

**Department of State Health Services**  
**Council Agenda Memo for State Health Services Council**  
**August 17-18, 0216**

**Agenda Item Title:** Amendment to rules concerning mental health services admission, continuity, and discharge

**Agenda Number:** 4.g.

**Recommended Council Action:**

For Discussion Only

For Discussion and Action by the Council

**Background:**

DSHS, Mental Health and Substance Abuse Division (DSHS-MHSA), Program Services Section II, is responsible for the development, implementation, and oversight of programs and services relating to the provision of mental health community treatment. DSHS-MHSA develops standards to ensure that the 37 Local Mental Health Authorities (LMHAs), two Community Centers, one Local Behavioral Health Authority (LBHA), and one Behavioral Health Organization (ValueOptions, Incorporated) provide appropriate and adequate mental health services to the citizens of Texas.

25 Texas Administrative Code (TAC), Chapter 412, Subchapter D, outlines requirements for admission, continuity, and discharge practices for individuals in the community in need of emergency or long-term mental health services, as well as those that require inpatient treatment in State Mental Health Facilities (SMHFs), or, DSHS-contracted beds at private psychiatric facilities.

Examples of community mental health services include the following: crisis intervention services, crisis follow-up and relapse prevention services, routine case-management, skills training and development, counseling services, psychiatric diagnostic interviews, peer support services, and psychosocial rehabilitative services. In fiscal year 2015, 249,259 individuals received outpatient mental health services as provided by the LMHAs, and as authorized by ValueOptions, Incorporated. Examples of inpatient mental health services include the following: psychiatric diagnostic interviews, medication training, pharmacological management, safety monitoring, skills training, and competency restoration treatment. In fiscal year 2015, 18,560 individuals were served in the state hospital system and contracted beds.

Funding for the provision of outpatient and inpatient mental health treatment comes from state general revenue funds.

**Summary:**

The purpose of this subchapter is to reduce or eliminate barriers to accessing care and to transitioning between and among system components for individuals receiving DSHS-MHSA services by ensuring:

- clinically appropriate treatment based on level of acuity and needs;
- timely access to evaluation and treatment services in the least restrictive, most appropriate setting of care; and
- uninterrupted services during transition between service types or providers.

The rules provide the requirements that enable DSHS to operate as a system of care with both inpatient and community-based components. It revises policies and procedures to better ensure continuity of services for individuals who are entering or exiting services at either state mental health facilities, contracted beds, or community services.

The amendments update terminology and legal and rule citations. In addition, the rules no longer provide a mechanism for non-physician assessment professionals to perform intake assessments at SMHFs. This is because

the current practice is for physicians to conduct intake assessments at SMHFs. The amendments include the uniform assessment in the description of procedures requisite to being placed in appropriate services. Provisions are added describing access to services at Waco Center for Youth. Consistent with ensuring continuity, the rules include a requirement for LMHAs to authorize an initial 180 day period of services for adults and 90 days for children towards receipt of transitional and on-going care. The repeals delete sections of the rules dealing with references and distribution.

**Key Health Measures:**

The following are examples of measures used by DSHS-MHSA Program Services staff to assess continuity of care practices:

**Community Support Plan**

- The statewide performance level for adults, children, and youth discharged from state facilities with a community support plan is 95%.

**Follow-Up Within Seven Days**

- The statewide follow-up performance level for adults, children, and youth discharged from a state facility, privately operated and state funded facility (i.e., Montgomery County Mental Health Treatment Facility and University of Texas Health Science Center at Tyler), or private psychiatric hospital funded through a Private Psychiatric Bed or Community Mental Health Hospital contract is 75% for face-to-face follow-up, and 95% with any follow-up disposition.

**Adult Community Tenure**

- The percentage of adults in a Full Level of Care (FLOC) that avoid hospitalization in a DSHS Operated or Contracted Inpatient Bed after authorization into a FLOC is > 96.4% per measurement period.

**Frequent Admissions**

- The percentage of adults and children authorized in a FLOC who are admitted 3 or more times within 180 days to a DSHS Operated or Contracted Inpatient psychiatric Bed is < 0.3% per measurement period.

