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 22. EXAMINING BOARDS
PART 5. STATE BOARD OF DENTAL EXAMINERS
CHAPTER 108. PROFESSIONAL CONDUCT
SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

22 TAC §108.9
The State Board of Dental Examiners (Board) adopts on an emergency basis an amendment to 22 TAC §108.9, relating to Dishonorable Conduct, in response to the COVID-19 disaster declaration. The amendment is being made pursuant to Executive Order GA-15, and expands dishonorable conduct to include failure to postpone all surgeries and procedures that are not medically necessary to diagnose or correct a serious medical condition of, or to preserve the life of, a patient who without timely performance of the surgery or procedure would be at risk for serious adverse medical consequences or death, as determined by the patient's dentist.

The amended rule is adopted on an emergency basis due to the imminent peril to the public health, safety and welfare caused by unnecessary exposure of both patients and health care professionals in undertaking and performing non-urgent elective surgeries and procedures during the COVID-19 pandemic.

The amended definitions are applicable only for purposes of the COVID-19 disaster declaration and shall only remain effective until the COVID-19 disaster declaration is terminated.

The emergency rule amendment is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

In addition, the emergency rule amendment is adopted on an emergency basis pursuant to Texas Government Code §2001.034, which authorizes the adoption of a rule on an emergency basis without prior notice and comment based upon a determination of imminent peril to the public health, safety or welfare.

The statutes affected by this rule: Dental Practice Act, Chapters 251 and 263, Texas Occupations Code.

§108.9. Dishonorable Conduct.
The dishonorable conduct section is intended to protect the public from dangerous, unethical, and illegal conduct of licensees. The purpose of this section is to identify unprofessional or dishonorable behaviors of a licensee which the Board believes are likely to pose a threat to the public. Actual injury to a patient need not be established for a licensee to be in violation of this section. Behavior constituting dishonorable conduct includes, but is not limited to:

(1) Criminal conduct—including but not limited to conviction of a misdemeanor involving fraud or a felony under federal law or the law of any state as outlined in Chapter 101 of this title.

(2) Deception or misrepresentation—engages in deception or misrepresentation:
   a) in soliciting or obtaining patronage; or
   b) in obtaining a fee.

(3) Fraud in obtaining a license—obtains a license by fraud or misrepresentation or participates in a conspiracy to procure a license, registration, or certification for an unqualified person.

(4) Misconduct involving drugs or alcohol—actions or conduct that include, but are not limited to:
   a) providing dental services to a patient while the licensee is impaired through the use of drugs, narcotics, or alcohol;
   b) addicted to or habitually intemperate in the use of alcoholic beverages or drugs;
   c) improperly obtained, possessed, or used habit-forming drugs or narcotics including self-prescription of drugs;
   d) grossly over prescribes, dispenses, or administers narcotic drugs, dangerous drugs, or controlled substances;
   e) prescribes, dispenses, or administers narcotic drugs, dangerous drugs, or controlled substances to or for a person who is not his or her dental patient; or
   f) prescribes, dispenses, or administers narcotic drugs, dangerous drugs, or controlled substances to a person for a non-dental purpose, whether or not the person is a dental patient.

(5) Assisting another in engaging in the unauthorized practice of dentistry or dental hygiene—holds a dental license and employs, permits, or has employed or permitted a person not licensed to practice dentistry to practice dentistry in an office of the dentist that is under the dentist's control or management.

(6) Failure to comply with applicable laws, rules, regulations, and orders or remedial plans—violates or refuses to comply with a law relating to the regulation of dentists, dental hygienists, or dental assistants; fails to cooperate with a Board investigation; or fails to comply with the terms of a Board Order or remedial plan.

(7) Inability to practice safely—is physically or mentally incapable of practicing in a manner that is safe for the person's dental patients.

(8) Discipline of a licensee by another state board—holds a license or certificate to practice dentistry or dental hygiene in another state and the examining board of that state:
   a) reprimands the person;
(B) suspends or revokes the person's license or certificate or places the person on probation; or
(C) imposes another restriction on the person's practice.

(9) Failure to comply with Medicaid, insurance, or other regulatory laws—knowingly provides or agrees to provide dental care in a manner that violates a federal or state law that:

(A) regulates a plan to provide, arrange for, pay for, or reimburse any part of the cost of dental care services; or
(B) regulates the business of insurance.

