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 36. COUNCIL ON SEX OFFENDER TREATMENT
CHAPTER 810. COUNCIL ON SEX OFFENDER TREATMENT
SUBCHAPTER A. LICENSED SEX OFFENDER TREATMENT PROVIDERS
22 TAC §810.3
The Council on Sex Offender Treatment is renewing the effectiveness of emergency amended §810.3 for a 60-day period. The text of the emergency rule was originally published in the July 17, 2020, issue of the Texas Register (45 TexReg 4854).

Filed with the Office of the Secretary of State on October 19, 2020.
TRD-202004350
Aaron Pierce, PhD, LPC, LSOTP-S
Chairman
Council on Sex Offender Treatment
Original effective date: July 2, 2020
Expiration date: December 28, 2020
For further information, please call: (512) 231-5721

TITLE 26. HEALTH AND HUMAN SERVICES
PART 1. HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 500. COVID-19 EMERGENCY HEALTH CARE FACILITY LICENSING
SUBCHAPTER A. HOSPITALS
26 TAC §500.3
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 §500.3, concerning an emergency rule in response to COVID-19 in order to designate licensed hospital space to allow hospitals to treat and house patients more effectively. 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 Designation of Licensed Hospital Space During the COVID-19 Pandemic.

To protect hospital 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 a currently licensed hospital to designate a specific part of its hospital for use as an off-site facility by another hospital, and to allow another currently licensed hospital to apply to use the first hospital’s designated hospital space as an off-site facility for inpatient care.

STATUTORY AUTHORITY
The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Health and Safety Code §241.026. 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 Health and Safety Code §241.026 authorizes the Executive Commissioner of HHSC to adopt rules governing development, establishment, and enforcement standards for the construction, maintenance, and operation of licensed hospitals.


§500.3. Designation of Licensed Hospital Space 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) Using a form prescribed by HHSC, a hospital currently licensed under Texas Health and Safety Code Chapter 241 may designate a specific portion of its facility for use as an off-site facility by another hospital. A portion of the facility designated under this subsection may not be used under the designating hospital’s license while the designation is effective.

(c) Another hospital currently licensed under Texas Health and Safety Code Chapter 241 may apply to use a portion of the facility designated under subsection (b) of this section as an off-site facility for inpatient care under §500.1 of this chapter (relating to Hospital Off-Site Facilities in Response to COVID-19) in the same manner as it would apply to use a facility described by §500.1(c)(2) of this chapter.

(d) A hospital that uses a portion of the facility designated under subsection (b) of this section as an off-site facility for inpatient care is responsible under its license for complying with all applicable federal and state statutes and rules, including §500.1 of this chapter, while using the portion of the facility.

(e) A hospital may withdraw its designation of the portion of the facility upon 10 days’ notice to HHSC and to the hospital using the portion of the facility as an offsite facility. HHSC, at its sole discretion, may withdraw a hospital’s designation of the portion of the facility at any time. Any patients being treated in the portion of the facility shall be safely relocated or transferred as soon as practicable, according to the policies and procedures of the hospital using the portion of the facility as an off-site facility.

(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 hospital, the hospital 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.

Filed with the Office of the Secretary of State on October 16, 2020.
TRD-202004329
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: October 20, 2020
Expiration date: February 16, 2021
For further information, please call: (512) 834-4591

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 twenty 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, 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 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 adopting 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

§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) (relating to Screening), provided all other requirements of that subsection are met. The physician who examines a client screened by an 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) (relating to Requirements Applicable to Detoxification Services), 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 (relating to Treatment Services Provided by Electronic Means) to conduct the comprehensive psychosocial assessment of a client admitted to the facility, as required by 25 TAC §448.803 (relating to Assessment), 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, licensed clinical social worker, or licensed professional counselor intern may provide intensive residential services required by 25 TAC §448.903(d)(1) - (2) (relating to Requirements Applicable to Residential Services), 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) (relating to Therapeutic Communities), 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.

(g) 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.

(h) Notwithstanding the provisions of 25 TAC §448.911 (relating to Treatment Services Provided by Electronic Means), 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.

§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) (relating to Requirements Applicable to Residential Services), 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) (relating to Requirements Applicable to Residential Services), 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) (relating to Therapeutic Communities), 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 (relating to Treatment Services Provided by Electronic Means), 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 (relating to Client Records), 25 TAC §448.210 (relating to Confidentiality), 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.
The Health Chief Karen and 45 Effective to 2020. health public cerning and cable notice §2001.034, nature, Title order TAC further (a) (d) client and or HHSC and counsel an and October 17, 2020 rule (2). 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. Filed with the Office of the Secretary of State on October 16, 2020. TRD-202004337 Karen Ray Chief Counsel Health and Human Services Commission Effective date: October 17, 2020 Expiration date: February 13, 2020 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 an emergency rule 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, 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 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 the chapter, establish standards of conduct and ethics for persons licensed under the chapter, and establish any additional criteria for peer assistance programs for chemical dependency counselors that the Executive Commissioner of HHSC determines necessary.


§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.

Filed with the Office of the Secretary of State on October 16, 2020.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 834-4591

CHAPTER 551. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS

SUBCHAPTER C. STANDARDS FOR LICENSURE

26 TAC §§551.47
The Executive Commissioner of the Health and Human Services Commission (HHSC) adopts an emergency basis in Title 26, Texas Administrative Code, Chapter 551, Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions, Subchapter C, Standards for LICENSURE, new §551.47, concerning an emergency rule in response to COVID-19 describing requirements for limited indoor and outdoor visitation in a facility. 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. This emergency rulemaking reflects the continued reopening of the State of Texas. 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 Intermediate Care Facility COVID-19 Response—Expansion of Reopening Visitation.

To protect intermediate care facility individuals and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to require limited indoor and outdoor visitation in an intermediate care facility. The purpose of the new rule is to describe the requirements related to such visits.

STATUTORY AUTHORITY
The emergency rulemaking is adopted under Texas Government Code, §2001.034 and §§31.055, and Texas Health and Safety Code §§252.031 - 252.033 and §252.043. 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 Health and Safety Code §§252.031 - and 252.033 require the Executive Commissioner of HHSC to establish rules prescribing the minimum standards and process for licensure as an intermediate care facility. Texas Health and Safety Code §252.043 establishes HHSC's authority to conduct an inspection, survey, or investigation at an intermediate care facility to determine if the intermediate care facility is in compliance with the minimum acceptable levels of care for individuals who are living in an intermediate care facility, and the minimum acceptable life safety code and physical environment requirements.


