

EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 379. FAMILY VIOLENCE PROGRAM

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 1 Texas Administrative Code (TAC), Chapter 379 Family Violence Program, amended §§379.206, 379.614, 379.615, 379.626, 379.628, 379.701, 379.709, 379.711, 379.713, 379.902, 379.1605, 379.2012, 379.2013, 379.2024, 379.2026, 379.2027, 379.2106, 379.2108, and 379.2110, which contain amendments aimed at protecting the Family Violence Program's staff and clients from exposure to 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 this 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 essential services. HHSC accordingly finds that COVID-19 poses an imminent peril to the public health, safety, and welfare of the state, requiring immediate adoption of these Family Violence Program COVID-19 Emergency Rules.

Current rules in 1 TAC Chapter 379 require HHSC Family Violence Program (FVP) contractors to provide in-person group services, convene board meetings, and have signed confidentiality agreements, which may put contractors' staff and clients' health and safety at risk at this time. Continuing to require the same levels of services and in-person participation during the time of an emergency is untenable and, without certain flexibilities, could deter survivors from accessing critical supportive services. To protect contractor staff, FVP clients, and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting emergency rule amendments to allow flexibilities in FVP service provision.

SUBCHAPTER B. SHELTER CENTERS

DIVISION 2. CONTRACT STANDARDS

1 TAC §379.206

STATUTORY AUTHORITY

This emergency rulemaking is adopted under Texas Government Code §§2001.034 and 531.0055 and Texas Human Resources Code, Title 2, Chapter 51, Subtitle E, §51.010. 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 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 Human Resources Code, Title 2, Chapter 51, Subtitle E, §51.010, authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program.

The amended section implements Texas Government Code §531.0055 and Texas Human Resources Code §51.010.

§379.206. *Requesting a Variance or Waiver:*

(a) To request a waiver from the maximum prescribed funding percentage, a center [center's board] must submit:

(1) a completed Family Violence Program Waiver Request Form prescribed by the Health and Human Services Commission (HHSC);

(2) supporting documentation demonstrating the center's efforts to raise funds compared to its budget; and

(3) a written agreement to receive technical assistance as designated by HHSC.

(b) To request a variance or waiver from any other requirement in this subchapter, the center [center's board] must submit a completed Family Violence Program Waiver Request Form prescribed by HHSC demonstrating the need for the variance or waiver.

(c) In the event of a natural disaster, emergency, pandemic, or other public health, safety, or welfare concern, a variance or waiver from any other requirement in this subchapter may be submitted by email to the center's assigned HHSC Family Violence Program contract manager.

(d) [(e)] A center [center's board] may submit a request for a variance or waiver up to 45 calendar days after the Annual Funding Report is due.

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

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Karen Ray

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Texas Health and Human Services Commission

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For further information, please call: (512) 460-0992



DIVISION 6. PROGRAM ADMINISTRATION

1 TAC §§379.614, 379.615, 379.626, 379.628

STATUTORY AUTHORITY

This emergency rulemaking is adopted under Texas Government Code §§2001.034 and 531.0055 and Texas Human Resources Code, Title 2, Chapter 51, Subtitle E, §51.010. 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 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 Human Resources Code, Title 2, Chapter 51, Subtitle E, §51.010, authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program.

The amended sections implement Texas Government Code §531.0055 and Texas Human Resources Code §51.010.

§379.614. Confidentiality Information for Adult Residents and Non-residents.

A center must provide to adult residents and nonresidents, in writing or verbally, at least the following:

- (1) the right to see their records;
- (2) the kind of information recorded, why, and the methods of collection;
- (3) who within the center has access to the resident's or nonresident's case files and records;
- (4) an overview of the center's policy and practices on confidentiality;
- (5) current state and federal laws regarding the limits of confidentiality under the law, including mandatory reporting for abuse or suspected abuse of:
 - (A) children;
 - (B) the elderly; and
 - (C) people with disabilities;
- (6) an overview of the center's policy for responding to court orders;
- (7) an overview of the center's policy for requests for information under the Public Information Act;
- (8) an overview of the center's policy for release of information;
- (9) when the records will be decoded or destroyed; and
- (10) an overview of what kind of information will remain in the file once a resident or nonresident terminates services.

