



## TEXAS DEPARTMENT OF STATE HEALTH SERVICES

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COMMISSIONER

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**Broadcast MSG BH #162**

October 1, 2014

To: Executive Director, Texas Council of Community MHMR Centers  
Executive Directors, Local Mental Health Authorities  
Executive Director, Disability Rights Texas  
Members of the Local Area Network Advisory Committee (LANAC)  
Members of the Council for Advising and Planning (CAP) for the  
Prevention and Treatment of Mental and Substance Use Disorders

From: Trina Ita, MA, LPC – Director, Program Services Section II   
Mental Health and Substance Abuse (MHSA), Adult Mental Health Services Unit

**Request for Informal Comment On:**  
New Chapter 416, Subchapter C,  
governing Jail-based Competency Restoration Services  
**Informal Comments Due: October 15, 2014**

The new rules are necessary to comply with Senate Bill (SB) 1475, 83rd Legislative Session, Regular Session, 2013, which amended Code of Criminal Procedure, Article 46B.73 by adding subsection (e) and new Article 46B.090. The new statute requires the department to contract with an entity to provide jail-based competency restoration services under a pilot program for people with a mental health or a co-occurring psychiatric and substance use disorder. This includes the provision of legal education to adult men and women found incompetent to stand trial.

The rules proposed in the March 21, 2014 issue of the *Texas Register* were withdrawn as of September 22, 2014. Many of the comments and suggestions that the department received during informal and formal comment periods are reflected in the attached revised version and are described as follows.

Throughout the subchapter references to the following terms have been revised. Language has been added to the terms “staff” and “staffing” to clarify whether the staff are “program staff” or “provider staff,” and “peer specialist” is replaced with “peer provider.” Additional changes made throughout the subchapter include revisions to grammar, punctuation, and format.

In §416.78 concerning Definitions, revisions were made to the term “Competency restoration training module or training module” to clarify that provider staff are responsible for providing

competency education rather than jail staff; and "Incompetent to stand trial (IST)" was revised to clarify that a person determined incompetent to stand trial must meet both criteria described in the definition. In definition for the term "licensed practitioner of the healing arts," reference to the Board of Nurse Examiners has been revised to reflect the current name of the licensing entity, i.e., the Texas Board of Nursing.

In §416.79 (d) concerning Program Eligibility, the phrase "the likelihood of malingering" was deleted because it was believed that the term "malingering" was insensitive and implies an intention to be dishonest.

In §416.80 (a) concerning Program Standards, was revised to clarify the possibility that referenced statute may be amended and if it is amended the provider would be required to comply with the amended statute.

In §416.82 (1) concerning Written Policies and Procedures, language describing the court order and physician's confirmation of eligibility were rearranged to clarify the importance of the physician's confirmation.

In §416.84 (1) concerning LMHA, LBHA or MCO Responsibilities, the phrase "services prior to" was added after "OCR" to clarify that provider staff should consider participants for placement in OCR Program services, which is the least restrictive environment for competency restoration, prior to admitting individuals into the JBCR Program.

In §416.85 concerning Treatment Planning, the language "with the participant" was added to clarify the need for participants to actively collaborate with provider staff to develop their treatment plan.

In §416.86 (c)(2) concerning Program Staffing, changes were made to evening program staffing to include removal of the required presence of four psychiatric nursing assistants (PNAs), or, qualified mental health professional-community services (QMHP-CS). In subsection (c)(3), changes were made to night program staffing to include removal of the required presence of three PNAs, or, QMHP-CSs.

In §416.88 (a) concerning Competency Restoration Services, the word "competency" was inserted before education to indicate that competency restoration services include "competency education"; in subsection (c)(7), the phrase "competency restoration education" replaced "legal education related to competency" to clarify that such education is not provided by staff who have neither a license to practice to law nor have any specialized legal training. In subsection (d) the phrase "psychiatric medication" replaced "compelled medication," reference to §574.106 of the Health and Safety Code replaced §574.206 to appropriately reference the correct section pertaining to court ordered psychiatric medications, the phrase "mental health" was deleted, the word "with" replaced "and", and the word "issues" was deleted.

In §416.91 concerning Discharge Planning, a new subsection (d) was added using the last sentence of subsection (c) in the proposed rule text and the remaining subsections were renumbered. Language was added to subsections (e) and (f) to reflect the different statutory requirements for treating participants charged with misdemeanor versus felony offenses, and the length of treatment 70 days is replaced with 60 days consistent with applicable statute.

In §416.92 (a)(2) concerning Compliance with Statutes, Rules, and Other Documents, the general reference to Health and Safety Code, Chapter 574 replaced the specific reference to §574.001. In subsection (b)(5), references to Health and Safety Code, §§576.0055 and 595.005(c) were deleted because they were not applicable to participants receiving jail-based competency restoration services.

In §416.93(1)(C) concerning Outcome Measures, the phrase “charged with a felony” was added to distinguish between the outcome measures for felony offences and misdemeanor offences. Paragraph (1)(D) was added to reflect a new outcome measure to address the average number of days for a participant charged with a misdemeanor to be restored to competency. In paragraph (1)(H)(i), the length of treatment "70 days" is replaced with 60 days consistent with applicable statute.

The proposed rules governing requirements for Jail-based Competency Restoration Services — Adult Mental Health will be published for formal comment January 2015 in the *Texas Register*.

A PDF version of the draft preamble and rules is attached to this broadcast.

Comments may be submitted to: [MHSARules@dshs.state.tx.us](mailto:MHSARules@dshs.state.tx.us). Please title the subject line “Informal Comments for 25 TAC 416 C.” Comments should include the citation for the section that you are referencing, suggestions for alternative language, and a rationale for the alternative language. Contact Courtney Heard with questions or concerns by email at [courtney.heard@dshs.state.tx.us](mailto:courtney.heard@dshs.state.tx.us) or by phone at 512-206-5081.

