

**Department of State Health Services
Council Agenda Memo for State Health Services Council
April 3, 2013**

Agenda Item Title: Amendments to rules concerning Preadmission Screening and Resident Review (PASRR) for general hospitals, special hospitals, private psychiatric hospitals, and crisis stabilization units and colored alert wrist bands to identify patient risks in hospitals

Agenda Number: 5.b.

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background:

The Health Facility Licensing Group is located within the Regulatory Licensing Unit, Health Care Quality Section, of the Regulatory Services Division. The Health Facility Licensing Group monitors health care delivery by regulated health care facilities to ensure high quality care is provided to the people of Texas. This Group issues licenses to general hospitals, special hospitals, private psychiatric hospitals, and crisis stabilization units and conducts inspections to determine compliance with state and federal rules and regulations. Findings of non-compliance may result in referral for escalated enforcement action.

There are 426 licensed general hospitals, 212 licensed special hospitals, 38 private psychiatric hospitals and 3 crisis stabilization units in Texas. The budget and source of funding is general revenue and program costs are offset by licensing fees.

Summary:

PASRR is a federal requirement to ensure that placement of an individual in a nursing facility is necessary, to identify alternate placement options when applicable, and to identify specialized services that may benefit the individual with a diagnosis of mental illness, intellectual disability, or developmental disability. To promote a clear, consistent implementation of the federal requirements, the Department of Aging and Disability Services (DADS), who is responsible for administering the PASRR program in Texas, is promulgating detailed PASRR program rules.

The purpose of the amendment is to require general hospitals, special hospitals, private psychiatric hospitals, and crisis stabilization units to comply with the federal PASRR procedures and DADS' PASRR rules. The implementation of the PASRR process will ensure that individuals who have been referred for placement in Medicaid-certified nursing facilities and who have been identified as possibly having mental health needs are properly evaluated to determine if they require specialized services while in the facility or if an alternative placement in the community would better suit their needs. When specialized services such as mental health case management or rehabilitative services are indicated, those services will be provided.

The purpose of the amendment concerning colored wrist bands is to implement Senate Bill (S.B.) 7, Article 5, 82nd Legislature, First Called Session, 2011, which requires the development of a statewide standardized patient risk identification system. The system will enable hospital staff to identify patients with specific medical risks, such as drug allergies, using standardized, colored wrist bands. This system is consistent with, and based upon, the American Hospital Association's recommendations.

Key Health Measures:

Implementation of the IT system that DADS is developing to track all PASARR activities is scheduled for spring of 2013. The number of assessments conducted, the number of individuals identified as needing specialized services, the number of individuals who are placed in the community instead of a nursing facility, and the number of individuals receiving specialized services will be tracked. Reports and data from this system will clearly demonstrate whether the goals of the PASRR program are being met.

The rule change for a standardized patient risk identification system is to enable hospital staff to readily identify patients with specific medical risks. It is expected that this practice will result in fewer errors in treatment and improved safety for patients.

Summary of Input from Stakeholder Groups:

The draft rule language regarding PASRR requirements was posted on the DSHS Facility Licensing web site on October 23, 2012, and was presented at a hospital stakeholder meeting on October 25, 2012. The proposed PASRR rules will be presented to the Medical Care Advisory Committee at the February 14, 2013, meeting.

The PASRR rules will be published as proposed in the February 22, 2013, issue of the *Texas Register* in order to coincide with DADS and Health and Human Services Commission (HHSC) rules and be effective by May 24, 2013.

An appointment of an ad hoc committee to assist DSHS in developing a statewide standardized patient risk identification system was required by S.B. 7 and DSHS solicited nominations from hospital stakeholder organizations. The proposed rule regarding wrist bands reflects the recommendations of the ad hoc committee.

The rule concerning the colored alert wrist bands for patients in hospitals was previously presented at the September 5-6, 2012, council meeting. The council moved to recommend HHSC approval of the rule for publication in the *Texas Register* pending obtaining stakeholder input regarding whether or not to make one change to the rule text. A stakeholder meeting took place on October 25, 2012, and the consensus was to keep the rule as originally drafted and presented to the council.

Proposed Motion:

Motion to recommend that HHSC proceed with the rulemaking process for rules contained in agenda item #5.b.

