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Coronavirus, Public Health

## Coronavirus data on nursing homes released following AG ruling

[September 17](#) — Following an open records letter [ruling](#) issued July 6 by the Texas attorney general's office, the Texas Health and Human Services Commission (HHSC) in late July [released](#) the names and locations of nursing homes, assisted living facilities, state hospitals, and state supported living centers (SSLCs) where staff or residents have contracted the novel coronavirus.

HHSC had sought clarification from the attorney general's office on whether certain information was subject to required public disclosure under the Texas Public Information Act, Government Code [ch. 552](#), following requests from individuals and advocacy groups for the names and locations of long-term care facilities that had experienced COVID-19 cases. HHSC cited federal and state privacy laws in seeking the ruling from the attorney general.

The attorney general stated in the July ruling that the information sought by members of the public through the Public Information Act was not protected health information as defined by HIPAA and the Texas Medical Records Privacy Act. The Texas Medical Records Privacy [Act](#) uses the federal HIPAA [definition](#) of protected health information, which includes individually identifiable health information. Individually identifiable health information includes demographic data collected from an individual. It also:

- is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
- relates to the physical or mental health condition of or provision of health care to an individual and either identifies the individual or is information with respect to which there is a reasonable basis to believe it could be used to identify the individual.

In addition, the ruling concluded that HHSC was required to disclose the names and locations of facilities that had experienced COVID-19 cases because the request for the ruling had failed to demonstrate that the facility-level data requested under the Public Information Act included the following types of information excepted from disclosure:

- nursing facilities' quality improvement records under Health and Safety Code [sec. 242.049\(d\)](#);
- a statement of violations that is the subject of a pending informal dispute resolution process for assisted living facilities under Health and Safety Code [sec. 247.051\(d\)](#);
- a report, record, or working paper used or developed in an abuse, neglect, or exploitation investigation of boarding home facilities, which provide lodging and other services to elderly individuals or persons with disabilities under Health and Safety Code [sec. 260A.008](#); or
- medical records of the identity, diagnosis, evaluation, or treatment of a patient by a physician under Occupations Code [sec. 159.002\(b\)](#).

Since the July 6 ruling, HHSC has published on its website the [data](#) indicating where COVID-19 cases have occurred at nursing homes, assisted living facilities, state hospitals, and SSLCs. For each type of facility, the data include the names and addresses of facilities that have had cases, the number of active and cumulative cases among residents and staff, and the number of resident recoveries and deaths.

**Federal data.** A federal [rule](#) (85 FR 27550) that became effective on May 8 requires nursing home facilities to report to the Centers for Disease Control and Prevention (CDC):

- suspected and confirmed COVID-19 infections among residents and staff, including residents previously treated for

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COVID-19;

- total deaths and COVID-19 deaths among residents and staff;
- personal protective equipment, hand hygiene supplies, and ventilator capacity in the facility;
- access to COVID-19 testing while the resident is in the facility;
- staffing shortages; and
- other information specified by the secretary of the U.S. Health and Human Services Department.

The data required by the CDC begins with May 24 and is available to the public [online](#). The federal rule's reporting requirements do not apply to assisted living centers and state hospitals, whereas the information released by HHSC following the Texas attorney general ruling does include those places.

— *Alison Hern*