(10) Improper delegation—improperly delegates any task to any individual who is not permitted to perform the task by law, this chapter, or practice restrictions imposed by Board Order.

(11) Unprofessional conduct—engages in conduct that has become established through professional experience as likely to disgrace, degrade, or bring discredit upon the licensee or the dental profession.

(12) Failure to postpone all dental surgeries and procedures that are not medically necessary to diagnose or correct a serious medical condition of, or to preserve the life of, a patient who without timely performance of the dental surgery or procedure would be at risk for serious adverse medical consequences or death, as determined by the patient's dentist;

(A) Provided, however, that this prohibition shall not apply to any dental procedure that, if performed in accordance with the commonly accepted standard of clinical practice, would not deplete the hospital capacity or the personal protective equipment needed to cope with the COVID-19 disaster; or
(B) Any dental surgery or procedure performed in a licensed health care facility that has certified in writing to Texas HHSC both:

(i) that it will reserve at least 25% of its hospital capacity for treatment of COVID-19 patients, accounting for the range of clinical severity of COVID-19 patients; and
(ii) that it will not request any PPE from any public source -- whether federal, state, or local -- for the duration of the COVID-19 disaster as determined by the Governor.

The Texas Medical Board (Board) adopts on an emergency basis the emergency amendment to 22 TAC §190.8(2)(U) for purposes of the COVID-19 disaster declaration. The amendment is being made pursuant to Executive Order GA 15 and adds to the definition of “Unprofessional and Dishonorable Conduct” under 22 TAC §190.8(2)(U).

The amended rule is adopted on an emergency basis due to the imminent peril to the public health, safety and welfare caused by unnecessary exposure of both patients and health care professionals in undertaking and performing non-urgent elective surgeries and procedures during the COVID-19 pandemic in violation of the Executive Order.

The amended definition of unprofessional and dishonorable conduct is applicable only for purposes of the COVID-19 disaster declaration and shall only remain effective until 11:59 p.m. on May 8, 2020, unless terminated, modified, or extended by the governor.

The emergency rule amendment is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle.

In addition, the emergency rule amendment is adopted on an emergency basis pursuant to Texas Government Code §2001.034, which authorizes the adoption of a rule on an emergency basis without prior notice and comment based upon a determination of imminent peril to the public health, safety or welfare.

The statutes affected by this rule: Texas Medical Practice Act, Chapters 151 and 164, Texas Occupations Code.

§190.8. Violation Guidelines.

When substantiated by credible evidence, the following acts, practices, and conduct are considered to be violations of the Act. The following shall not be considered an exhaustive or exclusive listing.

(1) Practice Inconsistent with Public Health and Welfare. Failure to practice in an acceptable professional manner consistent with public health and welfare within the meaning of the Act includes, but is not limited to:

(A) failure to treat a patient according to the generally accepted standard of care;
(B) negligence in performing medical services;
(C) failure to use proper diligence in one's professional practice;
(D) failure to safeguard against potential complications;
(E) improper utilization review;
(F) failure to timely respond in person when on-call or when requested by emergency room or hospital staff;
(G) failure to disclose reasonably foreseeable side effects of a procedure or treatment;
(H) failure to disclose reasonable alternative treatments to a proposed procedure or treatment;
(I) failure to obtain informed consent from the patient or other person authorized by law to consent to treatment on the patient's behalf before performing tests, treatments, procedures, or autopsies as required under Chapter 49 of the Code of Criminal Procedure;
(J) termination of patient care without providing reasonable notice to the patient;

(K) prescription or administration of a drug in a manner that is not in compliance with Chapter 200 of this title (relating to Standards for Physicians Practicing Complementary and Alternative Medicine) or, that is either not approved by the Food and Drug Administration (FDA) for use in human beings or does not meet standards for off-label use, unless an exemption has otherwise been obtained from the FDA;

(L) prescription of any dangerous drug or controlled substance without first establishing a valid practitioner-patient relationship. Establishing a practitioner-patient relationship is not required for:

(i) a physician to prescribe medications for sexually transmitted diseases for partners of the physician's established patient, if the physician determines that the patient may have been infected with a sexually transmitted disease; or

