

**Department of State Health Services  
Council Agenda Memo for State Health Services Council  
December 1, 2008**

**Agenda Item Title:** Repeal of a rule concerning Medicaid Fair Hearings

**Agenda Number:** 3e

**Recommended Council Action:**

For Discussion Only

For Discussion and Action by the Council

**Background:** The Mental Health and Substance Abuse Division, Program Services Section develops and implements programs concerning mental health community services by assisting consumers to function in their communities. The services are provided by 37 local mental health authorities and their subcontractors who serve approximately 144,200 consumers throughout the state. In fiscal year 2008, Medicaid mental health services have been provided to approximately 53,500 consumers, including children. Consistent with the principles of Resiliency and Disease Management, the program provides an array of public mental health services, including medication services, case management services, rehabilitative services, crisis services, and cognitive behavioral health services. On a monthly basis, program reviews outcome data reports that may include functioning, employment, school attendance, or involvement in the juvenile justice system. Regular assessments are performed as a part of treatment and the outcomes are compared to determine improvement in a consumer's mental health status.

The source of funding for the program is provided through Medicaid, Mental Health Block Grant, and general revenue.

**Summary:** The purpose of the repeal is to delete an unnecessary rule from DSHS rule base in order to maintain clear, concise rules for the public. Section 419.301, adopted by the former Texas Department of Mental Health and Mental Retardation, primarily incorporates by reference the rules of the Health and Human Services Commission (HHSC) relating to Medicaid Fair Hearings. DSHS offers Medicaid mental health services and notifies eligible clients of their right to a fair hearing when benefits or services are denied, terminated, reduced, or suspended. In the event that a client requests a fair hearing, the hearing is provided by the Appeals Division of HHSC, and is subject to HHSC rules in 1 TAC Chapter 357, Subchapter A.

DSHS has reviewed this rule according to Government Code, Section 2001.039, and has determined that there is no need to retain the rule and, therefore, it is being proposed for repeal.

**Summary of Input from Stakeholder Groups:** The rule was distributed for stakeholder input via email to members of the Mental Health Planning and Advisory Council and the Local Area Network Committee; executive directors of Local Mental Health Authorities; and the chief executive officer of the Texas Council of Community Mental Health and Mental Retardation Centers. No substantive comments were received from stakeholders. The rule was also presented as an information item to the Medical Care Advisory Committee (MCAC) at its July 2008 meeting.

**Proposed Motion:** Motion to recommend HHSC approval for publication of rule contained in agenda item #3e

**Approved by Assistant Commissioner/Director:** Mike Maples **Date:** 9/26/08

**Presenter:** Mike Maples **Program:** MHSA Division **Phone No.:** 512-206-5968

**Approved by CPCPI:** Carolyn Bivens **Date:** 10/03/08

Title 25. HEALTH SERVICES  
Part 1. DEPARTMENT OF STATE HEALTH SERVICES  
Chapter 419. Mental Health Services - Medicaid State Operating Agency Responsibilities  
Subchapter G. Medicaid Fair Hearings  
Repeal §419.301

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission (HHSC) on behalf of the Department State Health Services (department) proposes the repeal of §419.301, concerning Medicaid Fair Hearings.

BACKGROUND AND PURPOSE

This rule, §419.301, adopted by the former Texas Department of Mental Health and Mental Retardation, primarily incorporates by reference the HHSC rules relating to Medicaid Fair Hearings. This separate, independent rule is not necessary to retain and is being proposed for repeal.

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). Section 419.301 has been reviewed and the department has determined that there is no need to retain the rule and is proposing its repeal.

The department offers Medicaid mental health services and notifies eligible clients of their right to a fair hearing when benefits or services are denied, delayed, terminated, reduced, or suspended. In the event that a client requests a fair hearing, the hearing is provided by the Appeals Division of HHSC, and is subject to the HHSC rules in 1 TAC Chapter 357, Subchapter A. Section 419.301 is redundant and unnecessary because it incorporates HHSC rules that apply when HHSC conducts the fair hearings for Medicaid clients receiving mental health services from the department.

SECTION-BY-SECTION SUMMARY

Section 419.301 is proposed for repeal as unnecessary because HHSC rules apply to Medicaid fair hearings conducted by HHSC.

FISCAL NOTE

Mike Maples, Assistant Commissioner for Mental Health and Substance Abuse Services, has determined that for each year of the first five-year period that the section will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the section as proposed.

SMALL AND MICRO-BUSINESS ECONOMIC IMPACT STATEMENT AND PERSONS AND LOCAL EMPLOYMENT

Mr. Maples has also determined that there will be no adverse economic impact on small businesses or micro-businesses required to comply with the section as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated impact on local employment. Therefore, an economic impact statement and regulatory flexibility analysis for small and micro-businesses are not required.

#### PUBLIC BENEFIT

Mr. Mike Maples has determined that for each year of the first five years the repeal of the section is in effect, the public will benefit. The public benefit anticipated as a result of repealing the section is that the department will maintain a clear, concise set of rules and avoid the potential for confusion from retaining a rule that is unnecessary and has no effect.

#### 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 repeal would 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 proposed repeal may be submitted in writing to Janet Fletcher, Department of State Health Services, Mail Code 2082, 909 West 45th Street, Austin, Texas 78751, 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 rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

#### STATUTORY AUTHORITY

The proposed repeal is 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 review of the section implements Government Code, §2001.039.

The proposed repeal affects the Government Code, Chapter 531; and Health and Safety Code, Chapter 1001.

Section for Repeal.

§419.301. Medicaid Fair Hearings.

Repealed Rule Text

~~§419.301 Medicaid Fair Hearings~~

~~(a) The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts by reference rules of the Health and Human Services Commission contained in 1 TAC §§357.1, 357.3, 357.5, 357.7, 357.9, 357.11, 357.13, 357.15, 357.17, 357.19, 357.21, 357.23, 357.25, 357.27, and 357.29 of Chapter 357 (relating to Medicaid Fair Hearings).~~

~~(b) As used in 1 TAC §357.1(b)(2), the term "authorized representative" means the parent, guardian, or managing conservator of an individual who is a minor or the guardian of the person of an individual who is an adult.~~

~~(c) Copies of the Health and Human Services Commission rules are available by contacting the Office of Policy Development, TDMHMR, 909 West 45th Street, Austin, Texas 78751.~~