



Long-Term Care Regulatory Provider Letter

Number: PL 2021-29 (Revised)

Title: End of Temporary 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: September 14, 2021

1.0 Subject and Purpose

The Health and Human Services Commission (HHSC) has requested that the Office of the Governor end suspensions of certain regulatory requirements related to COVID-19. The Office of the Governor granted HHSC's request to end the suspension of certain rules, meaning the rules go back into effect. This letter describes the rule suspensions that ended, the rule suspensions that are still in place, and the rule suspensions that will be ended in the future. **Revisions to this letter have been made to clarify how many individuals can occupy an HCS 4-person residence and the process to notify HCS Survey Operations of the additional individual(s).**

2.0 Policy Details & Provider Responsibilities

2.1 Suspensions Ended as of August 4, 2021

The following rules and statutes were previously suspended in response to COVID-19. These rules and statutes are no longer suspended effective August 4, 2021:

- ALF:

- An individual's right to receive visitors is vital to their health and well-being. Facilities are required to adhere to all rules and requirements related to a resident's right to receive visitors. Facilities are also required to follow [emergency rules related to visitation](#) in an ALF. (Rule: [26 TAC §553.125\(a\)\(3\)\(j\)-\(k\)](#); Statute: [HSC §247.064\(b\)\(7\)-\(8\)](#))
- ICF/IID:
 - Therapeutic Leave. (Rule: [26 TAC §261.226\(a\)-\(f\)](#)); Statute: [HSC §252.203\(2\)](#))

2.2 Suspensions Ending on September 3, 2021

The following rule and statute suspensions are still in place but the suspensions will be lifted on September 3, 2021. These rules and statutes will be effective on September 3, 2021:

- NF:
 - Medicaid Occupancy Reporting Requirement. The suspension of the rules for Medicaid bed occupancy reporting ends on September 3, 2021. NFs must submit occupancy reporting data for September 2021 no later than October 5, 2021. Failure to submit occupancy data in a timely manner may result in HHSC placing a vendor hold on payments due to the NF until the NF submits the data. (Rule: [26 TAC §554.2322\(l\)](#)) See Section 2.6 of this document for information on how to submit historical occupancy data.
- ALF:
 - Requirement for ALFs to notify residents and, if applicable, the residents' legally authorized representative of changes in policy. The suspension of the rules for ALFs to notify residents and, if applicable, the residents' legally authorized representative in advance of a policy change ends on September 3, 2021. Starting September 3, 2021, ALFs are required to notify residents and, if applicable, the residents' legally authorized representative of changes in policies prior to the date of effective date of the policy changes. (Rule: [26 TAC §553.41\(d\)\(5\)](#), as of August 31, 2021, this section will be found in 26 TAC §553.259(c)(5)).
- PPECC:

- Requirement for PPECCs to provide 30 days' advance notice of suspending operations. The suspension of the rules for PPECCs to provide 30 days' advance notice of suspending operations ends on September 3, 2021. Starting September 3, 2021, all PPECCs must provide advance notice of suspending operations in accordance with state rules. (Rule: [26 TAC §550.202\(c\)\(1\), \(5\), and \(6\)](#); Statute: [THSC §248A.157](#)).

2.3 Suspensions Ending October 3, 2021

The following rule and statute suspensions are still in place but the suspensions will be lifted on October 3, 2021. These rules and statutes will be effective on October 3, 2021:

- NF:
 - Three-day leave and discharge requirements. The suspension of the rules related to three-day leaves ends on October 3, 2021. Starting October 3, 2021, NFs will be required to submit a discharge notice to a resident leaving the facility for three or more days in accordance with state rules. (Rule: [26 TAC §554.2603\(b\)\(3\)](#)).
 - Nurse aide exam for second-year nursing students. The suspension of the rules related to second-year nursing students having to complete the nurse aide exam prior to performing nurse aide functions ends on October 3, 2021. Ending this suspension allows HHSC to place second-year nursing students on the Nurse Aide Registry, if the nursing student completes the nurse aide exam. Nursing students may still perform nurse aide tasks under the federal and state CNA waivers without being required to take the nurse aide exams if they are operating as a temporary nurse aide (see Section 2.8). (Rule: [26 TAC §556.11\(c\)\(1\)\(D\)-\(E\)](#)).

2.4 License Submission and Processing Timelines

Requirements related to application submission and processing timeframes. The suspension of license application and renewal timeline requirements ends on October 3, 2021. Any license expiring on or after October 3, 2021, must be renewed according the appropriate rules listed below. A licensee with a license that expires before October

3, 2021 must submit a renewal application by January 2, 2022. All other application requirements must be followed in accordance with the appropriate rules listed below.

- NF:
 - Rules: 26 TAC [§554.205](#), [§554.208\(e\)-\(f\)](#), [§554.210\(e\)](#), [§554.212\(a\)](#) and (e)
 - Statutes: THSC [§242.033\(f\)](#) and [§242.0336\(g\)](#)
- ALF:
 - Rules: 26 TAC [§553.13](#), [§553.15\(a\)](#) and (e) (located at §553.33(a) and (c) after 8/31/2021)
 - Statute: THSC [§247.023](#)
- ICF/IID:
 - Rules: 26 TAC [§551.15\(a\), \(d\), and \(e\)](#) and [§551.21\(a\), \(c\), and \(e\)](#)
- DAHS Facility:
 - Rules: 26 TAC [§559.11\(d\)](#), [§559.15\(a\)\(2\)](#) and (e)-(h), [§559.18\(a\), \(c\), and \(e\)](#), [§559.20\(a\)\(2\)](#), [§559.21\(b\)](#)
 - Statute: THSC [§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\(1\) 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](#) (text of subchapter effective until federal determination of failure to comply with federal regulations)

2.5 Fire Marshal Approval Documentation

Approved fire marshal report. The suspension of the requirements related to having an approved fire marshal report to submit an application for facility licensure will end on November 2, 2021. Any application submitted on or after November 2, 2021 must include the required fire marshal approval documentation, regardless of the due date of the application or license expiration date.

