



Health Facility Compliance Guidance Letter

Number: GL 20-2017-A
Title: ESRD Facility Requirements in Response to COVID-19 [Amended]
Provider Types: End Stage Renal Disease Facilities
Date Issued: August 13, 2020

1.0 Subject and Purpose

This amended guidance letter replaces the previous GL 20-2017, issued on April 16, 2020, to notify providers that on August 13, 2020, the Health and Human Services Commission (HHSC) extended emergency rule §500.21, related to ESRD Facility Requirements in Response to COVID-19, for an additional 60 days. The emergency rule extension is effective until October 11, 2020 and can be viewed in the Texas Register under docket number **202001479**.

The Health and Human Services Commission (HHSC) has adopted emergency rules in response to the state of disaster declared in Texas and the United States of America relating to COVID-19. End stage renal disease facilities (ESRDs) will now be required to comply with alternative operational requirements related to staffing ratios, in-home visits, telemedicine, incident reporting, and education and training requirements for staff, in order to more safely and effectively treat patients and utilize staff during the COVID-19 public health emergency. This letter describes the emergency rule adopted during the disaster.

2.0 Policy Details & Provider Responsibilities

Emergency rule §500.21, related to ESRD Facility Requirements in Response to COVID-19, is adopted under TAC Title 26, Chapter 500, COVID-19 Emergency Health Care Facility Licensing. Under this emergency rule:

- (1) core staff members can actively participate in quality assessment and performance improvement (QAPI) activities and attend

meetings every other month instead of monthly as normally required by 25 TAC §448.117.43(e);

- (2) all verbal or telephone physician orders can be documented and authenticated or countersigned by the physician not more than 30 calendar days from the date the order was given, instead of 15 calendar days as normally required by 25 TAC §117.45(c)(3);
- (3) each patient receiving dialysis in the facility can be seen by a physician on the medical staff once per month during the patient's treatment time, instead of every two weeks. Home dialysis patients shall be seen by a physician, advanced practice registered nurse, or physician's assistant no less than one time a month. If home dialysis patients are seen by an advanced practice registered nurse or a physician's assistant, the physician shall see the patient at least one time every three months. This visit may be conducted using telemedicine medical services, instead of in person as normally required by 25 TAC §117.45(i)(2)(C). The record of these contacts shall include evidence of assessment for new and recurrent problems and review of dialysis adequacy each month;
- (4) the staffing level for home dialysis patients, including all modalities, can be one full-time equivalent registered nurse per 25 patients, or portion thereof, instead of 20 patients as normally required by 25 TAC §117.45(j)(4);
- (5) the home dialysis training curriculum shall be conducted by a registered nurse with at least 12 months clinical experience and three months experience in the specific modality with the responsibility for training the patient and the patient's caregiver, instead of six months as normally required by 25 TAC §117.45(j)(5)(A);
- (6) an initial monitoring visit of a patient's home adaptation prior to the patient beginning training for the selected home modality may be conducted from outside the patient's home if the visit is performed using a synchronous audiovisual interaction between the registered nurse and the patient while the patient is at home, instead of in person as normally required by 25 TAC §117.45(j)(9)(A). The visit must be conducted to the same review standards as a normal face-to-face visit. If the visit is incapable of being performed using a synchronous audiovisual

interaction between the registered nurse and the patient, the visit must be conducted in the patient's home;

- (7) a home patient visit may be conducted using telemedicine medical services, instead of in person as normally required by 25 TAC §117.45(j)(9)(B);
- (8) each registered nurse who is assigned charge nurse responsibilities shall have at least 12 months of clinical experience and have three months of experience in hemodialysis subsequent to completion of the facility's training program, instead of six months experience in hemodialysis as normally required by 25 TAC §117.46(c)(2). In addition:
 - a. the registered nurse must be able to demonstrate competency for the required level of responsibility and the facility shall maintain documentation of that competency;
 - b. the registered nurse must be certified by the facility's medical director and governing body;
 - c. the hemodialysis experience shall be within the last 24 months; and
 - d. a registered nurse who holds a current certification from a nationally recognized board in nephrology nursing or hemodialysis may substitute the certification for the three months experience in dialysis obtained within the last 24 months.
- (9) if patient self-care training is provided, a registered nurse who has at least 12 months clinical experience and three months experience in the specific modality, instead of six months of experience in the specific modality as normally required by 25 TAC §117.46(c)(4), shall be responsible for training the patient or family in that modality. When other personnel assist in the training, supervision by the qualified registered nurse shall be demonstrated;
- (10) a facility shall report an incident listed in 25 TAC §117.48(a)(1)-(5) to HHSC within 20 working days, instead of 10 working days as normally required by 25 TAC §117.48(a); and
- (11) for persons with no previous experience in direct patient care, a minimum of 80 clock hours of classroom education and 200 clock

hours of supervised clinical training shall be required for dialysis technicians. Training programs for dialysis technician trainees who have confirmed previous direct patient care experience may be shortened to a total of 40 clock hours of combined classroom education and clinical training, instead of 80 hours as normally required by 25 TAC §117.62(i), if they demonstrate competency with the required knowledge and skills and there has not been more than a year of time elapsed since they provided patient care in a licensed ESRD facility setting.

To the extent this emergency rule conflicts with other ESRD rules in 25 TAC Chapter 117, this emergency rule controls.

3.0 Background/History

In accordance with Texas Government Code §2001.034, HHSC adopted emergency rule §500.21 on April 16, 2020 in Texas Administrative Code (TAC), Title 26, Chapter 500, relating to ESRD Facility Requirements in Response to COVID-19, due to imminent peril to the public health, safety, or welfare. This emergency rule may not be effective for longer than 120 days and may not be renewed for longer than 60 days.

4.0 Resources

View emergency rule §500.21 in the Texas Register by searching Texas Register Docket Number (TRD ID): **202001479** at:

[https://texreg.sos.state.tx.us/public/regviewctx\\$.startup](https://texreg.sos.state.tx.us/public/regviewctx$.startup)

View Governor Abbott's Disaster Declaration, provided at:

https://gov.texas.gov/uploads/files/press/DISASTER_covid19_disaster_proclamation_IMAGE_03-13-2020.pdf

To receive future updates, sign up for GovDelivery:

<https://service.govdelivery.com/accounts/TXHHSC/subscriber/new>.

5.0 Contact Information

If you have any questions about this letter, please contact the Policy, Rules, and Training unit by email at HCR_PRT@hhsc.state.tx.us.