

## STATUTORY AUTHORITY

The new sections are authorized by: Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §§142.0011 and 142.012, which provide that the Executive Commissioner of HHSC shall adopt rules protecting the quality of care and quality of life of HCSSA clients and necessary to implement Chapter 142, respectively; Texas Health and Safety Code §242.001, which states that 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 individuals who are living in a nursing facility, and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents; Texas Health and Safety Code §§247.025 and 247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and ensure the quality of care and protection of residents' health and safety, respectively; Texas Health and Safety Code §248A.101, which requires the Executive Commissioner of HHSC to adopt rules necessary to implement Chapter 248A and protect the health, safety, and comfort of the minors serviced by a PPECC; Texas Health and Safety Code §252.008, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 252; Human Resources Code §103.004, which requires the Executive Commissioner of HHSC to adopt rules for implementing Chapter 103 and set standards for the health and welfare of persons attending a DAHS facility; Texas Human Resources Code §32.021, which provides that the Executive Commissioner of HHSC shall adopt rules for the proper and efficient operation of the medical assistance program; and Health and Safety Code §260B(b), which requires the Executive Commissioner of HHSC to by rule develop guidelines to assist facilities and program providers in establishing essential caregiver visitation policies and procedures; and Texas Health and Safety Code §260C(b), which requires the Executive Commissioner of HHSC to by rule develop guidelines to assist health care facilities in establishing in-person religious counselor visitation policies and procedures.

The new sections implement Texas Government Code §531.0055; Health and Safety Code §§142.0011, 142.012, 242.001, 242.037, 247.025, 247.026, 248A.101, 252.008, 260B(b), and 260C(b); and Human Resources Code §§32.021 and 103.004.

### §570.101. Emergency Response to Outbreak, Epidemic, or Pandemic.

- (a) During a contagious disease outbreak, epidemic, or pandemic, whether or not a public health emergency has been declared, an assisted living facility (ALF) must regularly check federal, state, and local guidance.
- (b) During a contagious disease outbreak, epidemic, or pandemic, whether or not a public health emergency has been declared, an ALF must:
  - (1) maintain infection control measures when:
    - (A) evacuation is necessary;
    - (B) sheltering in place is necessary; or

(C) receiving residents evacuating from another ALF that has positive cases of the disease or other health condition that is the basis of the outbreak, epidemic, or pandemic;

(2) have a transportation plan in place to evacuate residents as needed; and

(3) maintain a 90-day supply of personal protective equipment (PPE), including facemasks for droplet protection, N95 respirators, goggles, face shields, gloves, and gowns and ensure they are readily available in the event of an evacuation. Each facility determines what a 90-day supply means based on the CDC burn rate methodology.

(c) An ALF must have a protocol for receiving deliveries. This protocol must comply with any CDC guidance in place.

(d) Each ALF must have a communication plan to communicate the following information with residents, residents' representatives, resident's designated emergency contacts, and families:

(1) when a positive case is identified by the ALF;

(2) current visitation and activities policies and procedures;

(3) alternate methods of visitation that will be available during times of restricted visitation by executive order or other direction issued by the Governor of Texas, the President of the United States, or another applicable authority; and

(4) the primary point of contact at the ALF for questions and information and how residents, residents' representatives, and families can reach the primary point of contact.

(e) An ALF must post the information required in subsection (d)(2) - (4) of this section at its physical location.

(f) An ALF must develop infection prevention and control policies and procedures that:

(1) ensure resident rights in each area of the facility, including the right to:

(A) be informed of the resident's status;

(B) be informed of any symptoms or cases in the facility;

(C) personal visits, including virtual visits, based on the resident's personal status and the facility's status;

(D) refuse testing after receiving an explanation of the necessary precautions for residents who refuse; and

(E) leave the facility, based on their personal status and applicable guidance from the CDC, HHSC, or DSHS; and

(2) promote socialization and prevention of isolation, in accordance with CDC guidance, which must address:

(A) preventing unnecessary isolation or quarantine;

(B) ensuring that residents are not unnecessarily confined to their rooms;

(C) identifying and regularly facilitating activities that promote resident socialization in accordance with resident preferences; and

(D) identifying environmental factors that cause psychological stress.

§570.103. Testing.

(a) During a contagious disease outbreak, epidemic, or pandemic, the assisted living facility (ALF) must have a testing strategy for all staff and residents if required by the CDC, HHSC, or DSHS.

