

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 19 NURSING FACILITY REQUIREMENTS FOR LICENSURE AND
MEDICAID CERTIFICATION
SUBCHAPTER CC COVID-19 EMERGENCY RULE

EMERGENCY ADOPTION PREAMBLE

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 40, Texas Administrative Code, Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification, new §19.2803, 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. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this Nursing Facility COVID-19 Response - Expansion of Reopening Visitation.

To protect nursing facility residents and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting a new emergency rule to require limited indoor and outdoor visitation in a nursing 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 §242.001 and §242.037. 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 §242.037 requires the Executive Commissioner of HHSC to make and enforce rules prescribing minimum standards quality of care and quality of life for nursing facility residents. Texas Health and Safety Code §242.001 states the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for residents who are living in a nursing facility.

The new rule implements Texas Government Code §531.0055 and §531.021, Texas Health and Safety Code Chapter 242, and Texas Human Resources Code §32.021.

The agency hereby certifies that the emergency rulemaking has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

ADDITIONAL INFORMATION

For further information, please call: (512) 438-3161.

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§19.2803. Nursing Facility COVID-19 Response – Expansion of Reopening Visitation.

(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. A closed window visit is permitted at all facilities and for all residents.

(2) COVID-19 negative--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 a resident who is actively dying. An end-of-life visit is permitted in all facilities and 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 and has been designated by the resident or legal representative to provide regular care and support to a resident.

(6) Essential caregiver visit-- A personal visit between a resident and a designated essential caregiver as described in subsection (f) 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 in a nursing facility and was not present at the end of the 14 day quarantine period following admission or readmission.

(8) 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.

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

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

(11) 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 (f) of this section.

(12) 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.

(13) 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.

(14) 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 resident health and safety.

(15) Salon services visit--A personal visit between a resident and a salon services visitor as described in subsection (q) of this section. A salon services visit is permitted in all facilities for COVID-19 negative residents.

(16) Salon services visitor--A barber, beautician, or cosmetologist providing hair care or personal grooming services to a resident.

(17) 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.

(18) Vehicle parade--A personal visit between a resident and one or more personal visitors, during which the resident remains outdoors on the nursing facility campus, and a visitor drives past in a vehicle.

(b) All nursing facilities, including licensed-only facilities, must comply with the COVID-19 testing requirements specified by 42 CFR §483.80(h).

(c) A nursing facility must screen all visitors outside of the nursing facility prior to allowing them to enter, except 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. 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.

(d) Visitors who meet any of the following screening criteria must leave the nursing 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 CDC in Symptoms of Coronavirus at [cdc.gov](https://www.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.

(e) A nursing facility must allow persons providing critical assistance, including essential caregivers, to enter the nursing facility if they pass the screening in subsection (d) of this section, except as provided in subsection (f)(8)(H) and (f)(9)(F) of this section.

(f) 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 nursing 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.

(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 over both the mouth and nose (if tolerated) throughout the visit.

(7) The nursing 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 nursing 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.

(8) The nursing 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 (7)(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 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) prevent 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 nursing 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 nursing facility chooses to perform a rapid test prior to entry in the nursing 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, active COVID-19 infection, or other communicable diseases; and

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

(10) 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.

(g) A nursing facility approved by the Texas Health and Human Services Commission (HHSC) must allow limited personal visitation as permitted by this section upon receiving an approved visitation designation. 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), (a)(4), and (a)(5) of this section. If a nursing 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 V of this chapter.

(h) To request a facility visitation designation, a nursing facility must submit a completed LTCR Form 2194 ("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 residents, to the Regional Director in the LTCR Region where the facility is located. A facility with previous approval for visitation designation does not have to submit Form 2194 and a facility map, unless the previous visitation approval has been withdrawn, rescinded, or cancelled. However, the facility must comply with requirements in subsection (o)(2) of this section for plexiglass indoor visits.

(i) To receive a facility visitation designation, a nursing facility must demonstrate that:

(1) it has separate areas, units, wings, halls, or buildings designated for COVID-19 positive, COVID-19 negative, and unknown COVID-19 status resident cohorts;

(2) separate dedicated staff are working exclusively 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; and

(6) if a nursing 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 has conducted a verification survey and confirmed the following:

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

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

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

(j) Each nursing facility must submit Form 2194 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 nursing facility that does not meet the criteria for expansion of reopening visitation designation must:

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

(2) develop and implement a plan to meet the visitation designation criteria as defined in this section; and

(3) submit the plan to the Regional Director in the LTCR Region where the facility is located within 5 days of submitting the form or of receiving notification from HHSC that the nursing facility was not approved for visitation designation.

(k) A nursing facility shall use the COVID-19 county positivity rate as additional information to determine how to facilitate indoor visitation. The COVID-19 county positivity rate can be found at <https://data.cms.gov/stories/s/COVID-19-Nursing-Home-Data/bkwz-xpvg>. A nursing facility may use the county positivity rate provided by the county as long as the county positivity rate is updated at least weekly.

(1) A nursing facility located in a county with a positivity rate up to 10 percent must permit visitation in accordance with this section.

(2) A nursing facility located in a county with a positivity rate greater than 10 percent must limit visitation to outdoor visits, closed window visits, end-of-life visits, and essential caregiver visits as defined by this section and must not permit indoor plexiglass visits.

(l) A nursing facility must provide instructional signage throughout the facility and proper visitor education regarding:

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

(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).

(m) A nursing 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 limits apply to all visitation allowed under this subsection.

(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) Open window visits, vehicle parades, outdoor visits, and plexiglass indoor visits are permitted as can be accommodated by the nursing facility only for residents who are COVID-19 negative.

(4) Closed window visits and end-of-life visits are permitted for residents who are COVID-19 negative, COVID-19 positive, or unknown COVID-19 status as can be accommodated by the nursing facility.

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

(6) Visits are permitted only 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 nursing 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 nursing 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 they

must maintain physical distancing between themselves and all other residents, staff, and other visitors.

(10) The nursing 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 nursing facility must ensure a comfortable and safe outdoor visiting area for outdoor visits, open window visits, and vehicle parades considering outside air temperatures and ventilation.

(13) For outdoor visits, the nursing 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) A nursing 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.

(n) The following requirements apply to vehicle parades.

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

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

(3) The nursing 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 over both the mouth and nose (if tolerated) throughout the visit.

(o) 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 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 resident 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 residents in the visitation area as needed.

(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 (d) 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 at <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 nursing 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 nursing 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 nursing 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 nursing 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 nursing 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 nursing facility chooses to perform a rapid test prior to entry in the nursing 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, or other communicable diseases; 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) 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 experiences an outbreak of COVID-19, the facility must notify the Regional Director in the LTCR Region where the facility is located, that the area, unit, wing, hall, or building no longer meets visitation criteria, and all visitation, except 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, must be cancelled until the area, unit, wing, hall, or building meets the criteria described in subsection (g) of this section and visitation approval is provided by HHSC.

(s) 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 a nursing facility, the nursing facility must comply with the executive order or other direction.