Title 25. Health Services
Part 1. Department of State Health Services
Chapter 416. Mental Health Community-based Services
Subchapter C. Jail-based Competency Restoration Program
New §§416.76 - 416.93

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes new §§416.76 - 416.93, concerning the standards for a Jail-based Competency Restoration Program.

BACKGROUND AND PURPOSE

The new rules are necessary to comply with Senate Bill (SB) 1475, 83rd Legislative Session, Regular Session, 2013, which amended the Code of Criminal Procedure, Article 46B.073 by adding subsection (e) and new Article 46B.090. The new provisions require that the department contract with an entity to provide jail-based competency restoration services under a pilot program for two years for people with a mental health or a co-occurring psychiatric and substance use disorder, including competency education for persons found incompetent to stand trial.

SECTION-BY-SECTION SUMMARY

New §416.76 describes the purpose of the subchapter which is to outline standards and requirements for operating jail-based competency restoration services.

New §416.77 sets forth the subchapter's application to providers of jail-based competency restoration services.

New §416.78 sets forth the definitions that are used in the subchapter. Definitions that are proposed include the terms "Co-occurring psychiatric and substance use disorder (COPSD)," "Community provider," "Competency restoration," "Competency restoration training module or training module," "DSHS," "DSHS Statewide Forensic Hospital Clearinghouse Waitlist or clearinghouse waitlist," "Incompetent to stand trial (IST)," "Inpatient forensic facility," "Jail-based competency restoration," "Legally authorized representative (LAR)," "Licensed practitioner of the healing arts (LPHA)," "Local behavioral health authority (LBHA)," "Local mental health authority (LMHA)," "Managed care organization (MCO)," "Mental illness," "Peer Provider," "Provider," "Qualified mental health professional-community services (QMHP-CS)," "Specially trained security officer," "Sub-contractor," and "Texas Commission on Jail Standards."

New §416.79 sets forth the requirements for eligibility criteria to participate in the jail-based competency restoration program.

New §416.80 sets forth standards for operating a program.

New §416.81 sets forth the requirements for program admission, assessment, and reassessment.

New §416.82 sets forth the requirements for written policies and procedures for the program.

New §416.83 sets forth the requirements for staff member training for the program.

New §416.84 sets forth the requirements for responsibilities of the LMHA, LBHA, or MCO in screening, continuity of care planning, and data reporting of services provided to participants in the program.

New §416.85 sets forth the requirements of treatment planning for participants in the program.

New §416.86 sets forth the requirements for program staffing of the program.

New §416.87 sets forth the requirements for rights afforded to participants in the program.

New §416.88 sets forth the requirements for competency restoration services provided in the program.

New §416.89 sets forth the requirements for using a DSHS-approved competency restoration module for the program.

New §416.90 sets forth the requirements for coordination of transitional services for participants' post-treatment in the program.

New §416.91 sets forth the requirements for participants' discharge planning post-treatment.

New §416.92 sets forth the requirements for compliance with statutes, rules, and other documents related to providing jail-based competency restoration services.

New §416.93 sets forth the requirements for collecting and reporting outcome measures associated with the program.

FISCAL NOTE

Lauren Lacefield Lewis, Assistant Commissioner for the Mental Health and Substance Abuse Division, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mrs. Lacefield Lewis has also determined that the proposed rules will have no direct adverse economic impact on small businesses or micro-businesses. This was determined by

interpretation that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

The rules may have direct application to a private provider, an LMHA, an LBHA, or an MCO, none of which meet the definition of small or micro-businesses under the Government Code, §2006.001. Therefore, an economic impact statement and regulatory flexibility analysis for small businesses are not required.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated impact on local employment.

PUBLIC BENEFIT

Mrs. Lacefield Lewis has determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to provide the contractor of jail-based competency restoration with standards for delivering competency restoration services in a jail setting. These services will: reduce the number of maximum security and non-maximum security defendants on the state mental health program clearinghouse waiting list determined to be IST due to mental illness and/or COPSD; provide a cost-effective alternative to restoration in a state hospital; and reduce the demand for forensic state hospital bed days in the area served by the pilot.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed new rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Dr. Courtney Heard, Adult Mental Health Program Services, Department of State Health Services, Mail Code 2091, P.O. Box 149347, Austin, Texas 78714-9347, telephone (512) 206-5081 or by email to

MHSArules@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The new sections are authorized by Texas Code of Criminal Procedure, Articles 46B.073 and 46B.090; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The new sections affect Government Code, §531.0055; and Health and Safety Code, §534.053, §534.058, and §1001.075.

