

# EMERGENCY RULES

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 26. HEALTH AND HUMAN SERVICES PART 1. HEALTH AND HUMAN SERVICES COMMISSION

### CHAPTER 600. LIMITED SERVICES RURAL HOSPITALS

#### 26 TAC §600.1

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 600, Limited Services Rural Hospitals, new §600.1, concerning an emergency rule to permit qualified rural hospitals to apply for licensure as a limited services rural hospital.

This emergency rule is proposed under and implements Texas Health and Safety Code Chapter 241, Subchapter K, which allows a qualified rural hospital that is designated as rural emergency hospital by the Centers for Medicare and Medicaid Services (CMS) to become licensed as a limited services rural hospital and remain open to treat patients.

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.

The purpose of the emergency rulemaking is to implement Senate Bill 1621, 86th Legislature, Regular Session, 2019, which the Legislature enacted to ensure individuals living in rural areas continue to have access to hospital care, in response to the closure of rural hospitals. HHSC accordingly finds that this threat to access to hospital care constitutes an imminent peril to the public health, safety, and welfare of the state that requires immediate adoption of this emergency rule for limited services rural hospitals.

To protect individuals living in rural areas and the public health, safety, and welfare of the state, HHSC is adopting this emergency rule to permit a qualified rural hospital to become licensed as a limited services rural hospital under Texas Health and Safety Code Chapter 241, Subchapter K.

#### BACKGROUND AND PURPOSE

Senate Bill 1621 added Texas Health and Safety Code Chapter 241, Subchapter K, which, in part, requires HHSC to adopt licensing standards for limited services rural hospitals if the United States Congress passes a bill creating a payment program specifically for limited services rural hospitals or similarly designated hospitals that becomes law. The Consolidated

Appropriations Act, 2021, became law on December 27, 2020, and required CMS to establish a federal rural emergency hospital designation. The CMS conditions of participation for rural emergency hospitals took effect January 1, 2023.

The requirements and flexibilities established in this section are applicable while this emergency rule is in effect pursuant to Texas Government Code §2001.034 (relating to Emergency Rulemaking) and Texas Government Code §531.0055 (relating to Executive Commissioner: General Responsibility for Health and Human Services System, respectively).

#### STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Health and Safety Code §§241.302 and 241.303. 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 §241.302 authorizes the Executive Commissioner of HHSC to adopt rules governing licensing standards for limited services rural hospitals, and §241.303 authorizes the Executive Commissioner to establish and collect licensing fees for limited services rural hospitals.

The new section implements Texas Government Code §531.0055 and Texas Health and Safety Code §§241.302 and 241.303.

#### §600.1. Limited Services Rural Hospital.

(a) Based on Texas Health and Safety Code (HSC) Chapter 241, Subchapter K (relating to Limited Services Rural Hospital), as added by Senate Bill 1621, 86th Legislature, Regular Session, 2019, the Texas Health and Human Services Commission (HHSC) adopts this emergency rule to establish requirements for qualified rural hospitals to apply to HHSC for a limited services rural hospital (LSRH) license and forego any conflicting inpatient license and operational requirements, to protect public health and safety of rural communities until HHSC adopts standard rules for LSRH licensure in the Texas Administrative Code.

(b) To the extent this emergency rule conflicts with Texas Administrative Code Title 25 (25 TAC) Chapter 133 (relating to Hospital Licensing), this emergency rule controls.

(c) In this section, "qualified rural hospital" means a hospital that meets the requirements to be designated as a rural emergency hospital under the Code of Federal Regulations Part 42 (42 CFR) §485.502 (relating to Definitions), and §485.506 (relating to Designation and certification of REHs) that is currently licensed under HSC Chapter 241 (relating to Hospitals); and is:

(1) located in a rural area, as defined by United State Code Title 42 Section 1395ww(d)(2)(D); or

(2) designated by the Centers for Medicare and Medicaid Services as a critical access hospital, rural referral center, or sole community hospital.

(d) Notwithstanding the licensing and operational requirements in 25 TAC Chapter 133, a qualified rural hospital may apply to HHSC for an LSRH license using a form prescribed by HHSC as described on the HHSC website.

(e) The presurvey conference and architectural and compliance inspections under 25 TAC §133.22 (relating to Application and Issuance of Initial License) are not required for licensure under this emergency rule.

(f) If HHSC approves a hospital's LSRH application, HHSC will issue the hospital an LSRH license with the same expiration date as the hospital's current license and the hospital's existing license becomes void.

(g) An LSRH shall comply with the following:

(1) 42 CFR Part 485, Subpart E (relating to Conditions of Participation: Rural Emergency Hospitals (REHs));

(2) 25 TAC §133.44 (relating to Hospital Patient Transfer Policy), and

(3) 25 TAC §133.61 (relating to Hospital Patient Transfer Agreements).

(h) In addition to the conditions of participation (CoPs) at 42 CFR Part 485, Subpart E, the hospital shall comply with 25 TAC Chapter 133 to the extent it does not conflict with the CoPs.

(i) An LSRH licensed under this section shall comply with 25 TAC §133.23 (relating to Application and Issuance of Renewal License). The renewal licensure fee shall be the amount the hospital previously paid for its most recent hospital license.

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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