



Long-Term Care Regulatory Provider Letter

Number: PL 20-21 (Revised)
Title: Suspension of Certain LTCR Requirements during COVID-19 Outbreak
Provider Types: Nursing Facility (NF), Intermediate Care Facility for Individuals with an Intellectual Disability or Related Conditions (ICF/IID), Assisted Living Facility (ALF), Day Activity and Health Services (DAHS) Facility, Prescribed Pediatric Extended Care Center (PPECC), Home and Community Support Services Agency (HCSSA), Home and Community-based Services (HCS) Provider, Texas Home Living (TxHmL) Provider
Date Issued: March 1, 2021

1.0 Subject and Purpose

The Health and Human Services Commission (HHSC) requested the Office of the Governor suspend certain regulatory requirements in response to the state of disaster declared in Texas and America relating to COVID-19. In accordance with section 418.016 of the Texas Government Code, the Office of the Governor granted HHSC's request to suspend these rules and statutes. This suspension is in effect until terminated by the Office of the Governor or until the March 13, 2020, disaster declaration is lifted or expires. This letter describes the state rules and statutes waived or suspended during the disaster. **This letter has been revised to include information for ICF/IID providers regarding the discharge of residents who are absent from an ICF/IID as a result of COVID-19.**

2.0 Suspension Details

2.1 License Submission and Processing Timelines

Requirements related to application submission and processing timeframes. This suspension includes flexibility on extending licenses while a late application is being processed. Any license existing at the time of the disaster declaration is in effect until HHSC requires renewal.

The following rules and statutes are suspended:

- NF:
 - Rules: 40 Texas Administrative Code (TAC) [§19.205](#), [§19.208\(e\)-\(f\)](#), [§19.210\(e\)](#), [§19.212\(a\) and \(e\)](#)
 - Statutes: Texas Health and Safety Code (THSC) [§242.033\(f\)](#) and [§242.0336\(g\)](#)
- ALF:
 - Rules: 26 TAC [§553.13](#), [§553.15](#) (a) and (e)
 - Statute: THSC [§247.023](#)
- ICF/IID:
 - Rules: 26 TAC [§551.15\(a\)\(d\)\(e\)](#) and [§551.21](#) (a),(c),(e)
- DAHS Facility:
 - Rules: 40 TAC [§98.11\(d\)](#), [§98.15\(a\)\(2\)](#) and (e)-(h), [§98.18\(a\)](#) and (c) and (e), [§98.20\(a\)\(2\)](#), [§98.21\(b\)](#)
 - Statute: Texas Human Resources Code (THRC) [§103.006\(b\)](#), [§103.007\(c\)-\(d\)](#)
- PPECC:
 - Rules: 26 TAC [§550.106\(a\)-\(c\)](#) and (e)-(f)
 - Statutes: THSC [§248A.053\(b\)\(1\)](#) and (c)
- HCSSA:
 - Rules: 26 TAC [§558.17\(g\)](#) and (i), [§558.25\(a\)\(1\)](#) and (4), [§558.3\(b\)](#) and (c), [§558.13](#), [§558.31](#)
 - Statute: THSC [§142.0105](#)
- Nursing Facility Administrators:
 - Rules: 26 TAC [§555.32\(b\)](#), [§555.34\(a\)-\(d\)](#)
 - Statute: THSC [§242.310](#)
- Certified Nurse Aides:
 - Rule: 26 TAC [§556.9\(d\)](#)
- Medication Aides:
 - Rules: 26 TAC [§557.115\(a\)\(1\)-\(3\)](#) and (6); (c)(1)-(4)
 - Statutes: THSC [§242.610\(e\)](#), (h)-(k)

2.2 Fire Marshal Approval Documentation

Requirements related to having an approved fire marshal report to submit an application for facility licensure. The facility's application will be pended until the appropriate documentation is received at a later date as required by HHSC.

The following rules are suspended:

- NF: 40 TAC [§19.202](#)
- ALF: 26 TAC [§553.18\(c\)](#)
- ICF/IID: 26 TAC [§551.12\(a\)](#)
- DAHS: 40 TAC [§98.12\(a\)](#)
- PPECC: 26 TAC [§550.103\(a\)](#)

2.3 Suspension of Resident Right to Receive Visitors

Requirements related to resident rights associated with visitors in order to protect the health and safety of vulnerable residents by limiting visitors allowed into the facility.

The following rules and statutes are suspended:

- NF:
 - Rule: 40 TAC [§19.413\(a\)\(8\)-\(9\)](#)
 - Statute: THSC [§242.501\(a\)\(16\)](#)
- ALF:
 - Rule: 26 TAC [§553.125\(a\)\(3\)\(j\)-\(k\)](#)
 - Statute: THSC [§247.064\(b\)\(7\)-\(8\)](#)

2.4 Suspension of Three-Day Leave and Discharge Requirements

2.4.1 NF Requirements

Requirements to extend the timeframes during which NF residents may be away from the facility without being discharged. Facilities must notify HHSC if they have residents who have exceeded time frames. Upon receipt of provider notification, HHSC will afford the provider a limited duration waiver, which may be extended upon request on a case-by-case basis. Facilities will not be permitted to bill for services while individuals are away (payment for individuals on extended leave would be suspended).