**Summary of Input from Stakeholder Groups:**

Amendments to the rule began in the fall of 2011 and continued until the spring of 2016. A workgroup convened of internal and external DSHS stakeholders including DSHS-MHSA Program Services; DSHS-MHSA State Hospital Services Section; DSHS-Office of General Counsel; medical, program, and administrative staff from SMHFs and LMHAs; probate judges and probate staff; and representatives from advocacy and professional organizations with demonstrated interest in quality of care issues affecting people with mental illness.

Twelve stakeholder meetings were held to discuss proposed amendments to the rule. In March 2015, an internal workgroup was convened to resume amendments to the rules for presentation at a DSHS State Health Services Council Meeting in 2016. To obtain external stakeholder feedback, the draft rules were distributed for informal comment in June 2016 to Disability Rights Texas; LMHAs; Texas Council of Community Mental Health and Mental Retardation Centers; ValueOptions, Incorporated; North Texas Behavioral Health Authority; and members of the public who have signed up to receive information about rule activities.

**Proposed Motion:**

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

**Approved by Assistant Commissioner/Director:** Lauren Lacefield Lewis **Date:** 7/19/16

**Presenter:** Trina Ita **Program:** MHSA **Phone No.:** 512-838-4333

**Approved by CPEA:** Carolyn Bivens **Date:** 7/19/2016

Title 25. Health Services  
Part 1. Department of State Health Services  
Chapter 412. Local Mental Health Authority Responsibilities  
Subchapter D. Mental Health Services--Admission, Continuity, and Discharge  
Repeals and New §§412.151 - 412.231

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (DSHS), proposes the repeal of §§412.151 - 412.154, 412.161 - 412.163, 412.171 - 412.179, 412.191 - 412.195, 412.201 - 412.208, 412.221, and 412.231, and new §§412.151 - 412.155, 412.161 - 412.163, 412.171 - 412.180, 412.191 - 412.195, 412.201 - 412.208, 412.221, and 412.231, concerning admission, continuity, and discharge practices.

BACKGROUND AND PURPOSE

The rules are being revised in compliance with Government Code, §2001.039, which requires that each state agency review and consider for reoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections §412.151 - 412.154, 412.161 - 412.163, 412.171 - 412.179, 412.191 - 412.195, 412.201 - 412.208, 412.221 and §412.231 have been reviewed and DSHS has determined that reasons for adopting the sections continue to exist because rules on this subject are needed to administer the program effectively.

The new rules will outline requirements for admission, continuity, and discharge practices for individuals in the community in need of emergency or long-term mental health services, as well as, those that require inpatient treatment in SMHFs or DSHS-contracted beds at private psychiatric facilities.

Throughout the subchapter, the terms "Texas Department of Mental Health and Mental Retardation (TDMHMR)" and "Texas Department of Health (TDH)" are replaced with "Department of State Health Services (DSHS);" the term "Texas Department of Protective and Regulatory Services" is replaced with "Department of Family and Protective Services (DFPS);" the term "Board of Nurse Examiners for the State of Texas" is replaced with the term "Texas Board of Nursing;" "mental retardation" is replaced with "intellectual disability or related condition;" and references to "Advocacy, Inc." are replaced with "Disability Rights Texas." References to exhibits in this subchapter are deleted because they are outdated. Each reference is replaced with language explaining the updated content within the rule language as it relates to the exhibit it replaces.

SECTION-BY-SECTION SUMMARY

Division 1: General Provisions

Section 412.151 describes the purpose of the subchapter which is to reduce or eliminate barriers to accessing care and to transitioning between and among system components for individuals receiving DSHS Mental Health and Substance Abuse (MHSA) Division services by ensuring: clinically appropriate treatment based on level of acuity and needs; timely access to evaluation and treatment services in the least restrictive, most appropriate setting of care; and uninterrupted services during transition between service types or providers.

Section 412.152 sets forth the subchapter's application to providers of mental health services to include admission, continuity, and discharge practices. The subchapter is applicable to the following: State Mental Health Facilities (SMHFs), contracted psychiatric beds, local mental health authorities (LMHAs) or local behavioral health authorities (LBHAs) whose local service area is not served by a Managed Care

Organization (MCO), an LMHA/LBHA whose local service area is served by an MCO, to the extent compliance with one or more provisions of this subchapter is required in the LMHA/LBHA's contract with DSHS, and an MCO, to the extent compliance with one or more provisions of this subchapter is required in the MCO's contract with DSHS. New language has been added to reflect Application and Responsibility for Compliance that includes contracted psychiatric beds (PPB). LBHA has been added to reflect the changes in NorthSTAR.