The following rules will no longer be suspended effective November 2, 2021:

- NF: 26 TAC [§554.202](#)
- ALF: 26 TAC [§553.18\(c\)](#) (located at 553.39(c) after 8/31/2021)
- ICF/IID: 26 TAC [§551.12\(a\)](#)
- DAHS: 26 TAC [§559.12\(a\)](#)
- PPECC: 26 TAC [§550.103\(a\)](#)

2.6 Submitting Historical Medicaid Occupancy Data

HHSC is providing a transition period of 90 days following the date the rule suspension ends to allow NFs who have not submitted all historical Medicaid occupancy data to do so. Historical data includes any occupancy reporting that was not previously submitted between March 2020 and August 2021. NFs must submit all historical Medicaid occupancy data by December 2, 2021.

To report Medicaid bed occupancy data for previous months, a NF must submit the following information by email to MedOccupancy@hhs.texas.gov:

- Facility name
- Facility identification number
- Occupancy data, including:
 - Month and year
 - Medicaid bed days
 - Medicaid recipients
 - Facility census
- A copy of the facility census for each month reported

A separate email is required for each facility. Separate facilities must not submit combined data in one email.

2.7 Suspensions Still in Place

The following rules and statutes are still suspended until further notice:

- NF:
 - Resident rights relating to visitors. (Rule: [26 TAC §554.413\(a\)\(8\)-\(9\)](#); Statute: [THSC §242.501\(a\)\(16\)](#))

- Requirements 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. See Section 2.8 for more information on this suspension. (Rule: [26 TAC §554.1001\(a\)\(4\)](#))
- HCS:
 - HHSC will still allow an HCS four-person residence to add **up to two** additional individuals temporarily if the residence has the space to accommodate them and has been approved as a four-person residence by HHSC. (Rule: [40 TAC §9.153\(39\)\(B\)](#))
 - **The program provider must notify HCS Survey Operations of the additional individual(s) by emailing the following information to WaiverSurvey.Certification@hhsc.state.tx.us.**
 - **Provider Name and Contract Number**
 - **Name and CARE ID of the individual moving**
 - **Location code and address of permanent residence**
 - **Location code and address of temporary residence**
 - Suspension of the requirement for HCS providers to ensure at least one complete staff shift change per day for individuals receiving residential support. (Rule: [§9.174\(a\)\(38\)\(C\)](#))
 - Suspension of 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. (Rule: [§9.174\(a\)\(28\)](#))
 - Certified Nurse Aides (CNA) and Medication Aides:
 - 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 continue to complete classroom training online and clinical/skills training in a laboratory setting. (Rules: [26 TAC §556.3\(h\)-\(j\)](#) and [§557.119](#))
 - Requirements related to application submission and processing timeframes for CNAs and medication aides. This

suspension includes flexibility on extending certificates and permits while a late application is being processed. Any certification currently held by a CNA or permit currently held by a medication aide is in effect until HHSC requires renewal. (Rules: [26 TAC §556.9\(d\)](#) and [§557.115\(a\)\(1\)-\(3\) and \(6\); \(c\)\(1\)-\(4\)](#); Statutes: [THSC §242.610\(e\), \(h\)-\(k\)](#))

2.8 Suspension of Certified Nurse Aide Requirements

The Governor suspended provisions prohibiting a nursing facility from hiring someone to complete nurse aide tasks who is not a CNA for longer than four months. The suspension of these provisions will still be in place until further notice. This suspension is intended to provide flexibility in staffing during the pandemic. The following rules are suspended:

- [26 TAC §554.1001\(a\)\(4\)\(A\)\(ii\)](#)
- [26 TAC §554.1001\(a\)\(4\)\(B\), \(C\), \(E\), \(F\), and \(H\)](#)

Additionally, 26 TAC §554.1001(a)(4)(D) is partially suspended, only to the extent necessary to allow the employment as a nurse aide of an individual who is not listed in the Nurse Aide Registry due solely to the individual's having no history of employment as a nurse aide.

Note that this waiver does **not** suspend requirements for supervision or competency. Facilities must still ensure that individuals completing nurse aide tasks are able to demonstrate competency in skills and techniques necessary to care for residents' needs, as identified through resident assessments, and described in the plan of care. Additionally, the facility is responsible for training the individual on the task to be performed, return demonstration of the skill to ensure competency, and documentation of the training/return demonstration.

Likewise, this waiver does **not** suspend the requirement that prior to allowing an individual to complete nurse aide tasks, a facility must receive verification that the individual is not designated in the registry as having a finding concerning abuse, neglect or mistreatment of a resident, or misappropriation of a resident's property, subject to the exceptions specified in §554.1001(a)(4)(D)(i)-(ii). A nursing facility

must still comply with Health and Safety Code, Chapter 250, regarding criminal history checks and registry checks.

Lastly, HHSC issued [emergency rules](#) to establish a process for temporary nurse aides to become certified. See [PL 2021-19](#) for more information.

3.0 Background/History

HHSC requested the Office of the Governor suspend certain regulatory requirements in response to the state of disaster declared in Texas and the United States 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 of these rules was to be in effect until terminated by the Office of the Governor or until the March 13, 2020, disaster declaration is lifted or expires.

4.0 Resources

None.

5.0 Contact Information

If you have any questions about this letter, please contact the Policy and Rules Section by email at LTCRPolicy@hhs.texas.gov or call (512) 438-3161.