Legend: (Proposed New Rules)
Regular Print = Proposed New Language

§416.76. Purpose.

The purpose of this subchapter is to provide standards, which are consistent with the state ~~mental health facility~~hospital standards for competency restoration~~,~~ for the Jail-based Competency Restoration Program (program), as required by Texas Code of Criminal Procedure, Articles 46B.073 and 46B.090, through Acts of the 83rd Texas Legislature, Regular Session, as Senate Bill 1475. The program shall include mental health and co-occurring psychiatric and substance use disorder (COPSD) treatment services, as well as competency education in the jail for adult men or women found incompetent to stand trial (IST), under Texas Code of Criminal Procedure, Chapter 46B.

§416.77. Application.

This subchapter applies to potential and current providers of jail-based competency restoration services authorized by Texas Code of Criminal Procedure, Chapter 46B, including local mental health authorities (LMHAs), local behavioral health authorities (LBHAs), and managed care organizations (MCOs).

§416.78. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1)~~-~~ Co-occurring psychiatric and substance disorder (COPSD)--The co-occurring diagnoses of psychiatric and substance use disorders.

(2)~~-~~ Community provider--Any person or legal entity that contracts with ~~the~~ DSHS, an LMHA, LBHA, or MCO to provide mental health and substance disorder community services to individuals, including that part of an LMHA, LBHA or MCO directly providing mental health community services to individuals. The term includes providers of mental health case management services and providers of mental health rehabilitative services.

(3) Competency restoration--The treatment process for restoring one's ability to consult with his or her attorney with a reasonable degree of rational understanding~~,~~ and a rational and factual understanding of the proceedings against them.

(4)~~-~~ Competency restoration training module or training module--The DSHS-approved training module to be used by provider staff members who provide competency education during competency restoration.

(5) ~~-~~DSHS--The Department of State Health Services.

(6)~~-~~ DSHS Statewide Forensic Hospital Clearinghouse Waitlist or clearinghouse waitlist--

A forensic waiting list for persons committed to one of the state mental health hospitals under the Texas Code of Criminal Procedure, Chapter 46B as incompetent to stand trial (IST) or 46C not guilty by reason of insanity.

(7)- Incompetent to stand trial (IST)--A person is incompetent to stand trial if the person does not have:

(A) sufficient present ability to consult with the person's lawyer with a reasonable degree of rational understanding; ~~or~~and

(B) a rational as well as factual understanding of the proceedings against the person.

(8)- Inpatient forensic facility--An entity that provides inpatient forensic mental health treatment such as a state mental health facility.

(9)- Jail-based competency restoration--Competency restoration conducted in a county jail setting that is provided in a dedicated mental health unit.

(10) Legally authorized representative (LAR)--A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, who may be a parent, guardian, or managing conservator of a minor, the guardian of an adult, or the legal representative of a deceased individual.

(11) Licensed practitioner of the healing arts (LPHA)--A staff member who is:

(A) a physician;

(B) a licensed professional counselor;

(C) a licensed clinical social worker (formally a licensed master social worker-advanced clinical practitioner) as determined by the Texas State Board of Social Work Examiners in accordance with Texas Occupations Code, Chapter 505;

(D) a psychologist;

(E) an advanced practice nurse recognized by the Board of Nurse Examiners for the State of Texas as a clinical nurse specialist in psych/mental health or nurse practitioner in psych/mental health; or

(F) a licensed marriage and family therapist.

(12) Local behavioral health authority (LBHA)--An entity designated as the local behavioral health authority in accordance with Texas Health and Safety Code, §533.0356.

(13) Local mental health authority (LMHA)--An entity designated as the local mental

authority by DSHS in accordance with the Texas Health and Safety Code, §533.035(a). For purposes of this subchapter, the term includes an entity designated as a local behavioral health authority pursuant to Texas Health and Safety Code, §533.0356.

(14) Managed care organization (MCO)--An entity that has a current Texas Department of Insurance certificate of authority to operate as a health maintenance organization (HMO) in the Texas Insurance Code, Chapter 843, or as an approved nonprofit health corporation in the Texas Insurance Code, Chapter 844, and that provides mental health community services pursuant to a contract with the DSHS.

