

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

#### EMERGENCY 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 §554.2803, concerning an emergency rule in response to COVID-19 requiring a nursing facility to follow the Centers for Medicare and Medicaid Services (CMS) guidance for visitation during the COVID-19 public health emergency. As authorized by Texas Government Code §2001.034, HHSC may adopt an emergency rule without prior notice or hearing upon finding 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. This emergency rulemaking reflects the continued reopening of the State of Texas as well as the new requirements for visitation of nursing facility residents provided by CMS in Memorandum QSO-20-39-NH, as revised November 12, 2021. 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 COVID-19 Response - Expansion of Reopening Visitation.

To protect nursing facility residents and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting a new emergency rule to allow visitation in a nursing facility in accordance with CMS guidance. The purpose of the new rule is to require all nursing facilities, including licensed-only facilities, to comply with CMS guidance.

#### STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055, and Texas Health and Safety Code §242.001 and §242.037. 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 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 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 residents who are living in a nursing facility.

The new rule implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 242.

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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§554.2803. Nursing Facility COVID-19 Response – Expansion of Reopening Visitation.

A nursing facility, including a licensed-only nursing facility, must adhere to the Centers for Medicare and Medicaid Services guidance for visitation during the COVID-19 public health emergency provided in the September 17, 2020, Memorandum to State Survey Agency Directors, “Nursing Home Visitation – COVID-19,” QSO-20-39-NH, as revised November 12, 2021, and available at <https://www.cms.gov/files/document/qso-20-39-nh-revised.pdf>.