§379.615. Confidentiality Agreements.

(a) A center must have all employees, volunteers, board members, student interns, and adult residents [~~and adult nonresidents~~] sign a confidentiality agreement. The agreement must have a provision that states that confidentiality must be maintained after an employee, volunteer, board member, student intern, or resident [~~or nonresident~~] leaves the center. The signed agreements must be placed:

- (1) in the personnel files of the employees;
- (2) in the corporate records of the board members; and
- (3) in the individual files of volunteers, student interns, and residents [~~and nonresidents~~].

(b) A center must, at a minimum, verbally inform adult nonresidents of the confidentiality policy. A center also must obtain verbal acknowledgement of the policy from each adult nonresident, confirming that the adult nonresident understands the policy and agrees to comply with it. When possible, adult nonresidents must sign a confidentiality agreement.

§379.626. Disruption in Providing Services.

(a) A center must develop, maintain, and comply with written policies and procedures for any disruption in the ability to provide services.

(b) Any disruption in the ability to provide services must be [~~verbally~~] reported immediately to the Health and Human Services Commission (HHSC).

(c) The report to HHSC must include a detailed description of the disruption and how services will be, or were, maintained.

~~{(e) After the initial verbal notification, the center must submit to HHSC, within two weeks, a written description of the disruption and how services will be or were maintained.}~~

§379.628. Resident and Nonresident Rights.

A center must:

- (1) provide [~~written~~] rights to all residents and nonresidents either in writing or verbally;
- (2) make reasonable accommodations to provide [~~written~~] rights for residents and nonresidents with limited English proficiency in writing or verbally; and
- (3) post resident and nonresident rights in a visible area within all center facilities.

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

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DIVISION 7. SERVICE DELIVERY

1 TAC §§379.701, 379.709, 379.711, 379.713

STATUTORY AUTHORITY

This emergency rulemaking is adopted under Texas Government Code §§2001.034 and 531.0055 and Texas Human Resources Code, Title 2, Chapter 51, Subtitle E, §51.010. 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 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 Human Resources Code, Title 2, Chapter 51, Subtitle E, §51.010, authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program.

The amended sections implement Texas Government Code §531.0055 and Texas Human Resources Code §51.010.

§379.701. *Shelter Center Services.*

(a) When safe for the resident, nonresident, and staff, the [The] center must provide [; at a minimum,] access in-person or remotely to the following services, directly, by referral, or through formal arrangements with other agencies, and have written procedures regarding these services as described in this subchapter:

- (1) 24-hour-a-day shelter;
- (2) a crisis call hotline available 24 hours a day;
- (3) emergency medical care;
- (4) intervention services, including safety planning, understanding and support, information, education, referrals, resource assistance, and individual service plans;
- (5) emergency transportation;
- (6) legal assistance in the civil and criminal justice systems, including identifying individual needs, legal rights and legal options and providing support and accompaniment in pursuing those options;
- (7) information about educational arrangements for children;
- (8) information about training for and seeking employment; and
- (9) a referral system to existing community services.

(b) If a center is unable to directly, or through a formal arrangement, provide a service or services requested by a resident or nonresident, due to safety concerns, the center must refer the client to another organization capable of providing the requested service or services. Prior to referring the client, a center must ensure the other organization has the capacity to offer the requested services.

§379.709. *Nonresident's Orientation.*

A center must ensure orientation is provided verbally [~~orally~~] and in writing when possible, is documented, and includes, but is not limited to:

- (1) explanation of services available;
- (2) termination policy;
- (3) nonresidents' rights;
- (4) nondiscrimination statement;
- (5) grievance procedures;
- (6) safety and security procedures;

(7) confidentiality and limits of confidentiality;

(8) waivers of liability; and

(9) a wellness check for all family members that addresses their immediate needs.

§379.711. *Group Intervention.*

A center must:

(1) provide at least one in-person or remote weekly support group for adult residents and adult nonresidents; and

(2) not mandate adult resident or adult nonresident attendance at weekly support groups.