(a) The following words and terms, when used in this subchapter, have the following meanings.

(1) Closed window visit—A personal visit between a visitor and an individual during which the individual and visitor are separated
by a closed window and the visitor does not enter the building. A closed window visit is permitted at all facilities for all individuals.

(2) COVID-19 negative--The status of a person who has tested negative for COVID-19, is not exhibiting symptoms of COVID-19, and has had no known exposure to the virus since the negative test.

(3) COVID-19 positive--The status of a person who has tested positive for COVID-19 and does not yet meet Centers for Disease Control and Prevention (CDC) guidance for the discontinuation of transmission-based precautions.

(4) End-of-life visit--A personal visit between a visitor and an individual who is actively dying. An end-of-life visit is permitted in all facilities for all individuals at the end of life.

(5) Essential caregiver--A family member or other outside caregiver, including a friend, volunteer, private personal caregiver or court-appointed guardian, who is at least 18 years old, and has been designated by the individual or legal representative to provide regular care and support to an individual.

(6) Essential caregiver visit--A personal visit between an individual and a designated essential caregiver, as described in subsection (e) of this section. An essential caregiver visit is permitted in all facilities for COVID-19 negative and unknown COVID-19 status individuals.

(7) Facility-acquired COVID-19 infection--COVID-19 infection that is acquired after admission in an intermediate care facility and was not present at the end of the 14-day quarantine period following admission or readmission.

(8) Individual--A person enrolled in the intermediate care facilities for individuals with an intellectual disability or related conditions program.

(9) Large intermediate care facility--An intermediate care facility serving 17 or more individuals in one or more buildings.

(10) Open window visit--A personal visit between a visitor and an individual during which the individual and personal visitor are separated by an open window.

(11) Outbreak--One or more laboratory confirmed cases of COVID-19 identified in either an individual or paid or unpaid staff.

(12) Outdoor visit--A personal visit between an individual and one or more personal visitors that occurs in-person in a dedicated outdoor space.

(13) 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 two designated essential caregivers as described in subsection (o) of this section.

(14) Persons with legal authority to enter--Law enforcement officers, representatives of the long-term care ombudsman's office, and government personnel performing their official duties.

(15) Plexiglass indoor visit--A personal visit between an individual and one or more personal visitors, during which the individual and the visitor are both inside the facility but within a booth separated by a plexiglass barrier and the individual remains on one side of the barrier and the visitor remains on the opposite side of the barrier.

(16) Providers of essential services--Contract doctors, contract nurses, hospice workers, 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.

(17) Salon services visit--A personal visit between an individual and a salon services visitor as described in subsection (q) of this section. All facilities may permit salon services visits for COVID-19 negative residents.

(18) Salon services visitor--A barber, beautician, or cosmetologist providing hair care or personal grooming services to an individual.

(19) Small intermediate care facility--An intermediate care facility serving 16 or fewer individuals.

(20) Unknown COVID-19 status--The status of a person who is a new admission or readmission, has spent one or more nights away from the facility, has had known exposure or close contact with a person who is COVID-19 positive, or who is exhibiting symptoms of COVID-19 while awaiting test results.

(21) Vehicle parade--A personal visit between an individual and one or more personal visitors, during which the individual remains outdoors on the intermediate care facility campus, and a visitor drives past in a vehicle.

(b) An intermediate care facility must screen all visitors prior to allowing them to enter the facility, as described in subsection (c) of this section. Visitor screenings must be documented in a log kept at the entrance to the facility, which must include the name of each person screened, the date and time of the screening, and the results of the screening. The visitor screening log may contain protected health information and must be protected in accordance with applicable state and federal law. An intermediate care facility is not required to screen emergency services personnel entering the facility or facility campus in an emergency and personal visitors participating in a vehicle parade or a closed window visit.

(c) Visitors who meet any of the following screening criteria must leave the intermediate care facility campus and reschedule the visit:

(1) fever defined as a temperature of 100.4 Fahrenheit and above;

(2) signs or symptoms of COVID-19, including chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea;

(3) any other signs and symptoms, as outlined by the CDC in Symptoms of Coronavirus at cdc.gov;

(4) contact in the last 14 days with someone who has a confirmed diagnosis of COVID-19, is under investigation for COVID-19, or is ill with a respiratory illness, unless the visitor is seeking entry to provide critical assistance; or

(5) has a positive COVID-19 test result from a test performed in the last 10 days.

(d) An intermediate care facility must allow persons providing critical assistance, including essential caregivers, to enter the intermediate care facility if they pass the screening in subsection (c) of this section, except as provided in subsection (o)(8)(H) and (o)(9)(F) of this section.

(e) An intermediate care facility must allow essential caregiver visits, end-of-life visits and closed window visits in accordance with this section. Approved visitation designation for a facility is not required for a closed window visit, end-of-life visit, or visits by persons providing critical assistance including essential caregivers, as defined in subsection (a)(1) and (a)(4) - (5) of this section.
(f) Except as approved by HHSC under subsection (k) of this section, an intermediate care facility with an approved visitation designation by HHSC must allow outdoor visits, open window visits, vehicle parades, and plexiglass indoor visits with individuals with COVID-19 negative status.

(g) Each intermediate care facility must submit a completed Long-term Care Regulation (LTCR) Form 2195, COVID-19 Status Attestation Form, including a facility map indicating which areas, units, wings, halls, or buildings accommodate COVID-19 negative, COVID-19 positive, and unknown COVID-19 status individuals, to the Regional Director in the LTCR Region where the facility is located, whether the facility meets or does not meet the criteria for expansion of reopening visitation. A facility with previous approval for visitation designation does not have to submit Form 2195 and a facility map, unless the previous visitation approval has been withdrawn, rescinded, or cancelled.