(15) Mental illness--An illness, disease, or condition (other than a sole diagnosis of epilepsy, senility, substance use disorder or dependency, intellectual or developmental disorder, or autism) that:

(A)- substantially impairs an individual's thought, perception of reality, emotional process, or judgment; or

(B)- grossly impairs an individual's behavior as demonstrated by recent disturbed behavior.

(16) Peer ~~Provider~~provider --A staff member who:

(A) has received:

(i) a high school diploma; or

(ii) a high school equivalency certificate issued in accordance with the law of the issuing state;

(B) has at least one cumulative year of receiving mental health community services; and

(C) is under the direct clinical supervision of an LPHA.

(17) Provider--A person or entity that contracts with the DSHS to provide jail-based competency restoration services.

(18) Qualified mental health professional-community services (QMHP-CS)--A staff member who is credentialed as a QMHP-CS who has demonstrated and documented competency in the work to be performed and:

(A) has a bachelor's degree from an accredited college or university with a minimum number of hours that is equivalent to a major (as determined by the LMHA or MCO in accordance with §412.316(d) of this title (relating to Competency and Credentialing) in psychology, social work, medicine, nursing, rehabilitation, counseling, sociology, human growth and development, physician assistant, gerontology, special education, educational psychology,

early childhood education, or early childhood intervention;

(B) is a registered nurse; or

(C) completes an alternative credentialing process identified by the DSHS.

(19) Specially trained security officer – A county jailer that has obtained certification as a special officer for offenders with mental illness as provided through the Texas Commission on Law Enforcement, and has received staff member training in accordance with this subchapter.

(20 ~~(19~~) Sub-contractor--A person or entity that contracts with the provider of jail-based competency restoration services.

(21 ~~(20~~) Texas Commission on Jail Standards--The regulatory agency for all county jails and privately operated municipal jails in the state as established in 37 TAC Part 9.

§416.79. Program Eligibility.

(a) To be eligible to participate in the program, participants shall be adult males or females who are determined by the court to be incompetent to stand trial (IST) pursuant to Texas Code of Criminal Procedure, Article 46B.

(b) Participants must be screened for ~~Outpatient Competency Restoration~~outpatient competency restoration (OCR) by the LMHA, LBHA, or MCO and determined to be ineligible for ~~OCR~~those services before being admitted into the jail-based competency restoration program.

(c) Potential participants who are found to have an intellectual or developmental disability in the absence of any serious mental illness must be referred to the Local Intellectual and Developmental Authority through the LMHA, LBHA, or MCO for a decision regarding the appropriate services for these individuals.

(d) Evaluation for eligibility shall also include assessment and testing to include participant's current psychological functioning, ~~the likelihood of malingering,~~ and the likeliness to restore to competency.

§416.80. Program Standards.

(a) The program shall meet the standards set forth in Texas Code of Criminal Procedure, Article 46B.090(f), as may be amended, and:

(1) upon operation of program services be certified by a nationwide nonprofit organization that accredits health care organizations and programs and maintain this accreditation while under contract with DSHS to provide competency restoration services under this subchapter;

(2) use a non-punitive behavior management program; and

(3) use a DSHS-approved protocol for preventing and managing aggressive behavior.

(b) The contractor shall ensure that the county jail requires jail staff be trained and demonstrate competency in preventing and managing aggressive behavior such as the Prevention and Management of Aggressive Behavior, Satori Alternatives to Managing Aggression, or, other approved preventative de-escalation intervention strategies.

(c) The provider shall through contract obligate sub-contractors to comply with the ~~applicable~~ sections contained in this subchapter.

§416.81. Admission, Assessment, and Reassessment.

(a)~~-~~ Specific deficits in rational and factual understandings of legal proceedings and/or inability to consult with the person's lawyer with a reasonable degree of rational understanding that result in incompetence to stand trial, as detailed in Texas Code of Criminal Procedure, Chapter 46B, shall be assessed upon admission to the program. These specific deficits, as appropriate, shall be listed individually in the treatment plan and targeted specifically in the participant's treatment. The treatment team shall work to identify participant strengths which may assist the participant in overcoming barriers to achieving a factual and rational understanding of legal proceedings and their ability to consult with the person's lawyer with a reasonable degree of rational understanding.

(b) ~~A participant is reassessed~~The treatment team will review at minimum every two weeks ~~or as agreed to by~~ the ~~court to determine whether the participant is competent~~participant's progression towards attaining competency.