§379.713. *Delivery of Children's Direct Services.*

The center must:

(1) have services available that are specific to meet the needs of children;

(2) provide transportation or make transportation arrangements for child residents who attend school;

(3) provide or arrange for school supplies and clothing for child residents;

(4) provide an in-person or remote [a] support group for child residents at least weekly, when age appropriate; and

~~[(5) provide a recreational or social group for child residents at least weekly; and]~~

(5) ~~[(6)]~~ offer information and referral services for nonresident children if nonresident services are offered to the child's parent.

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER C. SPECIAL NONRESIDENTIAL PROJECTS

DIVISION 2. CONTRACT STANDARDS

1 TAC §379.902

STATUTORY AUTHORITY

This emergency rulemaking is adopted under Texas Government Code §§2001.034 and 531.0055 and Texas Human Resources Code, Title 2, Chapter 51, Subtitle E, §51.010. 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 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 Human Resources Code, Title 2, Chapter 51, Subtitle E, §51.010, authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program.

The amended section implements Texas Government Code §531.0055 and Texas Human Resources Code §51.010.

§379.902. *Requesting a Variance or Waiver.*

(a) To request a variance or waiver from a specific requirement in this subchapter, the center [~~contractor's board~~] must submit a completed Family Violence Program Waiver Request Form prescribed by the Health and Human Services Commission demonstrating the need for the variance or waiver.

(b) In the event of a natural disaster, emergency, pandemic, or other public health, safety, or welfare concern, a variance or waiver from any other requirement in this subchapter may be submitted by email to the center's assigned HHSC Family Violence Program contract manager.

(c) [(b)] A center [~~contractor's board~~] may submit a request for a variance or waiver up to 90 calendar days after the end of the contract year for which the variance or waiver is requested.

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

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Karen Ray

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SUBCHAPTER D. NONRESIDENTIAL

CENTERS

DIVISION 2. CONTRACT STANDARDS

1 TAC §379.1605

STATUTORY AUTHORITY

This emergency rulemaking is adopted under Texas Government Code §§2001.034 and 531.0055 and Texas Human Resources Code, Title 2, Chapter 51, Subtitle E, §51.010. 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 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 Human Resources Code, Title 2, Chapter 51, Subtitle E, §51.010, authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program.

The amended section implements Texas Government Code §531.0055 and Texas Human Resources Code §51.010.

§379.1605. *Requesting a Variance or Waiver.*

(a) To request a waiver from the maximum prescribed funding percentage, the center [~~center's board~~] must submit:

(1) a completed Family Violence Program Waiver Request Form prescribed by the Health and Human Services Commission (HHSC);

(2) supporting documentation demonstrating the center's efforts to raise funds compared to its budget; and

(3) a written agreement to receive technical assistance as designated by HHSC.

(b) To request a variance or waiver from any other requirement in this subchapter, the center [~~center's board~~] must submit a completed Family Violence Program Waiver Request Form prescribed by HHSC demonstrating the need for the variance or waiver.

(c) In the event of a natural disaster, emergency, pandemic, or other public health, safety, or welfare concern, a variance or waiver from any other requirement in this subchapter may be submitted by email to the center's assigned HHSC Family Violence Program contract manager.

(d) [(e)] A center [~~center's board~~] may submit a request for a variance or waiver up to 45 calendar days after the Annual Funding Report is due.

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

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DIVISION 6. PROGRAM ADMINISTRATION

1 TAC §§379.2012, 379.2013, 379.2024, 379.2026, 379.2027

STATUTORY AUTHORITY

This emergency rulemaking is adopted under Texas Government Code §§2001.034 and 531.0055 and Texas Human Resources Code, Title 2, Chapter 51, Subtitle E, §51.010. 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 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 Human Resources Code, Title 2, Chapter 51, Subtitle E, §51.010, authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program.

The amended sections implement Texas Government Code §531.0055 and Texas Human Resources Code §51.010.

§379.2012. *Confidentiality Information for Adult Program Participants.*

A center must provide to adult program participants, verbally and in writing when possible, at least the following:

- (1) the right to see their records;
- (2) the kind of information recorded, why, and the methods of collection;
- (3) who within the center has access to the program participants' case files and records;
- (4) an overview of the center's policy and practices on confidentiality;
- (5) current state and federal laws regarding the limits of confidentiality under the law, including mandatory reporting for abuse or suspected abuse of:
 - (A) children;
 - (B) the elderly; and
 - (C) people with disabilities;
- (6) an overview of the center's policy for responding to court orders;
- (7) an overview of the center's policy for requests for information under the Public Information Act;
- (8) an overview of the center's policy for release of information;
- (9) when the records will be decoded or destroyed; and
- (10) an overview of what kind of information will remain in the file once a program participant terminates services.

