

TITLE 25 HEALTH SERVICES

PART 1 DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 441 GENERAL PROVISIONS SUBCHAPTER A DEFINITIONS

§441.101 Definitions

The following words and terms, when used in 40 TAC chs. 141, 142, 144, 147, 148, 150, and 153 of this title shall have the following meanings, unless the context clearly indicates otherwise:

(1) Abuse--An intentional, knowing, or reckless act or omission by provider personnel, a counselor, applicant for counselor licensure, or counselor intern that causes or may cause death, emotional harm or physical injury to a participant or client. Abuse includes without limitation the following:

(A) any sexual activity between provider personnel, a counselor, applicant for counselor licensure, or counselor intern and a participant or client;

(B) corporal punishment;

(C) nutritional deprivation or sleep deprivation;

(D) efforts to cause fear;

(E) the use of any form of communication to threaten, curse, shame, or degrade a participant or client;

(F) restraint that does not conform with chapter 148 of this title (relating to Standard of Care);

(G) coercive or restrictive actions taken in response to a participant or client's request for discharge or refusal of medication or treatment that are illegal or not justified by the participant or client's condition; and

(H) any other act or omission classified as abuse by Texas law, including but not limited to, TEX. FAMILY CODE ANN. §261.001 (Vernon 1996) and TEX. HUM. RES. CODE ANN. §48.002 (Vernon Supp. 2004).

(2) Administrative Discharge--A discharge report processed by the Commission for a client whose last admission date and/or last billing end date exceeds 50 days.

(3) Administrative Follow-up--A report processed by the Commission if 90 days for non-detoxification clients or 40 days for detoxification clients have elapsed from the client's last discharge date and the client has not been readmitted to the same provider within 60 days (non-detoxification clients) or ten days (detoxification clients).

(4) Administrative Hearing--An appeals hearing conducted by the State Office of Administrative Hearings (SOAH).

(5) Administrative Law Judge (ALJ)--An individual appointed by the chief administrative law judge of SOAH under TEX. GOV'T CODE ANN. §2003.041 (Vernon 2004) to preside over a contested case proceeding.

(6) Administrative Procedure Act (APA)--TEX. GOV'T CODE ANN. ch. 2001 (Vernon 2000 & Supp. 2004), as amended.

(7) Adolescent--An individual 13 through 17 years of age whose disabilities of minority have not been removed by marriage or judicial decree.

(8) Adult--An individual 18 years of age or older, or an individual under the age of 18 whose disabilities of minority have been removed by marriage or judicial decree.

(9) Agency--TCADA.

(10) Alternative Activities--A strategy that gives participants and their families the opportunity to take part in educational, cultural, recreational, skill-building, and work-oriented substance-free activities. Activities under this strategy are designed to encourage and foster bonding with peers, family and community.

(11) Applicant--A person who has submitted an application for an initial license to provide chemical dependency counseling or treatment, renewal of a license, or certification or approval for provision of an offender education program. For funding purposes, an applicant is a person who has submitted a proposal or application to provide substance abuse services in response to a solicitation issued by the Commission.

(12) Assessment--An ongoing process through which the counselor collaborates with the client and others to gather and interpret information necessary for developing and revising a treatment plan and evaluating client progress toward achievement of goals identified in the treatment plan, resulting in comprehensive identification of the client's strengths, weaknesses, and problems/needs.

(13) ATOD--Alcohol, tobacco and other drugs collectively.

(14) Authorized Representative--An attorney authorized to practice law in the State of Texas or, if authorized by applicable law, a person designated in writing by a party to represent the party.

(15) Behavioral Health Integrated Provider System (BHIPS)--The Commission's Internet-based computer system for contracted service providers that offers contractors the tools to meet State and Federal requirements for reporting, including capturing required client and billing data.

(16) Block Grant--Substance Abuse Prevention and Treatment Block Grant, 42 U.S.C. 300x-21, et seq.

(17) Brief Interventions--Practices designed to initiate a resolution of a problem and motivate an individual to begin to do something about his or her substance abuse. Brief interventions are described in "Brief Interventions and Brief Therapies for Substance Abuse" (Treatment Improvement Protocol 34), published by the United States Department of Health and Human Services Center for Substance Abuse Treatment (CSAT). Brief interventions are short counseling sessions that can be as short as five minutes or long as an hour for "at risk" or "harmful" users that are not chemically dependent. These interventions are for the purpose of goal setting within safe limits, giving self care instruction and referral to other sources that are appropriate. For those clients that are dependent or for whom the position along the stage of change spectrum of alcohol or drug problems is uncertain, the brief intervention is a negotiation process to seek further assessment and referral to an appropriate level of care. The brief intervention is summarized by the acronym FRAMES: feedback, responsibility, advice, menu of strategies, empathy and self-efficacy.

(18) Brief Therapy--A systematic, focused process that relies on client engagement, and rapid implementation of change strategies. Brief therapies are described in "Brief Interventions and Brief Therapies for Substance Abuse" (Treatment Improvement Protocol 34), published by CSAT.

(19) Business Day--A weekday on which State offices are open.

