

**Department of State Health Services  
Council Agenda Memo for State Health Services Council  
June 25, 2009**

**Agenda Item Title:** New rules concerning the Youth Empowerment Services (YES) Medicaid Waiver Program

**Agenda Number:** 4a

**Recommended Council Action:**

For Discussion Only

For Discussion and Action by the Council

**Background:**

The Mental Health and Substance Abuse Division (MHSA), Program Services Section, is responsible for developing and implementing programs concerning mental health community services. The Division develops standards, rules, and processes to ensure that the local mental health authorities (LMHAs), including one managed care organization (NorthStar), that contract directly with DSHS provide appropriate, adequate mental health services to the citizens of Texas.

In fiscal year (FY) 2007, there were 11,562 children and adolescents receiving Medicaid with an inpatient psychiatric hospitalization (including state hospital admissions). Of these, 1,353 were in Bexar County and 238 in Travis County. In FY 2008, the LMHAs served 38,318 children and adolescents statewide. The Center for Health Care Services (CHCS) in Bexar County served 1,579 and Austin Travis County MHMR Center (ATCMHMR) in Travis County served 1,476. The following statistics relate to state hospital admissions and are based on the 38,318 served in FY 2008. Statewide admissions reflect 536 in FY 2007, 762 FY 2008, 312 FY 2009 to date; state hospital admissions authorized by CHCS include 15 in FY 2007, 26 in FY 2008, and 13 in FY 2009 to date; state hospital admissions authorized by ATCMHMR include 47 in FY 2007, 60 in FY 2008, 25 in FY 2009 to date.

The MHSA programs utilize a variety of funding sources to carry out its objectives, including Medicaid, Mental Health Block Grant, and general revenue. The YES pilot program will be funded through the Health and Human Services Commission (HHSC) Medicaid budget.

**Summary:**

The purpose of the new rules is to implement the YES pilot program, which is designed to prevent or reduce institutionalization of children and adolescents with severe emotional disturbance (SED), enable more flexibility in providing intensive community-based services for children and adolescents with SED, and provide support for their families by improving access to services. The new rules describe the purpose and application, definitions, eligibility criteria, co-payments, individual plan of care, transition planning, provider qualifications and contracting, and right to fair hearing for the program. The YES pilot program was approved by the federal government under the Medicaid waiver provisions of the federal Social Security Act, §1915(c). The YES pilot program will provide services to children and adolescents that reside in Bexar and Travis counties and serve up to 300 children and adolescents in those counties at any given time.

Outcome data will be derived through a variety of mechanisms. The Child and Adolescent Texas Recommended Assessment Guidelines, a broad measure of current functioning, are administered at intake and at regular intervals thereafter. The LMHA service encounters and other client level data will be accessed via DSHS's Data Warehouse. Waiver providers will provide waiver-specific encounter data through monthly invoicing procedures. In addition to these data sources, the prevention or reduction of institutionalization will also be measured by Texas Medicaid Healthcare Partnership data.

While the YES Waiver Program primarily provides services to children and adolescents, all of the waiver program services potentially benefit the family. There are some services that provide direct support to the family, for example:

- family support, which provides peer mentoring and support to the primary caregivers; engages the family in the treatment process; models self-advocacy skills; provides information, referral and non-clinical skills training; maintains engagement; and assists in the identification of natural/non-traditional and community support systems; and
- respite care, which is furnished on a short-term basis because of the absence or need for relief of those persons who normally provide care for the participant.

**Summary of Input from Stakeholder Groups:**

DSHS and HHSC worked collaboratively to develop the waiver, and sought input throughout the process from a broad array of stakeholders, including the Mental Health Planning and Advisory Council, Local Area Network Advisory Committee, local mental health authorities, and the Texas Council of Community Mental Health and Mental Retardation Centers. The final draft rules were distributed electronically to stakeholders for informal comment. Comments were received from Border Region Mental Health and Mental Retardation Center, Laredo and Tropical Texas Center for MHMR, Edinburg. Comments were reviewed by the rule development workgroup and minor changes were made to provide needed clarification.

The rules were presented, discussed, and approved at the Medical Care Advisory Committee meeting held in May 2009.

**Proposed Motion:** Motion to recommend HHSC approval for publication of rules contained in agenda item #4a

**Approved by Assistant Commissioner/Director:** Mike Maples **Date:** 4-20-09

**Presenter:** Matthew Ferrara **Program:** MHSA Division **Phone No.:** 512/206-5740

**Approved by CPCPI:** Carolyn Bivens **Date:** 5-5-09

Title 25. HEALTH SERVICES

Part 1. DEPARTMENT OF STATE HEALTH SERVICES

Chapter 419. Mental Health Services--Medicaid State Operating Agency Responsibilities

Subchapter A. Youth Empowerment Services (YES)

New §§419.1 - 419.8

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission (HHSC) on behalf of the Department of State Health Services (department) proposes new §§419.1 - 419.8, concerning the youth empowerment services (YES) Medicaid waiver program.

