



Health Facility Licensing Guidance Letter

Number: GL 21-1002-A
Title: Emergency Hospital Off-Site Facilities and Designation of Licensed Hospital Space in Response to COVID-19 [Amended]
Provider Types: General and Special Hospitals
Date Issued: July 16, 2021

1.0 Subject and Purpose

This amended guidance letter replaces the previous GL 21-1002, to notify providers that effective July 18, 2021, the Health and Human Services Commission (HHSC) extended emergency rule §500.1, Hospital Off-Site Facilities in Response to COVID-19, in Texas Administrative Code Title 26, Part 1, Chapter 500, Subchapter A, for an additional 60 days. The emergency rule extension is effective until September 15, 2021 and can be viewed in the Texas Register under docket number **202101132**.

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 emergency rule a currently licensed hospital is permitted to apply to temporarily operate an off-site inpatient facility, including hospital space designated by another currently licensed hospital for use as an off-site facility, without obtaining a new license to more effectively treat and house patients in response to the COVID-19 pandemic. This emergency rule also temporarily permits a currently licensed hospital to designate a specific part of the hospital for use as an off-site facility by another hospital.

This letter describes the emergency rule and application process for operating an off-site facility under the emergency rule.

2.0 Emergency Rule Details

Emergency rule §500.1, Hospital Off-Site Facilities in Response to COVID-19, was originally adopted under Texas Administrative Code Title 26, Part 1, Chapter 500 on March 20, 2021. This emergency rule permits general and special hospitals licensed under Health and Safety Code Chapter 241 to apply to HHSC for approval to provide inpatient care at an off-site facility under the hospital's existing license. This emergency rule also permits a currently licensed hospital facility to designate a specific part of its hospital for use as an off-site facility by another hospital.

Hospitals must follow the operational requirements when providing services under this emergency rule. To allow operation of additional off-site facilities, HHSC has the discretion to waive the requirement that an off-site facility must be open or have been licensed within the past 36 months.

2.1 Emergency Rule §500.1 Hospital Off-Site Facilities in Response to COVID-19

The emergency rule is reproduced below:

§500.1. Hospital Off-Site Facilities in Response to COVID-19.

(a) Based on Governor Greg Abbott's March 13, 2020, declaration of a state of disaster in all Texas counties, the Texas Health and Human Services Commission adopts this emergency rule to establish continuing requirements and flexibilities to protect public health and safety during the COVID-19 pandemic. The requirements and flexibilities established in this section are applicable during an active declaration of a state of disaster in all Texas counties due to the COVID-19 pandemic, declared pursuant to Texas Government Code §418.014.

(b) A hospital licensed under Texas Health and Safety Code Chapter 241 that meets the requirements of this emergency rule may use an off-site facility for inpatient care under its existing license for the duration this emergency rule is in effect or any extension of this emergency rule is in effect.

(c) The off-site facility must be:

(1) an inpatient hospice unit licensed under Texas Health and Safety Code Chapter 142 either currently or within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection;

(2) a hospital no longer licensed under Texas Health and Safety Code Chapter 241 that closed within the past 36 months, or a facility with a

pending application for such a license that has passed its final architectural review inspection;

(3) a hospital exempt from licensure under Texas Health and Safety Code Chapter 241;

(4) a mobile, transportable, or relocatable unit, as defined in Title 25 Texas Administrative Code (TAC) §133.166 (relating to Mobile, Transportable, and Relocatable Units), that otherwise complies with that section;

(5) a nursing facility or other institution licensed under Texas Health and Safety Code Chapter 242 either currently or within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection;

(6) an ambulatory surgical center licensed under Texas Health and Safety Code Chapter 243 either currently or within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection;

(7) an assisted living facility licensed under Texas Health and Safety Code Chapter 247 either currently or within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection;

(8) a freestanding emergency medical care facility licensed under Texas Health and Safety Code Chapter 254 either currently or within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection;

(9) a mental hospital licensed under Texas Health and Safety Code Chapter 577 either currently or within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection;

(10) an outpatient facility operated by the hospital, either currently or within the past 36 months;

(11) a building or structure of opportunity temporarily converted for health care use, including an alternate care site, that is created or maintained by the hospital in partnership with or under the supervision of the health authority, local health department, public health district, or public health consortium that has jurisdiction over the site location;
or

(12) a specific portion of a second hospital currently licensed under Texas Health and Safety Code Chapter 241 that the second hospital has designated for use as an off-site facility by another hospital, using a form prescribed by the Texas Health and Human Services Commission (HHSC).