§379.2013. *Confidentiality Agreements.*

(a) A center must have all employees, volunteers, board members, and student interns [~~and adult program participants~~] sign a confidentiality agreement. The agreement must have a provision that states that confidentiality must be maintained after an employee, volunteer, board member, or student intern [~~or program participant~~] leaves the center. The signed agreements must be placed:

- (1) in the personnel files of the employees;
- (2) in the corporate records of the board members; and
- (3) in the individual files of volunteers[~~;~~] and student interns[~~;~~ and program participants].

(b) A center must verbally inform adult program participants of the confidentiality policy. A center also must obtain verbal acknowledgement of the policy from each adult program participant, confirming that the participant understands the policy and agrees to comply with it. When possible, adult program participants must sign a confidentiality agreement.

§379.2024. *Minimum Hours for a Nonresidential Center.*

When safe for the resident, nonresident, and staff, a [A] center must provide in-person or remote services to victims of family violence [a minimum of 40 hours per week] with a consistent schedule of service hours that may be regular business hours or other hours as approved by the Health and Human Services Commission.

§379.2026. *Disruption in Providing Services.*

(a) A center must develop, maintain, and comply with written policies and procedures for any disruption in the ability to provide services.

(b) Any disruption in the ability to provide services must be verbally reported immediately to the Health and Human Services Commission (HHSC).

(c) The report to HHSC must include a detailed description of the disruption and how services will be, or were, maintained.

~~[(e) After the initial verbal notification, the center must submit to HHSC, within two weeks, a written description of the disruption and how services will be or were maintained.]~~

§379.2027. *Program Participant Rights.*

A center must:

- (1) provide [~~written~~] rights to all program participants verbally and when possible in writing;
- (2) make reasonable accommodations to provide [~~written~~] rights for program participants with limited English proficiency verbally and when possible in writing; and
- (3) post program participant rights in a visible area within all center facilities.

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

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Karen Ray

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Texas Health and Human Services Commission

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For further information, please call: (512) 460-0992



DIVISION 7. SERVICE DELIVERY

1 TAC §§379.2106, 379.2108, 379.2110

STATUTORY AUTHORITY

This emergency rulemaking is adopted under Texas Government Code §§2001.034 and 531.0055 and Texas Human Resources Code, Title 2, Chapter 51, Subtitle E, §51.010. 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 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 Human Resources Code, Title 2, Chapter 51, Subtitle E, §51.010, authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program.

The amended sections implement Texas Government Code §531.0055 and Texas Human Resources Code §51.010.

§379.2106. *Program Participant's Orientation.*

A center must ensure that an orientation is provided to a program participant verbally [orally] and when possible in writing, is documented, and includes, but is not limited to:

- (1) explanation of services available;

- (2) termination policy;
- (3) program participants' rights;
- (4) nondiscrimination statement;
- (5) grievance procedures;
- (6) safety and security procedures;
- (7) confidentiality and limits of confidentiality;
- (8) waivers of liability; and
- (9) a wellness check for all family members that addresses their immediate needs.

§379.2108. *Group Intervention.*

A center must:

- (1) provide at least one in-person or remote weekly support group for adult program participants; and
- (2) not mandate adult program participant attendance at weekly support groups.

§379.2110. *Delivery of Children's Direct Services.*

A center must:

- (1) have services available that are specific to meet the needs of children, including information and referral services; and
- (2) when providing services in-person, make reasonable accommodations to provide recreational or social activities for children during the time in which the adult parent is receiving services.

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

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Chief Counsel

Texas Health and Human Services Commission

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TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.24

The Texas Board of Nursing (Board) adopts emergency amendments to §217.24, relating to *Telemedicine Medical Service Prescriptions*, pursuant to a finding of imminent peril to the public health, safety, and welfare, which requires adoption in fewer than thirty (30) days' notice, as authorized by Tex. Gov't. Code §2001.034.