(ii) a physician to prescribe dangerous drugs and/or vaccines for post-exposure prophylaxis of disease for close contacts of a patient if the physician diagnoses the patient with one or more of the following infectious diseases listed in subclauses (I) - (VII) of this clause, or is providing public health medical services pursuant to a memorandum of understanding entered into between the board and the Department of State Health Services. For the purpose of this clause, a "close contact" is defined as a member of the patient's household or any person with significant exposure to the patient for whom post-exposure prophylaxis is recommended by the Centers for Disease Control and Prevention, Texas Department of State Health Services, or local health department or authority ("local health authority or department" as defined under Chapter 81 of the Texas Health and Safety Code). The physician must document the treatment provided to the patient's close contact(s) in the patient's medical record. Such documentation at a minimum must include the close contact's name, drug prescribed, and the date that the prescription was provided.

(I) Influenza;

(II) Invasive Haemophilus influenzae Type B;

(III) Meningococcal disease;

(IV) Pertussis;

(V) Scabies;

(VI) Varicella zoster; or

(VII) a communicable disease determined by the Texas Department of State Health Services to:

(-a-) present an immediate threat of a high risk of death or serious long-term disability to a large number of people; and

(-b-) create a substantial risk of public exposure because of the disease's high level of contagion or the method by which the disease is transmitted.

(M) inappropriate prescription of dangerous drugs or controlled substances to oneself, family members, or others in which there is a close personal relationship that would include the following:

(i) prescribing or administering dangerous drugs or controlled substances without taking an adequate history, performing a proper physical examination, and creating and maintaining adequate records; and

(ii) prescribing controlled substances in the absence of immediate need. "Immediate need" shall be considered no more than 72 hours.

(N) providing on-call back-up by a person who is not licensed to practice medicine in this state or who does not have adequate training and experience.

(O) delegating the performance of nerve conduction studies to a person who is not licensed as a physician or physical therapist without:

(i) first selecting the appropriate nerve conduction to be performed;

(ii) ensuring that the person performing the study is adequately trained;

(iii) being onsite during the performance of the study; and

(iv) being immediately available to provide the person with assistance and direction.

(2) Unprofessional and Dishonorable Conduct. Unprofessional and dishonorable conduct that is likely to deceive, defraud, or injure the public within the meaning of the Act includes, but is not limited to:

(A) violating a board order;

(B) failing to comply with a board subpoena or request for information or action;

(C) providing false information to the board;

(D) failing to cooperate with board staff;

(E) engaging in sexual contact with a patient;

(F) engaging in sexually inappropriate behavior or comments directed towards a patient;

(G) becoming financially or personally involved with a patient in an inappropriate manner;

(H) referring a patient to a facility, laboratory, or pharmacy without disclosing the existence of the licensee's ownership interest in the entity to the patient;

(I) using false, misleading, or deceptive advertising;

(J) providing medically unnecessary services to a patient or submitting a billing statement to a patient or a third party payer that the licensee knew or should have known was improper. "Improper" means the billing statement is false, fraudulent, misrepresents services provided, or otherwise does not meet professional standards;

(K) behaving in an abusive or assaultive manner towards a patient or the patient's family or representatives that interferes with patient care or could be reasonably expected to adversely impact the quality of care rendered to a patient;

(L) failing to timely respond to communications from a patient;

(M) failing to complete the required amounts of CME;

(N) failing to maintain the confidentiality of a patient;

(O) failing to report suspected abuse of a patient by a third party, when the report of that abuse is required by law;

(P) behaving in a disruptive manner toward licensees, hospital personnel, other medical personnel, patients, family members

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(Q) entering into any agreement whereby a licensee, peer review committee, hospital, medical staff, or medical society is restricted in providing information to the board; and

(R) commission of the following violations of federal and state laws whether or not there is a complaint, indictment, or conviction:

(i) any felony;

(ii) any offense in which assault or battery, or the attempt of either is an essential element;

(iii) any criminal violation of the Medical Practice Act or other statutes regulating or pertaining to the practice of medicine;

(iv) any criminal violation of statutes regulating other professions in the healing arts that the licensee is licensed in;

(v) any misdemeanor involving moral turpitude as defined by paragraph (6) of this section;

(vi) bribery or corrupt influence;

(vii) burglary;

(viii) child molestation;

(ix) kidnapping or false imprisonment;

(x) obstruction of governmental operations;

(xi) public indecency; and

(xii) substance abuse or substance diversion.

