



## 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  
Executive Director, Disability Rights Texas  
Executive Director, North Texas Behavioral Health Authority  
Chief Executive Officer, ValueOptions, Incorporated  
Superintendents, State Hospitals  
Members of the Joint Committee on Access and Forensic Services  
Chairman, Texas Hospital Association

From: Trina Ita, Director, Program Services Section II *SPH*  
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### **Request for Informal Comment On:**

Amendment, 25 Texas Administrative Code, Chapter 412, Subchapter D,  
governing Mental Health Services—Admission, Continuity, and Discharge  
**Informal Comments Due: July 15, 2016**

The proposed rules governing requirements for the provision of mental health services specific to admission, continuity, and discharge are anticipated to be published for formal comment October 2016 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 412 D." Comments should include the citation for the section that you are referencing, suggestions for alternative language, and a rationale for the alternative language. Contact Vicky Hall with questions or concerns by email at [vicky.hall@dshs.state.tx.us](mailto:vicky.hall@dshs.state.tx.us) or by phone at 512-838-4349.

### **BACKGROUND AND PURPOSE**

The purpose of the amendments to 25 Texas Administrative Code (TAC), Chapter 412, Subchapter D, are to outline requirements for admission, continuity, and discharge practices for

individuals in the community in need of emergency or long-term mental health services, as well as, those that require inpatient treatment in State Mental Health Facilities (SMHFs), or, department-contracted beds at private psychiatric facilities.

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 §412.151 - §412.231 have been reviewed and the department has determined that revisions to the rules are necessary as outlined in this preamble.

Throughout the subchapter, the terms "Texas Department of Mental Health and Mental Retardation (TDMHMR)" and "Texas Department of Health (TDH)" are replaced with "Department of State Health Services (DSHS);" the term "Texas Department of Protective and Regulatory Services" is replaced with "Department of Family and Protective Services (DFPS);" the term "Board of Nurse Examiners for the State of Texas" is replaced with the term "Texas Board of Nursing;" "mental retardation" is replaced with "intellectual disability or related condition;" and references to "Advocacy, Inc." are replaced with "Disability Rights Texas." References to exhibits in this subchapter are deleted because they are outdated. Each reference is replaced with language explaining the updated content within the rule language as it relates to the exhibit it replaces.

## SECTION-BY-SECTION SUMMARY

### **Division I: General Provisions**

Section 412.151 describes the purpose of the subchapter which is to reduce or eliminate barriers to accessing care and to transitioning between and among system components for individuals receiving Department of State Health Services (DSHS) Mental Health and Substance Abuse (MHSA) Division services by ensuring: clinically appropriate treatment based on level of acuity and needs; timely access to evaluation and treatment services in the least restrictive, most appropriate setting of care; and uninterrupted services during transition between service types or providers.

Section 412.152 sets forth the subchapter's application to providers of mental health services to include admission, continuity, and discharge practices. The subchapter is applicable to the following: State Mental Health Facilities (SMHFs), private contracted psychiatric beds, Local Mental Health Authorities (LMHA/LBHAs) whose local service area is not served by a Managed Care Organization (MCO), an LMHA/LBHA whose local service area is served by an MCO, to the extent compliance with one or more provisions of this subchapter is required in the LMHA/LBHA's contract with DSHS, and an MCO, to the extent compliance with one or more provisions of this subchapter is required in the MCO's contract with DSHS. New language has been added to reflect Application and Responsibility for Compliance that includes private contracted psychiatric beds (PPB). Local behavioral health authority (LBHA) has been added to reflect the changes in NorthSTAR.

Section 412.153 sets forth the definitions that are used in the subchapter. Revises, adds, and deletes definitions that are used in this subchapter. Definitions that are proposed for readoption include the terms "Absence," "absence for trial placement" "Assisted living facility," "Clinical Management for Behavioral Health Services," "Community Resource Coordination Group," "Continuity of services," "Crisis," "Crisis services," "Day," "Discharge," "Discharged unexpectedly," "Emergency medical condition," "Family violence," "Inpatient services,"

“Involuntary patient,” “Local service area,” “Nursing facility,” “Patient,” “Personal care services,” “Prescriber of medication,” “Qualified mental health professional—community services,” “State mental health facility,” “Substance use disorder,” “Transfer,” “Treating physician,” and “Voluntary patient.”

