

Title 25. Health Services

Part 1. Department of State Health Services

Chapter 415. Provider Clinical Responsibilities--Mental Health Services

Subchapter J. Preadmission Screening and Resident Review (PASARR)--Mental Health Services

Repeals §§415.451 - 415.458

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §§415.451 - 415.458, concerning Preadmission Screening and Resident Review (PASARR).

BACKGROUND AND PURPOSE

In accordance with 42 Code of Federal Regulations Part 483, Subpart C, concerning Preadmission Screening and Resident Review (PASRR), the amended section sets forth the requirements for state mental health facilities (SMHFs) and local mental health authorities (LMHAs) to perform PASRR screenings and evaluations of patients who are being considered for nursing home placement upon discharge.

The purpose of PASRR is to ensure that placement of the patient in a nursing facility is necessary, to identify alternate placement options when applicable, and to identify specialized services that may benefit the person with a diagnosis of mental illness, intellectual disability, or developmental disability. To promote a clear, consistent implementation of the PASRR Program, the Department of Aging and Disability Services (DADS), who is designated with the responsibility for administering the PASRR Program in Texas, is promulgating PASRR Program rules to which LMHAs and SMHFs must comply. The department is amending an applicable rule in Chapter 412, Subchapter D, §412.202, concerning admission, continuity, and discharge to require that LMHAs and SMHFs comply with federal regulations and the rules in 40 TAC Chapter 17, concerning substantially the same matter. DADS' new PASRR rules, which are being published in the same issue of the *Texas Register* as the amendment and repeals in this preamble, may be found at 40 TAC Chapter 17, and the existing DADS' PASRR rule at 40 TAC Chapter 19 is being repealed.

The department rules in Chapter 415, Subchapter J, concerning PASARR are being repealed because they are no longer necessary.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 415.451 - 415.458 have been reviewed and are no longer necessary and are being repealed.

SECTION-BY-SECTION SUMMARY

Sections 415.451 - 415.458 concerning PASARR are being repealed because the PASRR Program requirements will be addressed in new DADS rules in 40 TAC Chapter 17.

## FISCAL NOTE

Mike Maples, Assistant Commissioner, 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 the state or local governments as a result of enforcing and administering the sections as proposed.

## SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Maples 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 have direct application only to local mental health authorities and state mental health facilities, neither of which meet the definition of small or micro-business under the Government Code, §2006.001. Therefore, an economic impact statement and regulatory flexibility analysis for small businesses are not required.

## ECONOMIC COST TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

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

## PUBLIC BENEFIT

Mr. Maples has also 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 that individuals are appropriately discharged to the least restrictive setting that meets their needs and if a nursing facility is determined the least restrictive setting, ensure that individuals receive appropriate specialized services to address their diagnosis of mental illness, intellectual disability, or developmental disability.

## 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 as 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 proposal does 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, does not constitute a taking under Government Code, §2007.043.

#### PUBLIC COMMENT

Comments on the proposal may be submitted to Janet Fletcher, Department of State Health Service, P.O. Box 149347, Austin, TX 78714-9347, Mail Code 2018/552 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 repeals are authorized by Government Code, §531.0055(e), and Health and Safety Code, Chapter 35 and §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 repeals affect Government Code, Chapter 531, and Health and Safety Code, Chapters 35 and 1001. The review of the rules implements Government Code, §2001.039.

Sections for repeal.

§415.451. Purpose.

§415.452. Application.

§415.453. Definitions.

§415.454. PASARR Determination Process.

§415.455. Provision of Specialized Services and Alternate Placement Services.

§415.456. Assistance for Applicants Denied Nursing Facility Admission.

§415.457. References.

§415.458. Distribution.