

TITLE 26 HEALTH AND HUMAN SERVICES  
PART 1 HEALTH AND HUMAN SERVICES COMMISSION  
CHAPTER 558 LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT  
SERVICES AGENCIES  
SUBCHAPTER I RESPONSE TO COVID-19 AND PANDEMIC-LEVEL  
COMMUNICABLE DISEASE

EMERGENCY RULE ADOPTION PREAMBLE

The Executive Commissioner of the Texas 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, Subchapter I, Response to COVID-19 and Pandemic-Level Communicable Disease, new §558.950, an emergency rule in response to COVID-19 describing requirements for indoor and outdoor visitation in a hospice inpatient unit. As authorized by Texas 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 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 Home and Community Support Services Agencies.

To protect clients admitted to a hospice inpatient unit and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to require limited indoor and outdoor visitation in a hospice inpatient unit. The purpose of the new rule is to describe the requirements related to such visits.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055, and Texas Health and Safety Code §142.012. 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 HHSC. Texas Health and Safety Code §142.012 requires the Executive Commissioner of HHSC to adopt rules necessary to implement Chapter 142 and to adopt rules prescribing minimum standards to protect the health and safety of clients admitted to hospice inpatient units.

The new section implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 142, concerning Home and Community Support Services Agencies.

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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§558.950. Hospice Inpatient Units COVID-19 Response--Reopening Visitation.

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

(1) COVID-19 negative--The status of a person who has either 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.

(2) COVID-19 positive--The status of 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.

(3) End-of-life visit--A personal visit between a personal visitor and a client receiving hospice services who is at or near the end of life and in the later stages of a terminal illness or whose prognosis does not indicate recovery. An end-of-life visit is permitted in all hospice inpatient units and for all clients of a hospice inpatient unit at the end of life.

(4) Essential caregiver--A family member or other outside caregiver, including a friend, volunteer, clergy member, private personal caregiver or court-appointed guardian, who is at least 18-years-old and has been designated by a client or legal representative to provide regular care and support to the client.

(5) Essential caregiver visit--A personal visit between a client and an essential caregiver. An essential caregiver visit is permitted in all hospice inpatient units for all clients with any COVID-19 status.

(6) Facility-acquired COVID-19--A COVID-19 infection that is acquired after admission to a hospice inpatient unit and was not present at the end of the 14-day quarantine period following admission or readmission.

(7) Family education visit--A visit between a family education visitor and a client who is in the hospice inpatient unit for an intensive stay for the purpose of hospice staff educating the family education visitor on proper equipment utilization or care of the client after discharge from the unit.

(8) Family education visitor--An individual (who may or may not be an essential caregiver) designated by a client who provides regular care and support to the client while the client is in the hospice inpatient unit for an intensive stay for the

purpose of learning proper equipment utilization or care of the client after discharge from the unit.

(9) Fully vaccinated person--A person who received the second dose in a two-dose series or a single dose of a one dose COVID-19 vaccine and 14 days have passed since this dose was received.

(10) Indoor visit--A personal visit between a client and one or more personal visitors that occurs in-person in a dedicated indoor space, which may include the client's room.

(11) Outbreak--One or more laboratory-confirmed cases of COVID-19 identified in either a client or paid or unpaid staff.

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

(13) Persons providing critical assistance--Providers of essential services, persons with legal authority to enter, family members or friends of clients at the end of life, family education visitors, and designated essential caregivers.

(14) Persons with legal authority to enter--Law enforcement officers and government personnel performing their official duties.

(15) Physical distancing--Maintaining a minimum distance between persons as recommended by the CDC, avoiding gathering in groups in accordance with state and local orders, and avoiding unnecessary physical contact.

(16) PPE--Personal protective equipment.

(17) Providers of essential services--Contract doctors or nurses, hospice employees and contractors, hospice physicians, nurses, hospice aides, social workers, therapists, spiritual counselors, contract professionals, clergy members and spiritual counselors whose services are necessary to ensure client health and safety.

(18) Salon services visit--A personal visit between a client and a salon services visitor.

(19) Salon services visitor--A barber, beautician, or cosmetologist providing hair care or personal grooming services to a client.

(20) Unknown COVID-19 status--The status of a person, except as provided by the CDC for a fully-vaccinated client who has recovered from COVID-19, who:

(A) is a new admission or readmission;

(B) has spent one or more nights away from the hospice inpatient unit;

(C) has had known exposure or close contact with a person who is COVID-19 positive; or

(D) is exhibiting symptoms of COVID-19 while awaiting test results.

(b) A hospice agency operating a hospice inpatient unit must screen all visitors prior to allowing them to enter the hospice inpatient unit in accordance with subsection (c) of this section, except emergency services personnel entering the unit or hospice inpatient unit campus in an emergency. Visitor screenings must be documented in a log kept at the entrance to the hospice inpatient unit, which must include the name of each person screened, the date and time of the screening, and the results of the screening. The visitor screening log may contain protected health information and must be protected in accordance with applicable state and federal law.