Section 412.153 sets forth the definitions that are used in the subchapter. Revises, adds, and deletes definitions that are used in this subchapter. Definitions that are proposed for readoption include the terms "Absence," "absence for trial placement" "Day," "Discharge," "Discharged unexpectedly," "Emergency medical condition," "Patient," "Prescriber of medication," "Transfer" and "Treating physician."

Revised or new definitions for terms that are included are "Admission," "Adolescent," "Advanced directive," "Advanced practice registered nurse," "Alternate provider," "Assessment," "Assisted living facility," "Capacity," "Client assessment and registration system (CARE) Clinical management for behavioral health services (CMBHS)," "Community resource agency group(CRCG)," "Contracted psychiatric beds," "Continuity of services," "Co-occurring psychiatric and substance use disorder, (COPSD)," "Crisis services," "Crisis stabilization unit," "Designated LIDDA," "Designated LMHA/LBHA," "Family violence," "Inpatient services." "Involuntary patient," "Legally authorized representative (LAR)," "LMHA/LBHA designated staff member," "LMHA/LBHA liaison staff," "LMHA/LBHA-network provider," "LMHA/LBHA services," "Local behavioral health authority (LBHA)," "Intellectual developmental disability," "Local mental health authority,(LMHA)," "Local intellectual developmental disability authority (LIDDA)," "Local service area," "Managed care organization," "Mental illness," "Mental health priority population," "Minor," " Non third-party payor," "nursing facility," "Ombudsman," "Other inpatient provider," "Provider," "Permanent residence," "Personal care services," "Physician assistant," "Priority population," "Qualified mental health professional-Community services (QMHP-CS)," "Screening," "Special needs offender," "Special needs offenders with serious mental illnesses (SNO-SMI)," "State mental health facility, (SMHF)" "State-supported living center (SSLC)," "Substance use disorder," "Uniform assessment" and "Voluntary patient."

The definitions in the existing rules "Assessment professional," "Designated MRA" and State mental retardation facility (SMRF)" are not being proposed and have been deleted.

Section 412.154 sets forth the requirements for utilization management agreements between SMHFs and LMHA/LBHAs. Language for Waco Center for Youth has been deleted.

Section 412.155 is a new rule and sets forth processes for non third-party payor notifications and appeals for LMHA/LBHAs and additionally describes the complaint process for an SMHF. Describes the LMHA/LBHA process, notification and timeframes for such appeal. The process described in this section provides notification and appeal processes for individuals who are non-Medicaid eligible.

Division 2: Screening and Assessment for Crisis Services and Admission to LMHA or LBHA Services--  
LMHA or LBHA Responsibilities

The Division 2 title has been revised to reflect the addition of an LBHA.

Section 412.161 sets forth the requirements for screening and assessment into crisis services and long-term mental health services at the LMHA/LBHAs. New language has been added to reflect the LMHA/LBHA responsibilities and the approved assessment tool approved by DSHS to determine eligibility.

Section 412.162 sets forth the requirements for determining a county of residence for individuals seeking admission into LMHA/LBHA services. This section also adds language that the LMHA/LBHA must initiate or continue providing clinically necessary services, including discharge planning, during the dispute resolution process.

Section 412.163 sets forth the requirements for determining the most appropriate and available treatment alternative to include outpatient and inpatient mental health services. This section broadens the crisis services alternatives offered in the community which requires the LMHA/LBHA to assign a liaison staff person when using an alternate provider of inpatient services upon admission to the facility.

### Division 3: Admission to SMHFs and Other Inpatient Providers--SMHF and Other Inpatient Provider Responsibilities

The Division 3 title has been modified to reflect other inpatient provider responsibilities

Section 412.171 sets forth general admission criteria for SMHFs and other inpatient providers, with the exception of the Waco Center for Youth.

Section 412.172 sets forth admission criteria for maximum security units. North Texas State Hospital Vernon Campus has been deleted from the rule and the section title and the rule text have been replaced with Admission Criteria for a Maximum Security Unit. Also, the Texas Criminal Code Procedures has been updated.

