

# 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 26. HEALTH AND HUMAN SERVICES

### PART 1. HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 500. COVID-19 EMERGENCY

##### HEALTH CARE FACILITY LICENSING

##### SUBCHAPTER D. CHEMICAL DEPENDENCY TREATMENT FACILITIES

#### 26 TAC §§500.41 - 500.44

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 500 COVID-19 Emergency Health Care Facility Licensing, new §500.41, concerning an emergency rule on telemedicine and telehealth in order to reduce the risk of transmission of COVID-19; new §500.42, concerning an emergency rule on maximum caseloads in order to permit an intensive residential program in a chemical dependency treatment facility (CDTF) to temporarily increase counselor caseloads to 20 clients per counselor; new §500.43, concerning an emergency rule on service delivery via two-way, real-time internet or telephone communications in order to reduce the risk of transmission of COVID-19; and new §500.44, concerning an emergency rule on treatment planning and service provision documentation deadlines in order to provide CDTFs additional time to document service delivery, as counselor caseloads may have increased in intensive residential treatment programs in response to the COVID-19 pandemic. 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 essential services. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of these emergency rules.

To protect patients and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopt-

ing emergency rules to temporarily adjust CDTF operational requirements to: (1) permit a licensed CDTF to provide telehealth and telemedicine treatment services to clients in order to reduce the risk of transmission of COVID-19; (2) permit an intensive residential program in a CDTF to increase counselor caseloads from 10 to 20 clients per counselor due to CDTF staff shortages; (3) permit a licensed CDTF to provide treatment services through two-way, real-time internet or telephone communications to clients in order to reduce the risk of transmission of COVID-19; and (4) extend treatment planning and service provision documentation deadlines to provide CDTFs additional time to document service delivery, as counselor caseloads may have increased in intensive residential treatment programs. These emergency rules will address staff shortages, reduce the risk of transmission of COVID-19, and reduce barriers to treatment for patients seeking treatment for substance use disorders and chemical dependency.

#### STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Health and Safety Code §464.009. 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. Health and Safety Code §464.009 authorizes the Executive Commissioner of HHSC to adopt rules governing organization and structure, policies and procedures, staffing requirements, services, client rights, records, physical plant requirements, and standards for licensed CDTFs.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code §464.009.

#### §500.41. CDTF Telemedicine or Telehealth During the COVID-19 Pandemic.

(a) Based on Governor Greg Abbott's March 13, 2020, declaration of a state of disaster in all Texas counties, the Texas Health and Human Services Commission (HHSC) adopts this emergency rule to establish continuing requirements and flexibilities to protect public health and safety during the COVID-19 pandemic. The requirements and flexibilities established in this section are applicable during an active declaration of a state of disaster in all Texas counties due to the COVID-19 pandemic, declared pursuant to Texas Government Code §418.014.

(b) In this section, telehealth service has the meaning assigned by Texas Occupations Code §111.001(3), and telemedicine medical service has the meaning assigned by Texas Occupations Code §111.001(4).

(c) A physician, physician assistant, nurse practitioner, registered nurse, or licensed vocational nurse (LVN) may use telemedicine medical service or telehealth service to screen a client for admission to a detoxification program as required by 25 TAC §448.801(e), provided all other requirements of that subsection are met. The physician who examines a client screened by a LVN, as required by 25 TAC §448.801(e)(4), may use telemedicine medical service or telehealth service to examine the client.

(d) The medical director or their designee (physician assistant, nurse practitioner) may use telemedicine medical service or telehealth service to conduct the examination of a client for admission to a detoxification program, as required by 25 TAC §448.902(e), provided all other requirements of that subsection are met.

(e) A counselor or counselor intern may use electronic means that meet the criteria of 25 TAC §448.911 to conduct the comprehensive psychosocial assessment of a client admitted to the facility, as required by 25 TAC §448.803, provided all other requirements of §448.803 are met, and to review information from an outside source with the client, as required by 25 TAC §448.803(f), provided all other requirements of that subsection are met.

