fever and other symptoms of COVID-19 per CDC guidance.

(i) A COVID-19 positive individual must be isolated until the individual meets CDC guidelines for the discontinuation of transmission-based precautions, if cared for in the facility.

(j) If a COVID-19 positive individual must be transferred for a higher level of care, the facility must isolate the individual until the individual can be transferred.

(k) An intermediate care facility must implement a staffing policy requiring the following:

(1) the facility must designate staff to work with each cohort and not change designation from one day to another, unless required in order to maintain adequate staffing for a cohort;

(2) staff must wear appropriate PPE based on the cohort with which they work;

(3) staff must inform to the facility per facility policy prior to reporting for work if they have known exposure or symptoms;

(4) staff must perform self-monitoring on days they do not work; and

(5) the facility must develop and implement a policy regarding staff working with other long-term care (LTC) providers that:

(A) limits the sharing of staff with other LTC providers and facilities, unless required in order to maintain adequate staffing at a facility;

(B) maintains a list of staff who work for other LTC providers or facilities that includes the names and addresses of the other employers;

(C) requires all staff to inform the facility immediately if there are COVID-19 positive cases at the staff's other place of employment;

(D) requires the facility to notify the staff's other place of employment if the staff member is diagnosed with COVID-19; and

(E) requires staff to inform the facility which cohort they are assigned to at the staff's other place of employment. The facility must maintain the same cohort designation for that employee in all facilities in which the staff member is working, unless required to maintain adequate staffing for a cohort.

(l) All intermediate care facility staff must wear a facemask while in the facility. Staff who are caring for COVID-19 positive individuals and those caring for individuals 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 COVID-19 Response Plan for Intermediate Care Facilities, and must be worn appropriately, completely covering the nose and mouth, at all times.

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

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

(m) COVID-19 activity must be reported to HHSC Complaint and Incident Intake as described below:

(1) A facility must report the first confirmed case of COVID-19 in staff or individuals, and the first confirmed case of COVID-19 after a facility has been without 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 positive confirmation.

(2) A facility must 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.

(n) 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 an intermediate care facility, the intermediate care facility must comply with the executive order or other direction.