§416.82. Written Policies and Procedures. The provider shall develop and implement written policies and procedures that:

(1)~~-~~ describe the eligibility, intake and assessment, and treatment planning processes and address coordination and continuity of care planning with the LMHA, LBHA, or MCO, beginning at admission. Any admission to the program requires ~~the~~a physician's confirmation of eligibility, an order of the court with jurisdiction over the ~~potential~~ participant ~~and a physician's order~~, as well as cooperation and close coordination with the LMHA, LBHA, or MCO;

(2)~~-~~ assess participants for suicidality and homicidality and address any facility-based issues as well as address the degree of suicidality and homicidality by developing an individualized suicide and homicide prevention plan;

(3) ~~-~~outline the provider staff members' ability to monitor and report to the court a participant's restoration to competency status and readiness for return to court as specified in Texas Code of Criminal Procedure, Article 46.B.079;

(4)– by the 21st day, if it is determined that a participant is not likely to be restored by the 60th day, then the participant shall be added to the DSHS Statewide Forensic Clearinghouse Waitlist;

(5)- track the maximum length of stay for participants based on criminal charges. The expiration date of the competency restoration commitment shall be forwarded to the clearinghouse waitlist in the event that the participant is transferred to a state mental health facility;

(6) -address how provider staff members ensure the ongoing care, treatment, and overall therapeutic environment during evenings and weekends including, but not limited to behavioral and physical health crisis consistent with §412.321(a) and (e) of this title (relating to Crisis Services);

(7) -address how a participant's competency- is maintained after restoration and before adjudication or transfer to a forensic hospital or discharge to the community. If a person is deemed not likely to restore and is awaiting transfer to a state mental health facility, then treatment in the program (except for competency education) shall continue until the transfer is complete; and

(8)- if a participant is restored to competency he or she shall be evaluated by jail staff members to determine appropriate placementplaced in another section of the jailmental health unit pending disposition of the criminal charges.

§416.83. Staff Member Training.

(a) The provider shall recruit, train, and maintain qualified staff members, with documented competency in accordance with Chapter 416, Subchapter A of this title (relating to Mental Health Rehabilitative Services) and shall also comply with the following:

(1) §412.314(e) of this title (relating to Access to Mental Health Community Services);

(2) §412.315 of this title (relating to Medical Records System); and

(3) §412.316 of this title (relating to Competency and Credentialing).

(b) -Before providing services, all provider staff members shall be trained and demonstrate competence in:

(1) Rights of Participants Receiving Jail-Based Competency Restoration Services, Exhibit A, in §416.87 of this title (relating to Participant's Rights);

(2) identifying, preventing, and reporting abuse, neglect, and exploitation in accordance with the Commission on Jail Standards; Department of Family and Protective

Services, Adult Protective Services; or DSHS Office of Consumer Services and Rights Protection as set forth in applicable state laws and rules concerning abuse, neglect, and exploitation; and

(3) using the protocol for preventing and managing aggressive behavior.

§416.84. LMHA, LBHA, or MCO Responsibilities.

The LMHA, LBHA or MCO is responsible for:

(1) screening participants who are determined by the court to be IST for OCR ~~before~~services prior to their admission to the program;

(2) participating in continuity of care planning for participants; and

(3) reporting encounters with participants in the DSHS-approved clinical records management system (e.g., Clinical Management of Behavioral Health Symptoms).

§416.85. Treatment Planning.

Based on a comprehensive assessment, the provider shall complete the treatment plan with the participant within five business days of a participant's admission to the program. Treatment planning shall include the participant and any family members or other members of a participant's natural support system. The treatments shall address the following needs as applicable:

(1) trauma-informed care;

(2) physical health concerns/issues;

(3) medication and medication management;

(4) level of family and community support;

(5) mental health concerns or issues;

(6) intellectual and developmental disabilities;

(7) substance use disorder or COPSD concerns or issues; and

(8) discharge plans developed in conjunction with the participant, LAR, and LMHA, LBHA, or MCO, as appropriate, in the event that participant is released to the community upon restoration.

§416.86. Program Staffing.

(a) The program coordinator shall be a licensed practitioner of the healing arts (LPHA), who shall also act as a liaison between the program and the courts. A multidisciplinary treatment team (team) is used to provide clinical treatment that is directed toward the specific objective of restoring the participant's competency to stand trial and is similar to the clinical treatment provided as part of a competency restoration program at a state mental health facility. The team shall include a psychiatrist, a registered nurse, a psychologist, and an LPHA, each of whom must be licensed by his or her respective Texas licensing board. The provider is encouraged to employ peer ~~specialists~~providers in addition to the program staff members required in subsection (b) of this section.

