

Notice of Intent to Engage in Negotiated Rulemaking

DSHS intends to engage in negotiated rulemaking to develop an implementation plan, in the form of a rule, for the provider of last resort provisions of HB 2292, 78th Legislature, codified in Section 533.035 Texas Health and Safety Code. The subject of this negotiated rulemaking will involve an implementation plan that will operationalize the provisions of the law and the requirements of the Governor's Executive Order RP 45.

The provider of last resort provisions require that Local Mental Health Authorities make every reasonable attempt to solicit the development of an available and appropriate provider base sufficient to meet the needs of consumers in its area and determine whether or not there are willing providers of the relevant services in the service area or county. Executive Order RP 45 requires an implementation plan that ensures protection of consumer choice, protects the safety net, recognizes local differences and contains a timeline that is responsive to the need to ensure no disruption of existing services to consumers, the local community readiness, and the need for a safety net.

The scope of this negotiated rulemaking will include the development of an implementation plan. It will not include revisions to the existing scope of services required in the agency's performance contract with local mental health authorities.

From the convening process, DSHS has determined that:

- a diverse, but limited, set of stakeholders exists who will be affected by the subject matter of this rule;
- stakeholders have a high degree of interest in having a fair and balanced group negotiate a rule that includes an implementation plan for continuing the implementation of the provider of last resort provisions ;
- stakeholders have both diverse and common interests which are suitable for negotiation;
- stakeholders have something to gain by participating in the process and non-participation would likely result in negative and significant consequences;
- reaching consensus on most aspects of this rule appears possible; however, there will be some areas that will involve tough compromise on the part of all affected parties;
- the unprecedented opportunity exists for stakeholders to share information, communicate their interests and have the chance to have their data and assumptions questioned by others who have their own perspectives and data; and
- the agency stands to gain important information about how its stakeholders view the issues involved in this rule and criteria the agency can use to determine compliance with the provider of last resort provisions.

A preliminary list of issues to be negotiated include:

1. Ground Rules
2. Definitions
3. Provider Solicitation Guidelines
4. Local Decision-making

5. Criteria for Community Mental Health Centers that provide services
6. Evaluation

There is a diverse but limited set of stakeholders who are significantly affected by this rule and will be represented on the negotiating committee. They include:

- consumers of mental health services and their families;
- advocates for consumers and families;
- interested parties who do not have a personal stake in the outcome of the rule;
- designated local mental health authorities;
- private providers of mental health services;
- county judges and county commissioners, from both rural and urban counties, that are the appointing authorities for Community Mental Health Center boards of directors; and,
- the state agency that is required to regulate and provide oversight for public mental health services provided to Texans who are eligible.

DSHS proposes to appoint the following individuals to the negotiating committee to represent the agency and affected parties:

- consumers of mental health services and their families
 - Carli Scales, Consumer
 - Richard Hansen, Consumer
 - Valerie Garza, Family member
 - Monica Thyssen, Family member
- advocates for consumers and families
 - Aaryce Hayes, Advocacy, Inc.
 - Robin Peyson, NAMI Texas
- interested parties who do not have a personal stake in the outcome of the rule
 - Linda Frost, Hogg Foundation
- designated Local Mental Health Authorities
 - Sandy Skelton, Texas Council of MHMR Centers
 - Cindy Sill, Tri-County MHMR Services
- private providers of mental health services
 - Richard Wallace, Providence of Texas
 - Beth Epps, Adapt of America, Inc.
- county judges and county commissioners, from both rural and urban counties, who are the appointing authorities for CMHC boards of directors;
 - Judge Van Lee York, Borden County, Association of County Judges and County Commissioners
 - Donald Lee, Conference of Urban Counties
- the state agency that is required to regulate and provide oversight for public mental health services provided to Texans who are eligible.
 - Randy Fritz

DSHS has attempted to identify all significantly affected parties and include at least one person to represent each party on the negotiated rulemaking committee. Meetings will be open to the public. If there are persons who are significantly affected by this proposed

rule and not represented by the persons named above, those persons may apply to the agency for membership on the negotiating committee or nominate another to represent their interests. Application for membership must be made in writing and include the following information:

- Name and contact information of the person submitting the application;
- Description of how the person is significantly affected by the rule;
- Name and contact information of the person being nominated for membership;
- Description of the qualifications of the nominee to represent the person's interests.

DSHS requests comments on the proposal to engage in negotiated rulemaking and on the proposed membership of the negotiated rulemaking committee. Comments and applications for membership on the negotiating committee must be submitted by September 18, 2006, to: Sam Shore, DSHS, 1100 W. 49th Street, Austin, TX, 78756 or sam.shore@dshs.state.tx.us, fax 512-458-7507.