BACKGROUND AND PURPOSE

The new rules are necessary to implement the pilot program, approved by the federal government under the waiver provisions of the federal Social Security Act, §1915(c), which is designed to prevent or reduce institutionalization of children and adolescents with severe emotional disturbance (SED), enable more flexibility in providing intensive community-based services for children and adolescents with SED, and provide support for their families by improving access to services. The YES Medicaid waiver program will provide services to children and adolescents that reside in Bexar and Travis Counties.

SECTION-BY-SECTION SUMMARY

New §419.1 sets forth the purpose and application of the subchapter; §419.2 defines a number of terms used throughout the subchapter; §419.3 describes the eligibility criteria that children or adolescents must meet to participate in the waiver program; §419.4 states that that receipt of waiver program service may be dependent upon the child's or adolescent's and/or legally authorized representative's ability to make a co-payment; §419.5 requires that each waiver participant have an individual plan of care (IPC) and describes the elements that must be addressed in the IPC; §419.6 requires a transition plan for adolescents who will become 19 years of age while receiving waiver program services; §419.7 describes the requirements and application process to be a provider of waiver program services; and §419.8 requires that the waiver program participant and legally authorized representative be notified of the right to a fair hearing when services are denied, reduced, suspended, or terminated.

FISCAL NOTE

Mike Maples, Assistant Commissioner, Mental Health and Substance abuse has determined that for each year of the first five-year period 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 ECONOMIC IMPACT STATEMENT

Mr. Maples, as required by Government Code, Chapter 2006, Agency Actions Affecting Small Businesses, §2006.002, Adoption of Rules with Adverse Economic Effect, has also determined that the proposed rules will not have an adverse economic effect on small businesses or micro-businesses. The program does not impose a regulatory burden on businesses of any size. The rules permit implementation of a pilot program to provide certain services to children and adolescents in two Texas counties. There will be an "open enrollment" process for providers who wish to participate in the program. Any qualified provider may participate. Information about the program, including reimbursement rates, will be made available to the public prior to the enrollment process. However, because the services are reimbursed through Medicaid, the sections may result in economic increase to waiver providers.

#### 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 negative impact on local employment.

#### PUBLIC BENEFIT

In addition, Mr. Maples 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 prevent institutionalization of children and adolescents with severe emotional disturbance by providing more intensive community-based services.

#### 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 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 proposed rules may be submitted to Janet Fletcher, Mental Health and Substance Abuse Division, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347, (512) 419-2673 or by email to [janet.fletcher@dshs.state.tx.us](mailto:janet.fletcher@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 proposed new sections are authorized by 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 proposed new sections affect the Health and Safety Code, Chapter 1001; and Government Code, Chapter 531.

Legend: (Proposed New Rules)  
Regular Print = Proposed new language

Chapter 419. Mental Health Services--Medicaid State Operating Agency Responsibilities  
Subchapter A. Youth Empowerment Services (YES)

§419.1. Purpose and Application.

(a) Purpose. The purpose of this subchapter is to implement a pilot program, under the waiver provisions of the federal Social Security Act, §1915(c), that prevents or reduces institutionalization of children and adolescents with severe emotional disturbance (SED), enables more flexibility in providing intensive community-based services for children and adolescents with SED, and provides support for their families by improving access to services.

(b) Application. The subchapter applies to:

(1) persons and entities that have a Medicaid provider agreement to provide the waiver program services, as described in this subchapter;

(2) local mental health authorities (LMHAs), which have administrative responsibilities under the waiver program; and

(3) children and adolescents who are applicants for or recipients of services under the waiver program.

§419.2. Definitions.

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

(1) Adolescent -- An individual who is at least 13 years of age, but younger than 19 years of age.

(2) Assessment -- A set of standardized assessment measures used by the department to determine level of need as set forth in the approved waiver.

(3) Child -- An individual who is at least three years of age, but younger than 13 years of age.

(4) Department -- The Department of State Health Services.

(5) LAR or legally authorized representative -- A person authorized by law to act on behalf of a child or adolescent with regard to a matter described in this subchapter, including, but not limited to, a parent, guardian, or managing conservator.

(6) LMHA or local mental health authority -- An entity designated as the local mental authority by the department in accordance with the Health and Safety Code, §533.035(a).

(7) LPHA or licensed practitioner of the healing arts -- A person who is:

- (A) a physician;
- (B) a licensed professional counselor;
- (C) a licensed clinical social worker;
- (D) a licensed psychologist;
- (E) an advanced practice nurse; or
- (F) a licensed marriage and family therapist.

(8) Provider -- Any person or legal entity that has an agreement with the department and the single state Medicaid agency to provide the waiver program services, as described in the approved waiver.

(9) SED or severe emotional disturbance -- A child or adolescent with a serious functional impairment or acute severe psychiatric symptomatology as identified by the assessment.

(10) Waiver program -- A Medicaid program that provides waiver program services to a limited number of eligible children or adolescents, in accordance with the provisions of the waiver approved under the federal Social Security Act, §1915(c).

(11) Waiver program services -- Medicaid community-based services provided under the approved waiver program.