(b) ~~Staff~~Program staff members shall be on-site 24 hours per day, seven days per week, which is consistent with a state mental health facility setting.

(c) ~~Staff~~Program staff members shall be assigned to participants at an average ratio over the three shifts of not lower than 1 program staff member to 3.7 participants.

(1) ~~-~~Day shift program staffing shall include a minimum of a psychiatrist, a registered nurse, a half-time psychologist, and an LPHA~~, and three psychiatric nursing assistants (PNA) or qualified mental health professionals - community services (QMHP-CSs).~~. Two specially trained county jail security staff will be present as well~~, in accordance with rules of the Texas Commission on Jail Standards, 37 TAC Part 9~~.

(2) ~~-~~Evening shift program staffing shall include a registered nurse and ~~four PNAs or QMHP-CSs. A~~a psychiatrist shall be available on call. Consistent with jail standards, two specially trained county jail security staff shall be present as well.

(3) Night shift program staffing shall include a registered nurse and ~~three PNAs or QMHP-CSs. A~~a psychiatrist shall be available on call. Consistent with jail standards, two specially trained county jail security staff shall be present as well.

§416.87. Participant's Rights.

Although program participants are incarcerated while receiving program services, their rights are paramount. The provider shall comply with the Rights of Participants Receiving Jail-based Competency Restoration Services, unless otherwise limited by the rules of the Texas Commission on Jail Standards. The Rights of Participants Receiving Jail-based Competency Restoration Services, Exhibit A, can be obtained by written request addressed to The Department of State Health Services, Mental Health and Substance Abuse Services, TAC rules, P. O. Box 149347, Mail Code 2018-552, Austin, Texas 78714-9347, or by visiting http://www.dshs.state.tx.us/mhsa-rights/.

§416.88. Competency Restoration Services.

(a) Competency restoration services shall include the treatment of the underlying mental illness by a psychiatrist, and the provision of competency education, rehabilitative skills training, case management, and counseling as clinically indicated for competency restoration.

(b) ~~Staff~~Provider staff members shall provide weekly treatment hours consistent with the treatment hours provided as part of a competency restoration program at a state mental health facility, including but not limited to 15 hours weekly, of rehabilitative services, skills training, substance use disorder treatment and counseling.

(c) The provider shall deliver competency restoration services that provide a full array of mental health and COPSD treatment services that are effective, responsive, individualized, culturally competent, trauma informed, and person-centered. Services shall include, but are not limited to:

(1) psychiatric evaluation;

(2) ~~-~~medications;

(3) ~~-~~nursing services;

(4) ~~-~~general medical care;

(5)~~-~~ psychoactive medication, including court-ordered medication;

(6)~~-~~ rehabilitative services, including skills training or psychosocial rehabilitation provided in accordance with the Chapter 416, Subchapter A of this title (relating to Mental Health Rehabilitative Services);

(7) ~~legal~~competency restoration education~~ related to competency~~; and

(8) peer ~~specialist~~provider services, if available.

(d) The provider shall, when necessary, seek a court order for ~~compelled medication~~psychiatric medications in accordance with the Texas Health and Safety Code, §574.~~206~~106 and Texas Code of Criminal Procedure, Chapter 46B~~, if participants refuses to give informed consent with regard to mental health treatment and psychoactive medication issues.~~.

§416.89. Competency Restoration Module.

(a) The provider shall use a DSHS-approved competency training module to provide legal education for each participant.

(b) Each participant shall be educated in multiple learning formats by multiple provider staff members, including but not limited to:~~-~~ discussion, reading, video and experiential methods such as role-playing, or mock trial. Participants with accommodation needs shall receive adapted materials and approach as needed.

§416.90. Transition Services.

While waiting for his or her case to be resolved, provider staff members shall provide transition services ~~that encourage timely resolution of participant's legal issues~~ in an effort to minimize the length of time a participant is ~~incarcerated~~in the program. Transition services shall be provided in a mental health unit, if a participant is:

(1) restored to competency;

(2) deemed not likely to restore and waiting for an inpatient forensic hospital bed; or

(3) deemed not likely to restore and awaiting return to the community.

§416.91. Discharge Planning.