Background

On March 13, 2020, the Governor of the State of Texas certified COVID-19 as posing an imminent threat of disaster to the public

health and safety and declared a state of disaster in all counties of Texas. On March 23, 2020, the Office of the Governor granted a waiver of 22 Texas Administrative Code §217.24(e)(1), which prohibits an advanced practice registered nurse (APRN) from treating chronic pain with scheduled drugs through the use of telemedicine medical services, unless otherwise permitted under federal and state law. The waiver, however, expired on June 6, 2020.

The Board held a public meeting on June 8, 2020, to consider the adoption of an emergency rule to permit advanced practice registered nurses to treat chronic pain with scheduled drugs through the use of telemedicine medical services under certain conditions during the COVID-19 pandemic. At the conclusion of the meeting, the Board voted to adopt the emergency amendments to 22 TAC §217.24(e)(1). The emergency amendments took effect June 8, 2020; were published in the *Texas Register* on June 19, 2020; and expired on July 7, 2020.

Because the continuation of the effects of the COVID-19 pandemic necessitated the continuation of the emergency rule beyond the July 7, 2020 expiration date, the Board held a public meeting on July 6, 2020, and again adopted emergency amendments to §217.24(e)(1). The emergency amendments took effect July 7, 2020; were published in the *Texas Register* on July 17, 2020; and expired on September 4, 2020. The Board again considered the need for the adoption of emergency amendments to §217.24(e)(1) in public meeting on September 4, 2020 and voted to adopt emergency amendments to §217.24(e)(1) at the conclusion of that meeting. The emergency amendments took effect September 5, 2020; were published in the *Texas Register* on September 18, 2020; and expired on November 3, 2020. The Board again considered the need for the adoption of emergency amendments to §217.24(e)(1) in public meeting on November 4, 2020, and voted to adopt emergency amendments to §217.24(e)(1) at the conclusion of that meeting. The emergency amendments took effect November 4, 2020; were published in the *Texas Register* on November 20, 2020; and will expire on January 3, 2021. The Board has determined that the continuation of the effects of the COVID-19 pandemic necessitates the continuation of an emergency rule beyond the rule's last effective day.

The adoption of emergency amendments to §217.24(e)(1) is immediately necessary to allow APRNs to continue to provide necessary treatment to established patients with chronic pain while mitigating the risk of exposure to COVID-19. Under the emergency amendments, an APRN may treat chronic pain with scheduled drugs through use of telemedicine medical services if a patient is an established chronic pain patient of the APRN, is seeking a telephone refill of an existing prescription, and the APRN determines that the telemedicine treatment is needed due to the COVID-19 pandemic. Further, the medical records must document the exception and the reason that a telemedicine visit was conducted instead of an in-person visit. The APRN must exercise appropriate professional judgment in determining whether to utilize telemedicine medical services for the treatment of chronic pain with controlled substances. The emergency amendments will only apply to those APRNs whose delegating physicians agree to permit them to issue re-fills for these patients, and the services provided are limited to refills of controlled substances in Schedules III through V. Finally, these emergency amendments will only be in effect for a period of 60 days or the duration of the time period that the Governor's disaster declaration of March 13, 2020 in response to the COVID-19 pandemic is in effect, whichever is shorter.

Statutory Authority. The emergency amendments are adopted under the authority of the Tex. Occ. Code §301.151, which authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing. The emergency amendments are also adopted pursuant to Tex. Gov't. Code §2001.034 and §2001.036(a)(2) on an emergency basis and with an expedited effective date because an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice.

This emergency adoption also affects Texas Occupations Code Chapter 111.

§217.24. *Telemedicine Medical Service Prescriptions.*

(a) - (d) (No change.)

(e) (No change.)

(1) Treatment of chronic pain with scheduled drugs through use of telemedicine medical services is prohibited, unless otherwise allowed under federal and state law. For purposes of this section, "chronic pain" means a state in which pain persists beyond the usual course of an acute disease or healing of an injury. Chronic pain may be associated with a chronic pathological process that causes continuous or intermittent pain over months or years.