(b) The ALF must develop a protocol based on HHSC, DSHS, and CDC guidance for residents and staff who refuse testing.

(c) An ALF must:

(1) monitor residents and staff for signs and symptoms of the contagious disease that caused the outbreak, epidemic, or pandemic;

(2) monitor residents and staff for any possible exposure to the contagious disease that caused the outbreak, epidemic, or pandemic; and

(3) activate outbreak infection control measures if:

(A) a positive case of the contagious disease that caused the outbreak, epidemic, or pandemic is identified in a resident or staff;

(B) a resident or staff is exhibiting symptoms of the contagious disease that caused the outbreak, epidemic, or pandemic; or

(C) there is a suspected or known exposure of a resident or staff to a positive case of the contagious disease that caused the outbreak, epidemic, or pandemic.

§570.105. Reporting.

(a) An assisted living facility (ALF) must report new positive cases of the contagious disease that caused the outbreak, epidemic, or pandemic to HHSC in accordance with any guidance issued by HHSC or the DSHS.

(b) An ALF must comply with a request from HHSC to submit data related to positive cases of the contagious disease that caused the outbreak, epidemic, or pandemic.

(c) An ALF must inform facility staff, residents, resident representatives, resident's designated emergency contacts, or responsible parties of those residing in facilities by 5:00 p.m. the next calendar day following the occurrence of a confirmed infection among residents or staff. The ALF must not include personally identifiable information.

§570.107. Screening.

(a) An assisted living facility (ALF) must screen all persons attempting to enter the building prior to allowing them to enter the facility, except emergency services personnel entering the facility or facility campus in an emergency.

(b) The following screening criteria shall be used for visitors, staff, and residents:

(1) signs or symptoms specific to the contagious disease that has caused the outbreak, epidemic, or pandemic;

(2) any other signs and symptoms as outlined by the CDC; or

(3) testing positive, indicating that the person is still in the infectious period related to the contagious disease outbreak, epidemic, or pandemic.

(c) An ALF must document, in writing, all persons who enter the building in a log kept at the entrance of the facility and include the date, the person's name, current contact information, and data from the screening. The screening log might contain protected health information and must be protected in accordance with applicable state and federal law.

(d) An ALF must screen all staff at the beginning of each shift for the criteria in subsection (b) of this section prior to allowing them to enter the facility.

(e) Staff who do not pass screening must leave the ALF and not return until it is confirmed that they are not infectious or until they meet the criteria to discontinue quarantine or isolation.

(f) An ALF must screen residents in accordance with any HHSC or DSHS guidance.

(g) Residents who do not pass screening must be quarantined or isolated, as appropriate, and monitored in accordance with HHSC, DSHS, and CDC guidance.

(h) An ALF must allow persons providing critical assistance, including essential caregivers, to enter the facility if they pass the screening criteria in subsection (b) of this section. A facility may not prohibit entry of persons with legal authority to enter when performing their official duties.

(i) An ALF must post signage at all entrances of the facility prohibiting persons, other than emergency services personnel providing emergency services, from entering the facility prior to being screened.

*§570.109. Staff Requirements.*

(a) Each assisted living facility (ALF) must ensure staffing levels are adequate to meet the needs of all residents, including those in isolation and quarantine.

(b) Each ALF must have a staffing plan in place that:

(1) ensures staff in each area of the facility are trained to provide care to residents in their assigned area;

(2) ensures supervision of staff in each area of the ALF; and

(3) includes a staffing contingency plan to ensure adequate staffing in the event multiple staff are out due to illness.

(c) Each ALF must have at least one staff member responsible for infection control protocol.

(d) Each ALF must document that training was provided to each staff member and that the

training topics included:

- (1) providing care to residents in isolation;
- (2) providing care to residents in quarantine;
- (3) proper use of personal protective equipment (PPE) including appropriate PPE use for:
  - (A) each area of the facility;
  - (B) providing care to residents who are negative status, positive status, and unknown status; and
  - (C) providing care to residents exhibiting symptoms and awaiting test results;
- (4) proper donning, doffing, and use of PPE;
- (5) proper cleaning and disinfecting procedures;
- (6) the ALF's infection control plan;
- (7) the ALF's emergency preparedness plan;
- (8) standard assessment protocols; and
- (9) enhanced assessment protocols to be implemented when quarantine and isolation are necessary.