(c) Visitors who meet any of the following screening criteria must leave the hospice inpatient unit:

(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, new or worsening 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 of 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, regardless of whether the person is fully vaccinated; or

(5) having tested positive for COVID-19 in the last 10 days.

(d) A hospice agency operating a hospice inpatient unit must allow persons providing critical assistance, including essential caregivers and family education visitors and persons with legal authority to enter to enter the unit if they pass the screening in subsection (c) of this section.

(e) A person providing critical assistance who has had contact with a person with COVID-19 positive or COVID-19 unknown status, but does not meet the CDC definition of close contact or unprotected exposure, must not be denied entry to the hospice inpatient unit unless the person providing critical assistance does not pass

the screening criteria described in subsection (c)(1) - (3) and (5) of this section, or any other screening criteria based on CDC guidance.

(f) The hospice inpatient unit must offer a complete series of a one- or two-dose COVID-19 vaccine to clients, client's family, and staff and document each client's choice to vaccinate or not vaccinate.

(g) The hospice agency operating the hospice inpatient unit must allow essential caregiver visits, family education visits, end-of-life visits, indoor visits, and outdoor visits as required by this section. If a hospice inpatient unit fails to comply with the requirements of this subsection, HHSC may take action in accordance with §558.601 of this chapter (relating to Enforcement Actions). In accordance with §558.602 of this chapter (relating to Administrative Penalties), HHSC may assess an administrative penalty of \$500 without providing the hospice agency with an opportunity to correct the violation if HHSC determines that the hospice agency willfully violated a client's right to visitation.

(1) The following limits and requirements apply to all visitation under this section.

(A) A hospice agency operating a hospice inpatient unit may ask about a visitor's COVID-19 vaccination or test status. However, the agency may not require a visitor to provide documentation of a COVID-19 negative test or COVID-19 vaccination status as a condition of visitation or to enter the facility.

(B) A hospice agency must develop and enforce policies and procedures that ensure infection control practices, including whether the visitor and the individual must wear a face mask, face covering, or appropriate PPE.

(C) To permit indoor visitation, a hospice agency operating an inpatient hospice unit must have separate areas, which include enclosed rooms such as bedrooms, or activities rooms, units, wings, halls, or buildings, designated for COVID-19 positive, COVID-19 negative, and unknown COVID-19 status client cohorts.

(D) A hospice agency must provide instructional signage throughout the facility and proper visitor education regarding:

- (i) the signs and symptoms of COVID-19;
- (ii) infection control precautions; and
- (iii) other applicable facility practices (e.g., use of facemasks and other appropriate PPE, specified entries and exits, routes to designated areas, and hand hygiene).

(E) Visitation must be facilitated to allow time for cleaning and sanitization of

the visitation area between visits and to ensure infection prevention and control measures are followed. A hospice agency may schedule personal visits in advance or permit personal visits that are not scheduled in advance. Scheduling in advance must not be so restrictive as to prohibit or limit visitation for clients and families.

(F) Family education visits, essential caregiver visits, and end-of-life visits are permitted for clients who have COVID-19 negative, COVID-19 positive, or unknown COVID-19 status.

(G) Except as provided in subparagraph (H) of this paragraph, a client and his or her personal visitor may have close or personal contact in accordance with CDC guidance. The visitor must maintain physical distancing between themselves and all other persons in the facility.

(H) Family education visitors, essential caregiver visitors, and end of life visitors may have close or personal contact with the client they are visiting. The visitor must maintain physical distancing between themselves and all other persons in the facility.

(I) Visits are permitted where adequate space is available as necessary to ensure physical distancing between visitation groups and safe infection prevention and control measures, including the client's room. The hospice agency must limit the movement of the visitor through the facility to ensure interaction with other persons in the facility is minimized.

(J) A hospice agency must ensure equal access by all clients to personal visitors, family education visitors, end-of life visitors, and essential caregivers.

(K) A hospice agency must allow visitors of any age.

(L) A hospice agency must ensure a comfortable and safe outdoor visitation area for outdoor visits, considering outside air temperature and ventilation.

(M) A hospice agency must inform visitors of the agency's infection control policies and procedures related to visitation.

(N) A hospice agency must provide hand washing stations, or hand sanitizer, to the visitor and client before and after visits.

(O) The visitor and the client must practice hand hygiene before and after the visit.

(2) The following requirements apply to essential caregiver visits.

(A) There may be up to two permanently designated essential caregiver visitors per client.

(B) Up to two essential caregivers may visit a client at the same time.

(C) The visit may occur outdoors, in the client's bedroom, or in another area in the facility that limits the visitor movement through the facility and interaction with other clients and staff.

(D) Essential caregiver visitors do not have to maintain physical distancing between themselves and the client they are visiting but must maintain physical distancing between themselves and all other clients and staff.