(20) Center for Substance Abuse Prevention (CSAP) Prevention Strategies--

(A) Community-Based Process--A strategy designed to enhance the ability of the community to provide effective prevention, intervention, and treatment services for ATOD problems and HIV infection through community mobilization and empowerment.

Activities include multi-agency coordination and collaboration, networking, and development of written agreements among community organizations.

(B) Environmental and Social Policy--A strategy designed to establish or change written and unwritten community standards, codes, and attitudes, thereby influencing incidence and prevalence of substance abuse in the general population. It includes activities that center on legal and regulatory initiatives and those that relate to the service and action-oriented initiatives.

(C) Information Dissemination--A strategy that provides awareness and knowledge of ATOD problems and/or HIV infection and their harmful effects on individuals, families, and communities. It also gives the general population information about available programs and services. Information dissemination is characterized by one-way communication from the source to the audience, with limited contact between the two. Information is disseminated through written communications and/or in-person community presentations.

(D) Prevention Education and Skills Training--A curriculum-based strategy designed to develop decision-making, problem solving, and other life skills. It also provides accurate information about the harmful effects of ATOD use, abuse and addiction pertinent to the needs of the target population. The basis of activities under this strategy is interaction between the educator/facilitator and the participants. These activities are aimed to increase protective factors, foster resiliency, decrease risk factors and affect critical life and social skills relative to substance abuse and/or HIV risk of the participant and/or family members.

(E) Problem Identification and Referral--A strategy that provides services designed to ensure access to appropriate levels and types of services needed by youth or adult participants.

(F) Alternative Activities--A strategy that gives participants and their families the opportunity to take part in educational, cultural, recreational, skill-building, and work-oriented substance-free activities. Activities under this strategy are designed to encourage and foster bonding with peers, family and community.

(21) Chemical Dependency--In addition to the statutory provisions defining chemical dependency as abuse of, dependence on, or addiction to alcohol or a controlled substance (as defined by TEX. HEALTH & SAFETY CODE ANN. ch. 481 (Vernon 2001) and related statutory provisions in TEX. HEALTH & SAFETY CODE ANN. chs. 461 and 464 (Vernon 2001 & Supp. 2004), the Commission also defines chemical dependency as substance-related disorders as that term is used in the most recent published edition of the Diagnostic and Statistical Manual of Mental Disorders (See DSM).

(22) Chemical Dependency Counseling--See Practice of Chemical Dependency Counseling.

(23) Chemical Dependency Counselor--See Licensed Chemical Dependency Counselor (LCDC).

(24) Chemical Dependency Counselor Intern--A person registered with the Commission who is pursuing a course of training in chemical dependency counseling at a registered clinical training institution.

(25) Chemical Dependency Treatment--A planned, structured, and organized chemical dependency program designed to initiate and promote a person's chemical-free status or to maintain the person free of illegal drugs. It includes, but is not limited to, the application of planned procedures to identify and change patterns of behavior related to or resulting from substance-related disorders that are maladaptive, destructive, or injurious to health, or to restore appropriate levels of physical, psychological, or social functioning.

(26) Child--For purposes of reporting abuse and neglect, a child is an individual under the age of 18 whose disabilities of minority have not been removed by marriage or judicial decree. For all other purposes in these rules, child shall mean an individual under the age of 13.

(27) Child Abuse and Neglect--Any act or omission that constitutes abuse or neglect of a child under the age of 18 by a person responsible for a child's care, custody, or welfare as defined in the TEX. FAM. CODE ANN. §261.001 (Vernon 1996).

(28) Client--An individual who receives or has received services, including admission authorization or assessment or referral, from a chemical dependency treatment provider, counselor, counselor intern, or applicant for licensure as a counselor, or from an organization where the counselor, intern or applicant is working on a paid or voluntary basis.

(29) Client Data Systems (CDS) Forms--CDS forms consist of the admission/transfer admission report, discharge report, and follow-up report.

(30) Clinical Evaluation--A systematic approach to screening and assessment.

(31) Clinical Training Institution (CTI)--An individual or legal entity registered with the Commission to supervise a counselor intern.

(32) Cognizant Agency--The Federal or State agency responsible for reviewing, negotiating, and approving an organization's indirect cost rate. TCADA has not been designated as a cognizant agency.

(33) Commission--Texas Commission on Alcohol and Drug Abuse and its branches, divisions, departments, and employees.

(34) Consenter--The individual legally responsible for giving informed consent for a client. Unless otherwise provided by law, a legally competent adult is his or her own consenter and the consenter for an adolescent or child is the parent, guardian, or conservator. Texas law allows a person 16 or 17 years of age to consent to his or her own treatment.

(35) Contested Case--A proceeding, including but not restricted to licensing, in which the legal rights, duties, or privileges of a party are to be determined by the Commission after an opportunity for adjudicative hearing.

(36) Contractor--Person funded by the Commission to provide substance abuse services unless otherwise specified.

(37) Cost Reimbursement--A payment mechanism used for prevention and intervention services in which funds are provided to carry out approved activities based on an approved budget.

(38) Counseling--A collaborative process that facilitates the client's progress toward mutually determined treatment goals and objectives. Counseling includes methods that are sensitive to individual client characteristics and to the influence of significant others, as well as the client's cultural and social context. Competence in counseling is built upon the understanding of, appreciation of, and ability to appropriately use the modalities of care for individuals, groups, families, couples, and significant others.

