

TITLE 26 HEALTH AND HUMAN SERVICES
PART 1 HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 554 NURSING FACILITY REQUIREMENTS FOR LICENSURE AND
 MEDICAID CERTIFICATION
SUBCHAPTER CC COVID-19 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 554, Nursing Facility Requirements for Licensure and Medicaid Certification, new §554.2802. This emergency rule is adopted in response to COVID-19 and requires nursing facilities to take certain actions to reduce the risk of spreading COVID-19. The emergency rule also permits nursing facilities to request temporary increases in capacity and Medicaid bed allocations to aid in preventing the transmission of COVID-19 or caring for residents with COVID-19. As authorized by Texas Government Code §2001.034, HHSC 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 Nursing 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 mitigate and contain COVID-19 and to permit a nursing facility to request a temporary increase in capacity or Medicaid bed allocation as part of the facility's response to COVID-19. The purpose of the new rule is to describe the requirements nursing facility providers must immediately put into place to mitigate and contain COVID-19 and the procedures and criteria for requesting a temporary capacity increase or a temporary Medicaid bed allocation increase.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034,

§531.0055, and §531.021, Texas Health and Safety Code §242.001 and §242.037, and Texas Human Resources Code §32.021 and §32.0213. 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 health and human services system. Texas Government Code §531.021 provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program. Texas Health and Safety Code §242.001 states the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility. Texas Health and Safety Code §242.037 requires the Executive Commissioner of HHSC to make and enforce rules prescribing minimum standards relating to quality of care and quality of life for nursing facility residents. Texas Human Resources Code §32.021 provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program. Texas Human Resources Code §32.0213 requires the Executive Commissioner of HHSC to establish procedures for controlling the number of Medicaid beds in nursing facilities.

The new rule implements Texas Government Code §531.0055 and §531.021, Texas Health and Safety Code Chapter 242, and Texas Human Resources Code §32.021 and §32.0213.

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.

TITLE 26	HEALTH AND HUMAN SERVICES
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CHAPTER 554	NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION
SUBCHAPTER CC	<u>COVID-19 EMERGENCY RULE</u>

§554.2802. Nursing Facility COVID-19 Response.

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

(1) Cohort--A group of residents placed in rooms, halls, or sections of the facility with others who have the same COVID-19 status or the act of grouping residents with other residents who have the same COVID-19 status.

(2) Cohorting--The act of establishing a cohort.

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

(4) COVID-19 positive--The status of a person who has tested positive for COVID-19 and does not yet meet the Texas Department of State Health Services (DSHS) guidance for the discontinuation of transmission-based precautions.

(5) COVID-19 status--The status of a person based on COVID-19 test results, symptoms, or other factors that consider the person's potential for having the virus.

(6) Fully-vaccinated--A person who received the second dose in a two-dose COVID-19 vaccination series or received one dose of a single-dose COVID-19 vaccination and it has been at least 14 days since receiving the vaccination.

(7) Isolated--The separation of people who have COVID-19 positive status from those who have COVID-19 negative status and those whose COVID-19 status is unknown.

(8) Long-term care (LTC) Providers--Nursing facilities, assisted living facilities, intermediate care facilities for individuals with intellectual disability or related conditions, day activity and health services facilities, prescribed pediatric extended care centers, home and community support services agencies, state supported living centers, home and community-based services waiver providers, and Texas home living waiver providers.

(9) Quarantine--The practice of keeping someone who might have been exposed to COVID-19 away from others. Quarantine helps prevent the spread of disease that can occur before a person knows they are sick or if they are infected with the virus without feeling symptoms.

(10) Unknown COVID-19 status--The status of a resident, except for fully-vaccinated residents or residents who have recovered from COVID-19, who:

(A) is a new admission or readmission;

(B) has spent one or more nights away from the facility;

(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) Response plan. A nursing facility must have a COVID-19 response plan that includes:

(1) cohorting plans that include designated space for COVID-19 negative residents, COVID-19 positive residents, and residents with unknown COVID-19 status,

(2) resident transport protocols; and

(3) resident recovery plans for continuing care after a resident recovers from COVID-19.

(c) Screening.

(1) Visitors. A nursing facility must screen all visitors in accordance with the Texas Health and Human Services Commission (HHSC) guidance upon arrival and must not allow a visitor who does not pass the screening to enter or remain in the facility.

(2) Residents. A nursing facility must screen each resident in accordance with HHSC guidance upon admission or readmission to the facility. Resident screenings must be documented in the resident's chart. A resident who meets any of the criteria must be cohorted appropriately.

(3) Employees and contractors. A nursing facility must screen each employee or contractor in accordance with HHSC guidance upon arrival and must not allow a person who does not pass the screening to enter or remain in the facility.

(4) Other people who come to the facility. A nursing facility must screen all other people who come to the facility, except emergency services personnel entering the facility or facility campus in an emergency, in accordance with HHSC guidance upon arrival and must not allow a person who does not pass the screening to enter or remain in the facility.

(d) Cohorting.

(1) Cohorting residents. A nursing facility must cohort residents based on the residents' COVID-19 status.

(A) COVID-19 status unknown. A resident with unknown COVID-19 status must be quarantined and monitored for fever and symptoms of COVID-19.

(B) COVID-19 positive. A resident with COVID-19 positive status must be isolated until the resident meets the criteria for the discontinuation of transmission-based precautions.

(2) Cohort staffing policy. A nursing facility must implement a staffing policy requiring:

(A) staff to report to the facility via phone prior to reporting for work if they have known exposure or symptoms; and

(B) staff to perform self-monitoring on days they do not work.