Approved by Assistant Commissioner/Director: Kathryn C. Perkins, R.N., M.B.A. **Date:** 1/25/13

Presenter: Ellen Cooper, Health Facilities Group Manager **Program:** Regulatory Licensing Unit **Phone No.:** (512) 834-6639

Approved by CCEA: Carolyn Bivens **Date:** 01/24/2013

Title 25. Health Services
Part 1. Department of State Health Services
Chapter 133. Hospital Licensing
Subchapter C. Operational Requirements
Amendment §133.41
Chapter 134. Private Psychiatric and Crisis Stabilization Licensing
Subchapter C. Operational Requirements
Amendment §134.41
Chapter 411. State Mental Health Authority Responsibilities
Subchapter J. Standards of Care and Treatment in Psychiatric Hospitals
Amendment §411.482
Subchapter M. Standards of Care and Treatment in Crisis Stabilization Units
Amendment §411.628

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §133.41, general and special hospitals; §134.41, psychiatric hospitals; and §411.482 and §411.628, psychiatric hospitals and crisis stabilization facilities concerning Preadmission Screening and Resident Review (PASRR); and an amendment to §133.41, concerning colored alert wrist bands to identify patient risks in hospitals.

The amendments will require that general and special hospitals, psychiatric hospitals, and crisis stabilization facilities undertake screening, prior to discharge, of all patients being considered for placement in a nursing facility to determine whether the patient may have a mental illness, intellectual disability or developmental disability. These amendments explicitly add to the State's regulatory scheme, the federal PASRR procedures which the Centers for Medicare and Medicaid Services (CMS) require.

The PASRR screening requirements are being added to §133.41(r) concerning quality assessment and performance improvement under the operational requirements for general and special hospitals; §134.41(m) concerning quality assurance under the operational requirements for psychiatric hospitals; and §411.482(a) and §411.628(a) concerning discharge planning as a standard of care and treatment at psychiatric hospitals and crisis stabilization facilities, respectively.

BACKGROUND AND PURPOSE

The purpose of the PASRR program is to ensure that placement of a patient in a nursing facility is necessary; to identify alternate placement options when applicable; and to identify specialized services that may benefit the person with a diagnosis of mental illness, intellectual disability, or developmental disability. The requirements of the federal PASRR program are set forth at 42 Code of Federal Regulations (CFR) Part 483, Subpart C. To promote a clear, consistent implementation of this federal regulatory scheme in Texas, the Department of Aging and Disability Services (DADS), the agency primarily responsible for administering the federal

PASRR Program in Texas, is promulgating new, detailed PASRR Program rules to which other state agencies, including the department, may refer. DADS' new PASRR rules, which are being published in the same issue of the *Texas Register* as the amendments described in this preamble, may be found at 40 TAC Part 1, Chapter 17 and the existing PASRR rule at 40 TAC Chapter 19 is being repealed. Through promulgation of the four rule amendments described in this preamble, the department is requiring General Hospitals, Special Hospitals, Private Psychiatric Hospitals and Crisis Stabilization Units to comply with the PASRR requirements "in accordance with" the specific, applicable provisions of the new DADS' rules as well as the federal regulations.

The proposed amendment to §133.41(f)(6) is required for the implementation of Senate Bill 7, Article 5, 82nd Legislature, First Called Session, 2011, which added Health and Safety Code, §311.004, and requires the development of a statewide standardized patient risk identification system. The purpose of this system is to better enable hospital staff to readily identify patients with specific medical risks, such as drug allergies, using standardized, colored wrist bands. This system is consistent with, and based upon, the American Hospital Association's recommendations.

SECTION-BY-SECTION SUMMARY

The four rule amendments to 25 TAC §133.41, §134.41, §411.482 and §411.628 are nearly identical, and require general, special, and psychiatric hospitals and crisis stabilization facilities to screen all patients who are being considered for discharge to a nursing facility, prior to discharge, to determine whether the patient may have a mental illness, intellectual disability or developmental disability. If the screening indicates that the patient has a mental illness, intellectual disability or developmental disability, the facility is required to contact and arrange for the local mental health authority to conduct an evaluation of the patient. These duties are to be carried out in accordance with both the federal and DADS' PASRR rules.

The proposed rule amendment to §133.41(f)(6) concerning the governing body will be revised by adding subparagraphs (D), (E) and (F). The new language requires the governing body to ensure that specific colored alert wrist bands are utilized in hospitals as follows: red wrist bands for allergies; yellow wrist bands for fall risks; and purple wrist bands for do-not-resuscitate status. New language also allows the governing body to consider use of optional condition alert wrist bands as follows: green wrist bands for latex allergies and pink wrist bands for restricted extremity. In addition, new language requires the governing body to implement and enforce a policy and procedure regarding removal of personal wrist bands and bracelets as well as a patient's right to refuse to wear condition alert wrist bands. Section 133.41(f)(6)(B) and (C) were amended for punctuation clarification.

FISCAL NOTE

Renee Clack, Section Director, Health Care Quality Section, has determined that for each year of the first five-year period that the sections will be in effect, there will not be fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Clack also has determined that there will not be an adverse economic impact on small businesses or micro-businesses required to comply with the sections as proposed because this was determined by interpretation of the rules that small business and micro-businesses will not be required to alter their business practices in order to comply with the sections.

