

TITLE 26 HEALTH AND HUMAN SERVICES  
PART 1 HEALTH AND HUMAN SERVICES COMMISSION  
CHAPTER 551 INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN  
INTELLECTUAL DISABILITY OR RELATED CONDITIONS  
SUBCHAPTER C STANDARDS FOR LICENSURE

EMERGENCY RULE ADOPTION PREAMBLE

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26, Part 1, Texas Administrative Code, Chapter 551, Intermediate Care Facilities for Individuals with an Intellectual Disability (ICF/IID) or Related Conditions, new §551.47, concerning an emergency rule in response to COVID-19 describing requirements for limited indoor and outdoor visitation in ICF/IID. 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. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this Intermediate Care Facility COVID-19 Response-- Expansion of Reopening Visitation.

To protect intermediate care 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 require limited indoor and outdoor visitation in an intermediate care facility. The purpose of the new rule is to describe the requirements related to such visits.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §§2001.034 and 531.0055 and Texas Health and Safety Code §§252.031 - 252.033 and 242.043. 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 §§252.031 - 252.033 require the Executive Commissioner of HHSC to establish rules prescribing the minimum standards and process for licensure as an intermediate care facility. Texas Health and Safety Code §252.043 establishes HHSC's authority to conduct an inspection, survey, or investigation at an intermediate care facility to determine if the intermediate care facility is in compliance with the minimum acceptable levels of care for individuals who are living in an intermediate care facility, and the minimum acceptable life safety code and physical environment requirements.

The new rule implements Texas Government Code §§531.0055 and 531.021 and Texas Human Resources Code §32.021.

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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§551.47. Intermediate Care Facility COVID-19 Response--Expansion of Reopening Visitation.

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

(1) 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 in the last 14 days.

(2) 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.

(3) End-of-life visit--A personal visit between a visitor and an individual who is receiving hospice services or who is at or near the end of life, with or without receiving hospice services, or whose prognosis does not indicate recovery. An end-of-life visit is permitted in all facilities and for all individuals at or near the end of life.

(4) Essential caregiver--A family member or other outside caregiver, including a friend, volunteer, clergy member, private personal caregiver, or court-appointed guardian, who is at least 18 years old and has been designated by the individual or legal representative.

(5) Essential caregiver visit--A personal visit between an individual and an essential caregiver. An essential caregiver visit is permitted for all individuals with any COVID-19 status.

(6) Facility-acquired COVID-19 infection--COVID-19 infection that is acquired after admission in a facility and was not present at the end of the 14-day period following admission or readmission.

(7) 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.

(8) Individual--A person enrolled in the intermediate care facilities for individuals with an intellectual disability or related conditions program.

(9) Indoor visit--A personal visit between an individual and one or more personal visitors that occurs in-person in a dedicated indoor space.

(10) Large intermediate care facility--An intermediate care facility serving 17 or more individuals in one or more buildings.

(11) Outbreak--One or more laboratory confirmed cases of COVID-19 identified in either an individual or paid or unpaid staff.

(12) Outdoor visit--A personal visit between an individual and one or more personal visitors that occurs in-person in a dedicated outdoor space.

(13) Persons providing critical assistance--Providers of essential services, persons with legal authority to enter, family members or friends of individuals at the end of life, and designated essential caregivers.

(14) Persons with legal authority to enter--Law enforcement officers and government personnel performing their official duties.

(15) Physical distancing--Maintaining a minimum distance between persons as recommended by the CDC, avoiding gathering in groups in accordance with state and local orders, and avoiding unnecessary physical contact.

(16) PPE--Personal protective equipment.

(17) Providers of essential services--Contract doctors or nurses, home health and hospice workers, health care professionals, contract professionals, clergy members and spiritual counselors, guardians, advocacy professionals, and individuals operating under the authority of a local intellectual and developmental disability authority or a local mental health authority, whose services are necessary to ensure individual health and safety.

(18) Salon services visit--A personal visit between an individual and a salon services visitor.