An individual's Medicaid status will not be affected by the extended leave allowance.

The following rules and statutes are suspended:

- Rule: 40 TAC [§19.2603\(b\)\(3\)](#)

2.4.2 ICF/IID Requirements

An ICF/IID resident who is absent from the facility because of COVID-19 and not on therapeutic leave or extended

therapeutic leave must return or be discharged under 26 TAC §261.227 and also be offered a written contract with the program provider to hold the resident's placement at the ICF/IID as described in 26 TAC §261.227(j). However, ICF/IID providers can request up to 90 days of COVID-19 therapeutic leave approved by CMS, following the instructions issued in Information Letter 2021-05.

Individuals whose Medicaid status depends upon enrollment in an ICF/IID facility will *not* have that status affected by discharge from an ICF/IID as long as the emergency remains in effect.

The following rule and statute are suspended:

- Rule: 26 TAC §261.226(a)-(f)
- Statute: THSC §252.203(2)

Additional resources:

- IL 2020-43, *ICF/IID Services During COVID-19*
- IL 2021-05, *Payments for Leave Due to the COVID-19 Pandemic*
- [Emergency Rule Related to Leave During the COVID-19 Pandemic, Effective 1/29/2021](#)

2.5 Suspension of Medicaid Occupancy Reporting Requirement for NF

Requirement for NFs to report their Medicaid Occupancy by the fifth of each month and for the report to be validated during the emergency. The following rule is waived: [40 TAC §19.2322\(l\)](#). HHSC will inform providers when reports will be required at a later date.

2.6 Suspension of Certain HCS Requirements

Certain certification principles. HHSC will allow an HCS four-person residence to add an additional individual temporarily if the residence has the space to accommodate and has been approved as a four-person residence by HHSC; waive the requirement for HCS providers to ensure at least one complete staff shift change per day for individuals receiving residential support; and waive the requirement for day habilitation to be provided in accordance with the individual's person-directed plan, individual plan of care, implementation plan, and Appendix C of the HCS Program waiver application.

The following rules are suspended: 40 TAC [§9.153\(37\)\(b\)](#), [§9.174\(a\)\(28\)](#), and [§9.174\(a\)\(38\)\(C\)](#).

2.7 Suspension of ALF Requirement Related to Resident Policies

Requirement for ALFs to document notification of changes in policies prior to the effective date of the changes is waived. This will allow facilities to quickly adapt policies in response to new guidance.

The following rule is suspended: 26 TAC [§553.41\(d\)\(5\)](#).

2.8 Suspension of Certain Notification Requirements in PPECCs

Requirement for the PPECC to provide 30 days advance notice of suspending operations, to allow centers greater flexibility in responding to changing community conditions.

The following rule and statute are suspended:

- Rule: 26 TAC [§550.202\(c\)\(1\)](#), (5), and (6)
- Statute: THSC [§248A.157](#)

2.9 Suspension of the Non-Certified Nurse Aide Restriction

Requirement related to restrictions for non-certified trained nurse aides (individuals who have completed the training, but not tested) from working more than four months following training. This will allow non-certified nurse aides to continue working during the emergency. The following rule is suspended: 40 TAC [§19.1903\(2\) and \(4\)](#).

2.10 Suspension of the Requirement for Nursing Students to Test Prior to Performing CNA functions

Requirement related to second-year nurse aide students having to complete the nurse aide exam prior to performing nurse aide functions. This will allow current nursing students to perform nurse aide functions during the emergency. The following rule is suspended: 26 TAC [§556.11\(c\)\(1\)\(D\)-\(E\)](#).

2.11 Suspension of the Certain NATCEP and Medication Aide Training Program Requirements

Requirements related to clinical and skills training in a nursing facility and the requirement of classroom training to be in person. This will allow NATCEPs and Medication Aide training programs to complete classroom training online and clinical/skills training in a laboratory setting.

The following requirements are suspended:

- Certified Nurse Aides: 26 TAC [§556.3\(h\)-\(j\)](#)
- Medication Aides: 26 TAC [§557.119](#)

3.0 Background/History

In accordance with section 418.016 of the Texas Government Code, the

Office of the Governor granted HHSC's request to suspend these rules and statutes. This suspension is in effect until terminated by the Office of the Governor or until the March 13, 2020 disaster declaration is lifted or expires. HHSC will notify providers at a later date when compliance is required for suspended provisions of statutes and rules.

4.0 Resources

None.

5.0 Contact Information

If you have any questions about this letter, please contact the Policy, Rules and Training Section by email at PolicyRulesTraining@hhsc.state.tx.us or call (512) 438-3161.