(e) Staff who work with other LTC providers. A nursing facility must develop and implement a policy regarding staff working with other LTC providers that limits the sharing of staff with other LTC providers, unless required in order to maintain adequate staffing at a facility.

(f) Infection Prevention and Control Procedures. A nursing facility must develop and enforce written standards, policies, and procedures for the facility's infection prevention and control program which must include standard and transmission-based precautions to prevent the spread of COVID-19.

(g) Notifying HHSC of COVID-19 activity. A nursing facility must notify HHSC of COVID-19 activity as required by §554.1601(d)(2) of this chapter (relating to Infection Control) and 42 Code of Federal Regulations §483.80(g)(1)-(2). A nursing facility must notify HHSC Complaint and Incident Intake of COVID-19 activity, as described below.

(1) Notify HHSC Complaint and Incident Intake (CII) through the Texas Unified Licensure Information Portal (TULIP) or by calling 1-800-458-9858 within 24 hours of the nursing facility's first positive case of COVID-19 in a staff member or resident and the facility's first positive case of COVID-19 in a staff member or resident after a facility has been without new cases for 14 days or more.

(2) Submit a Form 3613-A, Provider Investigation Report, to HHSC CII through TULIP or by calling 1-800-458-9858 within five working days from the day a confirmed case is reported to CII.

(h) Capacity Changes During COVID-19 Pandemic.

(1) A nursing facility may request a temporary capacity increase to aid in

preventing the transmission of COVID-19 or caring for residents with COVID-19. To request a temporary capacity increase, a nursing facility must send an email to the Associate Commissioner for Long-term Care Regulation at: LTCRSurveyOperation@hhs.texas.gov. The request must contain the following information:

(A) provider name;

(B) facility name;

(C) facility identification number;

(D) provider address;

(E) provider phone number;

(F) current capacity;

(G) current census;

(H) capacity requested;

(I) reasoning for the temporary capacity increase; and

(J) plan to care for the increased number of residents.

(2) If approved, the temporary capacity increase is valid until 120 days after approval or when the Governor's March 13, 2020, Proclamation of Disaster is terminated, whichever is earlier.

(3) A nursing facility may request an extension of a temporary capacity increase. HHSC may grant approval of an extension on a case-by-case basis. HHSC may extend the temporary capacity increase to permit the nursing facility adequate time to apply for a capacity increase under §554.206 of this chapter (relating to Increase in Capacity) or transition back to its previous licensed capacity.

(4) Before the temporary capacity increase approval expires, the nursing facility must:

(A) apply for and receive an increase in capacity through TULIP using the procedures established in §554.206 of this chapter; or

(B) reduce its census so as to not exceed its licensed capacity before the temporary capacity increase.

(i) Medicaid Bed Allocation During COVID-19 Pandemic.

(1) The property owner may request a temporary Medicaid bed allocation increase to aid in preventing the transmission of COVID-19 or caring for residents with COVID-19. To request a temporary Medicaid bed allocation increase, a nursing facility must send an email to the Director of Long-term Care Licensing and credentialing at: Medicaid_Bed_Allocation@hhsc.state.tx.us. The request must contain the following information:

(A) provider name;

(B) facility name;

(C) facility identification number;

(D) provider address;

(E) provider phone number;

(F) current licensed capacity;

(G) current approved capacity, if the facility received approval for a temporary capacity increase;

(H) current Medicaid bed occupancy;

(I) current Medicaid bed allocation;

(J) Medicaid bed allocation requested; and

(K) reasoning for the temporary Medicaid bed allocation increase.

(2) If approved, the temporary Medicaid bed allocation increase is valid until 120 days after approval or when the Governor's March 13, 2020, Proclamation of Disaster is terminated, whichever is earlier.

(3) A nursing facility may request an extension of a temporary Medicaid bed allocation increase. HHSC may grant approval of an extension on a case-by-case basis. HHSC may extend the temporary Medicaid bed allocation increase to permit the nursing facility adequate time to request and receive a Medicaid bed allocation increase under §554.2322 of this chapter (relating to Medicaid Bed Allocation Requirements) or transition back to its previous Medicaid bed allocation status. If a nursing facility requests an extension to transition back to its previous Medicaid bed allocation status or upon request of HHSC, the nursing facility must submit a plan for reducing the number of residents who have Medicaid as a payor source to the Director of Long-term Care Licensing and Credentialing at: Medicaid_Bed_Allocation@hhsc.state.tx.us. HHSC may request additional information, if needed.

(4) Before the temporary Medicaid bed allocation increase approval expires, the nursing facility must:

(A) apply for and receive an increase in Medicaid bed allocation per §554.2322 of this chapter by submitting a request to the Medicaid Bed Allocation email box: Medicaid_Bed_Allocation@hhsc.state.tx.us; or

(B) reduce the number of residents who have Medicaid as a payor source, so as to not exceed its Medicaid bed allocation before the temporary increase.

(5) A nursing facility may request a voluntary reduction in its licensed Medicaid bed allocation. The nursing facility may not reduce the number of Medicaid beds allocated to the facility to fewer than the minimum number needed to accommodate the residents with Medicaid as a payor source currently living in the nursing facility.

(6) A nursing facility may not reduce its Medicaid bed allocation to less than five beds unless the nursing facility voluntarily ceases to participate in Medicaid and follows the process for withdrawal from the Medicaid program contained in §554.2310 of this chapter (relating to Nursing Facility Ceases to Participate).