(S) contacting or attempting to contact a complainant, witness, medical peer review committee member, or professional review body as defined under §160.001 of the Act regarding statements used in an active investigation by the board for purposes of intimidation. It is not a violation for a licensee under investigation to have contact with a complainant, witness, medical peer review committee member, or professional review body if the contact is in the normal course of business and unrelated to the investigation.

(T) failing to timely submit complete forms for purposes of registration as set out in §160.1 of this title (relating to Physician Registration) when it is the intent of the licensee to maintain licensure with the board as indicated through submission of an application and fees prior to one year after a permit expires.

(U) a violation of Texas Executive Order GA-15, issued April 17, 2020, which states: "All licensed health care professionals and all licensed health care facilities shall postpone all surgeries and procedures that are not medically necessary to diagnose or correct a serious medical condition of, or to preserve the life of, a patient who without timely performance of the surgery or procedure would be at risk for serious adverse medical consequences or death, as determined by the patient's physician; provided, however, that this prohibition shall not apply to either of the following:

(i) any procedure that, if performed in accordance with the commonly accepted standard of clinical practice, would not deplete the hospital capacity or the personal protective equipment needed to cope with the COVID-19 disaster; or

(ii) any surgery or procedure performed in a licensed health care facility that has certified in writing to the Texas Health and Human Services Commission both:

(I) that it will reserve at least 25% of its hospital capacity for treatment of COVID-19 patients, accounting for the range of clinical severity of COVID-19 patients; and

(II) that it will not request any personal protective equipment from any public source, whether federal, state, or local, for the duration of the COVID-19 disaster."

(3) Disciplinary actions by another state board. A voluntary surrender of a license in lieu of disciplinary action or while an investigation or disciplinary action is pending constitutes disciplinary action within the meaning of the Act. The voluntary surrender shall be considered to be based on acts that are alleged in a complaint or stated in the order of voluntary surrender, whether or not the licensee has denied the facts involved.

(4) Disciplinary actions by peer groups. A voluntary relinquishment of privileges or a failure to renew privileges with a hospital, medical staff, or medical association or society while investigation or a disciplinary action is pending or is on appeal constitutes disciplinary action that is appropriate and reasonably supported by evidence submitted to the board, within the meaning of §164.051(a)(7) of the Act.

(5) Repeated or recurring meritorious health care liability claims. It shall be presumed that a claim is "meritorious," within the meaning of §164.051(a)(8) of the Act, if there is a finding by a judge or jury that a licensee was negligent in the care of a patient or if there is a settlement of a claim without the filing of a lawsuit or a settlement of a lawsuit against the licensee in the amount of $50,000 or more. Claims are "repeated or recurring," within the meaning of §164.051(a)(8) of the Act, if there are three or more claims in any five-year period. The date of the claim shall be the date the licensee or licensee's medical liability insurer is first notified of the claim, as reported to the board pursuant to §160.052 of the Act or otherwise.

(6) Discipline based on Criminal Conviction. The board is authorized by the following separate statutes to take disciplinary action against a licensee based on a criminal conviction:

(A) Felonies.

(i) Section 164.051(a)(2)(B) of the Medical Practice Act, §204.303(a)(2) of the Physician Assistant Act, and §203.351(a)(7) of the Acupuncture Act, (collectively, the "Licensing Acts") authorize the board to take disciplinary action based on a conviction, deferred adjudication, community supervision, or deferred disposition for any felony.

(ii) Chapter 53, Texas Occupations Code authorizes the board to revoke or suspend a license on the grounds that a person has been convicted of a felony that directly relates to the duties and responsibilities of the licensed occupation.

(iii) Because the provisions of the Licensing Acts may be based on either conviction or a form of deferred adjudication, the board determines that the requirements of the Act are stricter than the requirements of Chapter 53 and, therefore, the board is not required to comply with Chapter 53, pursuant to §153.0045 of the Act.

(iv) Upon the initial conviction for any felony, the board shall suspend a physician's license, in accordance with §164.057(a)(1)(A), of the Act.

(v) Upon final conviction for any felony, the board shall revoke a physician's license, in accordance with §164.057(b) of the Act.

