

**Department of State Health Services**  
**Council Work Session Agenda Memo for State Health Services Council**  
**August 17 – 18, 2016**

**Agenda Item Title:** Amendment to a rule concerning mental health case management.

**Agenda Number:** 4.f.

**Recommended Council Action:**

For Discussion Only

For Discussion and Action by the Council

**Background:**

The Mental Health and Substance Abuse (MHSA) Division develops and implements programs concerning the provision of mental health community services. The MHSA Division develops standards to ensure that the 37 local mental health authorities (LMHAs) provide appropriate, adequate mental health services to the citizens of Texas.

25 TAC, Chapter 412 concerning Local Authority Responsibilities includes subchapters that address contracts management for local authorities; charges for community services; admission, continuity, and discharge; mental health community services standards; mental health case management; mental health prevention; and provider network development.

This only applies to GR-funded case management services.

**Summary:**

The purpose of the rule amendment is to expand the definition of "provider" to include a Local Behavioral Health Authority (LBHA) and subcontractors of an LBHA. This will allow LBHAs to subcontract for general revenue-funded case management services, and allow for continuity of care between Managed Care Organizations (MCOs) and LBHA provider networks.

This rule amendment applies to the indigent population. Fee for Service Medicaid recipients will continue to receive case management services at community mental health centers in accordance with the Medicaid State Plan.

Adoption of this rule change will allow for greater continuity of care for clients in the Dallas area transitioning from a Behavioral Health Organization (BHO) model to an LBHA model. The Sunset Commission's recommendations for replacing NorthSTAR outlined the importance of continuity of care for clients in this region during the transition, including continuity in service providers. Currently, clients are able to receive case management services from ten Specialty Provider Networks. There are only three community mental health centers in the area. Therefore, not changing the rule would limit general revenue-funded clients to three options in the Dallas area, and would require that many clients change providers to continue receiving mental health case management services. The rule change maximizes the ability for clients in this region to continue receiving services from their current provider and is in compliance with the Sunset Commission's recommendations.

Additionally, with this rule change, there will be more overlap between MCO and LBHA provider networks in the area, allowing for more choice of providers by clients and better alignment between Medicaid and general revenue-funded provider networks.

**Key Health Measures:**

DSHS anticipates no fiscal implications for the department, local government, and small businesses or micro-businesses related to the adoption of these amendments. It is not expected that the number of people accessing case management services will change as a result of the rule change.

**Summary of Input from Stakeholder Groups:**

Amendments to these sections were recommended by the DSHS internal workgroup on April 6, 2016, which was comprised of staff from Legal Services and the MHSA Division.

The draft rules were distributed for informal comment in May 2016 to external stakeholders such as the Behavioral Health Advisory Committee, advocacy groups, and other people who have asked to receive information on rules. A conference call was held May 15, 2016 to discuss with DSHS, the Texas Council of Community Centers, and others. DSHS requested written feedback, but did not receive any.

**Proposed Motion:**

Motion to recommend HHSC approval for publication of rules contained in agenda item # 4.f.

**Approved by Assistant Commissioner/Director:** Lauren Lacefield-Lewis **Date:** 7/19/2016

**Presenter:** Tegan Henke **Program:** NorthSTAR Unit, Mental Health and Substance Abuse Division **Phone No.:** (512) 838-4315

**Approved by CPEA:** Carolyn Bivens **Date:** 7/25/2016

Title 25. Health Services  
Part 1. Department of State Health Services  
Chapter 412. Local Mental Health Authority Responsibilities  
Subchapter I. Mental Health Case Management  
Amendment §412.403

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §412.403, concerning mental health case management services.

BACKGROUND AND PURPOSE

The subchapter describes requirements for providing mental health case management services funded by or through the department. The purpose of amending this section is to update the following provisions to expand the definition of "provider" to include a Local Behavioral Health Authority (LBHA) and subcontractors of an LBHA. This will allow LBHAs to subcontract for general revenue-funded case management services, and allow for continuity of care between Managed Care Organizations (MCOs) and LBHA provider networks. Fee for Service Medicaid recipients will continue to receive case management services at community mental health centers in accordance with the Medicaid State Plan.

SECTION-BY-SECTION SUMMARY

The amendment to §412.403 revises and adds definitions that are used in the subchapter. Section 412.403(25) is being added to include a definition for an LBHA that states "An entity designated as the local behavioral health authority in accordance with Texas Health and Safety Code, §533.0356. Section 412.403(30) is being amended to provide clarification to expand the definition of provider to include an LBHA and the LBHA's subcontractors.

FISCAL NOTE

Lauren Lacefield Lewis, Assistant Commissioner for Mental Health and Substance Abuse Services, has determined that for each year of the first five years 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 IMPACT ANALYSIS

Lauren Lacefield Lewis has also determined that there will be no adverse impact on small businesses or micro-businesses required to comply with the section as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section. Therefore, an economic impact statement and regulatory flexibility analysis for small and micro-businesses are not required.

## ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

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

## PUBLIC BENEFIT

In addition, Mrs. Lacefield Lewis has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The section of the public expected to benefit as a result of enforcing or administering the section will be clients served by community mental health centers that have a contract with the department to provide general revenue-funded mental health case management services, Medicaid-funded mental health case management services, or both; Local Behavioral Health Authorities (LBHA) that have a contract with the department to provide general revenue-funded mental health case management services; or a subcontractor of an LBHA.