Revised or new definitions for terms that are included are “advanced practice nurse”, , “adolescent”, “alternate provider,” “assessment”, “capacity”, “co-occurring psychiatric and substance use disorder,” “crisis stabilization unit,” “designated LIDDA,” “designated LMHA/LBHA,” “Intellectual developmental disability,” “intake process”, “legally authorized representative,” “Local intellectual developmental disability authority,” “local behavioral health authority,” “local mental health authority,” “LMHA/LBHA-network provider,” “LMHA/LBHA services,” “LMHA/LBHA liaison staff,” “LMHA/LBHA designated staff member,” “Managed care organization,” “Mental illness,” “Mental health priority population,” “Minor,” “ Non third-party payor,” “Ombudsman,” “Other inpatient provider,” “Permanent residence,” “Physician assistant,” “Private contracted psychiatric beds,” “Screening,” “Special needs offender,” “State-supported living center,” “Special needs offenders with serious mental illnesses,” and “Uniform assessment.”

“Assessment professional”, “Client Assignment and Registration System,” (CARE), “designated MRA”, “priority population”, “state mental retardation facility (SMRF)” are not being proposed and have been deleted.

Section 412.154 sets forth the requirements for utilization management agreements between SMHFs and LMHA/LBHAs. Language for Waco Center for Youth has been deleted.

Section 412.155 (a) and (b) is an added section and sets forth processes for non third-party payor notifications and appeals for LMHA/LBHAs and additionally describes the complaint process for a SMHF. Describes the LMHA/LBHA process, notification and timeframes for such appeal. The process described in this section provides notification and appeal processes for individuals who are non-Medicaid eligible.

## **Division II: Screening and Assessment for Crisis Services and Admission to LMHA/LBHA Services--LMHA/LBHA Responsibilities**

Section 412.161 sets forth the requirements for screening and assessment into crisis services and long-term mental health services at the LMHA/LBHAs. New language has been added to reflect the LMHA/LBHA responsibilities and the approved assessment tool approved by the department to determine eligibility.

Section 412.162 sets forth the requirements for determining county of residence for individuals seeking admission into LMHA/LBHA services. Added language that the LMHA/LBHA must initiate or continue providing clinically necessary services, including discharge planning, during the dispute resolution process.

Section 412.163 sets forth the requirements for determining the most appropriate and available treatment alternative to include outpatient and inpatient mental health services. Broadens the crisis services alternatives offered in the community, requires the LMHA/LBHA to assign a liaison staff person when using an alternate provider of inpatient services (PPB) upon admission to the facility.

**Division III: Admission to SMHFs and Other Inpatient Providers--SMHF and Other Inpatient Provider Responsibilities** Division III title has been modified to reflect other inpatient provider responsibilities

Section 412.171 sets forth general admission criteria for SMHFs and other inpatient providers. No recommended changes

Section 412.172 sets forth admission criteria for maximum security units. The title North Texas State Hospital Vernon Campus has been deleted.

Section 412.173 sets forth admission criteria for an adolescent forensic unit. The title North Texas State Hospital Vernon Campus has been deleted.

Section 412.174 sets forth admission criteria for Kerrville State Hospital. This section has been added to reflect the admission pursuant to TCCP, Chapter 46B or Chapter 46C in accordance with Chapter 415, Subchapter G of this title relating to determination of manifest dangerousness.

Section 412.175 sets forth admission criteria for Waco Center for Youth. No recommended changes

Section 412.176 sets forth the requirements for voluntary admission to SMHFs or other inpatient contracted providers. Section title revised to reflect the LMHA/LBHA responsibilities to PPB. (1) (A) (ii) language "and has not been married" has been removed to accurately reflect the language in SB 718. (j) Periodic evaluation time frame for continued need of voluntary inpatient treatment by a physician has been changed from every three weeks to every three months in accordance with THSC §572.003

Section 412.177 sets forth the requirements for admission to SMHFs or other inpatient contracted providers under emergency detention. (2) (e) Intake process shall occur as soon as possible, but not later than 12 hours (changed from 24 hours) after a patient is admitted for emergency detention according to §414.176 (f) of this title (relating to voluntary admission).

Section 412.178 sets forth the requirements for admission to SMHFs or other inpatient contracted providers under order of protective custody or court-ordered inpatient mental health services. (b) Order for admission has been modified to reflect the physician designee, APRN with delegated authority or PA with delegated authority to issue and sign a written order admitting the person according to §414.176 (g) of this title (relating to voluntary admission).

Section 412.179 sets forth admission procedure requirements for SMHFs or other inpatient contracted providers. No recommended changes

Section 412.180 sets forth requirements for voluntary treatment following involuntary admission for SMHFs or other inpatient contracted providers. (2) (B) specific to the patients treating physician will determine the patient has capacity to consent as set forth in § 412.176 of this title relating to voluntary admissions to SMHF or PPB

**Division IV: Transfers and Changing LMHA/LBHAs**

Section 412.191 sets forth requirements for transferring clients from one SMHF to another SMHF. The language PPB has been added to reflect the LMHA/LBHA responsibilities for transfers.