(h) To receive a facility visitation designation, an intermediate care facility must demonstrate:

(1) there are separate areas, units, wings, halls, or buildings designated for COVID-19 positive, COVID-19 negative, or unknown COVID-19 status individual cohorts;

(2) separate dedicated staff are working exclusively in the separate areas, units, wings, halls, or buildings for individuals who are COVID-19 positive, COVID-19 negative, or unknown COVID-19 status;

(3) there have been no confirmed COVID-19 cases for at least 14 consecutive days in staff working in the area, unit, wing, hall, or building which accommodates individuals who are COVID-19 negative;

(4) there have been no facility-acquired COVID-19 confirmed cases for at least 14 consecutive days in individuals in the COVID-19 negative area, unit, wing, hall, or building;

(5) staff are designated to work with only one individual cohort and the designation does not change from one day to another; and

(6) if an intermediate care facility has had previous cases of COVID-19 in staff or individuals in the area, unit, wing, hall, or building which accommodates individuals who are COVID-19 negative, HHSC LTCR may conduct a verification survey and confirm the following:

(A) all staff and individuals in the COVID-19 negative area, unit, wing, hall, or building have fully recovered;

(B) the intermediate care facility has adequate staffing to continue care for all individuals and supervise visits permitted by this section; and

(C) the intermediate care facility is in compliance with infection control requirements and emergency rules related to COVID-19.

(i) A small intermediate care facility that cannot provide separate areas, units, wings, halls, or buildings for individuals who are COVID-19 positive, COVID-19 negative, or unknown COVID-19 status must demonstrate:

(1) there have been no confirmed COVID-19 cases for at least 14 consecutive days in staff;

(2) there have been no facility-acquired COVID-19 confirmed cases for at least 14 consecutive days in individuals; and

(3) if an intermediate care facility has had previous cases of COVID-19 in staff or individuals, HHSC LTCR may conduct a verification survey and confirm the following:

(A) all staff and individuals have fully recovered;

(B) the intermediate care facility has adequate staffing to continue care for all individuals and supervise visits permitted by this section; and

(C) the intermediate care facility is in compliance with infection control requirements and emergency rules related to COVID-19.

(j) An intermediate care facility that does not meet the criteria, in subsection (h) or (i) of this section, to receive a visitation designation must:

(1) permit closed window visits, persons providing critical assistance, including essential caregivers, and end-of-life visits;

(2) develop and implement a plan describing the steps the facility intends to take to meet the visitation designation criteria in subsection (h) or (i) of this section; and

(3) submit the plan to the Regional Director in the LTCR Region where the facility is located within five business days of submitting the form or of receiving notification from HHSC that the intermediate care facility was not approved for visitation designation.

(k) An intermediate care facility may request exemption from the requirements in this section, including that a facility with a visitation designation must allow certain personal visits. Intermediate care facilities may not request, and HHSC will not approve, an exemption from closed window visits or visits by persons providing critical assistance, including essential caregivers and end-of-life visits. If the intermediate care facility determines it is unable to meet one or more of the other visitation requirements of this section, the facility must request exemption from that requirement and explain its inability to meet the visitation requirement on the COVID-19 Status Attestation Form. HHSC will notify the intermediate care facility if a temporary exemption for a specific visit type is granted and the time period for exemption.

(l) Except if approved by HHSC for an exemption under subsection (k) of this section, an intermediate care facility with a facility visitation designation must allow outdoor visits, open window visits, vehicle parades, and plexiglass indoor visits involving individuals and personal visitors. The following requirements apply to all visitation allowed under this subsection, and all other visitation types as specified:

(1) Visits must be scheduled in advance and are by appointment only.

(2) Visitation appointments must be scheduled to allow time for cleaning and sanitization of the visitation area between visits.

(3) An intermediate care facility must allow open window visits, vehicle parades, outdoor visits, and plexiglass indoor visits for individuals who are COVID-19 negative. Individuals with unknown COVID-19 status or COVID-19 positive status cannot participate in outdoor visits, open window visits, vehicle parades, or plexiglass indoor visits.

(4) An intermediate care facility must allow closed window visits and end-of-life visits for individuals who are COVID-19 negative, COVID-19 positive, or unknown COVID-19 status.

(5) Physical contact between individuals and visitors is prohibited, except for essential caregiver visits and end-of-life visits.
(6) An intermediate care facility must allow visits where adequate space is available that meets criteria and when adequate staff are available to monitor visits. Essential caregiver visits and end-of-life visits can take place in the individual’s room or other area of the facility separated from other individuals. The intermediate care facility must limit the movement of the visitor through the facility to ensure interaction with other individuals is minimized.

(7) The visitor must wear a facemask or face covering over both the mouth and nose throughout the visit, except visitors participating in a vehicle parade or closed window visit.

(8) The individual must wear a facemask or face covering over both the mouth and nose (if tolerated) throughout the visit.

(9) The intermediate care facility must ensure physical distancing of at least six feet is maintained between visitors and individuals at all times and limit the number of visitors and individuals in the visitation area as needed to ensure physical distancing is maintained. Essential caregiver and end-of-life visitors do not have to maintain physical distancing between themselves and the individual they are visiting but must maintain physical distancing between themselves and all other individuals, staff, and other visitors.

(10) The intermediate care facility must limit the number of visitors per individual per week, and the length of time per visit, to ensure equal access by all individuals to visitors.

(11) Cleaning and disinfecting of the visitation area, furniture, and all other items must be performed, per CDC guidance, before and after each visit.

(12) The intermediate care facility must ensure a comfortable and safe outdoor visiting area for outdoor visits and vehicle parades, considering outside air temperatures and ventilation.

(13) For outdoor visits, the intermediate care facility must designate an outdoor area for visitation that is separated from individuals and limits the ability of the visitor to interact with individuals.

(14) An intermediate care facility must provide hand washing stations, or hand sanitizer, to the visitor and individual before and after visits, except visitors participating in a vehicle parade or closed window visit.

(15) The visitor and the individual must practice hand hygiene before and after the visit, except visitors participating in a vehicle parade or closed window visit.

(m) The following requirements apply to vehicle parades:

(1) Visitors must remain in their vehicles throughout the parade.

(2) The intermediate care facility must ensure physical distancing of at least six feet is maintained between individuals throughout the parade.

(3) The intermediate care facility must ensure individuals are not closer than 10 feet to the vehicles for safety reasons.

(4) The individual must wear a facemask or face covering over both the mouth and nose (if tolerated) throughout the visit.

(n) The following requirements apply to plexiglass indoor visits:

(1) The plexiglass booth must be installed in an area of the facility where it does not impede a means of egress, does not impede or interfere with any fire safety equipment or system, and does not offer access to the rest of the facility or contact between the visitors and other individuals.

