



## Health Facility Compliance Guidance Letter

<b>Number:</b> GL 23-2000
<b>Title:</b> End Stage Renal Disease Facility Emergency Preparedness Planning and Contingency Operations Planning Requirements (SB 1876–87R)
<b>Provider Types:</b> End Stage Renal Disease Facilities
<b>Date Issued:</b> February 24, 2023

### 1.0 Subject and Purpose

This guidance letter notifies providers the Texas Health and Human Services Commission (HHSC) adopted rules in Texas Administrative Code Title 25 (25 TAC) Chapter 117 to implement [Senate Bill \(SB\) 1876](#), which are described in this guidance letter. These rules, which took effect February 21, 2023, were published in the February 17, 2023, issue of the *Texas Register* (48 TexReg 893). Refer to [Section 2.5](#) below for more information about these rules.

HHSC provides guidance to licensed providers on legislation passed during the 87<sup>th</sup> Legislature, Regular Session (2021). SB 1876, relating to emergency planning for the continued treatment and safety of end stage renal disease (ESRD) facility patients, took effect September 1, 2021.

This letter provides instruction to ESRD facilities regarding SB 1876 and outlines provider responsibilities and expectations.

### 2.0 Legislative Details and Provider Responsibilities

SB 1876 amended [Texas Health and Safety Code \(HSC\) Chapter 251, Subchapter B](#), by adding [§251.016](#) and [§251.017](#), which require a licensed ESRD facility to adopt a written emergency preparedness and contingency operations plan to address the provision of care during an emergency<sup>1</sup> and

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<sup>1</sup> HSC §251.016(b).

an emergency contingency plan for the continuity of essential building systems during an emergency.<sup>2</sup>

In these sections, “emergency” means an incident likely to threaten the health, safety, or welfare of ESRD facility patients, staff, or the public, including a fire, equipment failure, power outage, flood, interruption in utility service, medical emergency, or natural or other disaster.<sup>3</sup>

## **2.1 Written Emergency and Preparedness Contingency Operation Plan Requirements**

Each licensed ESRD facility must adopt and annually update a written emergency and preparedness contingency operations plan, which the facility’s leadership must approve each time the facility updates the plan.<sup>4</sup>

The facility’s written emergency preparedness and contingency operations plan must include a written patient communications plan, which must address how the facility will notify a patient when the patient has an interruption in their scheduled dialysis treatment.<sup>5</sup>

When the facility expects to close or reduce its operational hours in response to an emergency, the facility’s written emergency preparedness and contingency operations plan must include procedures for notifying all the following entities as soon as possible:<sup>6</sup>

- HHSC,
- Each hospital with which the facility has a transfer agreement,
- The trauma service area regional advisory council serving the ESRD facility’s geographic area, and
- Each applicable local emergency management agency.

The facility’s written emergency preparedness and contingency operations plan must require the facility to contract with another ESRD facility located within a 100-mile radius to provide dialysis treatment to the facility’s patients who are unable to receive their scheduled dialysis treatments because the facility closed or reduced its operational hours.<sup>7</sup>

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<sup>2</sup> HSC §251.017(a).

<sup>3</sup> HSC §251.016(a).

<sup>4</sup> HSC §251.016(b)(1).

<sup>5</sup> HSC §251.016(b)(4).

<sup>6</sup> HSC §251.016(b)(2).

<sup>7</sup> HSC §251.016(b)(3).

**Note:** An ESRD facility is exempt from the contract requirement when the facility is not located within a 100-mile radius of another ESRD facility, and the facility obtains written approval from HHSC exempting the facility from the contract requirement.<sup>8</sup>

### **2.11 Continuity of Care Plan Requirements**

As part of the required emergency preparedness and contingency operations plan, SB 1876 also requires each ESRD facility to develop a continuity of care plan for providing dialysis treatment to the facility's patients during an emergency. The facility's leadership must approve the facility's continuity of care plan, and the plan must include:<sup>9</sup>

- Procedures for distributing written materials, which describe the facility's emergency preparedness and contingency operations plan, to facility patients, and
- Based on the facility's patient population, detailed contingency plan procedures, including transportation options, to ensure patient access to dialysis treatment at the contracted ESRD facility or other advanced preparations the facility made to ensure the facility's patients have the option to receive dialysis treatment.

The ESRD facility must provide a copy of the emergency preparedness and contingency operations plan, which includes the continuity of care plan, to each facility patient before providing or scheduling dialysis treatment.<sup>9</sup>

### **2.2 Emergency Contingency Plan for Power and Potable Water**

An ESRD facility must adopt an emergency contingency plan for the continuity of essential building systems during an emergency, which must meet the requirements of HSC §251.017(b), (d), or (e).<sup>2</sup>

#### ***HSC §251.017(b) Requirements***

Unless the ESRD facility adopts a plan described by HSC §251.017 subsections (d) or (e), the facility's emergency contingency plan must require the facility to:<sup>10</sup>

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<sup>8</sup> HSC §251.016(d)(1)-(2).

<sup>9</sup> HSC §251.016(c).

<sup>10</sup> HSC §251.017(b).

- Have an on-site emergency generator which meets the distribution, installation, testing, and maintenance standards in the [National Fire Protection Association \(NFPA\) 99](#) and [NFPA 110](#);
- Keep the on-site emergency generator 10 feet or more from the electrical transformer;
- Maintain an on-site fuel source with enough fuel capacity to power the on-site generator for at least 24 hours;
  - **Note:** An ESRD facility is not required to maintain an on-site fuel source if the facility's on-site emergency generator uses a vapor liquefied petroleum gas system with a dedicated fuel supply;
- Provide and maintain enough potable water on-site to operate the facility's water treatment system for at least 24 hours;
- Maintain a water valve connection allowing an outside vendor to provide potable water to operate the facility's water treatment system.

