

TITLE 26 HEALTH AND HUMAN SERVICES
PART 1 HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 553 LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES
SUBCHAPTER K COVID-19 RESPONSE

ADOPTION PREAMBLE

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC or Commission) adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 553, Licensing Standards for Assisted Living Facilities, new §553.2001, concerning an emergency rule in response to COVID-19 and requiring assisted living facility actions to mitigate and contain COVID-19. 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. 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 Assisted Living Facility COVID-19 Response.

To protect assisted living facility residents and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to require assisted living facility actions to mitigate and contain COVID-19. The purpose of the new rule is to describe these requirements.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §§2001.034 and 531.0055, and Texas Health and Safety Code §§247.025 and 247.026. 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 the health and human services system. Texas Health & Safety Code §247.026 requires the Executive Commissioner of HHSC to adopt

rules prescribing minimum standards to protect the health and safety of assisted living residents. Texas Health & Safety Code §247.025 requires the Executive Commissioner of HHSC to adopt rules necessary to implement Texas Health and Safety Code Chapter 247 concerning assisted living facilities.

The new section implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 247.

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.

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CHAPTER 553 LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES
SUBCHAPTER K COVID-19 EMERGENCY RULE

§553.2001. Assisted Living Facility COVID-19 Response.

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

(1) Cohort--A group of residents placed in rooms, halls, or sections of an assisted living 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) 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.

(3) 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.

(4) 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.

(5) 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.

(6) Isolation--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.

(7) PPE--Personal protective equipment means specialized clothing or equipment worn by assisted living facility staff for protection against transmission of infectious diseases such as COVID-19, including masks, goggles, face shields, gloves, and disposable gowns.

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

(9) Unknown COVID-19 status--The status of a person, except as provided by the CDC 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) An assisted living facility must have a protocol in place included in its COVID-19 response plan that describes how, if the facility cannot successfully isolate the individual, the facility will transfer a COVID-19 positive resident to another facility capable of isolating and caring for the COVID-19 positive resident.

(1) An assisted living facility must have contracts or agreements with alternative appropriate facilities for caring for COVID-19 positive residents.

(2) An assisted living facility must assist the resident and family member to transfer the resident to the alternate facility.

(c) An assisted living facility must have a COVID-19 response plan that includes:

(1) designated space for:

(A) COVID-19 negative residents;

(B) residents with unknown COVID-19 status; and

(C) COVID-19 positive residents, when the facility is able to care for a resident at this level or until arrangements can be made to transfer the resident to a higher level of care;

(2) spaces for staff to don and doff PPE that minimize the movement of staff through other areas of the facility;

(3) resident transport protocols;

(4) plans for obtaining and maintaining a two-week supply of PPE, including surgical facemasks, gowns, gloves, and goggles or face shields; and

(5) if the facility cares for or houses COVID-19 positive residents, a resident recovery plan for continuing care when a resident is recovering from COVID-19.

(d) An assisted living facility must screen all residents, staff, and people who come to the facility, in accordance with HHSC guidance.

(e) An assisted living facility must screen residents according to HHSC guidance:

(1) upon admission or readmission to the facility; and

(2) at least once a day in accordance with HHSC guidance.

(f) An assisted living facility must screen each employee or contractor for the criteria in subsection (d) of this section before entering the facility at the start of their shift. Staff screenings must be documented in a log kept at the facility entrance and must include the name of each person screened, the date and time of the evaluation, and the results of the evaluation. Staff who meet any of the criteria must not be permitted to enter the facility.

(g) An assisted living facility must assign each resident to the appropriate cohort based on the resident's COVID-19 status.

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

(i) A resident with COVID-19 positive status must be isolated until the resident meets CDC guidelines for the discontinuation of transmission-based precautions, if cared for in the facility.

(j) If a resident with COVID-19 positive status must be transferred for a higher level of care, the facility must isolate the resident until the resident can be transferred.

(k) An assisted living facility must implement a staffing policy requiring the following:

(1) staff must inform the facility per facility policy prior to reporting for work if they have known exposure or symptoms;

(2) staff must perform self-monitoring on days they do not work; and

(3) the facility must develop and implement a policy regarding staff working with other long-term care (LTC) providers that limits the sharing of staff with other LTC providers and facilities, unless required in order to maintain adequate staffing at a facility.

(l) The facility must develop and enforce policies and procedures for infection control. The written standards, policies, and procedures for the facility's infection prevention and control program must include standard and transmission-based precautions to prevent the spread of COVID-19, including the appropriate use of PPE. All facemasks and N95 masks must be in good functional condition as described in the COVID Response Plan for Assisted Living Facilities.

(1) An assisted living facility must comply with CDC guidance on the optimization of PPE when supply limitations require PPE to be reused.

(2) An assisted living facility must document all efforts made to obtain PPE, including each organization contacted and the date of each attempt.

(m) An assisted living facility must report COVID-19 activity as required by §553.41(n)(3) of this chapter (relating to Standards for Type A and Type B Assisted Living Facilities). COVID-19 activity must be reported to HHSC Complaint and Incident Intake as described below.

(1) A facility must report the first confirmed case of COVID-19 in staff or residents, and the first confirmed case of COVID-19 after a facility has been without cases for 14 days or more, to HHSC Complaint and Incident Intake through Texas Unified Licensure Information Portal (TULIP), or by calling 1-800-458-9858 within 24 hours of the positive confirmation.

(2) A facility must submit Form 3613-A, Provider Investigation Report, to HHSC Complaint and Incident Intake through TULIP or by calling 1-800-458-9858 within five working days from the day a confirmed case is reported.

(n) 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 an assisted living facility, the assisted living facility must comply with the executive order or other direction.