(2) Prior to using the booth, the facility must submit for approval a photo of the plexiglass visitation booth and its location in the facility to the Life Safety Code Program Manager in the LTCR Region in which the facility is located and must receive approval from HHSC.

(3) The visit must be supervised by facility staff for the duration of the visit.

(4) The individual must wear a facemask or face covering over both the mouth and nose (if tolerated) throughout the visit.

(5) The visitor must wear a facemask or face covering over both the mouth and nose throughout the visit.

(6) The facility shall limit the number of visitors and individuals in the visitation area as needed.

(o) The following requirements apply to essential caregiver visits:

(1) There may be up to two permanently designated essential caregiver visitors per resident.

(2) Only one essential caregiver at a time may visit an individual.

(3) Each visit is limited to one essential caregiver at a time.

(4) Each visit is limited to two hours, unless the intermediate care facility determines that it can only accommodate a visit for a shorter duration or that it can accommodate a longer duration and adjusts the duration of the visit accordingly.

(5) The visit may occur outdoors, in the individual’s bedroom, or in another area in the facility that limits visitor movement through the facility and interaction with other individuals.

(6) Essential caregiver visitors do not have to maintain physical distancing between themselves and the individual they are visiting, but they must maintain physical distancing between themselves and all other individuals and staff.

(7) The individual must wear a facemask or face covering over both the mouth and nose (if tolerated) throughout the visit.

(8) The intermediate care facility must develop and enforce essential caregiver visitation policies and procedures, which include:

(A) a testing strategy for designated essential caregivers;

(B) a written agreement that the essential caregiver understands and agrees to follow the applicable policies, procedures, and requirements;

(C) training each designated essential caregiver on proper personal protective equipment (PPE) usage and infection control measures, hand hygiene and cough and sneeze etiquette;

(D) the essential caregiver must wear a facemask and any other appropriate PPE recommended by CDC guidance and the facility's policy while in the intermediate care facility;

(E) expectations regarding using only designated entrances and exits as directed;

(F) limiting visitation to the area designated by the facility in accordance with paragraph (4) of this subsection;

(G) facility staff must escort the essential caregiver from the facility entrance to the designated visitation area at the start of each visit; and
(H) facility staff must escort the essential caregiver from the designated visitation area to the facility exit at the end of each visit.

(9) The intermediate care facility must:

(A) inform the essential caregiver visitor of applicable policies, procedures, and requirements;

(B) approve the visitor's facemask and any other appropriate PPE recommended by CDC guidance and the facility's policy, or provide an approved facemask and other appropriate PPE;

(C) maintain documentation of the essential caregiver visitor's agreement to follow the applicable policies, procedures and requirements;

(D) maintain documentation of the essential caregiver visitor's training, as required in paragraph (8)(C) of this subsection;

(E) maintain documentation of the date of last COVID-19 test as reported by the essential caregiver;

(F) document the identity of each essential caregiver in the individual's records and verify the identity of the essential caregiver by creating an essential caregiver visitor badge;

(G) maintain a record of each essential caregiver visit, including:

(i) the date and time of the arrival and departure of the essential caregiver visitor;

(ii) the name of the essential caregiver visitor;

(iii) the name of the individual being visited; and

(iv) attestation that the identity of the essential caregiver visitor was confirmed; and

(H) prevent visitation by the essential caregiver if the individual has an active COVID-19 infection.

(10) The essential caregiver must:

(A) wear a facemask over both the mouth and nose, and any other appropriate PPE recommended by CDC guidance and the facility's policy, while in the intermediate care facility;

(B) have a negative COVID-19 test result from a test performed no more than 14 days before the first essential caregiver visit, unless the intermediate care facility chooses to perform a rapid test prior to entry in the intermediate care facility;

(C) sign an agreement to leave the facility at the appointed time unless otherwise approved by the facility;

(D) self-monitor for signs and symptoms of COVID-19;

(E) not participate in visits if the designated essential caregiver has signs and symptoms of COVID-19 or an active COVID-19 infection; and

(F) not participate in visits if the individual has an active COVID-19 infection.

(11) The facility may cancel the essential caregiver visit if the essential caregiver fails to comply with the facility's policy regarding essential caregiver visits or applicable requirements in this section.

(p) A facility may allow a salon services visitor to enter the facility to provide services to an individual only if:

(1) The salon services visitor passes the screening described in subsection (c) of this section;

(2) the salon services visitor agrees to comply with the most current version of the Minimum Standard Health Protocols - Checklist for Cosmetology Salons/Hair Salons, located online at open.texas.gov; and the requirements of subsection (q) of this section are met.

(q) The following requirements apply to salon services visits:

(1) Each visit is limited to two hours, unless the intermediate care facility determines that it can only accommodate a visit for a shorter duration or that it can accommodate a longer duration and adjusts the duration of the visit accordingly;

(2) The visit may occur outdoors, in the individual's bedroom, or in another area in the facility that limits visitor movement through the facility and interaction with other individuals;

(3) Salon services visitors do not have to maintain physical distancing between themselves and each individual they are visiting, but they must maintain physical distancing between themselves and all other individuals and staff;

(4) The individual must wear a facemask or face covering over both the mouth and nose (if tolerated) throughout the visit;

(5) The intermediate care facility must develop and enforce salon services visitation policies and procedures, which include:

(A) a testing strategy for salon services visitors;

(B) a written agreement that the salon services visitor understands and agrees to follow the applicable policies, procedures, and requirements;

(C) training each salon services visitor on proper PPE usage and infection control measures, hand hygiene, and cough and sneeze etiquette;

(D) the salon services visitor must wear a facemask and any other appropriate PPE recommended by CDC guidance and the facility's policy while in the intermediate care facility;

(E) expectations regarding using only designated entrances and exits, as directed;

(F) limiting visitation to the area designated by the facility, in accordance with paragraph (2) of this subsection;

(G) facility staff must escort the salon services visitor from the facility entrance to the designated visitation area at the start of each visit; and

(H) facility staff must escort the salon services visitor from the designated visitation area to the facility exit at the end of each visit;

(6) The intermediate care facility must:

(A) inform the salon services visitor of applicable policies, procedures, and requirements;

(B) approve the visitor's facemask or provide an approved facemask;

(C) maintain documentation of the salon services visitor's agreement to follow the applicable policies, procedures and requirements;

(D) maintain documentation of the salon services visitor's training, as required in paragraph (5)(C) of this subsection;

(E) maintain documentation of the date of last COVID-19 test, as reported by the salon services visitor.
(F) document the identity of each salon services visitor in the facility's records and verify the identity of the salon services visitor by creating a salon services visitor badge;

(G) maintain a record of each salon services visit, including:

(i) the date and time of the arrival and departure of the salon services visitor;

(ii) the name of the salon services visitor;

(iii) the name of the individual being visited; and

(iv) attestation that the identity of the salon services visitor was confirmed; and

(H) prevent visitation by the salon services visitor if the individual has an active COVID-19 infection.