(B) Misdemeanors.

(i) Section 164.051(a)(2)(B) of the Act authorizes the board to take disciplinary action based on a conviction, deferred
adjudication, community supervision, or deferred disposition for any misdemeanor involving moral turpitude.

(ii) Chapter 53, Texas Occupations Code authorizes the board to revoke or suspend a license on the grounds that a person has been convicted of a misdemeanor that directly relates to the duties and responsibilities of the licensed occupation.

(iii) For a misdemeanor involving moral turpitude, the provisions of §164.051(a)(2) of the Medical Practice Act and §205.351(a)(7) of the Acupuncture Act, may be based on either conviction or a form of deferred adjudication, and therefore the board determines that the requirements of these licensing acts are stricter than the requirements of Chapter 53 and the board is not required to comply with Chapter 53, pursuant to §153.0045 of the Act.

(iv) The Medical Practice Act and the Acupuncture Act do not authorize disciplinary action based on conviction for a misdemeanor that does not involve moral turpitude. The Physician Assistant Act does not authorize disciplinary action based on conviction for a misdemeanor. Therefore these licensing acts are not stricter than the requirements of Chapter 53 in those situations. In such situations, the conviction will be considered to directly relate to the practice of medicine if the act:

(I) arose out of the practice of medicine, as defined by the Act;

(II) arose out of the practice location of the physician;

(III) involves a patient or former patient;

(IV) involves any other health professional with whom the physician has or has had a professional relationship;

(V) involves the prescribing, sale, distribution, or use of any dangerous drug or controlled substance; or

(VI) involves the billing for any financial arrangement regarding any medical service;

(v) Misdemeanors involving moral turpitude. Misdemeanors involving moral turpitude, within the meaning of the Act, are those which:

(I) have been found by Texas state courts to be misdemeanors of moral turpitude;

(II) involve dishonesty, fraud, deceit, misrepresentation, violence; or

(III) reflect adversely on a licensee’s honesty, trustworthiness, or fitness to practice under the scope of the person’s license.

(vi) Those misdemeanors found by state Texas courts not to be crimes of moral turpitude are not misdemeanors of moral turpitude within the meaning of the Act.

(C) In accordance with §164.058 of the Act, the board shall suspend the license of a licensee serving a prison term in a state or federal penitentiary during the term of the incarceration regardless of the offense.

(7) Violations of the Health and Safety Code. In accordance with §164.055 of the Act, the board shall take appropriate disciplinary action against a physician who violates §170.002 or Chapter 171, Texas Health and Safety Code.

(8) For purposes of §164.051(a)(4)(C) of the Texas Occupations Code, any use of a substance listed in Schedule I, as established by the Commissioner of the Department of State Health Services under Chapter 481, or as established under the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. §801 et seq.) constitutes excessive use of such substance.

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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Scott Freshour
General Counsel
Texas Medical Board
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Expiration date: August 19, 2020
For further information, please call: (512) 305-7016

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 417. AGENCY AND FACILITY RESPONSIBILITIES

SUBCHAPTER A. STANDARD OPERATING PROCEDURES

25 TAC §417.47

The Executive Commissioner of the Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 25 Texas Administrative Code, Chapter 417, Agency and Facility Responsibilities, amended §417.47, concerning an emergency rule in response to COVID-19 in order to ensure necessary state hospital staffing levels in the wake of the COVID-19 disaster. As authorized by 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 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. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this standard operating procedures.

To protect individuals served by the state hospitals and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting emergency amendments to efficiently and effectively deploy staff to meet basic needs during this unprecedented time, without posing risk to the individuals served.
The emergency rulemaking is adopted under Government Code §2001.034 and §531.0055 and Health and Safety Code §552.052. 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. 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 §552.052 authorizes the Executive Commissioner of HHSC to adopt rules governing training of state hospital employees.

§417.47. Training Requirements for State Mental Health Facilities.

(a) All State Hospital Employees. As required by Texas Health and Safety Code, §552.052(b), before performing the employee's duties without direct supervision, all state mental health facility (SMHF) staff members shall receive competency training and instruction on general duties. In the event of a declared disaster, the competency training, instruction, and evaluation may be modified and expedited to ensure the employee has achieved competency essential to perform the employee's duties.