(19) Salon services visitor--A barber, beautician, or cosmetologist providing hair care or personal grooming services to an individual.

(20) Small intermediate care facility--An intermediate care facility serving 16 or fewer individuals.

(21) Unknown COVID-19 status--The status of a person, except as provided by the CDC for an individual who is fully vaccinated for COVID-19 or 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 intermediate care facility must screen all visitors prior to allowing them to enter the facility in accordance with subsection (c) of this section, except emergency services personnel entering the facility or facility campus in an emergency. Visitor 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. The visitor screening log may contain protected health information and must be protected in accordance with applicable state and federal law.

(c) Visitors must be screened in accordance with emergency rules in §551.46 of this chapter (relating to ICF/IID Provider Response to COVID-19 – Mitigation).

(d) An intermediate care facility must allow persons providing critical assistance, including essential caregivers, and persons with legal authority to enter to enter the facility if they pass the screening in subsection (c) of this section.

(e) A person providing critical assistance who has had contact with an individual with COVID-19 positive or COVID-19 unknown status, but does not meet the CDC definition of close contact or unprotected exposure, must not be denied entry to the facility unless the person providing critical assistance does not pass the screening criteria described in subsection (c) of this section, or any other screening criteria based on CDC guidance.

(f) The facility must offer a complete series of a one- or two-dose COVID-19 vaccine to individuals and staff and document each individual's choice to vaccinate or not vaccinate.

(g) The facility must allow essential caregiver visits, end-of-life visits, indoor visits, and outdoor visits as required by this subsection. If an intermediate care facility fails to comply with the requirements of this section, HHSC may impose licensure remedies in accordance with Subchapter H of this chapter (relating to Enforcement).

(1) The following limits apply to all visitation allowed under this section.

(A) A facility may ask about a visitor's COVID-19 vaccination status and COVID-19 test results, but a facility must not require a visitor to provide documentation of a COVID-19 negative test or COVID-19 vaccination status as a condition of visitation or entering the facility.

(B) A facility must develop and enforce policies and procedures that ensure infection control practices, including whether the visitor and the individual must wear a face mask, face covering, or appropriate PPE.

(C) To permit indoor visitation, a large intermediate care facility must have separate areas, units, wings, halls, or buildings designated for COVID-19 positive, COVID-19 negative, and unknown COVID-19 status individual cohorts.

(D) An intermediate care facility must provide instructional signage throughout the facility and proper visitor education regarding:

(i) the signs and symptoms of COVID-19;

(ii) infection control precautions; and

(iii) other applicable facility practices (e.g., specified entries and exits, routes to designated areas, and hand hygiene).

(E) Visitation must be facilitated to allow time for cleaning and sanitization of the visitation area between visits and to ensure infection prevention and control measures are followed. A facility may schedule personal visits in advance to facilitate cleaning and sanitization of the visitation area. A facility may permit personal visits that are not scheduled in advance. Scheduling visits in advance must not be so restrictive as to prohibit or limit visitation for individuals.

(F) Except as provided in subparagraph (G) of this paragraph, indoor visits and outdoor visits are permitted only for individuals who have COVID-19 negative status.

(G) Essential caregiver visits and end-of-life visits are permitted for individuals who have COVID-19 negative, COVID-19 positive, or unknown COVID-19 status.

(H) Except as provided in subparagraph (I) of this paragraph, the individual and his or her personal visitor may have close or personal contact in accordance with CDC guidance. The visitor must maintain physical distancing between themselves and all other persons in the facility.

(I) Essential caregiver visitors and end-of-life visitors do not have to maintain physical distancing between themselves and the individual they are visiting but must maintain physical distancing between themselves and all other persons in the facility.

(J) Visits are permitted where adequate space is available as necessary to ensure physical distancing between visitation groups and safe infection prevention and control measures, including the individual's room. The facility must limit the movement of the visitor through the facility to ensure interaction with other

persons in the facility is minimized.

(K) A facility must ensure equal access by all individuals to personal visitors, end-of-life visitors, and essential caregivers.

