



TEXAS DEPARTMENT OF STATE HEALTH SERVICES

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To: Executive Director, Texas Council of Community MHMR Centers
Executive Directors, Local Mental Health Authorities
Superintendents, State Mental Health Facilities
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 Health and Substance Use Disorders

From: Lauren Lacefield-Lewis, Acting Director ^{L3}
Community Mental Health and Substance Abuse, Program Services

Request for Comments

New Chapter 416, Subchapter B, concerning Home and Community-based Services

Due: June 28, 2013

Purpose

The purpose of the HCBS program is to provide home and community-based services to adults with extended tenure in state mental health hospitals in lieu of their remaining long term residents of state facilities. An HCBS program could help free needed bed space to serve more individuals with acute inpatient needs.

Who is affected?

A number of adults have resided in Texas psychiatric facilities for extended periods of time, in some cases, for years. These individuals no longer require an inpatient level of treatment, but need specialized supports that are not available through existing community-based mental health and disability programs. Characteristics of this population include:

- A history of unstable housing / homelessness;

- Co-occurring physical health issues including hypertension, obesity, diabetes, high cholesterol, mobility impairment and suspected developmental disabilities;
- Cognitive issues including dementias, traumatic brain injuries, cognitive processing issues due to mental illness and complex mental health diagnoses such as schizoaffective disorder; and
- Less family support than other individuals with mental illness, in general.

Background

In September 2010, the Continuity of Care Task Force, which was charged by the department with developing recommendations for resolving barriers to discharging individuals with complex needs from state psychiatric facilities, advised that the state consider implementing an HCBS program. The task force, which included Local Mental Health Authority (LMHA) leadership, advocates, consumers, law enforcement, judges, inpatient providers and agency staff, conducted public meetings, key informant interviews, meetings with key professional groups and four public forums in various locations of the state.

The department sought and obtained funding to implement an HCBS program during the 83rd Regular Legislative Session via Article II, Rider 81 of the General Appropriations Act for the 2014-15 Biennium. The rider requires that the department implement an HCBS program for individuals with extended stay(s) in state mental health facilities. The department would operate the program, contracting for services with provider agencies, approving the individual service plans, paying claims for HCBS and performing quality assurance activities. DSHS estimates that a total of 106 individuals could be served during the biennium.

Community-based services could potentially include:

- Residential assistance (foster/companion care, supervised living, residential support services);
- Assisted living;
- Cognitive adaptation training (an evidence-based rehabilitative service that uses tools and motivational techniques to establish and refine daily living skills such as taking prescribed medications, keeping appointments, paying bills, cooking, cleaning, bathing, etc.);
- Psychosocial rehabilitation;
- Supported employment;
- Minor home modifications;
- Home delivered meals;
- Transition assistance (assistance to establish a basic household, including security deposits, essential furnishings, moving expenses, bed and bath linens);
- Adaptive aids (e.g., medication-adherence equipment, communication equipment, etc.);
- Non-medical transportation;
- Specialized behavioral therapies:
 - Cognitive behavioral therapy (an empirically supported treatment that focuses on maladaptive patterns of thinking and the beliefs that underlie such thinking); and
 - Dialectical behavior therapy (a treatment program, derived from cognitive behavioral therapy, that provides support in managing chronic crisis and stress to keep individuals in outpatient treatment settings);
- Prescription medications beyond those available through Medicaid or other insurance;

- Peer support (a service that models successful independent living behaviors, provided by certified peer specialists who are in recovery from mental illness and/or substance use disorders);
- Respite care (short term);
- Specialized substance abuse treatment services;
- Nursing;
- Occupational therapy, speech and language therapy, and physical therapy.

Services will be individualized to the evolving needs and preferences of the consumer and will be recovery-focused. The goal is to achieve the maximum level of independence and functioning possible for each individual.

For Medicaid-eligible individuals within this population, Section 1915(i) of the Social Security Act could potentially enable Texas to obtain federal matching funds for HCBS via a Medicaid State Plan Amendment (SPA), if the amendment were approved by the federal Medicaid agency. The department is working closely with HHSC to develop and obtain approval for the 1915(i) State Plan Amendment and to explore other options for obtaining federal Medicaid matching funds.

Please submit your comments via email to MHSARules@dshs.state.tx.us with the phrase “HCBS (416-A), 6-7-13, Informal Comments” in the subject line or by US mail to Janet Fletcher, Department of State Health Services, P.O. Box 149347, Mail Code 2018, Austin, TX 78714.

Call Janet Fletcher with questions or concerns at 512/206-5044. Thank you.

§416.51. Purpose and Application.

(a) Purpose. The purpose of this subchapter is to implement a program that provides Home and Community-based Services (HCBS) to individuals with severe and persistent mental illness who have extended tenure in state mental health facilities (SMHF).

(b) Application. The subchapter applies to:

- (1) persons and entities that have an agreement to provide the HCBS program services, as described in this subchapter;
- (2) entities who have administrative responsibilities under the HCBS program;
- (3) individuals who are applicants for or recipients of services under the HCBS program.