(39) Counselor--A qualified credentialed counselor, graduate or counselor intern working towards licensure that would qualify them to be a qualified credentialed counselor (QCC).

(40) Crisis Intervention--Actions designed to intervene in situations which require immediate attention to avert potential harm to self or others. Services include face-to-face individual, family, or group interviews/interactions and/or telephone contacts to identify needs.

- (41) Days--Calendar days, unless otherwise specified.
- (42) Digital Authentication Key--Identification data (that includes user identification and a time stamp) that is digitally stamped on electronic documents identifying the specific user that created the document. The identification data shall be controlled by a unique user ID and an encrypted password.
- (43) Direct Care Staff--Staff responsible for providing treatment, care, supervision, or other direct client services that involve face-to-face contact with a client.
- (44) Discharge--Formal, documented termination of services.
- (45) Document (noun)--A written or electronic record.
- (46) Diagnostic and Statistical Manual of Mental Disorders (DSM)--The Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association. The current version is the Fourth Edition, Text Revision (DSM-IV-TR). Any reference to DSM shall constitute a reference to the most recent edition then published.
- (47) Driving While Intoxicated (DWI)--The offense of driving while intoxicated as defined in the TEX. PEN. CODE ANN. ch. 49 (Vernon 2003).
- (48) Elderly--A person 65 years of age or older.
- (49) Emergency Behavioral Health Condition--Any condition, without regard to the nature or cause of the condition, which in the opinion of a prudent lay person possessing an average knowledge of medicine and health, requires immediate intervention and/or medical attention without which an individual would present a danger to themselves or others or which renders individuals incapable of controlling, knowing or understanding the consequences of their actions.
- (50) Encryption--A method that allows secure transmittal of information along the Internet by encoding the transmitted data using a mathematical formula that scrambles the data. Without a corresponding "decoder," the transmission would be unusable.
- (51) Executive Director--The chief administrative officer or designee of the Texas Commission on Alcohol and Drug Abuse.
- (52) Exploitation--The illegal or improper use of a client or participant, or their resources, for monetary or personal benefit, profit, or gain by provider personnel, a staff member, volunteer, or other individual working under the auspices of a provider or by a counselor, counselor intern or applicant for counselor licensure or any other act or omission classified as exploitation by Texas law including, but not limited to, TEX. FAM. CODE §261.001 (Vernon 1996) and TEX. HUM. RES. CODE §48.002 (Vernon Supp. 2004).
- (53) Facility--See Treatment Facility.
- (54) Family--The children, parents, brothers, sisters, other relatives, foster parents, guardians, and/or significant others who perform the roles and functions of family members in the lives of clients or participants.
- (55) Fiscal Year--The Commission's fiscal year, September 1-August 31, unless otherwise specified.
- (56) Gender Specific--Therapy, education and/or program components that are designed to address emotional, developmental, rehabilitative, health and/or other issues that are specific to the gender of the client.
- (57) Graduate--An individual who has successfully completed the 270 hours of education, 300 hour practicum, and 4,000 hours of supervised work experience and who is still registered with the Commission as a counselor intern.
- (58) Health Insurance Portability and Accountability Act of 1996 (HIPAA)--Pub. L. No. 104-191, 45 C.F.R. pts. 160 and 164.
- (59) Human Immunodeficiency Virus (HIV)--The virus that causes Acquired Immune Deficiency Syndrome (AIDS). Infection is determined through a testing and counseling process overseen by the Texas Department of Health (TDH). Being infected with HIV is not necessarily equated with having a diagnosis of AIDS, which can only be diagnosed by a physician using criteria established by the National Centers for Disease Control and Prevention.
- (60) HIV Antibody Counseling and Testing--A structured counseling session performed by Prevention Counseling and Partner Elicitation (PCPE) counselors registered with TDH. It promotes risk reduction behavior for those at risk of infection with HIV and other sexually transmitted diseases and offers testing for HIV infection.
- (61) HIV Early Intervention Services--
- (A) appropriate pretest counseling for HIV and AIDS;
 - (B) testing individuals with respect to such disease, including tests to confirm the presence of the disease, tests to diagnose the extent of the deficiency in the immune system, and tests to provide information on appropriate therapeutic measures for preventing and treating the deterioration of the immune system and for preventing and treating conditions arising from the disease;
 - (C) appropriate post-test counseling; and
 - (D) providing the therapeutic measures described in subparagraph (B) of this paragraph.
- (62) Indicated Population--The population who may already be experimenting with drugs or who exhibit other problem-related behaviors.
- (63) Individual Service Day--A day on which a specific client receives services.
- (64) Intake--The process for gathering information about a prospective client and giving a prospective client information about treatment and services.
- (65) Intervention--The interruption of the onset or progression of chemical dependency in the early stages. Intervention strategies target indicated populations.
- (66) Intervention Counseling--Interactions to assist individuals, families, and groups to identify, understand, and resolve issues and problems related to ATOD use within a specific number of sessions or within a certain time frame. It is intended to intervene in problem situations and high-risk behaviors, which, if not addressed, may escalate to substance abuse or cause communicable disease. Such interactions should not include determining whether a person is in need of treatment. The use of the term "counseling" does not carry the same meaning as defined in paragraph (38) of this section.
- (67) Key Performance Measures--Measures that reflect the services that are critical to the program design and intended outcomes of the program. Key performance measures are specified for all Commission-funded programs.
- (68) Knowledge, Skills, and Attitudes (KSAs)--The knowledge, skills, and attitudes of addictions counseling as defined by CSAT Technical Assistance Publication (TAP 21) "Addictions Counseling Competencies: the Knowledge, Skills, and Attitudes of Professional Practice."
- (69) License--The whole or part of any agency permit, certificate, approval, registration, or similar form of permission authorized by law.

