

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 98 DAY ACTIVITY AND HEALTH SERVICES REQUIREMENTS
SUBCHAPTER D LICENSURE AND PROGRAM REQUIREMENTS

EMERGENCY RULE ADOPTION PREAMBLE

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC or Commission) adopts on an emergency basis in Title 40, Texas Administrative Code, Chapter 98, Day Activity and Health Services Requirements, new §98.65, concerning an emergency rule in response to COVID-19 in order to reduce the risk of transmission of COVID-19. 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. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this Emergency Rule for Day Activity and Health Services Response to COVID-19.

To protect day activity and health services clients and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to update screening requirements for certain persons authorized to enter a day activity and health services facility. The updates are consistent with current guidance provided by the Centers for Disease Control and Prevention.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Human Resources Code §103.004 and §103.005. 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 Human Resources Code §103.004 authorizes the Executive Commissioner of HHSC to adopt rules implementing Texas Human Resources Code Chapter 103, concerning Day Activity and Health Services Facilities. Texas Human Resources Code §103.005 authorizes the Executive Commissioner of HHSC to adopt rules governing the standards for safety and sanitation of a licensed day activity and health services facility.

The new section implements Texas Government Code §531.0055 and Texas Human Resources Code Chapter 103.005.

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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§98.65. Emergency Rule for Day Activity and Health Services Response to COVID-19.

(a) Based on state law and federal guidance, the Texas Health and Human Services Commission (HHSC) finds COVID-19 to be a health and safety risk and requires a day activity and health services facility to take the following measures. The screening required by this section does not apply to emergency services personnel entering the facility in an emergency situation.

(b) In this section:

(1) Providers of essential services include, but are not limited to, contract doctors, contract nurses, and home health workers whose services are necessary to ensure client health and safety.

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

(3) Persons providing critical assistance include providers of essential services and persons with legal authority to enter.

(c) A day activity and health services facility must take the temperature of every person upon arrival and must not allow a person with a fever as described in subsection (e) of this section to enter or remain in the facility.

(d) A day activity and health services facility must prohibit visitors, except as provided in subsection (e) of this section.

(e) A day activity and health services facility may allow entry of persons providing critical assistance, unless the person meets one or more of the following screening criteria:

(1) Fever, defined as a temperature of 100.4 Fahrenheit and above, or by the most current Centers for Disease Control and Prevention (CDC) guidance;

(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 CDC in Symptoms of Coronavirus at [cdc.gov](https://www.cdc.gov); or

(4) Contact in the last 14 days, unless to provide critical assistance, with someone who has a confirmed diagnosis of COVID-19, someone who is under investigation for COVID-19, or someone who is ill with a respiratory illness.

(f) A facility must not prohibit government personnel performing their official duty from entering the facility, unless the individual meets the above screening criteria.

(g) If this emergency rule is more restrictive than any minimum standard relating to a day activity and health services facility, 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 minimum standard relating to a day activity and health services facility, the day activity and health services facility must comply with the executive order or other direction.