

TITLE 26 HEALTH AND HUMAN SERVICES  
PART 1 HEALTH AND HUMAN SERVICES COMMISSION  
CHAPTER 745 LICENSING  
SUBCHAPTER X EMERGENCY RULES  
DIVISION 1 EMERGENCY CHILD CARE OPERATION

#### ADOPTION PREAMBLE

The Executive Commissioner of the Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 745, Licensing, new §745.10005, concerning an emergency rule that establishes temporary requirements to ensure that child day-care operations follow health and safety guidelines from health authorities. The health, safety, and welfare of children will be at risk without adequate care and reasonable precautions. As authorized by Government Code §2001.034, the Commission 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. The Commission finds that an imminent peril exists to the public health, safety or welfare. An emergency rule adopted under 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 proposal 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 emergency rule §745.10005.

The purpose of the new emergency rule is to protect the health, safety, and welfare of children in day care operations and the public from the COVID-19 pandemic. The emergency rule will create specific requirements relating to health and safety standards and how to comply with recommendations from health authorities that have evolved since the pandemic began.

#### STATUTORY AUTHORITY

The emergency rules are adopted under Government Code §2001.034 and §531.0055 and Human Resources Code §42.001 and §42.042. 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. 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. Human Resources Code §42.001 states that it is the policy of the state to ensure the protection of all children under care in child-care facilities. In addition, Human Resources Code §42.042 authorizes the Executive Commissioner of HHSC to adopt rules governing the regulation of child care facilities in Chapter 42.

The agency hereby certifies that the emergency adoption 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) 438-3269.

TITLE 26	HEALTH AND HUMAN SERVICES
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DIVISION 1	RULES FOR CERTAIN DAY CARE OPERATIONS IN RESPONSE TO COVID-19

#### §745.10005. Emergency Rule with Ongoing Requirements for Certain Day Care Operations in Response to COVID-19.

(a) This section applies to the following operations:

- \_\_\_ (1) School-age programs;
- \_\_\_ (2) Before and after-school programs;
- \_\_\_ (3) Child-care centers;
- \_\_\_ (4) Licensed child-care homes; and
- \_\_\_ (5) Registered child-care homes.

(b) An operation must comply with the current CDC guidance for Childcare Programs that Remain Open located at: [www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-childcare.html](http://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-childcare.html).

(c) Regarding caregivers and other staff, an operation must:

- \_\_\_ (1) Ensure that all caregivers take the Special Considerations for Infection Control during COVID-19 training through the Texas A&M AgriLife Extension;

(2) Require all caregivers and other staff to notify the operation if they experience any illness or symptoms that may be related to COVID-19;

(3) Consult with the local or state health authority if a caregiver or other staff has been in close contact, as defined by CDC, with someone who has tested positive for COVID-19 and follow the local or state health authority's recommendations; and

(4) Encourage caregivers and other staff who are 65 years of age or older or who otherwise might be at higher risk for severe illness from COVID-19 to talk to their healthcare provider to assess their risk and determine if they should continue to be present at the operation.

(d) An operation must screen all persons and children according to CDC guidance before allowing entry into the operation, including checking the temperature of each person and child upon arrival at the operation each day and denying entry to any person who:

(1) Has a fever with a temperature of 100.4 degrees or higher;

(2) Demonstrates signs or symptoms of a respiratory infection, such as cough, shortness of breath, or sore throat, or other signs of illness;

(3) Has had close contact, as defined by the CDC, with someone who has a confirmed diagnosis of COVID-19 or someone who is under investigation for COVID-19 unless the local or state health authority has determined the person's presence at the operation would not put others at risk: [www.cdc.gov/coronavirus/2019-ncov/php/contact-tracing/contact-tracing-plan/appendix.html#contact](http://www.cdc.gov/coronavirus/2019-ncov/php/contact-tracing/contact-tracing-plan/appendix.html#contact); or

(4) Has a confirmed diagnosis of COVID-19.

(e) An operation must not deny entry to persons performing official duties, unless the individual meets a screening criterion in subsection (d). The screening required by subsection (d) does not apply to emergency services personnel entering the operation in an emergency situation.

(f) Regarding the pick-up and drop-off of children, an operation must:

(1) Limit the direct contact between parents and caregivers to the extent possible considering the age of the child; and

(2) Complete the pick-up and drop-off of children outside of the operation, unless the operation determines that there is a legitimate need for the parent to enter. If the operation determines that there is a legitimate need for a specific parent to enter, the operation must screen the parent as provided in subsection (d).

(g) Regarding the spread of germs:

(1) In addition to following the current minimum standards related to diapering:

(A) A caregiver must wash an infant's or toddler's hands and the caregiver's hands before changing a diaper;

(B) A caregiver must wear gloves when changing a diaper; and

(C) An operation must post diaper changing procedures in all diaper changing areas.

(2) Children and caregivers must have multiple changes of clothing available at an operation because any secretions on a child's clothes or bib or a caregiver's clothes will mean that the clothes or bib must be changed, and:

(A) Contaminated clothes or bibs must be placed in a sealed plastic bag to be sent home with the child or caregiver or washed in a washing machine;

(B) The child's hands and the caregiver's hands must be washed after changing clothes; and

(C) A child must not be allowed to wear another child's clothing.

(3) An operation must:

(A) Adjust the HVAC system, if possible, to allow fresh air to enter the operation;

(B) Not use machine washable cloth toys, or the toys must only be used by one child and then laundered before use by another child;

(C) Place posters describing handwashing steps near sinks used for handwashing. Developmentally appropriate posters in multiple languages are available from the CDC; and

(D) Require any caregiver or other staff who begins to exhibit symptoms of COVID-19 or any other contagious illness while at the operation to leave the operation immediately.

(h) Regarding food preparation, an operation:

(1) When using a sink for food preparation, must not use that sink for any other purpose; and

(2) Must not serve family style meals. Each child must be provided individual meals and snacks.

(i) If this emergency rule is more restrictive than any minimum standard relating to the operations addressed by this rule, this emergency rule will prevail so long as this emergency rule is in effect.

(j) 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 emergency rule or any minimum standard relating to the operations addressed in this emergency rule, the operations must comply with the executive order or other direction.