(7) The salon services visitor must:

(A) wear a facemask over both the mouth and nose and any other appropriate PPE recommended by CDC guidance and the facility's policy while in the intermediate care facility;

(B) have a negative COVID-19 test result from a test performed no more than 14 days before the first salon services visit, unless the intermediate care facility chooses to perform a rapid test prior to entry in the intermediate care facility;

(C) sign an agreement to leave the facility at the appointed time, unless otherwise approved by the facility;

(D) self-monitor for signs and symptoms of COVID-19;

(E) not participate in visits if the salon services visitor has signs and symptoms of COVID-19 or an active COVID-19 infection; and

(F) not participate in visits if the individual has an active COVID-19 infection.

(8) The facility may cancel the salon services visit if the salon services visitor fails to comply with the facility's policy regarding salon services visits or applicable requirements in this section.

(e) An intermediate care facility must provide instructional signage throughout the facility and proper visitor education regarding:

(1) the signs and symptoms of COVID-19 signs;

(2) infection control precautions; and

(3) other applicable facility practices (e.g., use of facemask or other appropriate PPE, specified entries and exits, routes to designated visitation areas, hand hygiene).

(s) If, at any time after facility visitation designation is approved by HHSC, the area, unit, wing, hall, or building accommodating individuals who are COVID-19 negative, or facility-wide for small intermediate care facilities that received visitation designation in accordance with subsection (i) of this section, experiences an outbreak of COVID-19, the facility must notify the Regional Director in the LTC Region where the facility is located that the area, unit, wing, hall, building or facility no longer meets visitation criteria, and all visit types authorized under the facility's visitation designation, including outdoor visits, open window visits, vehicle parades, and indoor plexiglass visits, must be cancelled until the area, unit, wing, hall, building or facility meets the criteria described in subsections (h) or (i) of this section and visitation approval is provided by HHSC.

(1) If an intermediate care facility fails to comply with the requirements of this section, HHSC may rescind the visitation designation and may impose licensure remedies in accordance with Subchapter H of this chapter (relating to Enforcement).

(u) 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 rule or any minimum standard relating to an intermediate care facility, the intermediate care 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.

Filed with the Office of the Secretary of State on October 16, 2020.

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Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: October 16, 2020
Expiration date: February 12, 2021
For further information, please call: (512) 438-3161

CHAPTER 553. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES
SUBCHAPTER K. COVID-19 EMERGENCY RULE
26 TAC §553.2003

The Executive Commissioner of the Health and Human Services Commission (HHSC) adopts an emergency basis in Title 26, Texas Administrative Code, Chapter 553, Licensing Standards for Assisted Living Facilities, Subchapter K, COVID-19 Emergency Rule, new §553.2003, an emergency rule in response to COVID-19 describing requirements for limited indoor and outdoor visitation in a facility. As authorized by Texas Government Code §2001.034, the Commission 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 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 Assisted Living Facility COVID-19 Response - Expansion of Reopening Visitation.
To protect assisted living facility residents and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to require limited indoor and outdoor visitation in an assisted living facility. The purpose of the new rule is to describe the requirements related to such visits.

**STATUTORY AUTHORITY**

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055, and Texas Health and Safety Code §247.025 and §247.026. 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 HHSC. Texas Health and Safety Code §247.026 requires the Executive Commissioner of HHSC to adopt rules prescribing minimum standards to protect the health and safety of assisted living facility residents.


(a) The following words and terms, when used in this subchapter, have the following meanings:

1. **Closed window visit--**A personal visit between a visitor and a resident during which the resident and visitor are separated by a closed window and the visitor does not enter the building permitted at all facilities, for all residents.

2. **COVID-19 negative--**A person who has tested negative for COVID-19 or meets the criteria for discontinuation for transmission-based precautions, is not exhibiting symptoms of COVID-19, and has had no known exposure to the virus since the negative test.

3. **COVID-19 positive--**A person who has tested positive for COVID-19 and does not yet meet Centers for Disease Control and Prevention (CDC) guidance for the discontinuation of transmission-based precautions.

4. **End-of-life visit--**A personal visit between a visitor and a resident who is actively dying, permitted in all facilities for all residents at the end of life.

5. **Essential caregiver--**A family member or other outside caregiver, including a friend, volunteer, private personal caregiver or court appointed guardian, who is at least 18 years old, designated to provide regular care and support to a resident.

6. **Essential caregiver visit--**A personal visit between a resident and an essential caregiver as described in subsection (o) of this section. An essential caregiver visit is permitted in all facilities for COVID-19 negative and unknown COVID-19 status residents.

7. **Facility-acquired COVID-19 infection--**COVID-19 infection that is acquired after admission to an assisted living facility and that was not present at the end of the 14-day quarantine period following admission or readmission.

8. **Large assisted living facility--**An assisted living facility licensed for 17 or more residents.

9. **Open window visit--**A personal visit between a visitor and a resident during which the resident and personal visitor are separated by an open window.

10. **Outbreak--**One or more laboratory confirmed cases of COVID-19 identified in either a resident or paid or unpaid staff.

11. **Outdoor visit--**A personal visit between a resident and one or more personal visitors that occurs in-person in a dedicated outdoor space.

12. **Persons providing critical assistance--**Providers of essential services, persons with legal authority to enter, family members or friends of residents at the end of life, and two designated essential caregivers as described in subsection (o) of this section.

13. **Persons with legal authority to enter--**Law enforcement officers, representatives of the long-term care ombudsman's office, and government personnel performing their official duties.

