



Long-Term Care Regulatory Provider Letter

Number: PL 2021-30
Title: Program Provider Response to COVID-19 and Visitation Expansion for HCS (Replaces PL 2021-09)
Provider Types: Home and Community-based Services (HCS)
Date Issued: August 23, 2021

1.0 Subject and Purpose

As part of the continued reopening of the State of Texas, the Texas Health and Human Services Commission (HHSC) has published new Home and Community-based Services (HCS) Program Provider Response to COVID-19 Emergency Rule¹ and HCS Expansion of Reopening Visitation Rule².

2.0 Policy Details & Provider Responsibilities

2.1 HCS Program Provider Response to COVID-19 Emergency Rule

HHSC published new HCS Program Provider Response to COVID-19 – Mitigation Rules effective August 21, 2021. These new rules replace the previous COVID-19 mitigation rules. See the HCS Program Provider Response to COVID-19 Emergency Rule at [40 TAC 9.198](#) for the complete list of requirements. Notable updates include the following.

2.1.1 Definitions

HHSC added the definition for a “fully vaccinated person,” which is a person who received the second dose in a two-dose series or a single dose of a one dose COVID-19 vaccine and 14 days have passed since this dose was received.

¹ 40 TAC 9.198

² 40 TAC 9.199

2.1.2 Infection Control

Program providers are still required to implement personnel practices that safeguard individuals against the spread of COVID-19. Program providers must develop and implement an infection control policy that:

- ensures that they have processes in place to reduce the spread of communicable and infectious diseases;
- is updated to align with CDC guidance;
- may include the use of face masks; and
- is revised if a shortcoming is identified.

These infection control policies should address the use of personal protective equipment (PPE). Program providers must have PPE available. If they are unable to obtain PPE, they will not be cited for not having certain supplies if they cannot obtain them for reasons outside of their control. Follow national guidelines for optimizing current supply or identify the next best option to care for the individuals.

Program providers must ensure that all host homes, three-person, and four-person residences are equipped with soap, hand sanitizer, and any other disinfecting agents to maintain a healthful environment.

Within residences, provider staff must ensure precautions such as, but not limited to:

- limiting physical contact, such as handshaking, hugging, etc. as recommended by the CDC;
- reinforcing strong hygiene practices for individuals and staff, such as proper handwashing, covering of coughs and sneezes, and the use of hand sanitizer;
- practicing social distancing as defined by CDC; and
- regularly disinfecting all high-touch surfaces, such as counters, doorknobs, telephones, etc.

2.1.3 Face Masks

HHSC removed the face mask and face covering requirement when a staff member is providing care to a person with COVID-19 negative status. However, if providing care to an individual with COVID-19, a program provider must still require staff to:

- wear appropriate PPE as defined by the CDC; and
- maintain physical distance according to CDC guidance as practicable.

A program provider may require the use of face masks as part of its infection control policy.

2.1.4 Screening

A program provider must screen individual once a day in accordance with CDC guidance using the following criteria:

- a fever, defined as a temperature of 100.4 Fahrenheit or above;
- 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;
- any other signs and symptoms identified by the Centers for Disease Control and Prevention (CDC) in Symptoms of Coronavirus at [cdc.gov](https://www.cdc.gov); and
- 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 visitor is seeking entry to provide critical assistance.

2.1.5 Day Habilitation and Outside Employment

HHSC removed the requirement found in previous COVID-19 emergency rules related to contracting with a day habilitation provider.

Individuals receiving HCS or TxHmL services can choose to attend off-site day habilitation or outside employment.

Providers are responsible for ensuring the health and safety of the individuals in their care. In the context of deciding whether to attend outside day habilitation sites, the program provider fulfills this responsibility by participating in the informed decision-making process, which includes:

- providing a full list of available options and alternatives, including in-home day habilitation, if available;
- assessing the risks of attending day habilitation; and
- providing training on hand hygiene, and physical distancing.

Program providers may use the CDC guidance for [Interim Public Health Recommendations for Fully Vaccinated People](#) for information regarding the use of face masks and physical distancing in a public setting.

