

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. 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.

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§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 Centers for Disease Control and Prevention (CDC) 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) Personal protective equipment (PPE)--Specialized clothing or equipment worn by nursing facility staff for protection against transmission of infectious diseases such as COVID-19, including masks, goggles, face shields, gloves, and disposable gowns.

(10) 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.

(11) Unknown COVID-19 status--The status of a resident, 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) 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) 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, N95 facemasks, gowns, gloves, and goggles or face shields; and

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

(c) Screening.

(1) Visitors. A nursing facility must screen all visitors as provided in §554.2803 of this title (relating to Nursing Facility COVID-19 Response – Expansion of Reopening Visitation).

(2) Residents. A nursing facility must screen each resident as described below. Resident screenings must be documented in the resident's chart. A resident who meets any of the criteria must be cohorted appropriately.

(A) Upon a resident's admission or readmission to the facility, the facility must screen the resident for the following criteria:

(i) fever, defined as a temperature of 100.4 degrees Fahrenheit and above;

(ii) signs or symptoms of COVID-19, including chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea;

(iii) any other signs and symptoms as outlined by CDC in Symptoms of Coronavirus at cdc.gov;

(iv) contact in the last 14 days with someone who has a confirmed diagnosis of COVID-19, is under investigation for COVID-19, or is ill with a respiratory illness; or

(v) a positive COVID-19 test result from a test performed in the last 10 days.

(B) At least once a day the facility must screen each resident for the criteria in subparagraph (A)(i)-(iv) of this paragraph.

(3) Employees and contractors. A nursing facility must screen each employee or contractor for the criteria in paragraph (2)(A)(i)-(v) of this subsection 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.

(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, for the criteria in paragraph (2)(A)(i)-(v) of this subsection before entering the facility. These screenings must be documented in a log kept at the entrance to the facility, which must include the name of each person screened, the date and time of the screening, and the results of the screening. Anyone who meets any of the screening criteria must leave the nursing facility campus.

(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, in accordance with CDC guidance.

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

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

(A) staff to wear appropriate PPE, based on the cohort with which they work;

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

(C) 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) PPE. 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, including the appropriate use of PPE. All facemasks and N95 masks must be in good functional condition, as described in the COVID-19 Response for Nursing Facilities at [hhs.texas.gov](https://www.hhs.texas.gov), and worn appropriately, completely covering the nose and mouth.

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

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

(g) Fully-vaccinated staff. A nursing facility's infection prevention and control program may allow fully-vaccinated staff to not wear a facemask or other PPE or maintain physical distancing when they are in well-defined areas that are restricted from resident access in accordance with CDC guidance.

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

(1) 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 new cases for 14 days or more, to 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 confirmed positive result.

(2) Submit a 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 to CII.

(i) 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: [LTCRSurveyOperations@hhs.texas.gov](mailto:LTCRSurveyOperations@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 title (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 title; or

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

(j) 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 title (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 title 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 title (relating to Nursing Facility Ceases to Participate).