



Substance Use Disorder Compliance Guidance Letter

Number: GL 21-3005
Title: Chemical Dependency Treatment Facility Requirements During the COVID-19 Pandemic
Provider Types: Chemical Dependency Treatment Facilities
Date Issued: October 12, 2021

1.0 Subject and Purpose

The Health and Human Services Commission (HHSC) adopted emergency rules in response to the state of disaster declared in Texas and the United States of America relating to COVID-19.

Under the new emergency rules, effective October 12, 2021, currently licensed chemical dependency treatment facilities (CDTFs) may temporarily adjust their usual operation requirements related to telehealth and telemedicine, maximum counselor caseloads, service delivery through two-way, real-time internet or telephone communications, documentation deadlines, and treatment planning and service provision. These temporary adjustments are designed to assist with limiting the spread of COVID-19, reduce barriers to treatment, and address staffing shortages in response to the COVID-19 pandemic.

This letter describes the emergency rules adopted during the disaster.

2.0 Emergency Rule Details

Emergency rules §500.41, CDTF Telemedicine or Telehealth During the COVID-19 Pandemic; §500.42, CDTF Maximum Caseloads During the COVID-19 Pandemic; §500.43, CDTF Service Delivery Through Two-Way, Real-Time Internet or Telephone Communications During the COVID-19 Pandemic; and §500.44, CDTF Treatment Planning and Service Provision Documentation Deadlines During the COVID-19 Pandemic are adopted in 26 TAC, Chapter 500, Subchapter D.

2.1 Emergency Rule §500.41, CDTF Telemedicine or Telehealth During the COVID-19 Pandemic

Under emergency rule §500.41, a licensed CDTF may provide certain treatment services to clients using telemedicine, telehealth, or electronic means to reduce the risk of transmission of COVID-19 and address shortages of available medical professionals. The emergency rule is reproduced below:

§500.41. CDTF Telemedicine or Telehealth During the COVID-19 Pandemic.

- (a) Based on Governor Greg Abbott's March 13, 2020 declaration of a state of disaster in all Texas counties, the Texas Health and Human Services Commission (HHSC) adopts this emergency rule to establish continuing requirements and flexibilities to protect public health and safety during the COVID-19 pandemic. The requirements and flexibilities established in this section are applicable during an active declaration of a state of disaster in all Texas counties due to the COVID-19 pandemic, declared pursuant to §418.014 of the Texas Government Code.
- (b) In this section, telehealth service has the meaning assigned by Occupations Code §111.001(3), and telemedicine medical service has the meaning assigned by Occupations Code §111.001(4).
- (c) A physician, physician assistant, nurse practitioner, registered nurse, or licensed vocational nurse (LVN) may use telemedicine medical service or telehealth service to screen a client for admission to a detoxification program as required by 25 TAC §448.801(e), provided all other requirements of that subsection are met. The physician who examines a client screened by a LVN, as required by 25 TAC §448.801(e)(4), may use telemedicine medical service or telehealth service to examine the client.
- (d) The medical director or their designee (physician assistant, nurse practitioner) may use telemedicine medical service or telehealth service to conduct the examination of a client for admission to a detoxification program, as required by 25 TAC §448.902(e), provided all other requirements of that subsection are met.
- (e) A counselor or counselor intern may use electronic means that meet the criteria of 25 TAC §448.911 to conduct the comprehensive psychosocial assessment of a client admitted to the facility, as required by 25 TAC §448.803, provided all other requirements of §448.803 are met, and to review information from an outside source

with the client, as required by 25 TAC §448.803(f), provided all other requirements of that subsection are met.

(f) A qualified credentialed counselor, licensed professional counselor, licensed chemical dependency counselor, licensed marriage and family therapist, or licensed clinical social worker may provide outpatient chemical dependency treatment program services by electronic means under 25 TAC §448.911, provided all other requirements of that section are met.

(g) Any use of telemedicine medical service or telehealth service under this section shall comply with all applicable professional statutes and rules.

(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 section or any minimum standard relating to a chemical dependency treatment facility (CDTF), the facility must comply with the executive order or other direction.

2.2 Emergency Rule §500.42, CDTF Maximum Counselor Caseloads During the COVID-19 Pandemic

Under emergency rule §500.42, a CDTF may increase counselor caseloads in intensive residential programs from 10 to 20 clients per counselor, because of CDTF staff shortages. The emergency rule is reproduced below:

§500.42. CDTF Maximum Caseloads During the COVID-19 Pandemic.

(a) Based on Governor Greg Abbott's March 13, 2020 declaration of a state of disaster in all Texas counties, the Texas Health and Human Services Commission (HHSC) adopts this emergency rule to establish continuing requirements and flexibilities to protect public health and safety during the COVID-19 pandemic. The requirements and flexibilities established in this section are applicable during an active declaration of a state of disaster in all Texas counties due to the COVID-19 pandemic, declared pursuant to §418.014 of the Texas Government Code.

(b) Notwithstanding 25 TAC §448.903(f), counselor caseloads in intensive residential programs shall be limited to 20 clients for each counselor. To the extent this emergency rule conflicts with 25 TAC Chapter 448, this emergency rule controls while it remains in effect.