§570.111. Visitation.

- (a) An assisted living facility's visitation policies and procedures may change during a contagious disease outbreak, epidemic, or pandemic in response to directives issued by the CDC, HHSC, or DSHS. Assisted living facility (ALF) visitation policies and procedures may not be more restrictive than directives issued by HHSC, DSHS, executive orders, or local orders.
- (b) An ALF must permit clergy to visit a resident at the request of the resident.
- (c) An ALF may not prohibit a resident from receiving in-person visitation with a religious counselor during a public health emergency on request from the resident, resident's legally authorized representative (LAR), or resident's family member. An ALF may prohibit in-person visitation with a religious counselor if a federal law or a federal agency requires the facility to prohibit in-person visitation during a public health emergency.
- (d) An ALF must adopt policies and procedures for in-person visitation with a religious counselor during a contagious disease outbreak, epidemic, or pandemic. These policies and procedures:
  - (1) must comply with the minimum health and safety requirements for in-person visitation with religious counselors developed by HHSC;
  - (2) may include reasonable time, place, and manner restrictions on in-person visitation with religious counselors to:
    - (A) mitigate the spread of a communicable disease; and

(B) address the resident's medical condition;

(3) must include special consideration for residents receiving end of life care; and

(4) may require religious counselors to comply with an ALF's guidelines, policies, and procedures for in-person visitation with a religious counselor.

(e) An ALF may allow salon services visits. An ALF must establish policies and procedures in response to a contagious disease outbreak, epidemic, or pandemic, based on guidance issued by the CDC, HHSC, or DSHS that provide conditions for a salon visit to occur.

(f) An ALF must permit end of life visits and immediately communicate any changes in a resident's condition that would qualify the resident for end of life visits to the resident representative.

§570.113. Essential Caregiver Visits.

(a) A resident or the resident's legally authorized representative (LAR), if the resident is unable, has the right to designate an essential caregiver.

(b) An assisted living facility (ALF) must permit essential caregiver visits.

(c) An ALF must allow essential caregiver visits to occur outdoors, in the resident's bedroom, or in another area, when possible, upon request by a resident or resident's LAR.

(d) An ALF must develop a visitation policy that permits an essential caregiver to visit the resident for at least two hours each day.

(e) An ALF must have procedures in place to enable physical contact between the resident and the essential caregiver.

(f) The ALF must develop safety protocols for essential caregiver visits. The safety protocols may not be more stringent for essential caregivers than safety protocols for staff.

(g) An ALF must obtain the signature of the essential caregiver certifying that the essential caregiver will follow the facility's safety protocols for essential caregiver visits.

(h) An ALF may revoke an essential caregiver designation if the caregiver violates the facility's safety protocols or rules adopted under this chapter.

(i) If an ALF revokes a person's designation as an essential caregiver under subsection (h) of this section:

(1) the resident or the resident's LAR has the right to immediately designate another person as the essential caregiver;

(2) within 24 hours after the revocation, the facility must inform the resident or the resident's legally authorized representative, in writing, of the right to appeal the revocation and the procedures for filing an appeal with the Texas Health and Human Services Commission (HHSC) Appeals Division by:

(A) email at [OCC\\_Appeals\\_ContestedCases@hhs.texas.gov](mailto:OCC_Appeals_ContestedCases@hhs.texas.gov); or

(B) mail at HHSC Appeals Division, P.O. Box 149030, MC W-613, Austin, TX 78714-9030; and

(3) the ALF must comply with a hearing officer's decision regarding an appeal of an essential caregiver revocation.

(j) An ALF may petition HHSC to suspend in-person essential caregiver visits for no more than seven consecutive calendar days if in-person visitation poses a serious community health risk. An ALF may request an extension from HHSC to suspend in-person essential caregiver visitation beyond the ALF's original request, but HHSC may not approve an extension for a period that exceeds seven days and an ALF must separately request each extension. HHSC may deny the ALF's original request to suspend in-person essential caregiver visitation or the ALF's extension request if HHSC determines that in-person visitation does not pose a serious community health risk.

(k) An ALF may not suspend in-person essential caregiver visits in a calendar year for a time period that:

(1) is more than 14 consecutive days; or

(2) is more than a total of 45 days.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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