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TITLE 26 HEALTH AND HUMAN SERVICES

PART 1 HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 553 LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES SUBCHAPTER K COVID-19 EMERGENCY RULE

EMERGENCY RULE ADOPTION PREAMBLE

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on 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, concerning an emergency rule in response to COVID-19 describing requirements for visitation in a facility. As authorized by Texas Government Code §2001.034, HHSC may adopt an emergency rule without prior notice or hearing if it finds that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice.

Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. 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 govern 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 §§247.025 and 247.026 require the Executive Commissioner of HHSC to adopt rules necessary to

implement Chapter 247 and to adopt rules prescribing minimum standards to protect the health and safety of assisted living facility residents.

The new section implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 247.

The agency hereby certifies that the emergency adoption 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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COVID-19 EMERGENCY RULE

§553.2003. Assisted Living Facility COVID-19 Response--Expansion of Reopening Visitation.

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

(1) 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 in the last 14 days.

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

(3) End-of-life visit--A personal visit between a personal visitor and a resident who is receiving

hospice services or who is at or near the end of life, with or without receiving hospice services, or whose prognosis does not indicate recovery. An end-of-life visit is permitted for all residents at or near the end of life.

(4) Essential caregiver--A family member or other outside caregiver, including a friend, volunteer, clergy member, private personal caregiver, or court-appointed guardian, who is at least 18 years old and has been designated by the resident or legal representative.

(5) Essential caregiver visit--A personal visit between a resident and an essential caregiver. An essential caregiver visit is permitted for all residents with any COVID-19 status.

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

(7) Fully-vaccinated resident--A resident who received the second dose in a two- dose series or a single dose of a one dose COVID-19 vaccine.

(8) Outbreak--One or more laboratory confirmed cases of COVID-19 identified in either a resident or paid or unpaid staff who have been present in the facility in the last 14 days.

(9) Persons providing critical assistance--Providers of essential services, persons with legal authority to enter, and family members or friends or residents at the end of life, and designated essential caregivers.

(10) 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.

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

(12) PPE--Personal protective equipment.

(13) Providers of essential services--Contract doctors or nurses, home health and hospice workers, health care professionals, contract professionals, and clergy members and spiritual counselors, whose services are necessary to ensure resident health and safety.

(14) Unknown COVID-19 status--The status of a person, except as provided by the CDC for a fully-vaccinated resident who has recovered from COVID-19, who:

(A) is a new admission or readmission;

(B) has had known exposure or close contact with a person who is COVID-19 positive; or

(C) is exhibiting symptoms of COVID-19 while awaiting test results.

(b) An assisted living facility must screen all visitors prior to allowing them to enter the facility in accordance with subsection (c) of this section, except emergency services personnel entering the facility or facility campus in an emergency. 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.

(c) Visitors must be screened in accordance with HHSC guidance.

(d) An assisted living facility must allow persons providing critical assistance, including essential caregivers, and persons with legal authority to enter the facility and visitors conducting end-of-life visits, if he or she passes the screening described in subsection (c) of this section.

(e) A person providing critical assistance who has had contact with a person with COVID-19 positive or COVID-19 unknown status, but does not meet the CDC definition of close contact or unprotected exposure, must not be denied entry to the facility unless the person providing critical assistance does not pass the screening criteria described in subsection (c) of this section, or any other screening criteria based on CDC guidance.

(f) The facility must offer a complete series of a one- or two-dose COVID-19 vaccine to residents and staff and document each resident's choice to vaccinate or not vaccinate.

(g) The facility must allow all visits, as required in this section. If a facility fails to comply with the requirements of this subsection, HHSC may take action in accordance with Subchapter H of this chapter (relating to Enforcement).

(1) The following limits apply to all visitation allowed under this section.

(A) An assisted living facility may ask about a visitor's COVID-19 vaccination or test status; however, a facility must not require a visitor to provide documentation of a COVID-19 negative test or COVID-19 vaccination status as a condition of visitation or entering the facility.

(B) A facility must develop and enforce policies and procedures that ensure infection control practices, including whether the visitor and the individual must wear a face mask, face covering or appropriate PPE.

(C) To permit visitation, an assisted living facility must have separate areas, which include enclosed rooms such as bedrooms, or activities rooms, units, wings, halls, or buildings, designated for COVID-19 positive, COVID-19 negative, and unknown COVID-19 status resident cohorts.

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

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

(ii) infection control precautions; and

(iii) other applicable facility practices (e.g., use of face masks and other appropriate PPE, specified entries and exits, routes to designated areas, and hand hygiene).

(E) The facility must ensure infection control protocols are followed. An assisted living facility may schedule personal visits in advance or permit personal visits that are not scheduled in advance. Scheduling in advance must not be so restrictive as to prohibit or limit visitation for residents.

(F) The facility may cancel the visit if the visitor fails to comply with the requirements in subparagraph (L) of this paragraph.

(G) All visits are allowed for residents with any COVID-19 status.

(H)

All visits may include close or personal contact with the resident being visited, in accordance with CDC guidance. The visitor must maintain physical distancing between themselves and other residents and staff in the facility.

(I)

Visits are permitted where adequate space is available as necessary to ensure physical distancing between visitation groups and safe infection prevention and control measures, including the resident's room. The facility must limit the movement of the visitor through the facility to ensure interaction with other persons in the facility is minimized.

(J)

A facility must ensure equal access by all residents to personal visitors, end-of-life visitors, and essential caregivers.

(K) A facility must allow visitors of any age.

(L) A facility must inform all visitors of the facility's infection control policies and procedures related to visitation.

(M) The visit may occur in the location of a resident's choice of designated visitation area which may include the resident's bedroom, outdoors, or in another area in the facility that limits the visitor movement through the facility and interaction with other residents and staff.

(N) An assisted living facility must prevent visitation by a visitor, including an essential caregiver visitor if he or she has signs and symptoms of COVID-19 or an active COVID-19 infection.

(2) The following requirements apply to essential caregiver visits.

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

(B) The two essential caregivers may visit a resident at the same time.

(C) Documentation of the identity of each essential caregiver must be included in the resident's record.

(D) The facility must develop and enforce essential caregiver visitation policies and procedures which include a written agreement that the essential caregiver understands and agrees to follow the applicable policies, procedures and requirements.

(E) The facility may revoke the essential caregiver's designation status if he or she fails to comply with the written agreement described by subparagraph (D) of this paragraph.