(70) Licensed Chemical Dependency Counselor (LCDC)--A counselor licensed by the Texas Commission on Alcohol and Drug Abuse pursuant to TEX. OCC. CODE ch. 504 (Vernon 2002 & Supp. 2003).

(71) Licensed Health Professional--A physician, physician assistant, advanced practice nurse practitioner, registered nurse, or licensed vocational nurse authorized to practice in the State of Texas.

(72) Licensee--Any individual or person to whom the agency has issued any permit, certificate, approved registration, or similar form of permission authorized by law.

(73) Licensing--The agency process relating to the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(74) Life Skills Training (Treatment)--A structured program of training, based upon a written curriculum and provided by qualified staff designed to help clients with social competencies such as communication and social interaction, stress management, problem solving, decision making, and management of daily responsibilities.

(75) Mechanical Restraint--

(A) The application of a device restricting the movement of the whole or a portion of an individual's body to control physical activity. Only commercially available devices specifically designed for the safe and comfortable restraint of humans may be used as mechanical restraints.

(B) Despite their commercial availability, the following types of devices may not be used to implement restraint:

- (i) those with metal wrist or ankle cuffs;
- (ii) those with rubber bands, rope, cord, or padlocks or key locks as fastening devices;
- (iii) long ties (e.g., leashes); or
- (iv) bed sheets.

(C) The following devices may be utilized to implement restraint.

(i) Anklets--A cloth or leather band fastened around the ankle or leg and secured to a stationary object (e.g., bed or chair frame). Acceptable fasteners include Velcro and buckles. The device must not be secured so tightly as to interfere with vital functions, including circulation, or so loose as to permit chafing of the skin. Padding on the inside of the device, which aids in preventing chafing, is required.

(ii) Belts--A cloth or leather band fastened around the waist. The belt may either be attached to a stationary object (e.g., chair frame) or used for securing the arms to the sides of the body. The device must not be secured so tightly as to interfere with vital functions, including breathing and circulation.

(iii) Chair restraint--A well-padded stabilized chair that supports all body parts and prevents the individual's voluntary egress from the chair without assistance (e.g., table top chair, Geri-chair). Mechanical restraint devices (e.g., wristlets, anklets) are attached or may be easily attached to restrict movement. The devices must not be secured so tightly as to interfere with vital functions, including breathing and circulation.

(iv) Ties--A length of cloth or leather used to secure approved mechanical restraints (i.e., mittens, wristlets, arm splints, belts, anklets, vests, etc.) to a stationary object (i.e., bed or wheelchair frame) or to other approved mechanical restraints. Ties must not be secured so tightly as to interfere with vital functions, including breathing and circulation.

(v) Wristlets--A cloth or leather band fastened around the wrist or arm and secured to a stationary object (e.g., bed or chair frame, waist belt). Acceptable fasteners include Velcro and buckles. The device must not be secured so tightly as to interfere with vital functions, including circulation or so loose as to permit chafing of the skin. Padding on the inside of the device, which aids in preventing chafing, is required.

(76) Medication Error--Medication not given according to the written order by the prescribing professional or as recommended on the medication label. Medication errors include without limitation, duplicate doses, missed doses, and doses of the wrong amount or drug.

(77) Minor--A person under the age of 18.

(78) Neglect--A negligent act or omission by provider personnel, a staff member, volunteer, or other individual working under the auspices of a provider, or by a counselor, applicant for counselor licensure, or counselor intern that causes or may cause death, physical injury, or substantial emotional harm to a participant or client. Examples of neglect include, but are not limited to:

(A) failure to provide adequate nutrition, clothing, or health care;

(B) failure to provide a safe environment free from abuse;

(C) failure to maintain adequate numbers of appropriately trained staff;

(D) failure to establish or carry out an appropriate individualized treatment plan; and

(E) any other act or omission classified as neglect by the Texas law including, but not limited to, TEX. FAM. CODE §261.001 (Vernon 1996) and TEX. HUM. RES. CODE §48.002 (Vernon Supp. 2004).

(79) Advanced Practice Nurse Practitioner--A registered nurse currently licensed in Texas who is approved by the Texas State Board of Nurse Examiners to engage in advanced practice.

(80) Offender Education Program--An Alcohol Education Program for Minors, Drug Offender Education Program, DWI Education Program, or DWI Intervention Program approved by the Commission under 40 TAC ch. 153 of this title (relating to Offender Education Programs).

