



## Health Facility Licensing Guidance Letter

<b>Number:</b> GL 21-3004A2
<b>Title:</b> Outpatient Chemical Dependency Treatment Service Provision Through Electronic Means (HB 4-87R) [Amended]
<b>Provider Types:</b> Chemical Dependency Treatment Facilities
<b>Date Issued:</b> May 20, 2024

### 1.0 Subject and Purpose

This amended guidance letter replaces the previous GL 21-3004-A, issued on March 3, 2022, to notify providers that the Texas Health and Human Services Commission (HHSC) adopted rules in Texas Administrative Code Title 25 (25 TAC) Chapter 448, now located at [26 TAC Chapter 564](#), to further implement [House Bill \(HB\) 4, Section 2](#), which is described in [Section 3.0](#) of this guidance letter. These rules, which took effect February 22, 2024, were published as adopted in the [February 16, 2024 issue of the Texas Register \(49 TexReg 871\)](#). This amended guidance letter also provides guidance on telehealth privacy requirements (refer to [Section 3.2](#) below).

HHSC provides guidance to licensed providers on enacted legislation and adopted rules implementing that legislation that impacts their provider type.

HB 4, 87<sup>th</sup> Legislature, Regular Session, 2021, relating to the provision and delivery of certain health care services in this state, including services under Medicaid and other public benefits programs, using telecommunications or information technology and to reimbursement for some of those services, took effect June 15, 2021.

This letter provides instruction to licensed chemical dependency treatment facilities (CDTFs) on HB 4's provisions and outlines provider responsibilities and expectations.

## 2.0 Background/History

The previous HHSC rule at 25 TAC Section 448.911, now located at [26 TAC Section 564.911](#), only allowed a CDTF to provide outpatient treatment services through electronic means to adults. In response to the state of disaster declared in Texas and the United States of America relating to COVID-19, HHSC adopted a temporary emergency rule amendment to 25 TAC Section 448.911 permitting a CDTF to also provide outpatient treatment services through electronic means to adolescents to reduce the risk of COVID-19 transmission.

HHSC received positive feedback from stakeholders regarding this emergency rule, including stakeholder requests for HHSC to adopt the emergency rule's provisions permanently in the rules governing licensed CDTFs. HB 4 codified into law the provisions of the emergency rule amendment, and the permanent rules implementing [HB 4, Sections 8 and 9](#), took effect March 3, 2022.

On April 30, 2024, HHSC administratively transferred the rules in 25 TAC Chapter 448 to [26 TAC Chapter 564](#). The rule transfer notices were previously posted in the [April 5, 2024, issue of the Texas Register \(49 TexReg 2197\)](#). Refer to [Figure: 25 TAC Chapter 441 and Chapter 448 \(PDF\)](#) for a crosswalk of the administratively transferred rules.

## 3.0 Legislative Details & Provider Responsibilities

HB 4 amended Texas Health and Safety Code (HSC) Chapter 462 by adding [Section 462.015](#), which allows a licensed CDTF to provide outpatient chemical dependency treatment services to adult and adolescent clients using telecommunications or information technology in a manner that complies with HHSC rules.<sup>1</sup>

HB 4 also amended [HSC Section 462.025](#) by adding subsection (d-1), which requires HHSC rules governing a CDTF's intake, screening, and assessment procedures to establish minimum standards for providing those services through telecommunications or information technology.<sup>2</sup>

HHSC proposed rules to implement new HSC Section 462.015 and amended HSC Section 462.025 in the [October 8, 2021, issue of the Texas Register \(46 TexReg 6875\)](#).

[HB 4, Section 2](#) amended [Texas Government Code Chapter 531](#) by adding new [Section 531.02161](#), which requires HHSC to determine which services

---

<sup>1</sup> [HSC Section 462.015\(a\)-\(b\)](#)

<sup>2</sup> [HSC Section 462.025\(d-1\)](#)

are cost-effective and clinically effective and adopt rules to develop and implement a system to allow providers to provide certain behavioral health services using audio-only means to an individual receiving those services.

HHSC proposed amendments to allow a CDTF to deliver certain audio-only substance use disorder treatment services that HHSC determined are clinically effective and safe in the [November 10, 2023, issue of the Texas Register \(48 TexReg 6562\)](#).

### **3.1 HHSC CDTF Rules Implementing HB 4**

To comply with HB 4's provisions described in [Section 3.0](#) (above), HHSC adopted amendments to the following CDTF rules:

Amended Section 448.911(c), now located at [Section 564.911\(c\)](#), permanently adopted the emergency rule amendment HHSC adopted in response to COVID-19 (refer to [Section 2.0](#) above), which allowed CDTFs to provide outpatient treatment services by electronic means to adults and adolescents. The emergency rule expired on March 2, 2022, and the permanent rule took effect March 3, 2022.