### ***HSC §251.017(d) Requirements***

Unless the ESRD facility adopts a plan described by HSC §251.017 subsections (b) or (e), the facility's emergency contingency plan must require the facility to<sup>11</sup> maintain sufficient resources to provide an on demand (or to execute a contract with an outside supplier or vendor to provide an on demand):<sup>12</sup>

- Portable emergency generator which:
  - Has an electrical transfer switch with a plug-in device to provide emergency power for patient care areas and complies with [National Fire Protection Association 99](#);
  - Has a water valve connection that allows for the use of potable water to operate the facility's water treatment system;
- Alternate power source for light, including a battery-powered light, that is:
  - Separate and independent from the normal electrical power source;

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<sup>11</sup> HSC §251.017(d).

<sup>12</sup> HSC §251.017(d)(1).

- Able to provide light for at least one and a half hours;
- Able to provide enough light to allow for the safe evacuation of the building; and
- Maintained and tested at least four times each year; and
- Potable water supply.

The ESRD facility must implement the plan when the facility loses electrical power due to a natural or man-made event in which the power may not be restored within 24 hours.<sup>13</sup> The facility must also contact the contracted outside supplier or vendor within 36 hours after the facility loses electrical power.<sup>14</sup>

### ***HSC §251.017(e) Requirements***

Unless the ESRD facility adopts a plan described by HSC §251.017 subsections (b) or (d), the facility's emergency contingency plan must require the facility to contract with another ESRD facility located within a 100-mile radius to provide dialysis treatment to patients who are unable to receive scheduled dialysis treatment due to the facility's closure or reduction in hours. The contracted ESRD facility must have an alternate power source for light, including a battery-powered light, that is:<sup>15</sup>

- Separate and independent from the normal electrical power source;
- Able to provide light for at least one and a half hours;
- Able to provide enough light to allow for the safe evacuation of the building; and
- Maintained and tested at least four times each year.

### **2.3 Plan Distribution Requirements**

On request, an ESRD facility must provide the facility's emergency preparedness and contingency operations plan to:<sup>16</sup>

- HHSC,

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<sup>13</sup> HSC §251.017(d)(2).

<sup>14</sup> HSC §251.017(d)(3).

<sup>15</sup> HSC §251.017(e).

<sup>16</sup> HSC §251.016(e).

- Each hospital with which the ESRD facility has a transfer agreement,
- The trauma service area regional advisory council serving the ESRD facility's geographic area, and
- Each applicable local emergency management agency.

## 2.4 Annual Training and Contact Requirements

An ESRD facility must provide annual training to the facility's staff on the facility's emergency preparedness and contingency operations plan.<sup>17</sup> An ESRD facility must also annually contact a local and state disaster management representative, an emergency operations center, and a trauma service area regional advisory council to:<sup>18</sup>

- Request comments on whether the facility should modify its adopted emergency preparedness and contingency operations plan; and
- Ensure local agencies, regional agencies, state agencies, and hospitals are aware of the ESRD facility and the ESRD facility's policy on providing life-saving treatment, patient population and potential transportation needs, anticipated number of patients affected.

## 2.5 HHSC Rules Implementing SB 1876

To comply with SB 1876's provisions, HHSC adopted new rules at [25 TAC §117.41](#), [§117.45](#), and [§117.91](#), which took effect February 21, 2023.

## 3.0 Background/History

During weather-related emergencies, many ESRD facilities are forced to close, leaving ESRD patients with missed appointments and lack of access to needed dialysis care. When patients are unable to access routine dialysis treatment, their conditions may worsen, and they may need to seek hospital care.

Senate Bill 1876 addresses this situation by updating the current law relating to emergency planning for the continued treatment and safety of ESRD facility patients to require ESRD facilities to adopt a written emergency preparedness and contingency operations plan.

## 4.0 Resources

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<sup>17</sup> HSC §251.016(f).

<sup>18</sup> HSC §251.016(g).

View SB 1876 (87th Legislature, 2021) at:

<https://capitol.texas.gov/tlodocs/87R/billtext/html/SB01876F.htm>.

View HSC Chapter 251 at:

<https://statutes.capitol.texas.gov/Docs/HS/htm/HS.251.htm>.

View National Fire Protection Association 99 at:

<https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=99>

View National Fire Protection Association 110 at:

<https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=110>

View 25 TAC §117.41 at:

[https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p\\_d ir=&p\\_rloc=&p\\_tloc=&p\\_ploc=&pg=1&p\\_tac=&ti=25&pt=1&ch=117&rl=41](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_d ir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=25&pt=1&ch=117&rl=41)

View 25 TAC §117.45 at:

[https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p\\_d ir=&p\\_rloc=&p\\_tloc=&p\\_ploc=&pg=1&p\\_tac=&ti=25&pt=1&ch=117&rl=45](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_d ir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=25&pt=1&ch=117&rl=45)

View 25 TAC §117.91 at:

[https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p\\_d ir=&p\\_rloc=&p\\_tloc=&p\\_ploc=&pg=1&p\\_tac=&ti=25&pt=1&ch=117&rl=91](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_d ir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=25&pt=1&ch=117&rl=91)

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<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.