(81) OMB--United States Office of Management and Budget.

(82) On Duty--Present, ready, awake and able to perform job duties at the physical locations where services are provided.

(83) Outcome--The results of a service on clients or participants or the service delivery system itself.

(84) Outreach--Activities directed toward finding individuals who might not use services due to lack of awareness or active avoidance.

(85) Participant--An individual who is receiving prevention or intervention services.

(86) Party--A person or agency formally named or admitted as a party.

(87) Person--An individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(88) Personal Restraint--Physical contact to control or restrict an individual's physical movement or actions. See also Mechanical Restraint.

(89) Personnel--The members of the governing body of a provider and, without limitation, its staff, employees, contractors, consultants, agents, representatives, volunteers, or other individuals working for or on behalf of the provider through a formal or informal agreement.

(90) Pleading--A written document submitted by a party, or a person seeking to participate in a case as a party, which requests procedural or substantive relief, makes claims, alleges facts, makes legal argument, or otherwise addresses matters involved in the case.

(91) Practice of Chemical Dependency Counseling Services--Providing or offering to provide chemical dependency counseling services involving the application of the principles, methods, and procedures of the chemical dependency counseling profession as defined by the activities listed in the domains of TAP 21 "Addictions Counseling Competencies: the Knowledge, Skills, and Attitudes of Professional Practice" published by CSAT.

(92) Prevention--A proactive process that uses multiple strategies to preclude the illegal use of alcohol, tobacco and other drugs and to foster safe, healthy, drug-free environments.

(93) Private Practice--The individual practice of a private, licensed health care practitioner who personally renders individual or group services within the scope of the practitioner's license and in the practitioner's offices. To qualify to be engaged in private practice, the individual licensed health care practitioner must not hold him/herself out as an organized program, or a part thereof, that provides counseling or treatment. This definition does not prohibit the sharing of office space or administrative support staff.

(94) Program--A specific type of service delivered to a specific population, at a specific location.

(95) Proprietary School--An organization approved and regulated by the Texas Workforce Commission under 40 TAC ch. 807 (2003) (relating to Proprietary Schools) that offers a course of study in chemical dependency counseling.

(96) Protective Factors--Characteristics within individuals and social systems which may inoculate or protect persons against risk factors and strengthen their determination to reject or avoid substance abuse.

(97) Provider--A person that performs or offers to perform substance abuse services. The term includes but is not limited to, a qualified credentialed counselor, applicant for counselor licensure, and counselor intern.

(98) Qualified Credentialed Counselor (QCC)--A licensed chemical dependency counselor or one of the practitioners listed below who is licensed and in good standing in the State of Texas and has at least 1,000 hours of documented experience treating substance-related disorders:

- (A) licensed professional counselor (LPC);
- (B) licensed master social worker (LMSW);
- (C) licensed marriage and family therapist (LMFT);
- (D) licensed psychologist;
- (E) licensed physician;
- (F) licensed physician's assistant;
- (G) certified addictions registered nurse (CARN); or
- (H) advanced practice nurse practitioner recognized by the Board of Nurse Examiners as a clinical nurse specialist or nurse practitioner with a specialty in psych-mental health (APN-P/MH).

(99) Qualified Mental Health Professional--A qualified mental health professional as defined in the 25 TAC §401.583 (15) (2003).

(100) Recovery Maintenance--A level of treatment designed to maintain and support a client's continued recovery.

(101) Referral--The process of identifying appropriate services and providing the information and assistance needed to access them.

(102) Residential Site--A physical location owned, leased, or operated by a provider where clients reside in a supervised treatment environment.

(103) Respondent--A person against whom the Commission seeks an administrative, civil or criminal remedy for non-compliance with law and rules governing substance abuse services.

(104) Restraint--See Personal and Mechanical Restraint.

(105) Retaliate--Actions taken to punish or discourage a person, including a participant or client, who reports a violation of these rules or cooperates with an investigation, inspection, or intimidation proceeding by the Commission. Such actions include, but are not limited to, suspension or termination of employment, demotion, discharge, transfer, discipline, abuse, neglect, restriction of privileges, harassment, or discrimination.

(106) Risk Factor--A characteristic or attribute of an individual, group, or environment associated with an increased probability of certain disorders, addictive diseases, or behaviors.

(107) Risk Management--The process of identifying, evaluating and taking steps to minimize the risk associated with any activity, function, or process.

(108) Rules--An agency statement of general applicability that implements, or prescribes law or policy by defining general standards of conduct, rights, or obligations of persons, or describes the procedure or practice requirements that prescribe the manner in which public business before an agency may be initiated, scheduled, or conducted, or interprets or clarifies law or agency policy. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the agency and does not affect private rights or procedures. This definition includes regulations. Any reference to the rules herein shall mean Commission rules currently in effect unless otherwise specified.

(109) Screening--The process through which a qualified staff, client or participant, and available significant others determine the most appropriate initial course of action, given the individual's needs and characteristics and the available resources within the community. In a treatment program, screening includes determining whether an individual is appropriate and eligible for admission to a particular program.

(110) Seclusion--Confinement of an individual for a period of time in a hazard-free room or other area in which direct observation can be maintained and from which egress is prevented.