(c) 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 section or any minimum standard relating to a chemical dependency treatment facility (CDTF), the facility must comply with the executive order or other direction.

2.3 Emergency Rule §500.43, CDTF Service Delivery Through Two-Way, Real-Time Internet or Telephone Communications During the COVID-19 Pandemic

Under emergency rule §500.43, CDTF personnel may temporarily provide certain treatment services through two-way, real-time internet or telephone communications to clients to reduce the risk of transmission of COVID-19. The emergency rule is reproduced below:

§500.43. CDTF Service Delivery Through Two-Way, Real-Time Internet or Telephone Communications During the COVID-19 Pandemic.

- (a) Based on Governor Greg Abbott's March 13, 2020 declaration of a state of disaster in all Texas counties, the Texas Health and Human Services Commission (HHSC) adopts this emergency rule to establish continuing requirements and flexibilities to protect public health and safety during the COVID-19 pandemic. The requirements and flexibilities established in this section are applicable during an active declaration of a state of disaster in all Texas counties due to the COVID-19 pandemic, declared pursuant to §418.014 of the Texas Government Code.
- (b) A qualified credentialed counselor, licensed professional counselor, licensed chemical dependency counselor, licensed marriage and family therapist, licensed clinical social worker, or licensed professional counselor intern may provide intensive residential services required by 25 TAC §448.903(d)(1)-(2), supportive residential services required by 25 TAC §448.903(g)(1)-(2), intensive residential services in therapeutic communities required by 25 TAC §448.1401(g)(1)-(2), and adult supportive residential services in therapeutic communities required by 25 TAC §448.1401(k)(1)-(2) using two-way, real-time internet or telephone communications to provide services.
- (c) A licensed professional counselor intern may provide outpatient chemical dependency treatment program services using two-way, real-time internet or telephone communications to provide services.
- (d) Notwithstanding the provisions of 25 TAC §448.911, the professionals listed in subsection (a) of this section and in §500.41(e) of this subchapter (relating to CDTF Telemedicine or Telehealth in

Response to COVID-19) may use two-way, real-time internet or telephone communications to provide services.

(e) Any provision of services under this section shall comply with all applicable state and federal statutes and rules regarding recordkeeping, confidentiality, and privacy, including 25 TAC §448.508, 25 TAC §448.210, and 42 Code of Federal Regulations Part 2.

(f) 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 section or any minimum standard relating to a CDTF, the facility must comply with the executive order or other direction.

2.4 Emergency Rule §500.44, CDTF Treatment Planning and Service Provision Documentation Deadlines During the COVID-19 Pandemic

Under emergency rule §500.44, CDTF treatment planning and service provision documentation deadlines are temporarily extended to provide additional time to document service delivery, as counselor caseloads may have increased in intensive residential treatment programs in response to the COVID-19 pandemic. The emergency rule is reproduced below:

§500.44. CDTF Treatment Planning and Service Provision Documentation Deadlines During the COVID-19 Pandemic.

(a) Based on Governor Greg Abbott's March 13, 2020 declaration of a state of disaster in all Texas counties, the Texas Health and Human Services Commission (HHSC) adopts this emergency rule to establish continuing requirements and flexibilities to protect public health and safety during the COVID-19 pandemic. The requirements and flexibilities established in this section are applicable during an active declaration of a state of disaster in all Texas counties due to the COVID-19 pandemic, declared pursuant to §418.014 of the Texas Government Code.

(b) Notwithstanding the deadline provision of 25 TAC §448.804(f), the client treatment plan required by 25 TAC §448.804 shall be completed and filed in the client record within seven business days of admission.

(c) Notwithstanding the deadline provision of 25 TAC §448.804(l), program staff shall document all treatment services (counseling, chemical dependency education, and life skills training) in the client record within seven business days, including the date, nature, and

duration of the contact, the signature and credentials of the person providing the service, and the information required by 25 TAC §448.804(l)(1)-(2).

(d) 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 section or any minimum standard relating to a chemical dependency treatment facility (CDTF), the facility must comply with the executive order or other direction.

3.0 Background/History

HHSC adopted previous emergency rules at §500.41, CDTF Telemedicine or Telehealth in Response to COVID-19, §500.42, CDTF Maximum Caseloads in Response to COVID-19, §500.43, CDTF Service Delivery Through Two-Way, Real-Time Internet or Telephone Communications in Response to COVID-19, and §500.44, CDTF Treatment Planning and Service Provision Documentation Deadlines in Response to COVID-19, on April 15, 2021 and extended them on August 13, 2021. These emergency rules expired on October 11, 2021, and HHSC adopted new replacement emergency rules at §§500.41 – 500.44 on October 12, 2021.

In accordance with Texas Government Code §2001.034, HHSC adopted emergency rules §§500.41 – 500.44 in 26 TAC, Part 1, Chapter 500, Subchapter D, Chemical Dependency Treatment Facilities, on October 12, 2021, 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 the emergency rules in the Texas Register by searching Texas Register Docket Number (TRD ID): **202104025** 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 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 at:
<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@hhs.texas.gov.