(f) A qualified credentialed counselor, licensed professional counselor, licensed chemical dependency counselor, licensed marriage and family therapist, or licensed clinical social worker may provide outpatient chemical dependency treatment program services by electronic means under 25 TAC §448.911, provided all other requirements of that section are met.

(g) Any use of telemedicine medical service or telehealth service under this section shall comply with all applicable professional statutes and rules.

(h) 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 section or any minimum standard relating to a chemical dependency treatment facility, the facility must comply with the executive order or other direction.

§500.42. CDTF Maximum Caseloads During the COVID-19 Pandemic.

(a) Based on Governor Greg Abbott's March 13, 2020, declaration of a state of disaster in all Texas counties, the Texas Health and Human Services Commission (HHSC) adopts this emergency rule to establish continuing requirements and flexibilities to protect public health and safety during the COVID-19 pandemic. The requirements and flexibilities established in this section are applicable during an active declaration of a state of disaster in all Texas counties due to the COVID-19 pandemic, declared pursuant to Texas Government Code §418.014.

(b) Notwithstanding 25 TAC §448.903(f), counselor caseloads in intensive residential programs shall be limited to 20 clients for each counselor. To the extent this emergency rule conflicts with 25 TAC Chapter 448, this emergency rule controls while it remains in effect.

(c) 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 section or any minimum standard relating to a chemical dependency treatment facility, the facility must comply with the executive order or other direction.

§500.43. CDTF Service Delivery Through Two-Way, Real-Time Internet or Telephone Communications During the COVID-19 Pandemic.

(a) Based on Governor Greg Abbott's March 13, 2020, declaration of a state of disaster in all Texas counties, the Texas Health and Human Services Commission (HHSC) adopts this emergency rule to establish continuing requirements and flexibilities to protect public

health and safety during the COVID-19 pandemic. The requirements and flexibilities established in this section are applicable during an active declaration of a state of disaster in all Texas counties due to the COVID-19 pandemic, declared pursuant to Texas Government Code §418.014.

(b) A qualified credentialed counselor, licensed professional counselor, licensed chemical dependency counselor, licensed marriage and family therapist, licensed clinical social worker, or licensed professional counselor intern may provide intensive residential services required by 25 TAC §448.903(d)(1) - (2), supportive residential services required by 25 TAC §448.903(g)(1) - (2), intensive residential services in therapeutic communities required by 25 TAC §448.1401(g)(1) - (2), and adult supportive residential services in therapeutic communities required by 25 TAC §448.1401(k)(1) - (2) using two-way, real-time internet or telephone communications to provide services.

(c) A licensed professional counselor intern may provide outpatient chemical dependency treatment program services using two-way, real-time internet or telephone communications to provide services.

(d) Notwithstanding the provisions of 25 TAC §448.911, the professionals listed in subsection (b) of this section and in §500.41(f) of this subchapter (relating to CDTF Telemedicine or Telehealth in Response to COVID-19 Pandemic) may use two-way, real-time internet or telephone communications to provide services.

(e) Any provision of services under this section shall comply with all applicable state and federal statutes and rules regarding record-keeping, confidentiality, and privacy, including 25 TAC §448.508, 25 TAC §448.210, and 42 Code of Federal Regulations Part 2.

(f) 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 section or any minimum standard relating to a chemical dependency treatment facility, the facility must comply with the executive order or other direction.

§500.44. CDTF Treatment Planning and Service Provision Documentation Deadlines During the COVID-19 Pandemic.

(a) Based on Governor Greg Abbott's March 13, 2020, declaration of a state of disaster in all Texas counties, the Texas Health and Human Services Commission (HHSC) adopts this emergency rule to establish continuing requirements and flexibilities to protect public health and safety during the COVID-19 pandemic. The requirements and flexibilities established in this section are applicable during an active declaration of a state of disaster in all Texas counties due to the COVID-19 pandemic, declared pursuant to Texas Government Code §418.014.