(E) The hospice agency must develop and enforce essential caregiver visitation policies and procedures, which include:

(i) a written agreement that the essential caregiver understands and agrees to follow the applicable policies, procedures, and requirements;

(ii) training each essential caregiver on proper PPE usage and infection control measures, hand hygiene, and cough and sneeze etiquette;

(iii) expectations regarding using only designated entrances and exits as directed, if applicable; and

(iv) limiting visitation to the area designated by the facility in accordance with subparagraph (C) of this paragraph.

(F) A hospice agency must:

(i) inform the essential caregiver of applicable policies, procedures, and requirements;

(ii) maintain documentation of the essential caregiver's agreement to follow the applicable policies, procedures, and requirements;

(iii) maintain documentation of the essential caregiver's training as required in subparagraph (E)(ii) of this paragraph;

(iv) maintain documentation of the identity of each essential caregiver in the client's records; and

(vi) prevent visitation by the essential caregiver visitor if the essential caregiver visitor has signs and symptoms of COVID-19 or an active COVID-19 infection.

(G) The hospice agency may cancel the essential caregiver visit if the essential caregiver fails to comply with the facility's policy regarding essential caregiver visits or applicable requirements of this section.

(h) A hospice agency operating a hospice inpatient unit may allow a salon services visitor to enter the facility to provide services to a client only if:

(1) the salon services visitor passes the screening described in subsection (c) of this section;

(2) the salon services visitor agrees to comply with the most current version of the Minimum Standard Health Protocols – Checklist for Cosmetology Salons/Hair Salons, located on the website: [open.texas.gov](http://open.texas.gov); and

(3) the requirements of subsection (i) of this section are met.

(i) The following requirements apply to salon services visits.

(1) A salon services visit may be permitted for all clients with COVID-19 negative status.

(2) The visit may occur outdoors, in the client’s bedroom, or in another area in the facility that limits visitor movement through the facility and interaction with other persons in the facility.

(3) Salon services visitors do not have to maintain physical distancing between themselves and each client they are visiting, but they must maintain physical distancing between themselves and all other persons in the facility.

(4) The hospice agency must develop and enforce salon services visitation policies and procedures, which include:

(A) a written agreement that the salon services visitor understands and agrees to follow the applicable policies, procedures, and requirements;

(B) training each salon services visitor on proper PPE usage and infection control measures, hand hygiene, and cough and sneeze etiquette;

(C) expectations regarding using only designated entrances and exits as directed; and

(D) limiting visitation to the area designated by the facility in accordance with paragraph (2) of this subsection.

(5) The hospice agency must:

(A) inform the salon services visitor of applicable policies, procedures, and requirements;

(B) maintain documentation of the salon services visitor’s agreement to follow the applicable policies, procedures and requirements;

(C) maintain documentation of the salon services visitor's training as required in paragraph (4)(B) of this subsection;

(D) document the identity of each salon services visitor in the facility's records;

(E) prevent visitation by the salon services visitor if the client has an active COVID-19 infection; and

(F) cancel the salon services visit if the salon services visitor fails to comply with the facility's policy regarding salon services visits or applicable requirements of this section.

(j) The following applies to family education visits under this section.

(1) The hospice agency operating a hospice inpatient unit must develop and enforce family education visit policies and procedures which must address the requirements in this subsection.

(2) A hospice inpatient unit client may designate up to three family education visitors. An individual may be designated as both a family education visitor and an essential caregiver.

(3) A family education visit is permitted for clients who are COVID-19 negative, COVID-19 positive, and clients with unknown COVID-19 status.

(4) The hospice agency must provide appropriate PPE to the family education visitor for use during the entirety of each family education visit, including provision of replacement PPE if the equipment becomes soiled, damaged, or otherwise ineffective.

(5) The hospice agency must develop a written agreement that the family education visitor understands and agrees to follow the applicable policies, procedures, and requirements.

(6) The hospice agency must provide training for each family education visitor on proper PPE usage and infection control measures, hand hygiene, and cough and sneeze etiquette.

(7) The family education visitor must:

(A) sign an agreement to leave the hospice inpatient unit at the appointed time, unless otherwise approved by the hospice agency;

(B) self-monitor for signs and symptoms of COVID-19; and

(C) not participate in visits if the designated family education visitor has signs and symptoms of COVID-19, active COVID-19 infection, or other communicable diseases.

(8) The hospice agency may cancel the family education visit if the family education visitor fails to comply with the agency's policy regarding visitation or other applicable requirements of this section.

(9) If the hospice agency must cancel the family education visit, the hospice agency must discuss the situation with the interdisciplinary team and arrange for family education at the client's home or independent location in accordance with §558.288 of this chapter (relating to Coordination of Services) and the client's plan of care.

(k) If a hospice agency operating a hospice inpatient unit fails to comply with the requirements of this subsection HHSC may take action in accordance with §558.601 of this chapter. In accordance with §558.602 of this chapter, HHSC may assess an administrative penalty of \$500 without providing the hospice agency with an opportunity to correct the violation.

(l) 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 a hospice agency operating a hospice inpatient unit, the hospice agency must comply with the executive order or other direction.