14. **Plexiglass indoor visit--**A personal visit between a resident and one or more personal visitors, during which the resident and the visitor are both inside the facility but within a booth separated by a plexiglass barrier and the resident remains on one side of the barrier and the visitor remains on the opposite side of the barrier.

15. **Providers of essential services--**Contract doctors, contract nurses, home health and hospice workers, and mental health specialists whose services are necessary to ensure resident health and safety.

16. **Salon services visit--**A personal visit between a resident and a salon services visitor as described in subsection (q) of this section. All facilities may permit salon services visits for COVID-19 negative residents.

17. **Salon services visitor--**A barber, beautician or cosmetologist providing hair care or personal grooming services to a resident.

18. **Small assisted living facility--**An assisted living facility licensed for 16 or fewer residents.

19. **Unknown COVID-19 status--**A person who is a new admission or readmission or who has spent one or more nights away from the facility, has had known exposure or close contact with a person who is COVID-19 positive, or who is exhibiting symptoms of COVID-19 while awaiting test results.

20. **Vehicle parade--**A personal visit between a resident and one or more personal visitors, during which the resident remains outdoors on the assisted living facility campus, and a visitor drives past in a vehicle.

(b) An assisted living facility must screen all visitors prior to entry as described in subsection (c) of this section. Visitor screenings must be documented in a log kept at the entrance to the facility. Visitor screening logs must include the name of each person screened, the date and time of the screening, and the results of the screening. The visitor screening log may contain protected health information and must be protected in accordance with applicable state and federal law. An assisted living facility is not required to screen emergency services personnel entering the facility in an emergency or personal visitors participating in a vehicle parade or a closed window visit.

(c) Visitors who meet any of the following screening criteria must leave the assisted living facility campus and reschedule the visit:

1. Fever defined as a temperature of 100.4 Fahrenheit and above;

2. Signs or symptoms of COVID-19, including chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea;
(3) any other signs and symptoms as outlined by the CDC in Symptoms of Coronavirus at cdc.gov; or

(4) contact in the last 14 days with someone who has a confirmed diagnosis of COVID-19, is under investigation for COVID-19, or is ill with a respiratory illness, unless the visitor is seeking entry to provide critical assistance; or

(5) has a positive COVID-19 test result from a test performed in the last 10 days.

(d) An assisted living facility must allow persons providing critical assistance, including essential caregivers, to enter the assisted living facility if they pass the screening in subsection (c) of this section, except as provided in subsection (o)(8)(H) and (o)(9)(F) of this section.

(e) An assisted living facility must allow essential caregiver visits, end-of-life visits and closed window visits in accordance with this section. Approved visitation designation for a facility is not required for a closed window visit, end-of-life visit, or visits by persons providing critical assistance, including essential caregivers as defined in subsection (a)(1), (4), and (5) of this section.

(f) Except as approved by HHSC under subsection (k) of this section, an assisted living facility with an approved visitation designation by HHSC must allow outdoor visits, open window visits, vehicle parades, and plexiglass indoor visits with residents with COVID-19 negative status.

(g) An assisted living facility must request a facility visitation designation by submitting a completed Long-term Care Regulation (LTCR) Form 2196, COVID-19 Status Attestation Form, including a facility map indicating which areas, which include enclosed rooms such as bedrooms or activities rooms, units, wings, halls, or buildings which accommodate COVID-19 negative, COVID-19 positive, and unknown COVID-19 status, to the Regional Director in the LTCR Region where the facility is located. A facility with previous approval for visitation does not have to submit Form 2196 and a facility map, unless the previous visitation approval has been withdrawn, rescinded, or cancelled.

(h) To receive a facility visitation designation, an assisted living facility must demonstrate:

(1) there are separate areas, which include enclosed rooms such as bedrooms, or activities rooms, units, wings, halls, or buildings for resident cohorts who are COVID-19 positive, COVID-19 negative or unknown COVID-19 status;

(2) separate staff are working in the separate areas, units, wings, halls, or buildings for residents who are COVID-19 positive, COVID-19 negative or unknown COVID-19 status;

(3) there have been no confirmed COVID-19 cases for at least 14 consecutive days in staff working in the area, unit, wing, hall, or building, which accommodates residents who are COVID-19 negative;

(4) there have been no facility-acquired COVID-19 confirmed cases for at least 14 consecutive days in residents in the COVID-19 negative area, unit, wing, hall, or building;

(5) staff are designated to work with only one resident cohort and the designation does not change from one day to another;

(6) evidence upon HHSC request of daily screening for staff and residents, if a testing strategy is not used; and

(7) if an assisted living facility has had previous cases of COVID-19 in staff or residents in the area, unit, wing, hall, or building, which accommodates residents who are COVID-19 negative, HHSC LTCR may conduct a verification survey to confirm the following:

(A) all staff and residents in the COVID-19 negative area, unit, wing, hall, or building have fully recovered;

(B) the assisted living facility has adequate staffing to continue care for all residents and monitor visits permitted by this section; and

(C) the assisted living facility is in compliance with infection control requirements and emergency rules related to COVID-19.

(i) A small assisted living facility that cannot provide separate areas, including enclosed rooms such as bedrooms or activities rooms, units, wings, halls, or buildings for residents who are COVID-19 positive, COVID-19 negative or unknown COVID-19 status must demonstrate:

(1) there have been no confirmed COVID-19 cases for at least 14 consecutive days in staff;

(2) there have been no facility-acquired COVID-19 confirmed cases for at least 14 consecutive days in residents; and

(3) if an assisted living facility has had previous cases of COVID-19 in staff or residents, HHSC LTCR may conduct a verification survey and confirm the following:

(A) all staff and residents have fully recovered;

(B) the assisted living facility has adequate staffing to continue care for all residents and monitor visits permitted by this section; and

(C) the assisted living facility is in compliance with infection control requirements and emergency rules related to COVID-19.

(j) An assisted living facility that does not meet the criteria in subsection (h) or (i) of this section to receive a visitation designation, must:

(1) continue to permit closed window visits and visits by persons providing critical assistance, including essential caregiver visits and end-of-life visits;

(2) develop and implement a plan describing the steps the facility intends to take in order to meet the criteria; and

(3) submit the plan to the Regional Director in the LTCR Region where the facility is located within five business days of submitting the form or of receiving notification from HHSC that the facility was not approved for visitation designation.

