

TITLE 26 HEALTH AND HUMAN SERVICES  
PART 1 HEALTH AND HUMAN SERVICES COMMISSION  
CHAPTER 558 LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT  
SERVICES AGENCIES  
SUBCHAPTER I RESPONSE TO COVID-19 AND PANDEMIC-LEVEL  
COMMUNICABLE DISEASE

#### 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 558, Licensing Standards for Home and Community Support Services Agencies, new §558.960, concerning an emergency rule in response to COVID-19 in order to reduce the risk of transmission of COVID-19. As authorized by Texas 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. 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 critical essential services. 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 HCSSA Response to COVID-19.

To protect clients served by home and community support services agencies (HCSSAs) and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to define criteria for screening staff, clients, and household members for COVID-19, to require that related documentation be made available to HHSC upon request, and to clarify that HCSSA staff must comply with a long-term care facility's infection control protocols when entering to provide essential services.

#### STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Health and Safety Code §142.012. 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

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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 §142.012, authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement Chapter 142 of the Texas Health and Safety Code, concerning Home and Community Support Services. Texas Health and Safety Code §142.012, authorizes the Executive Commissioner of HHSC to adopt rules governing minimum standards for HCSSAs that are necessary to protect the public.

The new section implements Texas Government Code §531.0055 and Texas Health and Safety Code §142.012.

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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§558.960. Emergency Rule for HCSSA Response to COVID-19.

(a) Based on state law and federal guidance, the Texas Health and Human Services Commission (HHSC) finds COVID-19 to be a health safety risk and requires a home and community support services agency (HCSSA) to take the following measures. The screening required by this section does not apply to emergency services personnel entering an agency in an emergency situation.

(b) For the purposes of this section, personal protective equipment means specialized clothing or equipment worn by agency staff for protection against transmission of infectious diseases such as COVID-19, including surgical or N95 masks, goggles, gloves, and disposable gowns.

(c) Agency staff have legal authority to enter a facility licensed under Texas Health and Safety Code Chapters 242, 247, or 252, or Texas Human Resources Code Chapter 103, to provide services to the facility's residents who are agency clients. Agency staff entering a licensed facility must follow the infection control protocols of the facility.

(d) An agency must screen its staff and must not allow staff to remain in the agency, enter a licensed facility, or make home visits if the employee, volunteer or contractor meets one or more of the following screening criteria:

(1) fever defined as a temperature of 100.4 Fahrenheit and above, or by the most current Centers for Disease Control and Prevention (CDC) guidance relating to fever or signs or symptoms of a respiratory infection, such as cough, shortness of breath or sore throat;

(2) 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;

(3) additional signs and symptoms as outlined by the CDC in Symptoms or Coronavirus at [cdc.gov](https://www.cdc.gov);

(4) 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, regardless of whether the person is fully vaccinated, unless the person is conducting the visit to provide essential services; or

(5) testing positive for COVID-19 in the last 10 days.

(e) The agency must:

(1) document the results of all required screenings; and

(2) ensure documentation must be retrievable for review upon request by HHSC.

(f) The agency must determine if a scheduled home visit requires essential services or non-essential services.

(1) Essential services include a service that must be delivered to ensure the client's health and safety, such as nursing services, therapies, medication administration, assisting with self-administered medications and other personal care tasks, wound care, transfer, or ambulation. This is determined on a case-by-case basis and according to the client's need for the service on the day of the scheduled visit in accordance with the plan of care, care plan, or individualized service plan (ISP).

(2) If the visit requires non-essential services, the visit:

(A) must be conducted by phone or video conference, if possible; or

(B) must be rescheduled for a later date.

(3) If the visit requires essential services, staff must conduct the visit in person and screen the client and household members using the same criteria for staff that is described in subsection (d) of this section and proceed as described in subparagraphs (A) and (B) of this paragraph.

(A) If the client or a member of the household meet one or more of the screening criteria, use appropriate personal protective equipment during the visit.

(B) If the client or a member of the household does not meet one or more of the screening criteria, conduct the visit as indicated for the type of service provided.

(4) An agency must document any missed visits in the plan of care, care plan, or ISP and notify the attending physician or practitioner, if applicable.

(g) Providers of essential services include HCSSA employees and contractors, including but not limited to physicians, nurses, hospice aides, home health aides, attendants, social workers, therapists, spiritual counselors, and volunteers in any of those roles.

(h) A parent agency administrator or alternate administrator, or supervising nurse or alternate supervising nurse may make the monthly supervisory visit required for

branch supervision by §558.321(d)(1) of this chapter (relating to Standards for Branch Offices) or as required for alternative delivery site by §558.322(c)(1) of this chapter (relating to Standards for Alternate Delivery Sites) by virtual communication, such as video or telephone conferencing systems.

(i) A hospice registered nurse may make the supervisory visit required for hospice aides in §558.842(d) of this chapter (relating to Hospice Aide Services) by virtual communication, such as video or telephone conferencing systems.

(j) If this emergency rule is more restrictive than any minimum standard relating to a HCSSA, this emergency rule will prevail so long as this emergency rule is in effect.

(k) 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 a HCSSA, the HCSSA must comply with the executive order or other direction.