(A) Notwithstanding paragraph (e)(1), treatment of chronic pain with scheduled drugs through use of telemedicine medical services is not prohibited by this rule if the patient is an established chronic pain patient of the APRN and is seeking telephone refill of an existing prescription, and the APRN determines that such telemedicine treatment is needed due to the COVID-19 pandemic.

(B) If a patient is treated for chronic pain with scheduled drugs through the use of telemedicine medical services as permitted by (e)(1)(A), the medical records must document the exception and the reason that a telemedicine visit was conducted instead of an in-person visit.

(C) An APRN, when determining whether to utilize telemedicine medical services for the treatment of chronic pain with controlled substances as permitted by (e)(1)(A), shall give due consideration to factors that include, at a minimum, date of the patient's last in-person visit, patient co-morbidities, and occupational related COVID risks. These are not the sole, exclusive, or exhaustive factors an APRN should consider under this rule.

(D) The emergency amendment of this rule effective January 4, 2021, shall be in effect for only 60 days or the duration of the time period that the Governor's disaster declaration of March 13, 2020 in response to the COVID-19 pandemic is in effect, whichever is shorter.

(2) (No change.)

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 745. LICENSING
SUBCHAPTER X. EMERGENCY RULES
DIVISION 3. PREVIOUS COMPLIANCE HISTORY, HEIGHTENED MONITORING, AND THE DECISION TO ISSUE OR DENY A RESIDENTIAL CHILD-CARE OPERATION LICENSE

26 TAC §§745.10201, 745.10203, 745.10205, 745.10207

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 745 Licensing, new emergency rules §745.10201, concerning the terms used in the emergency rules; §745.10203, concerning to whom the new emergency rules apply; §745.10205, concerning Child Care Regulation's (CCR) consideration of an applicant's previous compliance history when evaluating an application for a new license to operate a residential child-care operation; and §745.10207, concerning the issuance of a new license to a residential child-care operation that was previously on heightened monitoring. As authorized by Texas Government Code §2001.034, the Commission may adopt emergency rules without prior notice upon finding that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, 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

HHSC adopts the emergency rules to require CCR to consider the previous five-year compliance history of related operations when evaluating an application for a new residential child-care operation license. The rules require the review when an applicant has been operating in a different location, has previously closed an operation, or has significant ties to another operation. The new emergency rules also require the continuation of heightened monitoring as a condition of a new license if a previous or related operation is on heightened monitoring, met the criteria for heightened monitoring in the previous five years, but was not placed on heightened monitoring, or was placed on heightened monitoring in the previous five years and did not successfully complete it.

In a December 18, 2020, order in the *MD v. Abbott* litigation, the court identified the need for CCR to evaluate compliance histories and continuity of heightened monitoring in evaluation of

license applications to ensure children in the conservatorship of the Department of Family and Protective Services (DFPS) who are placed in residential child-care operations licensed by HHSC are not placed at an unreasonable risk of serious harm in violation of their Fourteenth Amendment substantive due process rights.

The new emergency rules comply with this order and other orders by the same federal court finding that federal law requires, and unreasonable risk of serious harm exists in the absence of, certain actions by HHSC to protect the health, safety, and welfare of certain children. Accordingly, HHSC finds that immediate adoption of the emergency rules is necessary to prevent imminent peril to the public health, safety or welfare and comply with federal law, as found and ordered by the federal court.

STATUTORY AUTHORITY

The emergency rules are adopted under Texas Government Code §2001.034 and §531.0055 and Texas Human Resources Code §42.001 and §42.042. 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 the rules on fewer than 30 days' notice. Texas 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 Human Resources Code §42.001 states that it is the policy of the state to ensure the protection of all children under care in child-care facilities. In addition, Texas Human Resources Code §42.042 authorizes the Executive Commissioner of HHSC to adopt rules governing the regulation of child-care facilities in Chapter 42 of the Texas Human Resources Code.

The new sections implement Texas Government Code §531.0055, §531.0055 and Texas Human Resources Code §42.001 and §42.042.

§745.10201. What do the following terms mean when used in this division?

The following terms have the following meanings when used in this division:

(1) Change in ownership--As stated in §745.437 of this chapter (relating to What is a change in ownership of an operation?).

(2) Child Care Regulation (CCR)--A department of the Texas Health and Human Services Commission that regulates residential child-care operations.