(k) An assisted living facility may request exemption from requirements of this section that a facility with a visitation designation allow certain personal visits. Facilities may not request and HHSC will not approve an exemption from closed window visits or visits by persons providing critical assistance, including essential caregivers and end-of-life visits. If the assisted living facility determines it is unable to meet one or more of the other visitation requirements of this section, the facility must request exemption from that requirement and explain its inability to meet the visitation requirement on the COVID-19 Status Attestation Form. HHSC will notify the assisted living facility if a temporary exemption for a specific visit type is granted and the time period for exemption.

(l) Except if approved by HHSC for an exemption under subsection (k) of this section, an assisted living facility with a facility visitation designation must allow outdoor visits, open window visits,
vehicle parades, and plexiglass indoor visits involving residents and personal visitors. The following requirements apply to all visitation required under this subsection, and other visitation types as specified:

(1) Visits must be scheduled in advance and are by appointment only.

(2) Visitation appointments must be scheduled to allow time for cleaning and sanitation of the visitation area between visits.

(3) An assisted living facility must allow outdoor visits, open window visits, vehicle parades, and plexiglass indoor visits for residents who are COVID-19 negative, as can be accommodated by the assisted living facility. Residents with unknown COVID-19 status or COVID-19 positive status cannot participate in outdoor visits, open window visits, vehicle parades, or plexiglass indoor visits.

(4) The assisted living facility must allow closed window visits and end-of-life visits for residents who are COVID-19 negative, COVID-19 positive, or unknown COVID-19 status, as can be accommodated by the assisted living facility.

(5) Physical contact between residents and visitors is prohibited, except for essential caregiver and end-of-life visits.

(6) An assisted living facility must allow visits where adequate space is available that meets criteria and when adequate staff are available to monitor visits. Essential caregiver visits and end-of-life visits can take place in the resident's room or other area of the facility separated from other residents. The assisted living facility must limit the movement of the visitor through the facility to ensure interaction with other residents is minimized.

(7) The visitor must wear a facemask or face covering over both the mouth and nose throughout the visit, except visitors participating in a vehicle parade or closed window visit.

(8) The resident must wear a facemask or face covering over both the mouth and nose (if tolerated) throughout the visit.

(9) The assisted living facility must ensure physical distancing of at least six feet is maintained between visitors and residents at all times and limit the number of visitors and residents in the visitation area as needed to ensure physical distancing is maintained. Essential caregiver and end-of-life visitors do not have to maintain physical distancing between themselves and the resident they are visiting but must maintain physical distancing between themselves and all other residents, staff, and other visitors.

(10) The assisted living facility must limit the number of visitors per resident per week, and the length of time per visit, to ensure equal access by all residents to visitors.

(11) Cleaning and disinfecting of the visitation area, furniture, and all other items must be performed, per CDC guidance, before and after each visit.

(12) The assisted living facility must ensure a comfortable and safe outdoor visiting area for outdoor visits, and vehicle parades, considering outside air temperatures and ventilation.

(13) For outdoor visits, the assisted living facility must designate an outdoor area for visitation that is separated from residents and limits the ability of the visitor to interact with residents.

(14) The assisted living facility must provide hand washing stations, or hand sanitizer, to the visitor and resident before and after visits, except visitors participating in a vehicle parade or closed window visit.

(15) The visitor and the resident must practice hand hygiene before and after the visit, except visitors participating in a vehicle parade or closed window visit.

(m) The following requirements apply to vehicle parades:

(1) Visitors must remain in their vehicles throughout the parade.

(2) The assisted living facility must ensure physical distancing of at least six feet is maintained between residents throughout the parade.

(3) The assisted living facility must ensure residents are not closer than 10 feet to the vehicles for safety reasons.

(4) The resident must wear a facemask or face covering throughout the visit.

(n) The following requirements apply to plexiglass indoor visits:

(1) The plexiglass booth must be installed in an area of the facility where it does not impede a means of egress, does not impede or interfere with any fire safety equipment or system, and does not offer access to the rest of the facility or contact between the visitors and other residents.

(2) Prior to using the booth, the facility must submit for approval a photo of the plexiglass visitation booth and its location in the facility to the Life Safety Code Program Manager in the LTC Region in which the facility is located.

(3) The visit must be monitored by facility staff for the duration of the visit.

(4) The resident must wear a facemask or face covering throughout the visit.

(5) The visitor must wear a facemask or face covering throughout the visit.

(6) The facility shall limit the number of visitors and residents in the visitation area as needed.

(o) The following requirements apply to essential caregiver visits:

(1) There may be up to two permanently designated essential caregiver visitors per resident.

(2) Only one essential caregiver at a time may visit a resident.

(3) Each visit is limited to two hours, unless the assisted living facility can only accommodate a visit for a shorter duration or that it can accommodate a longer duration and adjusts the duration of the visit accordingly.

(4) The visit may occur outdoors, in the resident's bedroom, or in another area in the facility that limits visitor movement through the facility and interaction with other residents.

(5) Essential caregiver visitors do not have to maintain physical distancing between themselves and the resident they are visiting but must maintain physical distancing between themselves and all other residents and staff.

(6) The resident must wear a facemask or face covering throughout the visit.

(7) The assisted living facility must develop and enforce essential caregiver visitation policies and procedures, which include:
(A) a testing strategy for designated essential caregivers;

(B) a written agreement that the essential caregiver understands and agrees to follow the applicable policies, procedures, and requirements;

(C) training each designated essential caregiver on proper personal protective equipment (PPE) usage and infection control measures, hand hygiene, and cough and sneeze etiquette;

(D) wearing a facemask and other appropriate PPE recommended by CDC guidance and the facility's policy while in the assisted living facility;

(E) expectations regarding using only designated entrances and exits as directed;

(F) limiting visitation to the outdoor visitation area, the resident's room, or other area of the facility that limits the visitor's movement through the facility and interaction with other residents;

(G) facility staff must escort the essential caregiver from the facility entrance to the designated visitation area at the start of each visit; and

(H) facility staff must escort the essential caregiver from the designated visitation area to the facility exit at the end of each visit.