Amended 25 TAC Section 448.801, now located at [26 TAC Section 564.801](#), requires a provider screening an individual through electronic means to screen the individual using synchronous audio-visual technology, except under certain circumstances when a provider may screen an individual using audio-only technology during a declared state of disaster.

Amended 25 TAC Section 448.803, now located at [26 TAC Section 564.803](#), requires a provider assessing a client through electronic means to assess the client using synchronous audio-visual technology, except under certain circumstances when a provider may assess a client using audio-only technology during a declared state of disaster.

Amended 25 TAC Section 448.911, now located at [26 TAC Section 564.911](#), defines several terms, allows a licensed outpatient CDTF program to provide individual and group counseling services using synchronous audio-only technology, and updates and clarifies other requirements for providing services through electronic means, including requiring a CDTF providing services through electronic means to be equipped to provide in-person services at the program's physical location at a client's request.

### **3.2 Telehealth Privacy Requirements**

Updated 25 TAC Section 448.911(a)(3), now located at [26 TAC Section 564.911\(a\)\(3\)](#), and updated 25 TAC Section 448.911(a)(4), now located at

[26 TAC Section 564.911\(a\)\(4\)](#), require audio-only and audio-visual services to meet the privacy requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

The U.S. Department of Health and Human Services (USHHS) provides guidance on:

- [HIPAA and Telehealth](#)
- [Audio-Only Telehealth](#)
- [Audio-Only Telehealth Office of Civil Rights Notification and FAQs](#)

[26 TAC Section 564.911\(v\)\(4\)](#) requires programs to adhere to HIPAA and use HIPAA-compliant technology for services provided through electronic means, which is defined at [26 TAC Section 564.911\(a\)\(1\)](#), and the USHHS guidance above provides more information on protecting client privacy and confidential information.

#### 4.0 Resources

Review 26 TAC Chapter 564 at:

[texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=4&ti=26&pt=1&ch=564](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=26&pt=1&ch=564).

Review HB 4 (87<sup>th</sup> Legislature, Regular Session, 2021) at:

[capitol.texas.gov/tlodocs/87R/billtext/html/HB00004F.htm](http://capitol.texas.gov/tlodocs/87R/billtext/html/HB00004F.htm).

Review issues of the *Texas Register* at: [sos.texas.gov/texreg/index.shtml](http://sos.texas.gov/texreg/index.shtml).

Review Figure: 25 TAC Chapter 441 and Chapter 448 (PDF) at:

[www.sos.state.tx.us/texreg/archive/April52024/Transferred-Rules/202401264-1.pdf](http://www.sos.state.tx.us/texreg/archive/April52024/Transferred-Rules/202401264-1.pdf).

Review HSC Chapter 462 at:

[statutes.capitol.texas.gov/Docs/HS/htm/HS.462.htm](http://statutes.capitol.texas.gov/Docs/HS/htm/HS.462.htm).

Review Texas Government Code Chapter 531 at:

[statutes.capitol.texas.gov/Docs/GV/htm/GV.531.htm#531](http://statutes.capitol.texas.gov/Docs/GV/htm/GV.531.htm#531).

Review the USHHS HIPAA and Telehealth Guidance at: [hhs.gov/hipaa/for-professionals/special-topics/telehealth/index.html](http://hhs.gov/hipaa/for-professionals/special-topics/telehealth/index.html).

Review the USHHS Audio-Only Telehealth Guidance at:

[hhs.gov/about/news/2022/06/13/hhs-issues-guidance-hipaa-audio-telehealth.html](http://hhs.gov/about/news/2022/06/13/hhs-issues-guidance-hipaa-audio-telehealth.html).

Review the USHHS Audio-Only Telehealth Office of Civil Rights Notification and FAQs: [hhs.gov/hipaa/for-professionals/privacy/guidance/hipaa-audio-telehealth/index.html](https://hhs.gov/hipaa/for-professionals/privacy/guidance/hipaa-audio-telehealth/index.html).

To receive future updates, sign up for GovDelivery at: [service.govdelivery.com/accounts/TXHHSC/subscriber/new](https://service.govdelivery.com/accounts/TXHHSC/subscriber/new).

### **5.0 Contact Information**

Email the Policies and Rules Unit at [HCR\\_PRU@hhs.texas.gov](mailto:HCR_PRU@hhs.texas.gov) if you have any questions about this letter.