

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 §551.47, concerning an emergency rule for intermediate care facilities for individuals with an intellectual disability (ICF/IID) provider response to COVID-19 and describing requirements for limited indoor and outdoor visitation in a facility during Phase 1. 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. 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 Response to COVID-19.

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 allow limited indoor and outdoor visitation in an ICF/IID during Phase 1. The purpose of the emergency rule is to describe the requirements related to such visits.

STATUTORY AUTHORITY

The emergency rule 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 the Health and Human Services Commission 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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§551.47. ICF/IID Provider Response to COVID-19 – Phase 1 Visitation.

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

(1) Compassionate care visit--A personal visit between one permanently designated visitor and an individual diagnosed with a failure to thrive.

(2) Failure to thrive--A state of decline in an individual's physical or mental health, diagnosed by a physician and documented in the individual 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) Individual--A person enrolled in the ICF/IID Program.

(4) Outbreak--One or more laboratory confirmed cases of COVID-19 identified in either an individual or paid/unpaid staff.

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

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

(7) Vehicle parade--A personal visit between an individual and one or more personal visitors, during which the individual remains outdoors on the intermediate care facility campus, and a visitor drives past in a vehicle.

(8) Window visit--A personal visit between a visitor and an individual during which the individual and personal visitor are separated by an open window.

(b) An intermediate care 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 intermediate care facility must submit 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 intermediate care facility must demonstrate that:

(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 individuals;

(3) if the intermediate care facility has had previous cases of COVID-19 in staff or individuals, HHSC LTCR has conducted a verification survey and confirmed the following:

(A) all staff and individuals have fully recovered;

(B) the facility has adequate staffing to continue care for all individuals 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 intermediate care facility with a Phase 1 facility designation may allow outdoor visits, window visits, vehicle parades, limited indoor visits, and compassionate care visits involving individuals 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 individuals 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 intermediate care 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 intermediate care 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 individual must wear a facemask or face covering (if tolerated) throughout the visit.

(7) The intermediate care facility must ensure social distancing of at least six feet is maintained between visitors and individuals and limit the number of visitors and individuals in the visitation area as needed.

(8) The intermediate care facility can limit the number of visitors per individual per week, and the length of time per visit, to ensure equal access by all individuals 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 intermediate care facility must ensure a safe and reasonably comfortable outdoor visiting area (e.g., considering outside air temperatures and ventilation).

(11) For outdoor visits, the intermediate care facility must designate an outdoor area for visitation that is separated from individuals and limits the ability of the visitor to interact with individuals.

(f) The following requirements apply to outdoor visits, window visits, plexiglass indoor visits, and compassionate care visits:

(1) An intermediate care facility must provide hand washing stations, or hand sanitizer, to the visitor and individual before and after visits.

(2) The visitor and the individual 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 intermediate care facility must ensure social distancing of at least six feet is maintained between individuals throughout the parade.

(3) The intermediate care facility must ensure individuals are not closer than 10 feet to the vehicles for safety reasons.

(4) The individual 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 where it does not impede a means of egress, does not impede or interfere with any fire safety equipment or system, and does not offer access to the rest of the facility or contact between the visitors and other individuals.

(2) Prior to using the booth, 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.

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

(4) The individual 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 individuals in the visitation area as needed.

(i) The following requirements apply to compassionate care visits:

(1) The visit is limited to individuals diagnosed with a failure to thrive.

(2) The visit is limited to one permanently-designated personal visitor per individual at any time.

(3) If the individual experiencing failure to thrive cannot tolerate an outdoor visit, the visit may take place in the individual's room or other area of the facility separated from other individuals. The intermediate care facility must limit the movement of the visitor through the facility to ensure interaction with other individuals is minimized.

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

(5) The individual 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 individuals 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 suspended until the facility meets the criteria described in subsection (d) of this section and is again designated by HHSC as a Phase 1 facility.