(111) Selective Program--A prevention program designed to target subsets of the total population that are deemed to be at higher risk for substance abuse by virtue of membership in a particular population segment. Risk groups may be identified on the basis of biological, psychological, social or environmental risk factors, and targeted groups may be defined by age, gender, family history, place of residence, or victimization by physical and/or sexual abuse. Selective prevention programs target the entire subgroup regardless of the degree of individual risk.

(112) Services--Substance abuse services.

(113) Service Coordination--Administrative, clinical, and evaluative activities that bring the client, treatment services, community agencies, and other resources together to focus on issues and needs identified in the treatment plan. Service coordination, which includes care management and client advocacy, establishes a framework of action for the client to achieve specified goals. It involves collaboration with the client and significant others, coordination of treatment and referral services, liaison activities with community resources and managed care systems, client advocacy, and ongoing evaluation of treatment progress and client needs.

(114) Sexual Exploitation--A pattern, practice, or scheme of conduct by provider personnel or other individual working under the auspices of a provider, or by a counselor, intern, or applicant that involves a client or participant and can reasonably be construed as being for the purpose of sexual arousal or gratification or sexual abuse. It may include sexual contact, a request for sexual contact, or a representation that sexual contact or exploitation is consistent with, a part of or, a condition of receiving services. It is not a defense to sexual exploitation of a client, or participant if it occurs:

- (A) with consent of the client or participant;
- (B) outside of the delivery of services; or
- (C) off of the premises used for the delivery of substance abuse services; or
- (D) after the client or participant is no longer receiving services, unless it occurred two years after the client or participant stopped receiving services.

(115) Signature--Authentication of a record that meets the criteria established in §148.507 of this title (relating to General Documentation Requirements).

(116) Staff--Individuals working for a person in exchange for money or other compensation.

(117) State Office of Administrative Hearings (SOAH)--The agency to which contested cases are referred by the Commission.

(118) Substance Abuse--A maladaptive pattern of substance use leading to clinically significant impairment or distress, as defined by the most recently published version of the DSM.

(119) Substance Abuse Education--A planned, structured presentation of information provided by qualified staff, which is related to substance abuse or substance dependence, allows for discussion of the material presented and is relevant to the client or participant's goals.

(120) Substance Abuse Services (Services)--A comprehensive term intended to describe activities undertaken to address any substance-related disorder as well as prevention activities. The term includes the provision of screening, assessment, referral, treatment for chemical dependency and chemical dependency counseling.

(121) Substance-Related Disorders--Defined by the most recently published version of the DSM.

(122) TCADA--Texas Commission on Alcohol and Drug Abuse

(123) Texas Public Information Act--TEX. GOV'T CODE ANN. ch. 552 (Vernon 2000 & Supp. 2004).

(124) Therapeutic Services for Women--Education, services and/or therapy to address: parenting, reproductive and general health, self-esteem, physical and sexual abuse, mental health, child development and self-sufficiency.

(125) Toxic Inhalant--A gaseous substance that is inhaled by a person to produce a desired physical or psychological effect and that may cause personal injury or illness to the inhaler.

(126) Treatment--See Chemical Dependency Treatment.

(127) Treatment Facility--

- (A) a public or private hospital;
- (B) a detoxification facility;
- (C) a primary care facility;
- (D) an intensive care facility;
- (E) a long-term care facility;
- (F) an outpatient care facility;
- (G) a community mental health center;
- (H) a health maintenance organization;
- (I) a recovery center;
- (J) a halfway house;
- (K) an ambulatory care facility; or
- (L) any other facility that offers or purports to offer treatment.

(128) Treatment Planning--A collaborative process through which the provider and client develop desired treatment outcomes and identify the strategies for achieving them. At a minimum, the treatment plan addresses the identified substance use disorder(s), as well as issues related to treatment progress, including relationships with family and significant others, employment, education, spirituality, health concerns, and legal needs.

(129) Unethical Conduct--Conduct prohibited by the ethical standards adopted by state or national professional organizations or by rules established by a profession's state licensing agency.

(130) Unit Rate--A payment mechanism in which a specified rate of payment is made in exchange for a specified unit of service.

(131) Universal Population--Universal prevention programs are delivered to large groups without any prior screening for substance abuse risk. A prevention program designed to address an entire population with messages and programs aimed at preventing or delaying the use and abuse of alcohol, tobacco, and other drugs.

(132) Utilization Review--The process of evaluating the necessity, appropriateness and efficiency of the use of chemical dependency treatment services, procedures and facilities.

(133) Youth--Individuals between the ages of 13 through 17. See also Young Adult in chapters 147 and 148 of this title (relating to Contract Program Requirements and Standard of Care). *The provisions of this §441.101 adopted to be effective February 1, 2004, 29 TexReg 460; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8842*

SUBCHAPTER B CLAIMS AGAINST THE COMMISSION

§441.201 Notice of Claim

(a) For purposes of this Subchapter, the term contractor shall also have the meaning given that term in TEX. GOV'T CODE ANN. ch. 2260 (Vernon 2000 & Supp. 2004).