2.1.6 Communal Dining and Activities

HHSC removed requirements related to meals and communal dining found in previous COVID-19 emergency rules. Program providers may use the CDC guidance for [Communal Activities within a Healthcare Setting](#) for information regarding group activities and communal dining.

3.0 HCS Expansion of Reopening Visitation Rule

The new expanded visitation rules do not apply to host home/companion care providers unless otherwise specified in rule. These new rules replace the previous COVID-19 visitation rules. See the HCS Provider Response to COVID-19 Expansion of Reopening Visitation Rule at [40 TAC 9.199](#) for the complete list of requirements. Notable updates include the following.

3.1 Definitions

HHSC added the definition for a “fully vaccinated person,” which is a person who received the second dose in a two-dose series or a single dose of a one dose COVID-19 vaccine and 14 days have passed since this dose was received.

HHSC revised the definition of “unknown COVID-19 status” to exempt those individuals who are fully vaccinated for COVID-19 or recovered from COVID-19.

3.2 Expanded Visitation

HHSC removed the requirement for certain program providers to complete an attestation form and use restrictive measures, such as plexiglass barriers. A program provider must now ***offer a complete series of a one- or two-dose COVID-19 vaccine*** to individuals and staff and document each individual's choice to vaccinate or not vaccinate. A program provider must allow essential caregiver visits, end-of-life visits, indoor visits, and outdoor visits. A program provider must also develop and enforce policies and procedures that ensure infection control practices for visitor, including whether the visitor and the individual must wear a face mask or face covering and whether the visitor should wear appropriate PPE.

The program provider must inform visitors of its infection control policies and procedures related to visitation.

While the program provider may ask about a visitor's COVID-19 vaccination status and COVID-19 test results, it cannot require a visitor to provide documentation of a COVID-19 negative test or COVID-19 vaccination status as a condition of visitation or to enter the residence.

A visitor can be any age. However, essential caregivers must be 18 years of age or older.

As a reminder, an HCS is required to screen all visitors for signs or symptoms of COVID-19. A visitor may not participate in a visit if the visitor has signs and symptoms of COVID-19 or active COVID-19 infection.

3.3 Scheduling Visits

The program provider can schedule visitation to allow time for cleaning and sanitization of the visitation area between visits. However, the schedule cannot be so restrictive as to prevent, prohibit, or limit visitation for individuals.

3.4 Physical Contact

Essential caregiver visitors and end-of-life visitors do not have to maintain physical distancing between themselves and the individual they

are visiting but must maintain physical distancing between themselves and all other persons in the residence.

All other visitors may choose to have close or personal contact with the individual they are visiting in accordance with CDC guidance.

4.0 Essential Caregiver Visits

An essential caregiver visit is defined as a personal visit between an individual and a designated essential caregiver, permitted for all individuals with any COVID-19 status, including:

- COVID-19 negative;
- unknown COVID-19 status; or
- COVID-19 positive.

A program provider must allow essential caregiver visits. The following requirements apply to essential caregiver visits.

- Up to two essential caregivers can be designated per individual and up to two essential caregivers can visit an individual at the same time.
- An essential caregiver visit is not allowed if the visitor has signs or symptoms of COVID-19 or an active COVID-19 infection.
- Essential caregiver visits can occur outdoors, in the individual's bedroom, or in another area in the residence that limits visitor movement through the residence and interaction with other persons in the residence.
- The essential caregiver must be screened before being allowed to enter the residence and trained by the provider on the appropriate use of personal protective equipment (PPE).
- Essential caregivers do not have to maintain physical distancing between themselves and the individual they are visiting but must maintain physical distancing between themselves and other persons in the residence.

The program provider must:

- develop and enforce essential caregiver visitation policies and procedures as stated in each program's expanded emergency rules, including:
 - training the essential caregivers on the proper use of PPE; and

- informing the essential caregivers of expectations related to infection control;
- inform the essential caregivers of applicable policies, procedures, and requirements and maintain documentation of the essential caregiver's agreement to follow them; and
- document the identity of each essential caregiver in the individual's file.