#### §419.3. Eligibility Criteria.

(a) To participate in the waiver program, the child or adolescent must meet the following eligibility criteria:

- (1) be eligible for Medicaid, under a Medicaid Eligibility Group included in the approved waiver;
- (2) live in a county included in the waiver program;
- (3) be reasonably expected to qualify for inpatient care under the Texas Medicaid inpatient psychiatric admission guidelines, as defined in the approved waiver, in the absence of waiver services;

(4) reside:

(A) in a non-institutional setting with the child's or adolescent's LAR;

or

(B) in the child's or adolescent's own home or apartment, if legally

emancipated; and

(5) choose, or have the LAR choose, the waiver program services as an alternative to care in an inpatient psychiatric facility, in accordance with the provisions of the approved waiver.

(b) The participating child or adolescent must be determined to meet the eligibility criteria in subsection (a) of this section on an annual basis to continue in the waiver program.

(c) The department reserves the right to limit, in each county, the number of eligible children or adolescents that may participate in the waiver program, in accordance with the provisions of the approved waiver.

#### §419.4. Co-payments.

The receipt of certain waiver program services may be dependent up the child's or adolescent's and/or LAR's ability to make a co-payment.

#### §419.5. Individual Plan of Care (IPC).

(a) Each child and adolescent determined eligible to participate in the waiver program is assigned a mental health case manager, subject to the rules in Chapter 412, Subchapter I of this title (relating to Mental Health Case Management Services). The mental health case manager must coordinate with the child or adolescent, LAR, waiver service providers and LMHA to develop an IPC that is based upon the assessment.

(b) The initial IPC must be reviewed by an LPHA at the LMHA that serves the geographic area of the participant's residence before forwarding to the department for approval. The IPC must be approved by the department before a provider can begin delivering waiver program services. To be approved, the IPC must:

(1) promote the child's or adolescent's inclusion into the community;

(2) protect the child's or adolescent's health and welfare in the community;

(3) supplement, rather than replace, the child's or adolescent's natural and other non-waiver program support systems and resources;

(4) be designed to prevent or reduce the likelihood of the child's or adolescent's admission to an inpatient psychiatric facility; and

(5) be the most appropriate type and amount of services to meet the child's or adolescent's needs.

(c) The IPC must be reviewed by an LPHA at the LMHA and submitted to the department for approval as part of the annual eligibility determination required under §419.3 of this title (relating to Eligibility Criteria). Any recommended changes to the IPC outside the annual review process must be approved by the department.

(d) To demonstrate that the waiver program services specified in the IPC meet the requirements described in subsection (b) of this section, the LMHA must submit the following to the department:

(1) an assessment of the child or adolescent that identifies and supports the waiver program services included in the IPC; and

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

(e) 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 (b) 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 (b) of this section, the department may deny, reduce, or terminate the service, modify the IPC, and send written notification to the child or adolescent, LAR, and the provider.

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

(g) The cost of implementing the IPC must be within the cost ceiling identified by the department and the single state Medicaid agency. For children and adolescents with service needs that exceed the cost ceiling, the department has a process to ensure that their needs are met, which includes examining third-party resources or possible transition to other waiver programs or inpatient services.

#### §419.6. Transition Planning.

(a) The LMHA is required to develop a transition plan for an adolescent who will become 19 years of age while receiving services under the waiver program. The transition plan must be developed at least six months prior to the month the adolescent becomes 19 years of age to ensure that the adolescent is appropriately transitioned to adult services.

(b) The transition plan, required under subsection (a) of this section, must be developed in consultation with the adolescent and, if appropriate, the LAR, as well as future

providers, allowing adequate time for a smooth transition of the adolescent into adult services. The transition plan must include:

- (1) a summary of the mental health community services and treatment received while in the waiver program;
- (2) the adolescent's current assessment, e.g., diagnosis, medications, level of functioning, and unmet needs;
- (3) information from the adolescent and the LAR, if appropriate, regarding the adolescent's strengths, preferences for mental health community services, and responsiveness to past interventions, and
- (4) an IPC that:
  - (A) indicates the mental health and other community services the adolescent will receive at the point of becoming 19 years of age; and
  - (B) ensures the adolescent will be provided a smooth transition to adult services.

#### §419.7. Provider Qualifications and Contracting.

In order to provide waiver program services, 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. A prospective provider may request and submit an application to provide waiver program services at any time. The application sets forth the qualifications to be a provider.

#### §419.8. Right to Fair Hearing.

The LMHA or the department must notify the child or adolescent, and LAR, of the right to a fair hearing, conducted in accordance with the rules in 1 Texas Administrative Code Chapter 357, Subchapter A, (relating to Medicaid Fair Hearings), under the following circumstances:

- (1) a child or adolescent is denied participation in the waiver program, unless the reason for the denial is the program participation limit referred to in §419.3(c) of this title (relating to Eligibility Criteria);
- (2) a child or adolescent is denied continued participation in the waiver program; or
- (3) waiver program services for a child or adolescent are denied, reduced, suspended, or terminated.