(b) To file a claim of breach of contract under TEX. GOV'T CODE ANN. ch. 2260 (Vernon 2000), the contractor must deliver written notice of the claim to the Commission's executive director.

(c) The notice must be signed by the contractor's authorized representative and delivered by hand, certified mail return receipt requested, or other verifiable delivery service.

(d) The claim must specifically describe:

(1) the nature of the alleged breach of contract, including the date of the event which forms the basis of the claim and the contract provision(s) breached;

(2) the damages claimed, including the amount and the method used to calculate them; and

(3) the legal basis for filing the claim, including the relationship between the alleged breach and the damages claimed.

(e) The contractor must submit supporting documentation with the notice of claim.

(f) The notice must be delivered no later than 180 days after the date of the event that forms the basis of the claim.

(g) Any amount(s) owed by the contractor shall be deducted from the total damages claimed. This includes amounts owed for work not performed or work not performed in substantial compliance with the terms of the contract. The total amount of damages (after deduction of amount owed by contractor) may not exceed the contracted amount or include consequential or similar damages, exemplary damages, any damages based on an unjust enrichment theory, attorney's fees or home office overhead.

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§441.202 Agency Counterclaim

(a) The Commission may file a counterclaim of breach of contract.

(b) Written notice of counterclaim must be delivered to the authorized representative of the contractor who signed the notice of claim of breach of contract.

(c) The notice must be delivered by hand, certified mail return receipt requested, or other verifiable delivery service.

(d) The notice must specifically describe:

(1) the nature of the counterclaim;

(2) the damages or offsets, including the amount and the method used to calculate them; and

(3) the legal theory supporting the counterclaim.

(e) The notice of counterclaim must be delivered to the contractor no later than 90 calendar days after receipt of notice of the claim.

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§441.203 Timetable for Negotiations and Contested Case Hearings

(a) The Commission's executive director must examine the contractor's claim and the Commission's counterclaim, if any, and initiate negotiations.

(b) Except as provided in subsection (c) of this section, negotiations shall begin no more than 60 calendar days following the latest of:

(1) the date of termination of the contract;

(2) the completion date in the original contract; or

(3) the date the notice of claim of breach of contract is received by the Commission.

(c) The Commission may delay the negotiations until the 181st calendar day after the date of the event giving rise to the claim of breach of contract. The Commission shall give the contractor written notice of the delay and notify the contractor when it is ready to begin negotiations.

(d) The parties must complete the negotiations as a prerequisite to a contested case hearing no later than 270 days after the Commission receives the notice of claim of breach of contract. The negotiation period may be extended through a written agreement signed by the authorized representatives of each party.

(e) The parties may agree to mediate the dispute at any time before the 270th day after the Commission receives the notice of claim of breach of contract, or before the expiration of any extension agreed to in writing by the parties.

(f) If negotiations fail to resolve the dispute, the case may be submitted to the State Office of Administrative Hearings (SOAH).

(1) The contractor may file a request for contested case hearing with the Commission if a complete settlement agreement has not been reached 270 calendar days after the date the claim is delivered to the Commission, or after the expiration of any extension agreed to in writing by the parties.

(2) The parties may agree to submit the case to SOAH before the 270th day if they have reached a partial settlement or if an impasse has been reached in the negotiations and proceeding to a contested case hearing would serve the interests of justice.

(3) The parties may continue to negotiate or mediate after a request for contested case hearing is referred to the SOAH.

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§441.204 Conduct of Negotiations

(a) Any limitations on the settlement authority of the representatives participating in the negotiations must be disclosed by the parties as soon as possible. To the extent possible, the parties shall select negotiators who are knowledgeable about the dispute and who are in a position to reach agreement or can credibly recommend approval of an agreement.

(b) Negotiation may be conducted by any method, technique, or procedure authorized under the contract or agreed upon by the parties. The contractor and the Commission may conduct negotiations with the assistance of one or more neutral third parties.

(c) The parties may choose to mediate the dispute according to §141.205 of this title (relating to Mediation).

(d) To facilitate meaningful negotiation, the parties must exchange relevant documentation that supports their claims, defenses, counterclaims or positions.

(e) Any settlement reached during the negotiation must be put in writing and signed by representatives of the contractor and the Commission. The agreement must describe any procedures that must be followed to secure final approval.

(f) The final settlement must be documented in writing and signed by representatives of the contractor and the Commission with authority to bind the respective party. If the settlement does not resolve all issues raised by the claim and counterclaim, the agreement must specifically identify the issues that are not resolved.

(g) Unless the contractor and the Commission agree otherwise, each party shall be responsible for its own costs.

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§441.205 Mediation

(a) The contractor and the Commission may agree to mediate a claim through an impartial third party. Mediation is a forum in which an impartial person facilitates communication between parties to promote reconciliation, settlement, or understanding, but does not impose his own judgment on the issues.

(b) The mediation shall be governed by the provisions of the Governmental Dispute Resolution Act, TEX. GOV'T CODE ANN. ch. 2009 (Vernon 2003 & Supp. 2004).