ECONOMIC COST TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

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

PUBLIC BENEFIT

In addition, Ms. Clack also 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 rules protect the health, safety, and welfare of patients receiving services in hospitals, personnel, and the public.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined as a rule, the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Ellen Cooper, Manager, Facility Licensing Group, Regulatory Licensing Unit, Division of Regulatory Services, Department of State Health Services, P.O. Box 149347, Mail Code 2835, Austin, Texas 78714-9347, (512) 834-6639 or by email to ellen.cooper@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 amendments are authorized by Health and Safety Code, §241.026, concerning rules and minimum standards for the licensing and regulation of hospitals; §311.004, which requires the development of a standardized patient risk identification system; §577.010 concerning rules and standards for the proper care and treatment of patients in private psychiatric hospitals or mental health facilities; and 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 amendments affect Health and Safety Code, Chapters 241, 311, 577, and 1001; and Government Code, Chapter 531.

Legend: (Proposed Amendments)

Single Underline = Proposed new language

[Bold, Print, and Brackets] = Current language proposed for deletion

Regular Print = Current language

(No change.) = No changes are being considered for the designated subdivision

Subchapter C. Operational Requirements.

§133.41. Hospital Functions and Services.

(a) - (e) (No change.)

(f) Governing body.

(1) - (5) (No change.)

(6) Patient care. In accordance with hospital policy adopted, implemented and enforced, the governing body shall ensure that:

(A) (No change.)

(B) patients are admitted to the hospital only by members of the medical staff who have been granted admitting privileges; **[and]**

(C) a physician is on duty or on-call at all times; **[.]**

(D) specific colored condition alert wrist bands that have been standardized for all hospitals licensed under Health and Safety Code, Chapter 241, are used as follows:

(i) red wrist bands for allergies;

(ii) yellow wrist bands for fall risks; and

(iii) purple wrist bands for do not resuscitate status.

(E) the governing body shall consider the addition of the following optional condition alert wrist bands. This consideration must be documented in the minutes of the meeting of the governing body in which the discussion was held:

(i) green wrist bands for latex allergy; and

(ii) pink wrist bands for restricted extremity; and

(F) the governing body shall adopt, implement, and enforce a policy and procedure regarding the removal of personal wrist bands and bracelets as well as a patient's right to refuse to wear condition alert wrist bands.

(7) - (8) (No change.)

(g) - (q) (No change.)

(r) Quality assessment and performance improvement. The governing body shall ensure that there is an effective, ongoing, hospital-wide, data-driven quality assessment and performance improvement (QAPI) program to evaluate the provision of patient care.

(1) - (2) (No change.)

(3) Medically-related patient care services. The hospital shall have an ongoing plan, consistent with available community and hospital resources, to provide or make available social work, psychological, and educational services to meet the medically-related needs of its patients. The hospital also shall have an effective, ongoing discharge planning program that facilitates the provision of follow-up care.

(A) Discharge planning shall be completed prior to discharge.

(B) Patients, along with necessary medical information, shall be transferred or referred to appropriate facilities, agencies, or outpatient services, as needed for follow-up or ancillary care.

(C) Screening and evaluation before patient discharge from hospital. In accordance with 42 Code of Federal Regulations (CFR), Part 483, Subpart C (relating to Requirements for Long Term Care Facilities) and the rules of the Department of Aging and Disability Services (DADS) set forth in 40 Texas Administrative Code, Part 1, Chapter 17, (relating to Preadmission Screening and Resident Review (PASRR)), all patients who are being considered for discharge from the hospital to a nursing facility shall be screened, and if appropriate, evaluated, prior to discharge by the hospital and admission to the nursing facility to determine whether the patient may have a mental illness, intellectual disability or developmental disability. If the screening indicates that the patient has a mental illness, intellectual disability or developmental disability, the hospital shall contact and arrange for the local mental health authority designated pursuant to Texas Health and Safety Code, §533.035, to conduct prior to hospital discharge an evaluation of the patient in accordance with the applicable provisions of the PASRR rules. The purpose of PASRR is:

(i) to ensure that placement of the patient in a nursing facility is necessary;

(ii) to identify alternate placement options when applicable; and

(iii) to identify specialized services that may benefit the person with a diagnosis of mental illness, intellectual disability, or developmental disability.

(4) (No change.)

(s) - (y) (No change.)

Subchapter C. Operational Requirements.

§134.41. Facility Functions and Services.

(a) - (l) (No change.)

(m) Quality assurance. The governing body shall ensure that there is an effective, ongoing, facility-wide, data-driven quality assurance (QA) program to evaluate the provision of patient care.

(1) - (2) (No change.)

(3) Discharge planning. The facility shall have an effective, ongoing discharge planning program that facilitates the provision of follow-up care.

(A) Discharge planning shall be completed prior to discharge.