(3) Controlling person--As stated in §745.901 of this chapter (relating to Who is a controlling person at a child-care operation?).

(4) Heightened monitoring--An increase in oversight of a residential child-care operation that has a pattern of deficiencies relating to minimum standard deficiencies weighted medium or higher, confirmed abuse or neglect findings, or Texas Department of Family and Protective Services (DFPS) contract violations. Heightened monitoring is mandated by a court order in the *MD vs Abbott* litigation dated March 18, 2020.

(5) Single source continuum contractor--A child-placing agency that contracts with DFPS to provide community-based care, including contractual supervision over other child-placing agencies and their child-placing activities.

§745.10203. Who does this division apply to?

This division applies to an applicant for a general residential operation or child-placing agency license that demonstrates an intent to obtain a contract with the Texas Department of Family and Protective Services (DFPS) or a single source continuum contractor to provide care to children in the conservatorship of DFPS.

§745.10205. What previous compliance history of a residential child-care operation must CCR consider when evaluating an application for a license to operate a residential child-care operation?

(a) When evaluating an application for a residential child-care license, CCR must consider the previous five-year compliance history of a residential child-care operation that:

(1) Is applying for a new license in a different location;
(2) Is re-applying for a new license after voluntarily closing; or

(3) Had a change in ownership; and

(A) Any controlling person from the previous operation serves or intends to serve as a controlling person in the new operation; or

(B) A new owner, including a sole proprietor, either partner of a partnership, or any member of the governing body of a corporation, is related to a controlling person of the previous operation by a third degree of consanguinity or second degree of affinity as defined in §745.21 of this chapter (relating to What do the following words and terms mean when used in this chapter?).

(b) The five-year compliance history consideration required by this section must include and document information concerning a related residential child-care operation, including:

(1) The number of abuse, neglect, or exploitation intakes in the previous five years;

(2) The number of confirmed abuse, neglect, or exploitation findings in the previous five years;

(3) The number of citations issued for corporal punishment in the previous five years; and

(4) A narrative description of how this data and information was or will be considered.

(c) The five-year compliance history consideration required by this section is a component of the application evaluation and must be completed prior to the on-site inspection related to the application for a new license.

(d) The five-year compliance history collected under subsection (b) of this section may be considered in future extended compliance history reviews of a license granted pursuant to an application subject to subsection (a) of this section.

§745.10207. May CCR issue a new license to a residential child-care operation that was previously on heightened monitoring?

(a) When issuing an initial license to a residential child-care operation that is on or otherwise meets the criteria for heightened monitoring and is applying for a new license in a different location, CCR must include a condition on the license that the operation is on heightened monitoring.

(b) When issuing an initial license to a residential child-care operation that was on heightened monitoring at the time of voluntary closure or otherwise met the criteria for heightened monitoring in the five years before voluntarily closing and reapplying for a new license at the same or a different location, CCR must include a condition on the license that the operation is on heightened monitoring.

(c) When issuing an initial license to a residential child-care operation that had a change in ownership while on heightened monitoring or otherwise met the criteria for heightened monitoring in the five years before the change in ownership, CCR must include a condition on the license that the operation is on heightened monitoring if:

(1) Any controlling person from the previous operation serves or intends to serve as a controlling person in the new operation; or

(2) A new owner, including a sole proprietor, either partner of a partnership, or any member of the governing body of a corporation, is related to a controlling person of the previous operation by a third degree of consanguinity or second degree of affinity as defined in §745.21 of this chapter (relating to What do the following words and terms mean when used in this chapter?).

(d) If an operation successfully completed heightened monitoring in the five years prior to the relocation, voluntary closure, or change of ownership, CCR will not include a condition on the license that the operation is on heightened monitoring, unless the operation again met the criteria for heightened monitoring after successfully completing it.

(e) When issuing an initial license to a residential child-care operation, if CCR determines that the applicant has employed or intends to employ a substantial number of employees from a previous

operation, CCR as a condition of the license may include employee screening requirements or training requirements that must be met before employees may have contact with children.

(f) The timeframes for an initial license in §745.347 of this chapter (relating to How long is an initial license valid?) may be extended for an initial license issued with conditions as described by this section.

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

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