(8) The assisted living facility must:

(A) inform the essential caregiver of applicable policies, procedures, and requirements;

(B) approve the visitor's facemask and any other appropriate PPE recommended by CDC guidance and the facility's policy or provide an approved facemask and other PPE;

(C) maintain documentation of the essential caregiver visitor's agreement to follow the applicable policies, procedures, and requirements;

(D) maintain documentation of the essential caregiver visitor's training as required in paragraph (7)(C) of this subsection;

(E) maintain documentation of the date of the last COVID-19 test as reported by the essential caregiver;

(F) document the identity of each essential caregiver in the resident's records and verify the identity of the essential caregiver by creating an essential caregiver visitor badge;

(G) maintain a record of each essential caregiver visit, including:

(i) the date and time of the arrival and departure of the essential caregiver visitor;

(ii) the name of the essential caregiver visitor;

(iii) the name of the resident being visited; and

(iv) attestation that the identity of the essential caregiver visitor was confirmed; and

(H) prohibit visitation by the essential caregiver if the resident has an active COVID-19 infection.

(9) The essential caregiver must:

(A) wear a facemask over both the mouth and nose and any other appropriate PPE recommended by CDC guidance and the facility's policy while in the assisted living facility;

(B) have a negative COVID-19 test no more than 14 days before the first essential caregiver visit, unless the assisted living facility chooses to perform a rapid test prior to entry in the assisted living facility;

(C) sign an agreement to leave the facility at the appointed time unless otherwise approved by the facility;

(D) self-monitor for signs and symptoms of COVID-19;

(E) not participate in visits if the designated essential caregiver has signs and symptoms of COVID-19 or an active COVID-19 infection; and

(F) not participate in visits if the resident has an active COVID-19 infection.

(p) A facility may allow a salon services visitor to enter the facility to provide services to a resident only if:

(1) the salon services visitor passes the screening described in subsection (c) of this section;

(2) the salon services visitor agrees to comply with the most current version of the Minimum Standard Health Protocols-Checklist for Cosmetology Salons/Hair Salons, located on website: https://open.texas.gov/; and

(3) the requirements of subsection (q) of this section are met.

(q) The following requirements apply to salon services visits:

(1) Each visit is limited to two hours, unless the assisted living facility determines that it can only accommodate a visit for a shorter duration or that it can accommodate a longer duration and adjusts the duration of the visit accordingly.

(2) The visit may occur outdoors, in the resident's bedroom, or in another area in the facility that limits visitor movement through the facility and interaction with other residents.

(3) Salon services visitors do not have to maintain physical distancing between themselves and each resident they are visiting but must maintain physical distancing between themselves and all other residents and staff.

(4) The resident must wear a facemask or face covering over both the mouth and nose (if tolerated) throughout the visit.

(5) The assisted living facility must develop and enforce salon services visitation policies and procedures, which include:

(A) a testing strategy for salon services visitors;

(B) a written agreement that the salon services visitor understands and agrees to follow the applicable policies, procedures, and requirements;

(C) training each salon services visitor on proper PPE usage and infection control measures, hand hygiene, and cough and sneeze etiquette;

(D) the salon services visitor must wear a facemask and any other appropriate PPE recommended by CDC guidance and the facility's policy while in the assisted living facility;

(E) expectations regarding using only designated entrances and exits as directed;

(F) limiting visitation to the area designated by the facility in accordance with (o)(2) of this subsection;
(G) facility staff must escort the salon services visitor from the facility entrance to the designated visitation area at the start of each visit; and

(H) facility staff must escort the salon services visitor from the designated visitation area to the facility exit at the end of each visit;

(6) The assisted living facility must:

(A) inform the salon services visitor of applicable policies, procedures, and requirements;

(B) approve the visitor's facemask or provide an approved facemask;

(C) maintain documentation of the salon services visitor's agreement to follow the applicable policies, procedures and requirements;

(D) maintain documentation of the salon services visitor's training as required in paragraph (5)(C) of this subsection;

(E) maintain documentation of the date of last COVID-19 test as reported by the salon services visitor;

(F) document the identity of each salon services visitor in the facility's records and verify the identity of the salon services visitor by creating a salon services visitor badge; and

(G) maintain a record of each salon services visit, including:

(i) the date and time of the arrival and departure of the salon services visitor;

(ii) the name of the salon services visitor;

(iii) the name of the resident being visited; and

(iv) attestation that the identity of the salon services visitor was confirmed; and

(H) prevent visitation by the salon services visitor if the resident has an active COVID-19 infection.

(7) The salon services visitor must:

(A) wear a facemask over both the mouth and nose and any other appropriate PPE recommended by CDC guidance and the facility's policy while in the assisted living facility;

(B) have a negative COVID-19 test result from a test performed no more than 14 days before the first salon services visit, unless the assisted living facility chooses to perform a rapid test prior to entry in the assisted living facility;

(C) sign an agreement to leave the facility at the appointed time unless otherwise approved by the facility;

(D) self-monitor for signs and symptoms of COVID-19;

(E) not participate in visits if the salon services visitor has signs and symptoms of COVID-19, active COVID-19 infection; and

(F) not participate in visits if the resident has an active COVID-19 infection.

(8) The facility may cancel the salon services visit if the salon services visitor fails to comply with the facility's policy regarding salon services visits or applicable requirements in this section.

(r) An assisted living facility must provide instructional signage throughout the facility and proper visitor education regarding:

(1) the signs and symptoms of COVID-19 signs;

(2) infection control precautions; and

(3) other applicable facility practices (e.g. use of facemask or other appropriate PPE, specified entries and exits, routes to be designated visitation areas, hand hygiene).

(s) If, at any time after facility visitation designation is approved by HHSC, the area, unit, wing, hall, or building accommodating residents who are COVID-19 negative, or facility-wide for small assisted living facilities that received visitation designation in accordance with subsection (g) of this section, experiences an outbreak of COVID-19, the facility must notify the Regional Director in the LTC Region where the facility is located that the area, unit, wing, hall, building or facility no longer meets visitation criteria, and all visit types authorized under the facility's visitation designation, including outdoor visits, open window visits, vehicle parades, and indoor plexiglass visits, must be cancelled until the area, unit, wing, hall, building or facility meets the criteria described in subsections (h) or (i) of this section.

(t) If an assisted living fails to comply with the requirements of this section, HHSC may rescind the visitation designation and may impose licensure remedies in accordance with Subchapter H of this chapter.

(u) 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 rule or any minimum standard relating to an assisted living facility, the assisted living 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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Karen Ray
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For further information, please call: (512) 438-3161

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