(L) A facility must allow visitors of any age.

(M) A facility must ensure a comfortable and safe outdoor visitation area for outdoor visits, considering outside air temperature and ventilation.

(N) A facility must inform visitors of the facility's infection control policies and procedures related to visitation.

(O) A facility must provide hand-washing stations, or hand sanitizer, to the visitor and individual before and after visits.

(P) The visitor and the individual must practice hand hygiene before and after the visit.

(2) The following requirements apply to essential caregiver visits.

(A) There may be up to two permanently designated essential caregivers per individual.

(B) Up to two essential caregivers may visit a resident at the same time.

(C) The visit may occur outdoors, in the individual's bedroom, or in another area in the facility that limits visitor movement through the facility and interaction with other individuals and staff.

(D) Essential caregiver visitors do not have to maintain physical distancing between themselves and the individual they are visiting but must maintain physical distancing between themselves and all other individuals and staff.

(E) The facility must develop and enforce essential caregiver visitation policies and procedures, which include:

(i) a written agreement that the essential caregiver understands and agrees to follow the applicable policies, procedures, and requirements;

(ii) training each designated essential caregiver on infection control measures, hand hygiene, and cough and sneeze etiquette;

(iii) expectations regarding using only designated entrances and exits as directed, if applicable; and

(iv) limiting visitation to the area designated by the facility in accordance

with subparagraph (C) of this paragraph.

(F) An intermediate care facility must:

(i) inform the essential caregiver of applicable policies, procedures, and requirements;

(ii) maintain documentation of the essential caregiver's agreement to follow the applicable policies, procedures, and requirements;

(iii) maintain documentation of the essential caregiver's training as required in subparagraph (E)(ii) of this paragraph;

(iv) maintain documentation of the identity of each essential caregiver in the individual's records; and

(v) prevent visitation by the essential caregiver visitor if the essential caregiver has signs and symptoms of COVID-19 or an active COVID-19 infection.

(G) The facility may cancel the essential caregiver visit if the essential caregiver fails to comply with the facility's policy regarding essential caregiver visits or applicable requirements in this section.

(h) A facility may allow a salon services visitor to enter the facility to provide services to an individual only if:

(1) the salon services visitor passes the screening described in subsection (c) of this section;

(2) the salon services visitor agrees to comply with the most current version of the Minimum Standard Health Protocols – Checklist for Cosmetology Salons/Hair Salons, located on [open.texas.gov](http://open.texas.gov); and

(3) the requirements of subsection (i) of this section are met.

(i) The following requirements apply to salon services visits.

(1) A salon services visit may be permitted for all individuals with COVID-19 negative status.

(2) The visit may occur outdoors, in the individual's bedroom, or in another area in the facility that limits visitor movement through the facility and interaction with other persons in the facility.

(3) Salon services visitors do not have to maintain physical distancing between themselves and each individual they are visiting, but they must maintain physical distancing between themselves and all other persons in the facility.

(4) The intermediate care facility must develop and enforce salon services visitation policies and procedures, which include:

(A) a written agreement that the salon services visitor understands and agrees to follow the applicable policies, procedures, and requirements;

(B) training each salon services visitor on infection control measures, hand hygiene, and cough and sneeze etiquette;

(C) expectations regarding using only designated entrances and exits, as directed; and

(D) limiting visitation to the area designated by the facility, in accordance with paragraph (2) of this subsection.

(5) The intermediate care facility must:

(A) inform the salon services visitor of applicable policies, procedures, and requirements;

(B) maintain documentation of the salon services visitor's agreement to follow the applicable policies, procedures and requirements;

(C) maintain documentation of the salon services visitor's training, as required in paragraph (4)(B) of this subsection;

(D) document the identity of each salon services visitor in the facility's records; and

(E) cancel the salon services visit if the salon services visitor fails to comply with the facility's policy regarding salon services visits or applicable requirements in this section.

(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 rule or any minimum standard relating to a facility, the facility must comply with the executive order or other direction.