(B) Patients, along with necessary medical information, shall be transferred or referred to appropriate facilities, agencies, or outpatient services, as needed for follow-up or ancillary care.

(C) Screening and evaluation before patient discharge from facility. In accordance with 42 Code of Federal Regulations (CFR), Part 483, Subpart C (relating to Requirements for Long Term Care Facilities) and the rules of the Department of Aging and Disability Services (DADS) set forth in 40 Texas Administrative Code, Part 1, Chapter 17, (relating to Preadmission Screening and Resident Review (PASRR)), all patients who are being considered for discharge from the facility to a nursing facility shall be screened, and if appropriate, evaluated, prior to discharge by the facility and admission to the nursing facility to determine whether the patient may have a mental illness, intellectual disability or developmental disability. If the screening indicates that the patient has a mental illness, intellectual disability or developmental disability, the facility shall contact and arrange for the local mental health authority designated pursuant to Texas Health and Safety Code, §533.035, to conduct prior to facility discharge an evaluation of the patient in accordance with the applicable provisions of the PASRR rules. The purpose of PASRR is:

(i) to ensure that placement of the patient in a nursing facility is necessary;

(ii) to identify alternate placement options when applicable; and

(iii) to identify specialized services that may benefit the person with a diagnosis of mental illness, intellectual disability, or developmental disability.

(n) - (p) (No change.)

Subchapter J. Standards of Care and Treatment in Psychiatric Hospitals.

§411.482. Discharge Planning.

(a) Involvement of staff, patient, and LAR in planning activities.

(1) - (2) (No change.)

(3) Discharge planning shall include, at a minimum, the following activities:

(A) - (C) (No change.)

(D) Preadmission Screening and Resident Review (PASRR) as required by paragraph (4) of this subsection.

(4) Screening and evaluation before patient discharge from hospital. In accordance with 42 Code of Federal Regulations (CFR), Part 483, Subpart C (relating to Requirements for Long Term Care Facilities) and the rules of the Department of Aging and Disability Services (DADS) set forth in 40 Texas Administrative Code, Part 1, Chapter 17, (relating to Preadmission Screening and Resident Review (PASRR)), all patients who are being considered for discharge from the hospital to a nursing facility shall be screened, and if appropriate, evaluated, prior to discharge by the hospital and admission to the nursing facility to determine whether the patient may have a mental illness, intellectual disability or developmental disability. If the screening indicates that the patient has a mental illness, intellectual disability or developmental disability, the hospital shall contact and arrange for the local mental health authority designated pursuant to Texas Health and Safety Code, §533.035, to conduct prior to hospital discharge an evaluation of the patient in accordance with the applicable provisions of the PASRR rules. The purpose of PASRR is:

(A) to ensure that placement of the patient in a nursing facility is necessary;

(B) to identify alternate placement options when applicable; and

(C) to identify specialized services that may benefit the person with a diagnosis of mental illness, intellectual disability, or developmental disability.

(b) - (c) (No change.)

Subchapter M. Standards of Care and Treatment in Crisis Stabilization Units.

§411.628. Discharge Planning.

(a) Involvement of staff, patient, and LAR in planning activities.

(1) - (2) (No change.)

(3) Discharge planning shall include, at a minimum, the following activities:

(A) (No change.)

(B) qualified staff members arranging for the recommended services and supports; **[and]**

(C) Preadmission Screening and Resident Review (PASRR) as required by paragraph (4) of this subsection; and

(D) [(C)] qualified staff members counseling the patient, the patient's LAR, and as appropriate, the patient's caregivers, to prepare them for post-discharge care.

(4) Screening and evaluation before patient discharge from the CSU. In accordance with 42 Code of Federal Regulations (CFR), Part 483, Subpart C (relating to Requirements for Long Term Care Facilities) and the rules of the Department of Aging and Disability Services (DADS) set forth in 40 Texas Administrative Code, Part 1, Chapter 17, (relating to Preadmission Screening and Resident Review (PASRR)), all patients who are being considered for discharge from the CSU to a nursing facility shall be screened, and if appropriate, evaluated, prior to discharge by the CSU and admission to the nursing facility to determine whether the patient may have a mental illness, intellectual disability or developmental disability. If the screening indicates that the patient has a mental illness, intellectual disability or developmental disability, the CSU shall contact and arrange for the local mental health authority designated pursuant to Texas Health and Safety Code, §533.035, to conduct prior to CSU discharge an evaluation of the patient in accordance with the applicable provisions of the PASRR rules. The purpose of PASRR is:

(A) to ensure that placement of the patient in a nursing facility is necessary;

(B) to identify alternate placement options when applicable; and

(C) to identify specialized services that may benefit the person with a diagnosis of mental illness, intellectual disability, or developmental disability.

(b) - (d) (No change.)