



## Long-Term Care Regulatory Provider Letter

**Number:** PL 2022-13

**Title:** New Rules Implementing Senate Bill (S.B.) 25 and Senate Bill (S.B.) 572, 87<sup>th</sup> Legislature, Regular Session, 2021

**Provider Types:** Assisted Living Facilities (ALF), Home and Community-based Services (HCS) program providers, Home and Community Support Services Agencies (HCSSA), Intermediate Care Facilities (ICF/IID), Nursing Facilities (NF)

**Date Issued:** June 01, 2022

### 1.0 Subject and Purpose

This letter announces [new rules](#) that implement S.B. 25 and S.B. 572 that were adopted in the Texas Register on June 1, 2022. [S.B. 25](#), relating to the right of residents in certain long-term care facilities to designate an essential caregiver for in-person visitation, was effective on September 1, 2021. [S.B. 572](#), relating to in-person visitation of religious counselors with certain health care facility residents during a public health emergency, was effective on September 1, 2021.

### 2.0 Policy Details & Provider Responsibilities

#### 2.1 Scope of the Rules

These rules were originally proposed to be effective during any contagious disease outbreak, epidemic, or pandemic, but the scope of the adopted rules has been narrowed. The final rules only apply during a declared public health emergency or disaster. The rules define a public health emergency or disaster as a federal declaration of public health emergency or a statewide or regional declaration of a public health disaster by the commissioner of the DSHS under [Chapter 81](#) of the Health and Safety Code. A state or regional public health disaster can be declared only if the governor has declared a state of disaster for the same threat under [Chapter 418](#) of the Government Code.

## **2.2 Legislative Implementation of S.B. 25, Essential Caregiver Visits**

The new rules implement S.B. 25, which states that all residents of an ALF, NF, or ICF/IID and individuals receiving services through an HCS program provider in a residence have the right to designate an essential caregiver and have essential caregiver visits.

An essential caregiver is a family member, friend, guardian, volunteer, or other person designated for in-person visits by an individual, resident, or client or the individual's, resident's, or client's guardian or legally authorized representative (LAR). In case of conflict between an individual's, resident's, or client's selection and a guardian's selection on behalf of the individual, resident, or client, the guardian's selection prevails, in accordance with the terms of the guardianship. If an individual, resident, or client has no guardian and is unable to select an essential caregiver, the individual's, resident's, or client's LAR may select the essential caregiver. An essential caregiver visit is an in-person visit between an individual, resident, or client and a designated essential caregiver. The rules do not specify when or how the essential caregiver is designated, nor do they prescribe a form for designating an essential caregiver.

A facility or program provider may not prohibit in-person visitation with an essential caregiver for more than 14 consecutive days, or more than a total of 45 days in a calendar year. A facility or program provider may revoke an essential caregiver designation if the caregiver violates the facility or program provider's safety protocols. If the facility or program provider revokes a person's essential caregiver designation, the resident or individual has the right to immediately designate another person as an essential caregiver and has the right to appeal the revocation to HHSC. The appeal can be filed with HHSC by mail at HHSC Appeals Division, P.O. Box 149030, MC W-613, Austin, TX 78714-9030 or email at [OCC Appeals ContestedCases@hhs.texas.gov](mailto:OCC_Appeals_ContestedCases@hhs.texas.gov).

## **2.3 Legislative Implementation of S.B. 572, Religious Counselor Visits**

The new rules also implement S.B. 572, which intends to protect the religious liberty of each individual, resident, or client of a HCSSA, NF, or ALF by prohibiting a HCSSA, NF, or ALF from preventing a resident or client from receiving in-person visitation with a religious counselor during a public health emergency, unless there is a federal law or a federal agency that prohibits in-person visitation during that period.

Religious counselor is defined as a person acting substantially in a pastoral or religious capacity to provide spiritual counsel to other persons. A religious counselor visit is an in-person visit between a religious counselor and a resident or client that may occur at any time. A religious counselor visit is available to all residents and is not limited to an individual, resident, or client only during the end-of-life.

#### **2.4 End-Of-Life Visits**

The new rules require an ALF, HCSSA, ICF/IID, NF, or HCS program provider to permit end-of-life visits and immediately communicate any changes in an individual's, resident's, or client's condition that would qualify the individual, resident, or client for an end-of-life visit to the individual's, resident's, or client's representative.

An end-of-life visit is defined as a personal visit between a visitor and an individual, resident, or client who is receiving hospice services; who is at or near the end of life, with or without receiving hospice services; or whose prognosis does not indicate recovery.

### **3.0 Background/History**

HHSC is issuing this letter to notify ALFs, HCS program providers, HCSSAs operating an inpatient hospice unit, ICF/IIDs, and NFs that new rules to implement S.B. 25 and S.B. 572 were adopted in the *Texas Register* as new 26 TAC Chapter 570.

### **4.0 Resources**

[26 T.A.C. Chapter 570](#)

[S.B. 25](#)

[S.B. 572](#)

## 5.0 Contact Information

If you have any questions about this letter, please contact the Policy and Rules Unit by email at [LTCRPolicy@hhs.texas.gov](mailto:LTCRPolicy@hhs.texas.gov) or call (512) 438-3161.