(b) Direct Care Employees. Before an employee who provides direct delivery of services to a patient begins to perform direct care duties without direct supervision, a SMHF staff member shall receive training and instruction, in addition to the training outlined in subsection (a) of this section, on implementation of the interdisciplinary treatment program for each patient, a person admitted to a state hospital under the management and control of the department, for whom they will provide care.

(c) Specialized Training. Direct care employees shall receive additional training and instructional information in accordance with the specialized needs of the population being served, including services on units for individuals with intellectual disabilities, medical impairments, or geriatric patients within a reasonable period of time after the staff member begins employment.

(d) All SMHF staff members shall receive annual refresher training on the topics outlined in subsection (a) of this section throughout the staff member's employment or association with the SMHF, unless the department determines in good faith and with good reason a particular employee's performance will not be adversely affected in the absence of such refresher training or in the event of a declared disaster.

(e) Direct Care Employees whose duties require delivery of services to a patient shall receive annual refresher training on the topics outlined in subsections (a) and (b) of this section throughout the staff member's employment or association with the SMHF, unless the department determines in good faith and with good reason a particular employee's performance will not be adversely affected in the absence of such refresher training or in the event of a declared disaster.

(f) Direct Care Employees whose duties require delivery of services on units for individuals with intellectual disabilities, medical impairments, or geriatric patients shall receive annual refresher training on the topics outlined in subsections (a), (b), and (c) of this section, throughout the staff member's employment or association with the SMHF, unless the department determines in good faith and with good reason a particular employee's performance will not be adversely affected in the absence of such refresher training or in the event of a declared disaster.

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
Chief Counsel
Department of State Health and Services
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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, §500.42

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 in response to COVID-19 on telemedicine and telehealth in order to reduce the risk of transmission of COVID-19, and new §500.42, concerning an emergency rule in response to COVID-19 on maximum caseloads in order to permit an intensive residential program in a Chemical Dependency Treatment Facility (CDTF) to temporarily increase counselor caseloads to twenty clients per counselor. As authorized by Government Code §2001.034, HHSC 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 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. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this CDTF Telemedicine or Telehealth in Response to COVID-19 and CDTF Maximum Caseloads in Response to COVID-19.

To protect patients and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting
emergency rules to temporarily permit a licensed CDTF to provide telehealth and telemedicine treatment services to clients in order to reduce the risk of transmission of COVID-19, as well as to address shortages of available medical professionals and permit an intensive residential program in a CDTF to increase counselor caseloads from 10 to 20 clients per counselor because of CDTF staff shortages.

STATUTORY AUTHORITY

The emergency rules are adopted under Government Code §2001.034 and §531.0055, and Health and Safety Code §464.009. 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. 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 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.

§500.41. CDTF Telemedicine or Telehealth in Response to COVID-19.

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

(b) 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.

(c) 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.

(d) 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.

(e) 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.

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

§500.42. CDTF Maximum Caseloads in Response to COVID-19.

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.

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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Health and Human Services Commission
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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER OO. DISCLOSURES BY OUT-OF-NETWORK PROVIDERS

28 TAC §§21.4901 - 21.4904

The Texas Department of Insurance is renewing the effectiveness of new Title 28, Chapter 21, Subchapter OO, Disclosures By Out-Of-Network Providers, §§21.4901 - 21.4904, concerning disclosures by out-of-network providers, which was adopted on an emergency basis. The text of the emergency rules was originally published in the January 3, 2020, issue of the Texas Register (45 TexReg 13). Under the authority of Government Code §2001.034(c), the renewal will be effective for 60 days.

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James Person
General Counsel
Texas Department of Insurance
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 3. RESPONSIBILITIES OF STATE FACILITIES

SUBCHAPTER D. TRAINING

40 TAC §§3.401 - 3.403

The Executive Commissioner of the Health and Human Services Commission (HHSC) adopts an emergency basis in Title 40
Texas Administrative Code, Chapter 3, Responsibilities of State Facilities, amended §§3.401 - 3.403, concerning emergency rules in response to COVID-19 to ensure necessary state supported living center staffing levels in the wake of the COVID-19 disaster. As authorized by 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 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. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of these training rules.