416.52. Definitions.

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

(1) **Activities of daily living (ADL)**— These actions include (but are not limited to) performing personal hygiene activities, dressing, meal planning and preparation, managing finances, shopping for food, clothing, and other essential items, performing essential household chores, communicating by phone or other media, navigating public transportation and participating in the community.

(2) **Adult**--An individual who is 18 years of age or older

(3) **Department**--Department of State Health Services.

(4) **Individualized assessment**--A set of standardized assessment measures used by the department to determine level of need as set forth in the HCBS program.

(5) **Individual Plan of Care (IPC)** – a written, individualized plan, developed in consultation with the individual and LAR, if applicable, which identifies the necessary home and community-based services to be provided to the individual

(6) **Legally authorized representative (LAR)**--A person authorized by law to act on behalf of the client with regard to a matter described in this subchapter, including, but not limited to, guardian, or power of attorney.

(7) **Provider**--Any person or legal entity that has an agreement with the single state Medicaid agency and/or the department to provide the HCBS program services.

(8) **Serious mental illness (SMI)**—A diagnoses of bipolar disorder, schizophrenia, or major depression or a major mental disorder coupled with serious functional impairment as identified by the independent evaluation.

§416.53. Eligibility Criteria.

To participate in the HCBS program, the individual must be an adult and meet the needs-based eligibility criteria for HCBS services as determined by an independent evaluation conducted by a designee approved by the department.

§416.54. Co-payments.

The receipt of certain HCBS program services may be dependent upon the client or LAR's ability to make a co-payment.

§416.55. Assessment.

Each individual determined eligible to participate in the HCBS program must receive an assessment as defined by the department, based on the needs of the individual. The assessment will be the basis for the individual plan of care (IPC). The assessor must consult with the individual, service providers and, where appropriate, the individual's LAR, family, spouse, or other responsible individuals to conduct the assessment and develop the IPC. The independent assessment must:

- (1) be conducted face-to-face;
- (2) take into account the ability of the individual to perform two or more activities of daily living; and
- (3) assess the individual's need for HCBS.

§416.56. Individual Plan of Care.

(a) The IPC must be reviewed by a designee approved by the department before forwarding to the department for approval. The IPC must be approved by the department before a provider may begin delivering HCBS program services. To be approved, the IPC must:

- (1) promote the individual's inclusion into the community;
- (2) protect the individual's health and welfare in the community;
- (3) supplement, rather than replace, the individual's natural support systems and resources;
- (4) be designed to prevent or reduce the likelihood of the individual's admission into an inpatient psychiatric facility;
- (5) be the most appropriate type and amount of services to meet the individual's needs; and
- (6) prevent the provision of unnecessary or inappropriate care.

(b) The individual plan of care must be reviewed by a designee approved by the department and submitted to the department for approval as part of the annual eligibility determination required under §416.53 of this title (relating to Eligibility Criteria). Any recommended changes to the assessment outside the annual review process must be approved by the department.

(c) The designee approved by the department must submit the following to the department with the IPC:

(1) an assessment of the individual that identifies client needs and supports the HCBS program services included in the IPC; and

(2) documentation that non-HCBS program support systems and resources are unavailable or are insufficient to meet the goals specified in the IPC.

(d) The department may conduct utilization review of an IPC and supporting documentation at any time to determine if the services specified in the IPC meet the requirements described in subsection (a) of this section. If the department determines that one or more of the services specified in the IPC do not meet the requirements described in subsection (a) of this section, the department may deny, reduce, or terminate the service, modify the IPC, and send written notification to the individual, LAR, and the provider.

(e) In addition to the utilization review conducted in accordance with subsection (d) of this section, the department may conduct utilization review of the provider and the provision of HCBS program services at any time.

(f) The cost of the IPC must be reasonable as determined by the single state Medicaid agency and/or the department.

§416.57. Provider Qualifications and Contracting.

In order to provide HCBS program services to Medicaid-eligible individuals, a provider must be enrolled as an approved Medicaid provider in Texas and must enter into a contract with the department and the single state Medicaid agency. In order to provide HCBS program services to non-Medicaid-eligible individuals, a provider must be approved by, and enter into a contract with, the department. A prospective provider may request and submit an application to provide HCBS program services to the department at any time. The application sets forth the qualifications to be a provider.

§416.58. Fair Hearings and Appeal Processes.

(a) Right of Medicaid-eligible individual to request a fair hearing. Any Medicaid-eligible individual whose request for eligibility in the HCBS program is denied or is not acted upon with reasonable promptness, or whose services have been terminated, suspended, or reduced by the department, is entitled to a fair hearing in accordance with Texas Administrative Code Title 1, Part 15, Chapter 357, Subchapter A (relating to Uniform Fair Hearing Rules).

(b) Right of non-Medicaid-eligible individual to request an appeal. Any individual who has not applied for or is not eligible for Medicaid, whose request for eligibility for HCBS services is denied or is not acted upon with reasonable promptness, or whose services have been terminated, suspended, or reduced by a provider, is entitled to notification and right of appeal in accordance with the department's rules concerning such matters for non-Medicaid-eligible individuals.

**HOME AND COMMUNITY-BASED SERVICES (HCBS) – ADULT MENTAL HEALTH
CHAPTER 416, SUBCHAPTER B**