(b) Notwithstanding the deadline provision of 25 TAC §448.804(f), the client treatment plan required by 25 TAC §448.804 shall be completed and filed in the client record within seven business days of admission.

(c) Notwithstanding the deadline provision of 25 TAC §448.804(l), program staff shall document all treatment services (counseling, chemical dependency education, and life skills training) in the client record within seven business days, including the date, nature, and duration of the contact, the signature and credentials of the person providing the service, and the information required by 25 TAC §448.804(l)(1) - (2).

(d) 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 section or any minimum standard relating to a chemical dependency treatment facility, the facility must comply with the executive order or other direction.

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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For further information, please call: (512) 834-4591



## SUBCHAPTER E. LICENSED CHEMICAL DEPENDENCY COUNSELORS

### 26 TAC §500.51

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 500 COVID-19 Emergency Health Care Facility Licensing, new §500.51, concerning an emergency rule for supervision of licensed chemical dependency counselor (LCDC) interns in response to COVID-19 in order to permit supervisors of interns to provide required supervision through the use of two-way, real-time internet or telephone communications 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 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 Supervision of LCDC Interns During the COVID-19 Pandemic.

To protect patients and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to temporarily permit: (1) counselor interns with more than 1,000 hours of supervised work experience to provide services in person or through two-way, real-time internet or telephone communications; (2) supervisors of LCDC interns with less than 2,000 hours of supervised work experience to provide supervision in person or through two-way, real-time internet or telephone communications; and (3) a certified clinical supervisor, or the clinical training institution coordinator or intern's supervising qualified credentialed counselor at a clinical training institution, to provide supervision to a counselor intern using two-way,

real-time internet or telephone communications to observe and document the intern performing assigned activities and to provide and document one hour of face-to-face individual or group supervision. This emergency rule will address staff shortages, reduce the risk of transmission of COVID-19, and reduce barriers to treatment for patients seeking treatment for substance use disorders and chemical dependency.

#### STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Occupations Code §504.051. 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. Occupations Code §504.051 authorizes the Executive Commissioner of HHSC to adopt rules as necessary for the performance of its duties under that chapter, establish standards of conduct and ethics for persons licensed under that chapter, and establish any additional criteria for peer assistance programs for chemical dependency counselors that the Executive Commissioner of HHSC determines necessary.

The new section implements Texas Government Code §531.0055 and Texas Occupations Code §504.051.

§500.51. Supervision of LCDC Interns During the COVID-19 Pandemic.

(a) Based on Governor Greg Abbott's March 13, 2020 declaration of a state of disaster in all Texas counties, the Texas Health and Human Services Commission (HHSC) adopts this emergency rule to establish continuing requirements and flexibilities to protect public health and safety during the COVID-19 pandemic. The requirements and flexibilities established in this section are applicable during an active declaration of a state of disaster in all Texas counties due to the COVID-19 pandemic, declared pursuant to Texas Government Code §418.014.

(b) A counselor intern with more than 1,000 hours of supervised work experience may provide services in person or using two-way, real-time internet or telephone communications.

(c) Notwithstanding 25 TAC §140.422(c), the supervisor of a counselor intern with less than 2,000 hours of supervised work experience must be on site or immediately accessible by two-way, real-time internet or telephone communications when the intern is providing services.

(d) When supervising a counselor intern as required by 25 TAC §140.422(d), (e), (g), and (h), the certified clinical supervisor, or the clinical training institution coordinator or intern's supervising qualified credentialed counselor at a clinical training institution, may use two-way, real-time internet or telephone communications to observe and document the intern performing assigned activities and to provide and document one hour of face-to-face individual or group supervision.

(e) 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 section or any minimum standard relating to a licensed chemical dependency counselor, the licensee must comply with the executive order or other direction.

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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