(a) Upon discharge or transfer of a participant, the participant's medical record shall identify the services provided, diagnoses, treatment plan, medication and medication allergies and/or other known precautions.

(b) A reasonable and appropriate discharge plan developed in accordance with Chapter 412, Subchapter D of this title (relating to Mental Health Services--Admission, Continuity, and Discharge), shall be jointly developed by the provider staff ~~members~~, the participant, the LAR if available, the courts, the LMHA, LBHA, or MCO, state mental health facility, or other inpatient forensic facility. If applicable, discharge planning shall include, at a minimum, the following activities.

(1) If a participant is restored to competency and he or she is returning to the community or other provider (including jail), the provider shall:

(A) deliver counseling to prepare the participant and LAR, if any, for care after discharge or transfer;

(B) identify and recommend the clinical services and supports needed by the participant after discharge to the community or other provider, including jail;

(C) identify a community provider in collaboration with the participant and LAR to determine where the participant will be referred for any services or supports after discharge or transfer;

(D) prepare and forward to the LMHA, LBHA, MCO, or other provider (including jail) a continuing care plan signed by the participant's treating physician that includes all elements relating to discharge planning that are required by Chapter 412, Subchapter D of this title; and

(E) provide seven days of psychoactive medication if a participant is being discharged to the community.

(2) If a participant is not restored to competency and is transferring to a state mental health facility or other inpatient forensic facility, the provider shall:

(A) notify the DSHS staff member responsible for maintaining the clearinghouse waitlist within 24 hours;

(B) deliver counseling to prepare the participant and LAR, if any, for care after transfer;

(C) identify and recommend the clinical services and supports needed by the participant after transfer; and

(D) prepare and forward to the state mental health facility or other inpatient forensic facility a continuing care plan signed by the participant's treating physician that includes all elements relating to discharge planning that are required by Chapter 412, Subchapter D of this title.

(c) The psychiatrist for the provider shall conduct at least two full psychiatric evaluations of the defendant during the period the defendant receives competency restoration services in the jail. The psychiatrist must conduct one evaluation not later than the 21st day and one evaluation not later than the 55th day after the date the defendant begins to participate in the program. The psychiatrist shall submit to the court a report concerning each evaluation required under this subsection. ~~The provider shall notify the court immediately if a participant is deemed not likely to be restored to competency within the 60-day period.~~

~~(d~~ (d) The provider staff shall notify the court immediately if a participant has attained competency or is deemed not likely to attain competency within the 60-day period.

(e) If the psychiatrist for the provider determines that a participant ordered to participate in the program and charged with a felony has not been restored to competency by the end of the 55th day after the date the participant entered the program, the psychiatrist shall advise the court whether the participant is likely to restore within the next five days. If the participant is deemed:

(1) not likely to restore within the next five days, a provider staff member shall:

~~(A) add the participant's name to the DSHS staff member who maintains the clearinghouse waitlist within 24 hours of the psychiatrist's determination;~~

~~(B) within 48 hours of the psychiatrist's determination send via fax, or, send electronically to the clearinghouse all medical and legal records required by the staff member who maintains the clearinghouse waitlist; and~~

~~(C) ensure that a certificate of medical examination is provided to the court that complies with Texas Health and Safety Code, §574.011, and is consistent with the report deeming the participant not likely to restore; or~~

(2) likely to restore within the next five days, the participant may remain in the program until the 70th day.

(e) If the psychiatrist for the provider determines that a participant has not restored to competency by the 70th day, a staff member shall:

(1 (A) contact the DSHS staff member responsible for the clearinghouse waitlist to add the participant's name within 24 hours of the psychiatrist's determination;

(2 (B) send via fax or other electronic means all medical and legal records required by the staff member who maintains the clearinghouse waitlist within 48 hours of the psychiatrist's determination; and

(3 (C) ensure that the participant is transported to a state mental health facility for continued treatment within 48 hours.; or

(2) If likely to restore within the next five days, the participant may remain in the program until the 60th day.

