

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 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER D. UNIFORM GUIDANCE FOR RECIPIENTS OF FEDERAL AND STATE FUNDS

10 TAC §1.407

The Executive Director of the Texas Department of Housing and Community Affairs (the Department) adopts on an emergency basis, an amendment to 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.407 Inventory Report. As authorized by Texas Government Code §2001.034, the Department may adopt an emergency rule without prior notice or hearing if it finds 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. Failure to make this amendment could result in a portion of these funds being returned to HUD for failure to meet a CDBG-CV interim obligation deadline. The Department accordingly finds that an imminent peril to the public health, safety, or welfare requires immediate adoption of this emergency amendment to ensure access to limited temporary CDBG-CV funding.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034, which 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.

§1.407. *Inventory Report.*

(a) The Department requires the submission of an inventory report for all Contracts to be submitted to the Department, no later than 45 days after the end of the Contract Term, or a more frequent period as reflected in the Contract. Real Property and Equipment must

be inventoried and reported on the Department's required form. The form and instructions are found on the Department's website.

(b) Real property and Equipment purchased with funds under a Contract with the Department must be inventoried and reported to the Department during the Contract Term.

(c) Aggregate Supplies of over \$5,000 must be reported to the Department at the end of the Contract Term using federal form SF-428, which is a standard form to collect information related to tangible personal property or other form required by the federal fund source.

(d) For certain public facility activities funded by the Community Development Block Grant Program, inventory requirements will be those required by HUD for real property, as further identified in the Contract.

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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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3959

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 9. INTELLECTUAL DISABILITY SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

SUBCHAPTER D. HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)

40 TAC §9.198

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 40, Part 1, Texas Administrative Code, Chapter 9, Intellectual Disability Services--Medicaid State Operating Agency Responsibilities, new §9.198, concerning an emergency rule in

response to COVID-19 in order to reduce the risk of transmission of COVID-19. As authorized by Texas 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 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 July 29, 2021, proclamation relating to the continued response to the COVID-19 disaster. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this emergency rule concerning Program Provider Response to COVID-19.

To protect individuals receiving HCS and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting this emergency rule to reduce the risk of spreading COVID-19 to individuals in the HCS program. This new rule describes the requirements HCS program providers must immediately put into place and follow for infection control practices.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §§2001.034, 531.0055, and 531.021, and Texas Human Resources Code §32.021. 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 Government Code §531.021 provides HHSC with the authority to administer federal Medicaid funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program. Texas Human Resources Code §32.021 provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new section implements Texas Government Code §531.0055 and §531.021, and Texas Human Resources Code §32.021.

§9.198. Program Provider Response to COVID-19 Emergency Rule.

(a) Applicability. Based on state law and federal guidance, Texas Health and Human Services Commission (HHSC) finds COVID-19 to be a health and safety risk and requires a program provider to take the following measures. The screening required by this section does not apply to emergency services personnel entering the residence in an emergency situation.

(b) Definitions. The following words and terms, when used in this section, have the following meanings.

(1) Individual--A person enrolled in the Home and Community-based Services (HCS) program.

(2) Persons providing critical assistance--Providers of essential services, persons with legal authority to enter, and family members or friends of individuals at the end of life and designated essential caregivers as described in Title 26 Texas Administrative Code Chapter 570, Long-term Care Provider Rules During a Public Health Emergency or Disaster, Subchapter H, §570.711 (relating to Visitation).

(3) Persons with legal authority to enter--Law enforcement officers, representatives of Disability Rights Texas, and government personnel performing their official duties.

(4) Physical distancing--Maintaining a minimum distance between persons as recommended by the Centers for Disease Control and Prevention (CDC), avoiding gathering in groups in accordance with state and local orders, and avoiding unnecessary physical contact.

(5) Probable case of COVID-19--A case that meets the clinical criteria for epidemiologic evidence as defined and posted by the Council of State and Territorial Epidemiologists.

(6) Provider of essential services--Contract doctors or nurses, home health and hospice workers, health care professionals, contract professionals, clergy members and spiritual counselors, guardians, advocacy professionals, and individuals operating under the authority of a local intellectual and developmental disability authority (LIDDA) or a local mental health authority (LMHA), whose services are necessary to ensure individual health and safety.

(7) Residence--A host home/companion care, three-person, or four-person residence, as defined by the HCS Billing Guidelines, unless otherwise specified.

(c) Infection Control.

(1) A program provider must develop and implement an infection control policy to prevent the spread of COVID-19 that:

(A) prescribes a cleaning and disinfecting schedule for the residence, including high-touch areas and any equipment used to care for more than one individual;

(B) is updated to reflect current CDC or Texas Department of State Health Services guidance;

(C) may include the use of face masks;

(D) includes screening procedures for staff, visitors, and individuals;

(E) includes strategies for staff to provide services to individuals who have tested positive for COVID-19;

(F) includes strategies for a service provider at a host home, three-person or four-person residence, or a staff member at a respite or Community First Choice Personal Assistance Services/Habilitation (CFC PAS/HAB) to return to work when they have a confirmed or probable COVID-19 diagnosis; and

(G) is revised if a shortcoming is identified.

(2) A program provider must provide training to service providers on the infection control policy initially and upon updates.

(3) A program provider must educate staff and individuals on infection prevention, including hand hygiene, physical distancing, and cough etiquette.

(d) A program provider must update the emergency plan developed in accordance with §9.178(d) of this subchapter (relating to Certification Principles: Quality Assurance) to address COVID-19. The updated plan must include:

(1) a plan for maintaining infection control procedures during evacuation;

(2) a list of locations and alternate locations for evacuation for individuals with confirmed or probable COVID-19, and for individuals with negative or unknown COVID-19 status; and

(3) a list of supplies needed if required to shelter in place.

(e) A program provider may conduct the annual inspection required by §9.178(c) of this subchapter by video conference. A program provider must conduct an on-site inspection required by §9.178(c) of this subchapter within 30 days of the expiration or repeal of the public health emergency.

(f) Flexibilities in federal requirements granted by the Centers for Medicare and Medicaid Services during the COVID-19 pandemic, including waivers under the Social Security Act §1135, activation of Appendix K amending a 1915(c) home and community-based waiver, and other federal flexibilities or waivers are applied to corresponding state certification principles for HCS. HHSC will identify and describe federal flexibilities and flexibility in corresponding state certification principles in guidance issued through HCS provider letters.

(g) If this emergency rule is more restrictive than any minimum standard relating to the HCS program, this emergency rule will prevail so long as this emergency rule is 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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