Section 412.192 sets forth requirements for transferring clients between a SMHF and a State Supported Living Center. Section title has been updated to reflect the new terminology for state supported living centers.

Section 412.193 sets forth requirements for transferring clients between a SMHF and an out-of-state institution. No recommended changes

Section 412.194 sets forth requirements for transferring clients between a SMHF and another institution in Texas. No recommended changes

Section 412.195 sets forth requirements and processes for changing the LMHA/LBHA responsible for the provision of mental health services. The following language was added: 1 (a)(B) Screening assessment in accordance with §412.322 of this title relating to provider responsibilities for treatment planning and service authorization shall authorize an initial 180 days for adults and 90 days for children, transitioning and receiving ongoing care including the provision of medications. 2 (3) and (4) have been added specific to denial and appeal processes. Paragraph (4) Appeals and appeal decision language has been deleted as it is addressed in §412.55 of this title.

**Division V: Discharge and Absence Trial Placement from a SMHF or Contracted Private Psychiatric Beds**

Division title has been modified to reflect the term PPB.

Section 412.201 sets forth the requirements for discharge planning at a SMHF or contracted private psychiatric beds. Language has been added to reflect the discharge responsibilities of the LMHA/LBHA with contracted private psychiatric beds. Language has been added to (a) (6) to reflect that the LMHA/LBHA is responsible for identifying the community resources to be offered to the patient. If community placement is a nursing facility the nursing facility will participate in the first interdisciplinary team meeting. (7) (vi) final diagnosis is based on the current addition of the diagnostic statistical manual of mental disorders (DSM) and approved by the department. (9) Language has been added specific to processes when there is a disagreement between the LMHA/LBHA and the hospital treatment team. (10) language added to address individuals committed pursuant to TCCP, 46C or 46.03 and the responsibilities of the SMHF.

Section 412.202 sets forth special considerations for populations of individuals admitted to SMHFs such as those admitted three or more times in a 180-day period, those eligible for Preadmission Screening and Resident Review, those on absence for trial placement, those appropriate for assisted living post discharge, those eligible for Home and Community Based Services-Adult Mental Health Recovery, and special needs offenders. Paragraph (4) and subparagraphs (A)-(C) related to ATP have been deleted and replaced with (b) Preadmission screening and evaluation (PASRR) language has been added as described in 42 code of federal regulations, part 483, subpart C. (d) (1) language added specific to referrals to a Crisis stabilization Unit (CSU) in that the facility must be licensed. (g) Home and Community Based services-Adult mental health (HCBS-AMH) language has been added consistent with the provider manual. (i) Special Needs offenders, language has been added to reflect the processes and responsibilities of the LMHA/LBHA when an SNO is released afterhours from state jail or

prison. (3) language has been modified specific to the SMHF notifying Texas Correctional office on Offenders with Medical or Mental Impairments (TCOOMMI) prior to the discharge of an individual known to be on parole.

Section 412.203 sets forth the requirements for the discharge of voluntary patients from a SMHF (a) language added specific to the patient no longer benefitting from inpatient services as required by §412.201 of this title (relating to discharge planning)

Section 412.204 sets forth the requirements for the discharge of involuntary patients from a SMHF. (c) (2) (d) Language added specifically to address the discharge packet of an individual committed under Texas criminal codes to the jail and the LMHA/LBHA.

Section 412.205 sets forth the requirements for the discharge of minors from the Waco Center for Youth. New Section and language added specific to the responsibilities of Waco Center for Youth and the requirement of the coordination of a CRCG with the LMHA/LBHA

Section 412.206 sets forth the requirements for absences from a SMHF. No recommended changes

Section 412.207 sets forth the requirements for absence for trial placement from a SMHF. No recommended changes

Section 412.208 sets forth the procedures that must be enacted upon discharge or absence for trial placement from a SMHF. (c) (1) language added for the SMHF to make reasonable effort to contact the patient's family of discharge if the patients grants this permission. (c)(2) Language has been deleted specific to individuals younger than 16 years of age and is or has been married per SB 718.

Section 412.209 sets forth the requirements for contact and implementation of a continuing care plan post discharge and absence for trial placement from a SMHF. (C) Language added specific to provider responsibilities for treatment planning and service authorization in accordance with §412.322 of this title.

#### **Division VI: Discharge from LMHA/LBHA Services**

Section 412.221 sets forth the requirements for discharge from LMHA/LBHA services. Language added specific to the LMHA/LBHA responsibilities upon discharge regardless of the reasons for discharge and the authorization of transitional service package for 90 days.

#### **Division VII: Training**

Section 412.231 sets forth assessment and intake training requirements at a SMHF. Language added specific to the requirements of training at a SMHF specific to assessment and intake.