(f) If the psychiatrist for the provider determines that a participant ordered to participate in the program and charged with a misdemeanor has not been restored to competency by the end of the 55th day after the date the participant entered the program, the psychiatrist shall advise the court whether the participant is likely to restore within the next five days. If the participant is deemed not likely to restore within the next five days:

(1) the court may order a single extension under Texas Code of Criminal Procedure, Article 46B.080 and the transfer of the defendant without unnecessary delay to the appropriate state mental health facility or residential care facility as provided by the Texas Code of Criminal Procedure, Article 46B.073(d) for the remainder of the period under the extension;

(A) provider staff shall contact the DSHS staff member responsible for the clearinghouse waitlist to add the participant's name within 24 hours of the psychiatrist's determination;

(B) provider staff shall send via fax or other electronic means all medical and legal records required by the staff member who maintains the clearinghouse waitlist within 48 hours of the psychiatrist's determination; and

(C) provider staff shall ensure that the participant is transported to a state mental health facility for continued treatment within 48 hours; or

(2) the court may proceed under Subchapter E or F of the Texas Code of Criminal Procedure, Article 46B; or

(3) the court may release the participant on bail as permitted under the Texas Code of Criminal Procedure, Chapter 17; or

(4) the court may dismiss the charges in accordance with the Texas Code of Criminal Procedure, Article 46B.010.

§416.92. Compliance with Statutes, Rules, and Other Documents.

(a) The provider shall comply with the following:

(1) Texas Code of Criminal Procedure, Chapter 46B;

(2) Texas Health and Safety Code, §Chapter 574.001;

(3) 25 Texas Administrative Code Part 1:

(A) Chapter 405, Subchapter K (relating to Deaths of Persons Served by TXMHMR Facilities or Community Mental Health and Mental Retardation Centers);

(B) Chapter 411, Subchapter N (relating to Standards for Services to Individuals with Co-occurring Psychiatric and Substance Use Disorders (COPSD));

(C) Chapter 414, Subchapter I (relating to Consent to Treatment with Psychoactive Medication--Mental Health Services);

(D) Chapter 414, Subchapter K (relating to Criminal History and Registry Clearances);

(E) Chapter 415, Subchapter A (relating to Prescribing of Psychoactive Medication);

(F) Chapter 415, Subchapter F (relating to Interventions in Mental Health Programs); and

(G) Chapter 417, Subchapter K (relating to Abuse, Neglect, and Exploitation in TDMHMR Facilities);

(4) 37 TAC Part 9 (relating to Texas Commission on Jail Standards); and

(5) Rights of Participants Receiving Jail-based Competency Restoration Services, Exhibit A, in §416.87 of this title (relating to Participant's Rights).

(b) Concerning confidentiality, the provider shall comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and other applicable federal and state laws, including, but not limited to:

(1) 42 Code of Federal Regulations (CFR) Part 2 and Part 51, Subpart D;

(2) 45 CFR Parts 160 and 164, and §1386.22;

(3) Texas Health and Safety Code, Chapter 81, Subchapter F;

(4) Texas Health and Safety Code, Chapter 241, Subchapter G;

(5) Texas Health and Safety Code, Chapters 181, 595, and 611; and §§533.009, 533.035(a), 572.004, 576.005, 576.~~0055, 576.~~007, ~~595.005(c),~~ and 614.017;

(6) Texas Government Code, Chapters 552 and 559, and §531.042;

(7) Texas Human Resources Code, Chapter 48;

(8) Texas Occupations Code, Chapter 159; and

(9) Texas Business and Commerce Code, §521.053.

§416.93. Outcome Measures.

The following measures shall be used to determine if a participant's outcomes justify continuing the program. The provider shall collect data on the following:

(1) participant outcomes:

(A) the number of participants on felony charges;

(B) the number of participants on misdemeanor charges;

(C) the average number of days for a participant charged with a felony to be restored to competency;

(D) the average number of ~~participants~~days for ~~whom an extension was sought~~a participant charged with a misdemeanor to be restored to competency;

(E) the number of participants for whom an extension was sought;

(F) the number of participants who were restored to competency;

(F

(G) the average length of time between determination of non-restorability and transfer to a state mental health facility; and

(G

(H) the percentage of participants:

(i) who are restored to competency in 7060 days or less; and

(ii) who are restored to competency and avoid re-arrest for six months following discharge to the community;

(H

(I) the number of jail inmates found IST who were screened out of or deemed inappropriate for the program and the reason why; and

(I

(J) the number of participants who were not restored and who were transferred to a state mental health facility.

(2) administrative outcomes:

(A) the costs associated with operating the program relative to an OCR program or hospitalization in a state mental health facility; and

(B) the number of reported, and, confirmed cases of abuse, neglect, and exploitation, rights violations, use of restraint and seclusion, emergency medication, injury, and deaths.