



Health Facility Compliance Guidance Letter

Number: GL 20-2023-A
Title: ESRD Facility Requirements in Response to COVID-19 [Amended]
Provider Types: End Stage Renal Disease Facilities
Date Issued: February 10, 2021

1.0 Subject and Purpose

This amended guidance letter replaces the previous GL 20-2023, issued on October 12, 2020, to notify providers that on February 10, 2021, the Health and Human Services Commission (HHSC) extended emergency rule §500.21, ESRD Facility Requirements During the COVID-19 Pandemic, in Texas Administrative Code Title 26 (26 TAC), Part 1, Chapter 500, Subchapter B for an additional 60 days. The emergency rule extension is effective until April 10, 2021 and can be viewed in the Texas Register under docket number **202004231**.

The Health and Human Services Commission (HHSC) adopted an emergency rule in response to the state of disaster declared in Texas and the United States of America relating to COVID-19. Under the new emergency rule, effective October 13, 2020, end stage renal disease facilities (ESRDs) are required to comply with alternative operational requirements related to staffing ratios, in-home visits, telemedicine, incident reporting, and education and training requirements for staff, to safely and effectively treat patients and utilize staff during the COVID-19 pandemic.

This letter describes the emergency rule adopted during the disaster.

2.0 Emergency Rule Details

Emergency rule §500.21, ESRD Facility Requirements During the COVID-19 Pandemic, is adopted under 26 TAC, Part 1, Chapter 500.

2.1 Emergency Rule §500.21 ESRD Facility Requirements During the COVID-19 Pandemic

Under emergency rule §500.21:

- (1) core staff members can actively participate in quality assessment and performance improvement (QAPI) activities and attend meetings every other month instead of monthly as normally required by 25 TAC §448.117.43(e);
- (2) all verbal or telephone physician orders can be documented and authenticated or countersigned by the physician not more than 30 calendar days from the date the order was given, instead of 15 calendar days as normally required by 25 TAC §117.45(c)(3);
- (3) each patient receiving dialysis in the facility can be seen by a physician on the medical staff once per month during the patient's treatment time, instead of every two weeks. Home dialysis patients shall be seen by a physician, advanced practice registered nurse, or physician's assistant no less than one time a month. If home dialysis patients are seen by an advanced practice registered nurse or a physician's assistant, the physician shall see the patient at least one time every three months. This visit may be conducted using telemedicine medical services, instead of in person as normally required by 25 TAC §117.45(i)(2)(C). The record of these contacts shall include evidence of assessment for new and recurrent problems and review of dialysis adequacy each month;
- (4) the staffing level for home dialysis patients, including all modalities, can be one full-time equivalent registered nurse per 25 patients, or portion thereof, instead of 20 patients as normally required by 25 TAC §117.45(j)(4);
- (5) the home dialysis training curriculum shall be conducted by a registered nurse with at least 12 months clinical experience and three months experience in the specific modality with the responsibility for training the patient and the patient's caregiver, instead of six months as normally required by 25 TAC §117.45(j)(5)(A);
- (6) an initial monitoring visit of a patient's home adaptation prior to the patient beginning training for the selected home modality may be conducted from outside the patient's home if the visit is performed using a synchronous audiovisual interaction between the registered nurse and the patient while the patient is at

home, instead of in person as normally required by 25 TAC §117.45(j)(9)(A). The visit must be conducted to the same review standards as a normal face-to-face visit. If the visit is incapable of being performed using a synchronous audiovisual interaction between the registered nurse and the patient, the visit must be conducted in the patient's home;

- (7) a home patient visit may be conducted using telemedicine medical services, instead of in person as normally required by 25 TAC §117.45(j)(9)(B);
- (8) each registered nurse who is assigned charge nurse responsibilities shall have at least 12 months of clinical experience and have three months of experience in hemodialysis subsequent to completion of the facility's training program, instead of six months experience in hemodialysis as normally required by 25 TAC §117.46(c)(2). In addition:
 - a. the registered nurse must be able to demonstrate competency for the required level of responsibility and the facility shall maintain documentation of that competency;
 - b. the registered nurse must be certified by the facility's medical director and governing body;
 - c. the hemodialysis experience shall be within the last 24 months; and
 - d. a registered nurse who holds a current certification from a nationally recognized board in nephrology nursing or hemodialysis may substitute the certification for the three months experience in dialysis obtained within the last 24 months.
- (9) if patient self-care training is provided, a registered nurse who has at least 12 months clinical experience and three months experience in the specific modality, instead of six months of experience in the specific modality as normally required by 25 TAC §117.46(c)(4), shall be responsible for training the patient or family in that modality. When other personnel assist in the training, supervision by the qualified registered nurse shall be demonstrated;
- (10) a facility shall report an incident listed in 25 TAC §117.48(a)(1)-(5) to HHSC within 20 working days, instead of 10 working days as normally required by 25 TAC §117.48(a); and

- (11) for persons with no previous experience in direct patient care, a minimum of 80 clock hours of classroom education and 200 clock hours of supervised clinical training shall be required for dialysis technicians. Training programs for dialysis technician trainees who have confirmed previous direct patient care experience may be shortened to a total of 40 clock hours of combined classroom education and clinical training, instead of 80 hours as normally required by 25 TAC §117.62(i), if they demonstrate competency with the required knowledge and skills and there has not been more than a year of time elapsed since they provided patient care in a licensed ESRD facility setting.

To the extent this emergency rule conflicts with other ESRD rules in 25 TAC Chapter 117, this emergency rule controls.

3.0 Background/History

HHSC originally adopted a previous emergency rule at §500.21, ESRD Facility Requirements in Response to COVID-19, on April 16, 2020 and extended it on August 13, 2020. The rule expired on October 12, 2020 and HHSC adopted a new replacement emergency rule, ESRD Facility Requirements During the COVID-19 Pandemic, on October 13, 2020. The new emergency rule adds new language in subsections (a) and (n).

In accordance with Texas Government Code §2001.034, HHSC adopted emergency rule §500.21, relating to ESRD Facility Requirements During the COVID-19 Pandemic, in 26 TAC, Part 1, Chapter 500, Subchapter B, End Stage Renal Disease Facilities, effective October 13, 2020, due to imminent peril to the public health, safety, or welfare. This emergency rule may not be effective for longer than 120 days and may not be renewed for longer than 60 days.

4.0 Resources

View emergency rule §500.21 in the Texas Register by searching Texas Register Docket Number (TRD ID): **202004231** at [https://texreg.sos.state.tx.us/public/regviewctx\\$.startup](https://texreg.sos.state.tx.us/public/regviewctx$.startup).

Governor Abbott's Disaster Declaration, provided at https://gov.texas.gov/uploads/files/press/DISASTER_covid19_disaster_proclamation_IMAGE_03-13-2020.pdf.

To receive future updates, sign up for GovDelivery: <https://service.govdelivery.com/accounts/TXHHSC/subscriber/new>.

5.0 Contact Information

If you have any questions about this letter, please contact the Policy, Rules and Training unit by email at HCR_PRT@hhs.texas.gov.