(A) The second hospital may withdraw its designation upon 10 days' notice to HHSC and to the hospital using the portion of the facility as an offsite facility.

(B) Any patient being treated in the off-site facility at the time approval is withdrawn shall be safely relocated as soon as practicable according to the hospital's policies and procedures.

(C) A portion of the second hospital designated under this paragraph may not be used under the second hospital's license while the designation is effective.

(d) At its sole discretion, HHSC may waive the requirement that an off-site facility must have been licensed or open within the past 36 months under paragraph (c) of this section, if the hospital applying to use the off-site facility provides evidence satisfactory to HHSC that such waiver will not detrimentally affect the health or safety of patients, hospital staff, or the public.

(e) A hospital that uses any off-site facility under this emergency rule for inpatient care, including a portion of a second hospital designated under subsection (c)(12) of this section, is responsible under its license for complying with all applicable federal and state statutes and rules.

(f) A hospital must submit an application to use an off-site facility for inpatient care to the Texas Health and Human Services Commission via email at infohflc@hhs.texas.gov and receive written approval from HHSC before using the off-site facility for inpatient care.

(g) HHSC has the discretion to approve or deny any application to use an off-site facility for inpatient care. HHSC may require an inspection or additional documentation of the off-site facility before considering an application.

(h) In order to protect the health, safety, and welfare of patients and the public, HHSC may withdraw its approval for a hospital to use the off-site facility for inpatient care at any time. Any patient being treated in the off-site facility at the time approval is withdrawn shall be safely relocated as soon as practicable according to the hospital's policies and procedures.

(i) The requirements of 25 TAC §133.21(c)(4)(B)-(C) (relating to the Scope of Hospital License) do not apply to an off-site facility applied for or used under this section.

(j) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority that is more restrictive than this section or any minimum standard relating to a hospital, the hospital must comply with the executive order or other direction.

2.2 Application Requirements

Currently licensed hospitals must use [Form 3220, COVID-19 Response Off-Site Facility Application](#) to:

- Apply to use an off-site facility for inpatient care under the hospital's existing license;
- Designate a specific part of its hospital for use as an off-site facility by another hospital; or
- Apply to use the hospital space previously designated by another hospital and approved by HHSC as an off-site facility under its license for inpatient care.

Hospitals must submit completed [Form 3220](#) to the Health Facility Licensing unit by email at infohflc@hhs.texas.gov and receive written approval from HHSC prior to using an off-site facility for inpatient care. HHSC may approve an application at its sole discretion and may require an inspection or additional documentation prior to approval. HHSC may withdraw its approval to use a facility at any time.

3.0 Background/History

HHSC previously adopted emergency rule §500.1, Hospital Off-Site Facilities in Response to COVID-19 waiver on September 21, 2020 and extended it on January 18, 2021. The rule expired on March 19, 2021 and HHSC adopted a new replacement emergency rule Hospital Off-Site Facilities in Response to COVID-19, effective March 20, 2021. The new emergency rule combines the language from §500.1 and two other related emergency rules, §500.2, Waiver of 36-Month Requirement During the COVID-19 Pandemic and §500.3, Designation of Licensed Hospital Space in Response to COVID-19, to enhance readability and eliminate the need to cross reference other rules in different sections. HHSC withdrew emergency rules §§500.2-500.3, effective March 20, 2021.

In accordance with Texas Government Code §2001.034, HHSC adopted new emergency rule §500.1, relating to Hospital Off-Site Facilities in Response to COVID-19, in 26 TAC, Part 1, Chapter 500, Subchapter A, effective March 20, 2021, 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 Form 3220, COVID-19 Response Off-Site Facility Application at: <https://hhs.texas.gov/laws-regulations/forms/3000-3999/form-3220-covid-19-response-site-facility-application>.

View emergency rule §500.1 in the Texas Register by searching Texas Register Docket Number (TRD ID): **202101132** at [https://texreg.sos.state.tx.us/public/regviewctx\\$.startup](https://texreg.sos.state.tx.us/public/regviewctx$.startup).

View Governor Abbott's Disaster Declaration 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 at: <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.