(c) The Commission and the contractor shall select an impartial third party that is acceptable to both. The impartial third party must:

(1) possess the qualifications required under TEX. CIV. PRAC. & REM. CODE ANN. §154.052 (Vernon Supp. 2004);

(2) be subject to the standards and duties prescribed by TEX. CIV. PRAC. & REM. CODE ANN. §154.053 (Vernon 1997); and

(3) have the qualified immunity prescribed by TEX. CIV. PRAC. & REM. CODE ANN. §154.055 (Vernon 1997), if applicable.

(d) A mediation conducted under this section is confidential in accordance with TEX. GOV'T CODE ANN. §2009.054 (Vernon 2000).

(e) A final settlement agreement signed by the Commission under this section is subject to or excepted from required disclosure in accordance with TEX. GOV'T CODE ANN. ch. 552 (Vernon 2000 & Supp. 2003).

(f) Unless the contractor and the Commission agree otherwise, the costs of the mediator shall be divided equally between the parties and each party shall be responsible for its own costs.

(g) Any limitations on the settlement authority of the representatives participating in the negotiations must be disclosed by the parties before mediation begins.

(h) Any settlement reached during the mediation must be put in writing and signed by representatives of the contractor and the Commission. The agreement must describe any procedures that must be followed to secure final approval.

(i) The final settlement must be documented in writing and signed by representatives of the contractor and the Commission with authority to bind the respective party. If the settlement does not resolve all issues raised by the claim and counterclaim, the agreement must specifically identify the issues that are not resolved.

(j) If mediation does not resolve the claim to the satisfaction of the contractor, the contractor may file a request that the claim be referred to SOAH pursuant to TEX. GOV'T CODE ANN. ch. 2260 (Vernon 2000 & Supp. 2004). The request for referral must be filed according to the timetable described in §141.203 of this title (relating to Timetables for Negotiations and Contested Case Hearings).

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SUBCHAPTER D MEASURING THE EFFECTIVENESS OF THE STATE'S

SUBSTANCE ABUSE PREVENTION SERVICES

§441.401 Interagency Agreement

(a) Texas Commission on Alcohol and Drug Abuse, Texas Juvenile Probation Commission, Texas Youth Commission and Texas Department of Protective and Regulatory Services have agreed on the following criteria as measures of a substance abuse prevention program's effectiveness. According to Tex. H.B. 3126, 76th Leg. R.S. (1999), all funded substance abuse prevention programs shall:

(1) target problems that are specific to a given community or school.

(A) The provider shall determine what population(s) the program is designed to serve: universal, selective or indicated.

(i) Universal programs reach the general population (such as all students in a school).

(ii) Selective programs target a subset of the general population which is at high risk for substance abuse (such as children of drug users).

(iii) Indicated programs are designed for those who may already be experimenting with drugs or who exhibit other problem-related behaviors.

(B) The program shall identify and describe the primary and secondary target populations including specific information about:

(i) age, gender, and ethnicity;

(ii) risk and protective factors;

(iii) patterns of substance use;

(iv) social and cultural characteristics;

(v) knowledge, beliefs, values, and attitudes; and,

(vi) needs.

(C) The program shall identify long-range goals which:

(i) address identified risks, needs and/or problems of the primary and secondary target populations;

(ii) are designed to enhance protective factors;

(iii) clearly describe behavioral and/or societal changes to be achieved; and

(iv) are realistic in relation to available resources.

(D) The program shall establish objectives for each contract period that are linked to the goals. Objectives must be realistic, outcome oriented, measurable and time-specific.

(2) provide social services to children who have a family member with a drug addiction.

(A) The program shall identify needs that cannot be met by the program and help the participant access appropriate support systems and community resources. The program shall maintain a current list of referral resources, including other services provided by the organization.

(B) The program shall provide information, referrals and follow-up for participant and/or family needs that cannot be met by the program.

(3) use strategies that are appropriate for children and adolescents of different ages. The program design, content, communications and materials shall:

(A) be available in the primary language of the target population;

(B) be appropriate to the literacy level, gender, race, ethnicity, sexual orientation, age and developmental level of the target population; and

(C) recognize the cultural identification (context) of the family unit.

(4) Provide continuity in services and intervention strategies for all grade levels as stipulated in any contracts the program enters into with the agencies in this interagency agreement.

(A) The substance abuse prevention program shall be designed to build on and support other related prevention and intervention efforts in the community. The program shall secure and maintain the support of key decision makers and leaders and shall establish formal linkages and coordinate with other community resources.

(B) Each substance abuse prevention program that provides activities within this strategy shall work with other service providers, organizations, individuals and families to promote substance abuse services and improve the community's ability to prevent substance abuse and related problems.

(C) The program must use existing community services and resources effectively to enhance the substance abuse prevention program.

(D) The program must establish formal linkages with other service providers to build a continuum of substance abuse services in the community. The program shall document active participation in collaborations to support community resource development.

(E) The program shall provide information, referrals and follow-up for participant and/or family needs that cannot be met by the program.

(b) In addition, according to Tex. H.B. 3126, 76th Leg. R.S. (1999), each agency shall require the substance abuse prevention program to submit an annual report that describes the program's effectiveness in meeting established criteria.

(1) The program shall perform self-evaluation to verify, document and quantify program activities and effectiveness.

(2) The program shall submit a written evaluation report using the format specified by the funding agency at the end of each contract period.

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