Adoption of this rule change will also allow for greater continuity of care for clients in the Dallas area transitioning from a Behavioral Health Organization (BHO) model to an LBHA model. The Sunset Commission's recommendations around the dismantling of NorthSTAR outline the importance of continuity of care for clients in this region during the transition, including continuity in service providers. Currently, clients are able to receive case management services from ten Specialty Provider Networks (SPNs). There are only three community mental health centers in the area. Therefore, not changing the rule would limit general revenue-funded clients to three options in the Dallas area, and would require that many clients change providers to continue receiving mental health case management services. Approving this rule change will maximize the ability for clients in this region to continue receiving services from their current provider and will be in compliance with the Sunset Commission's recommendations.

Additionally, with this rule change, there will be more overlap between MCO and LBHA provider networks in the area, allowing for more choice of providers by clients and better alignment between Medicaid and general revenue-funded provider networks.

## 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 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 Rhyne Simon, Department of State Health Services, Mail Code 2012, 8317 Cross Park Drive, Austin, TX 78754, or by email to rhyne.simon@dshs.state.tx.us with the phrase “MHCM: 412.403 (29) Informal Comments” in the subject line. 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 amendment is authorized by Health and Safety Code, §534.058, which requires the department to develop standards of care for the services provided by local mental health authorities and their subcontractors; 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 amendment affects Government Code, Chapters 531 and 534; and Health and Safety Code, Chapter 1001.

Title 25. Health Services  
Part 1. Department of State Health Services  
Chapter 412. Local Mental Health Authority Responsibilities  
Subchapter I. Mental Health Case Management  
Amendment §412.403

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

§412.403. Definitions.

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

(1) - (24) (No change.)

(25) Local Behavioral Health Authority (LBHA)--An entity designated as the local behavioral health authority in accordance with Texas Health and Safety Code, §533.0356.

(26) [(25)] Medically necessary--A clinical determination made by an LPHA that services:

(A) are reasonable and necessary for the treatment of a mental health disorder or to improve, maintain, or prevent deterioration of functioning resulting from such a disorder;

(B) are provided in accordance with accepted standards of practice in behavioral health care;

(C) are furnished in the most appropriate and least restrictive setting in which services can be safely provided;

(D) are at the most appropriate level or amount of service that can be safely provided; and

(E) could not have been omitted without adversely affecting the individual's mental and/or physical health or the quality of care rendered.

(27) [(26)] Mental health (MH) case management services--Activities that assist an individual in gaining and coordinating access to necessary care and services appropriate to the individual's needs. Case management activities include assessment, recovery planning, referral and linkage, and monitoring and follow up. Activities may be provided as routine case management or intensive case management.

(28) [(27)] Monitoring and follow-up--Activities and contacts that are necessary to ensure that referrals and linkages are effectively implemented and adequately addressing the needs of the individual. The activities and contacts may be with the individual, LAR, primary caregiver, family members, providers, or other people and entities to determine whether services are being furnished, the adequacy of those services, and changes in the needs or status of the individual.

(29) [(28)] Primary caregiver--A person 18 years of age or older who:

(A) has actual care, control, and possession of a child or adolescent; or

(B) has assumed responsibility for providing shelter and care for an adult.

(30) [(29)] Provider--An entity that is:

(A) a [A] community mental health center that has a contract with the department to provide general revenue-funded MH case management services, Medicaid-funded MH case management services, or both;

(B) a Local Behavioral Health Authority (LBHA) that has a contract with the department to provide general revenue-funded MH case management services, or a subcontractor of a LBHA.

(31) [(30)] Qualified mental health professional-community services or QMHP-CS--A staff member who meets the definition of a QMHP-CS set forth in Subchapter G of this chapter (relating to Mental Health Community Services Standards).

(32) [(31)] Recovery--A process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential.

(33) [(32)] Recovery plan or treatment plan--A written plan developed with the individual and, as required, the LAR and a QMHP-CS that specifies the individual's recovery goals, objectives, and strategies/interventions in conjunction with the uniform assessment that guides the recovery process and fosters resiliency as further described in §412.322(e) of this title (relating to Provider Responsibilities for Treatment Planning and Service Authorization) concerning content and timeframe of treatment plan.

(34) [(33)] Recovery planning--A systematic process for ensuring the individual's active participation and allowing the LAR, and the primary caregiver and others to develop goals and identify a course of action to respond to the clinically assessed needs. The assessed needs may address medical, social, educational, and other services needed by the individual.

(35) [(34)] Referral and linkage--Activities that help link an individual with medical, social, and educational providers, and with other programs and services that are capable of providing needed services (e.g., referrals to providers for needed services and scheduling appointments).

(36) [(35)] Routine case management--Services that assist an individual in gaining and coordinating access to necessary care and services appropriate to the individual's needs. The standards for providing routine case management services are set forth in §412.407 of this title.

(37) [(36)] Site based--The location where routine case management services are usually provided (i.e., the case manager's place of business).

(38) [(37)] Staff member--Provider personnel, including a full-time and part-time employee, contractor, or intern, but excluding a volunteer.

(39) [(38)] Strengths based--The concept used in service delivery that identifies, builds on, and enhances the capabilities, knowledge, skills, and assets of the child, adolescent, LAR, or primary caregiver, and family, their community, and other team members. The focus is on increasing functional strengths and assets rather than on the elimination of deficits.

(40) [(39)] TAC--Texas Administrative Code.

(41) [(40)] Uniform assessment--An assessment adopted by the department that is used for recommending an appropriate level of care (LOC).

(42) [(41)] Utilization management guidelines--Guidelines developed by the department that establish the type, amount, and duration of MH case management services for each LOC.

(43) [(42)] Wraparound process planning or other department-approved model--A strengths-based course of action involving a child or an adolescent and family, including any additional people identified by the child or adolescent, LAR, primary caregiver, and family, that results in a unique set of community services and natural supports that are individualized for the child or adolescent to achieve a positive set of identified outcomes.