HHSC removed requirements regarding maintaining a record of each essential caregiver visit. The essential caregiver must still be screened in accordance with screening requirements at each visit.

The essential caregiver visitor must not participate in visits if the designated essential caregiver has signs and symptoms of COVID-19 or active COVID-19 infection and can be asked to leave the residence if they fail to comply with all visitation requirements.

5.0 Attachments

HHSC HCS Side by Side Comparison Chart

6.0 Communications

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

40 TAC 9.198 HCS Program Provider Response to COVID-19		
Topic	Previous Rule	New Rule
Definitions	No definition of fully vaccinated person.	Added a definition of fully vaccinated person. Amended the definition of physical distancing to reflect CDC guidance.
Infection Control	Required staff members to wear a mask or face covering by staff.	Removed the requirement for staff members to wear face masks or face coverings if not providing care to an individual with COVID-19 positive status. Added that the program provider's policy may include the use of face masks.
Screening	Directs the provider to screen individuals for signs or symptoms of COVID-19 at least twice a day.	Requires screening individuals once a day in accordance with CDC guidance.
Day Habilitation	Requires a program provider to contract with a day habilitation site only if the dayhab agrees to comply with the most current guidance from DSHS.	Removes all requirements related to day habilitation sites.
Masks/face coverings	Masks are not required in host home/companion care homes when the individual is COVID-19 negative.	HHSC cannot mandate the use of masks and removed the requirement from rule.

Communal Dining	Directs the provider to plate food and serve to individuals rather than use communal serving dishes.	Removes all requirements related to meals and communal dining.
40 TAC 9.199 HCS Expansion of Reopening Visitation		
Rule Topic	Previous Rule	New Rules
General Visitation (Indoor and Outdoor)	Provides requirements for expanded and limited visitation based on whether the program provider offered a complete COVID-19 vaccination series.	<p>The provider must: offer a complete COVID-19 vaccination series; allow ECG, end-of-life, indoor and outdoor visitation; and inform visitors of their infection control policies and procedures related to visitation.</p> <p>The provider cannot require a visitor to provide documentation of a COVID-19 negative test or COVID-19 vaccination status as a condition of visitation or to enter the residence.</p>
Physical contact	Physical contact between a visitor and an individual was dependent upon whether the provider offered a complete series of a one- or two-dose COVID-19 vaccination to individuals and staff.	<p>The individual and his or her visitor may choose to have close or personal contact based on CDC recommendations.</p> <p>EGC and end-of-life visitors may have close or personal contact.</p>
Masks/Face Covering	<p>Visitor must wear face mask throughout the visit</p> <p>Individual wears face mask or face covering if tolerated.</p>	Removed requirements related to the use of face masks as HHSC cannot mandate the use of face masks. However, the program provider must develop and implement infection control policies which may include the use of masks.

<p>Essential Caregiver (ECG) and End-of-Life visits</p>	<p>Required the program provider maintain a record of each essential caregiver visit, including:</p> <ul style="list-style-type: none"> the date and time of the arrival and departure of the essential caregiver visitor; the name of the essential caregiver visitor; the name of the individual being visited; and attestation that the identity of the essential caregiver visitor was verified. 	<p>Removed requirements related to individually logging each essential caregiver visit.</p> <p>Essential caregivers must still be screened at each visit for screening criteria.</p>
<p>Vaccination</p>	<p>Visitation conditions determined by whether the provider offered a complete series of a one- or two-dose COVID-19 vaccination to individuals and staff.</p>	<p>The program provider must offer a complete series of a one- or two-dose COVID-19 vaccination to individuals and staff and allow all visitation types.</p>
<p>Visitation designation</p>	<p>If the provider had not offered a complete COVID-19 vaccination series, the provider must complete an attestation form and keep on file for HHSC to offer limited personal visitation.</p> <p>Attestation forms not required for closed window visits, end-of-life visits, or essential caregiver visits.</p>	<p>Removes the requirement for any visitation designation.</p>