The Executive Commissioner of the Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 558 Licensing Standards for Home and Community Support Services Agencies, new §558.408, concerning an emergency rule in response to COVID-19 in order to reduce the risk of transmission of COVID-19. As authorized by 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 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 HCSSA Response to COVID-19.

To protect clients served by home and community support services agencies and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to require screening of staff, clients, and household members and offer alternative methods to provide non-essential services.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Government Code §2001.034 and §531.0055 and Health and Safety Code §142.012. 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. 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. Health and Safety Code §142.012, authorizes the Executive Commissioner of HHSC to adopt rules governing necessary to implement Chapter 142 of the Health and Safety Code, concerning, Home and Community Support Services. Health and Safety Code §142.012, authorizes the Executive Commissioner of HHSC to adopt rules governing minimum standards for home and community support services agencies that are necessary to protect the public.
(a) Based on state law and federal guidance, HHSC finds COVID-19 to be a health safety risk and requires a home and community support services agency to take the following measures. The screening required by this section does not apply to emergency services personnel entering an agency in an emergency situation.

(b) For the purposes of this section personal protective equipment means specialized clothing or equipment, worn by agency staff for protection against transmission of infectious diseases such as COVID-19, including masks, goggles, gloves, and disposable gowns.

(c) Agency staff have legal authority to enter a facility licensed under Health and Safety Code Chapters 242, 247, or 252, or Human Resources Code Chapter 103, to provide services to the facility’s residents who are agency clients. Agency staff entering a licensed facility must follow the infection control protocols of the facility.

(d) An agency must screen its staff and must not allow staff to remain in the agency or make home visits if the person meets one or more of the following screening criteria:
   (1) Fever or signs or symptoms of a respiratory infection, such as cough, shortness of breath, or sore throat;
   (2) Contact in the last 14 days 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; or
   (3) International travel within the last 14 days to countries with ongoing community transmission. For updated information on affected countries visit: https://www.cdc.gov/coronavirus/2019-ncov/travelers/map-and-travel-notices.html.

(e) The agency must determine if a home visit requires essential or non-essential services.
   (1) If the visit requires non-essential services, the visit:
      (A) must be conducted by phone or video conference, if possible; or
      (B) must be rescheduled for a later date.
   (2) If the visit requires essential services, staff must conduct the visit in person and screen the client and household members using the same criteria for staff that is described in subsection (d) of this section and proceed as described below:
      (A) If the client or a member of the household meet one or more of the screening criteria, use appropriate personal protective equipment during the visit.
(B) If the client or a member of the household does not meet one or more of the screening criteria, conduct the visit as indicated for the type of service provided.

(3) An agency must document any missed visits in the plan of care, care plan, or individualized services plan and notify the attending physician, if applicable.

(f) A parent agency administrator or alternate administrator, or supervising nurse or alternate supervising nurse may make the monthly supervisory visit required for branch supervision by 26 TAC §558.321(d)(1) or as required for alternative delivery site by §558.322(c)(1) by virtual communication, such as video or telephone conferencing systems.

(g) A hospice RN may make the supervisory visit required in 26 TAC §558.842(d) by virtual communication, such as video or telephone conferencing systems.

(h) If this emergency rule is more restrictive than any minimum standard relating to a home and community support services agency, this emergency rule will prevail so long as this emergency rule is in effect.

(i) 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 home and community support services agency, the home and community support services agency must comply with the executive order or other direction.

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 3, 2020

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Health and Human Services Commission

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Expiration date: July 31, 2020

For further information, please call: (512) 438-3161