

Texas Register Preamble

The Executive Commissioner of the Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 40, Texas Administrative Code, Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification, new Subchapter CC, COVID-19 Emergency Rule, §19.2801, 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 Facility Response to COVID-19.

To protect nursing facility residents and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to restrict entry into a nursing facility and require screening of certain persons authorized to enter a nursing facility.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Government Code §2001.034 and §531.0055 and Health and Safety Code §242.001 and §242.037. 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 HHSC 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 §242.037 authorizes the Executive Commissioner of HHSC to adopt rules to implement Chapter 242 of the Health and Safety Code including making and enforcing minimum standards for quality of care and quality of life of nursing facility residents. Health and Safety Code §242.001 provides that the goal of Chapter 242 is to ensure that nursing facilities deliver the highest possible quality of care.

TITLE 40

SOCIAL SERVICES AND ASSISTANCE

PART 1

DEPARTMENT OF AGING AND DISABILITY SERVICES

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| CHAPTER 19 | NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION |
| SUBCHAPTER | COVID-19 EMERGENCY RULE |
| CC | |
| RULE §19.2801 | Emergency Rule for Nursing Facility Response to COVID-19 |
| ISSUE | 04/17/2020 |
| ACTION | Emergency |

(a)Based on state law and federal guidance, HHSC finds COVID-19 to be a health and safety risk and requires a nursing 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, hospice workers, and individuals operating under the authority of a local intellectual and developmental disability authority (LIDDA) or a local mental health authority (LMHA) whose services are necessary to ensure resident health and safety.

(2)Persons with legal authority to enter include, but are not limited to, law enforcement officers, representatives of the long-term care ombudsman's office, and government personnel performing their official duties.

(3)Persons providing critical assistance include providers of essential services, persons with legal authority to enter, and family members or friends of residents at the end of life.

(c)A nursing facility must take the temperature of every person upon arrival and must not allow a person with a fever to enter or remain in the nursing facility, except as a resident.

(d)A nursing facility must prohibit visitors, except as provided in subsection (e) of this section.

(e)A nursing facility may allow entry of persons providing critical assistance, unless the nursing facility believes the person may impede the health and safety of residents or 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-notice.html>.

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

(g)If this emergency rule is more restrictive than any minimum standard relating to a nursing 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 nursing facility, the nursing facility 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

TRD-202001348

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Effective date: April 3, 2020

Expiration date: July 31, 2020

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