To protect individuals served by the state supported living center and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting emergency amendments to efficiently and effectively deploy staff to meet basic needs during this unprecedented time, without posing risk to the individuals served.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Government Code §2001.034 and §§31.0055 and Health and Safety Code §§555.024. 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. Government Code §31.0055 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 §§555.024 authorizes the Executive Commissioner of HHSC to adopt rules governing training of state supported living center employees.

§3.401. Training for New Employees.

(a) Before an employee performs employment duties without direct supervision, the employee shall receive competency training and instruction on general duties. In the event of a declared disaster, the competency training, instruction, and evaluation may be modified and expedited to ensure the employee has achieved competency essential to perform the employee's duties. [a facility must provide the employee with basic orientation].

(b) The focus of the basic orientation must be on:

(1) the uniqueness of each individual with whom the employee will work;

(2) techniques for improving the quality of life and promoting the integration, independence, person-directed choices, and health and safety of individuals; and

(3) the conduct expected of employees.

(c) The basic orientation must include instruction and information on the following topics:

(1) the general operation and layout of the facility, including armed intruder lockdown procedures;

(2) an introduction to intellectual disabilities;

(3) an introduction to autism;

(4) an introduction to mental illness and dual diagnosis;

(5) the rights of individuals as specified in 40 Texas Administrative Code (TAC) Part 1, Chapter 4, Subchapter C (relating to Rights of Individuals with an Intellectual Disability), including the right to live in the least restrictive setting appropriate to the individual's needs and abilities;

(6) respecting personal choices made by individuals;

(7) the safe and proper use of restraints;

(8) abuse, neglect, and exploitation of individuals;

(9) unusual incidents;

(10) illegal drug use in the workplace;

(11) workplace violence;

(12) sexual harassment in the workplace;

(13) preventing and treating infection;

(14) responding to emergencies, including information about first aid and cardiopulmonary resuscitation procedures;

(15) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191); and

(16) the rights of facility employees.

§3.402. Additional Training for Direct Support Professionals.

(a) Before a direct support professional performs employment duties without direct supervision, a facility must provide relevant training essential to perform the employee's duties. Direct support professionals will be provided basic instructional information on these statutorily required topics that covers at least the following topics to the direct support professional:

(1) implementation and data collection requirements for the individual support plan for each individual with whom the direct support professional will work;

(2) communication styles and strategies for each individual with whom the direct support professional will work;

(3) prevention and management of aggressive or violent behavior;

(4) observing and reporting changes in behavior, appearance, or health of individuals;

(5) positive behavior support;

(6) emergency response;

(7) development of individual support plans;

(8) self-determination;

(9) seizure safety;

(10) working with aging individuals;

(11) assisting individuals with personal hygiene;

(12) physical and nutritional management plans;
(13) home and community-based services, including the principles of community inclusion and participation in the community living options information process; and
(14) procedures for securing evidence following an incident of suspected abuse, neglect, or exploitation.

(b) If training on any of the following topics is relevant to working with a particular individual, a facility must provide that training to the direct support professional before performing duties related to that individual without direct supervision:

1. using techniques for lifting, positioning, moving and increasing mobility;
2. assisting individuals with visual, hearing, or communication impairments or who require adaptive devices and specialized equipment;
3. recognizing appropriate food textures; and
4. using proper feeding techniques to assist individuals with meals.

§3.403. Refresher Training.

(a) A facility must provide training on:

1. abuse, neglect, and exploitation to an employee annually;
2. unusual incidents to an employee annually;
3. the rights of individuals as specified in 40 Texas Administrative Code (TAC) Part 1, Chapter 4, Subchapter C (relating to Rights of Individuals with an Intellectual Disability) to a direct care professional annually and to an employee who is not a direct care professional every two years; and
4. restraints to a direct support professional annually.

(b) During a declared disaster, trainings required by subsection (a) of this section must be provided at the earliest opportunity.

1. A facility must provide training on abuse, neglect, and exploitation to an employee annually.
2. A facility must provide training on unusual incidents to an employee annually.
3. A facility must provide training on the rights of individuals as specified in 40 Texas Administrative Code (TAC) Part 1, Chapter 4, Subchapter C (relating to Rights of Individuals with an Intellectual Disability) to a direct care professional annually and to an employee who is not a direct care professional every two years.
4. A facility must provide training on restraints to a direct support professional annually.

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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