Section 412.173 sets forth admission criteria for an adolescent forensic unit. North Texas State Hospital Vernon Campus has been deleted from the rule and the section title and the rule text have been replaced with Admission to an Adolescent Forensic Unit.

Section 412.174 sets forth admission criteria for Kerrville State Hospital. This section has been added to reflect the admission pursuant to Texas Criminal Code Procedures, Chapter 46B or Chapter 46C in accordance with Chapter 415, Subchapter G of this title (relating to Determination of Manifest Dangerousness).

Section 412.175 sets forth admission criteria for Waco Center for Youth. Criteria language has been modified; managing conservatorship under (TDPRS) has been deleted; and denial and appeal processes have been added.

Section 412.176 sets forth the requirements for voluntary admission to SMHFs or other inpatient contracted providers. Section title revised to reflect the LMHA/LBHA responsibilities to CPB. (1)(A)(ii) language “and has not been married “has been removed to accurately reflect the language in THSC, Chapter 572; §572.001. In subsection (a)(1)(C), language was added for a person that does not consent to treatment. Subsection (b) added least restrictive environment language. Subsection (c) deleted preliminary examination and replaced with examination language. In subsection (c)(1), language was added for a physician to conduct the preliminary assessment. Subsection (d) added admission criteria language. Subsection (f) added capacity to consent language. Subsection (j) revised the periodic evaluation time frame for continued need of voluntary inpatient treatment by a physician from no less than three times a week to every month in accordance with THSC, §572.003.

Section 412.177 sets forth the requirements for admission to SMHFs or other inpatient contracted providers under emergency detention. In subsection (b)(1), the timeframe for the physician examination

has been changed from 24 to 12 hours after the person is apprehended by the peace officer or transported for emergency detention. In subsection (e) the intake process language updated to reflect this change.

Section 412.178 sets forth the requirements for admission to SMHFs or other inpatient contracted providers under order of protective custody or court-ordered inpatient mental health services. In subsection (b), the order for admission has been modified to reflect the physician designee, an Advanced Practice Registered Nurse with delegated authority or a Physician Assistant with delegated authority to issue and sign a written order admitting the person according to §412.176(f) of this title (relating to Voluntary Admission to State Mental Health Facility or Contracted Psychiatric Beds).

Section 412.179 sets forth admission procedure requirements for SMHFs or other inpatient contracted providers. Language was updated to reflect the additions of an LBHA.

Section 412.180 sets forth requirements for voluntary treatment following involuntary admission for SMHFs or other inpatient contracted providers. In paragraph (2)(B), specific to the patient's treating physician will determine if the patient has capacity to consent as set forth in §412.176 of this title.

#### Division 4: Transfers and Changing LMHAs or LBHAs

Section 412.191 sets forth requirements for transferring clients from one SMHF to another SMHF. The reference to LBHA has been added. In subsection (f), the language CPB has been added to reflect the LMHA/LBHA responsibilities for transfers.

Section 412.192 sets forth requirements for transferring clients between a SMHF and a state supported living center. The section title has been updated to reflect the new terminology for state supported living centers.

Section 412.193 sets forth requirements for transferring clients between a SMHF and an out-of-state institution.

Section 412.194 sets forth requirements for transferring clients between a SMHF and another institution in Texas.

Section 412.195 sets forth requirements and processes for changing the LMHA/LBHA responsible for the provision of mental health services.

The following language was added: a screening assessment in accordance with §412.322 of this title (relating to Provider Responsibilities for Treatment Planning and Service Authorization) shall authorize an initial 180 days for adults and 90 days for children, transitioning and receiving ongoing care including the provision of medications; the screening assessment has been replaced with pre-admission assessment; and language has been added specific to the LMHA, LBHA maintaining an open status in CARE/CMBHS for 90 days or until notified of the person's admission to another LMHA, LBHA.

#### Division 5: Discharge and Absence Trial Placement from a SMHF or Contracted Psychiatric Beds

The Division title has been modified to reflect the term CPB.

Section 412.201 sets forth the requirements for discharge planning at a SMHF or contracted private psychiatric beds. Language has been added to reflect the discharge responsibilities of the LMHA/LBHA with contracted private psychiatric beds. Language has been added to reflect that the LMHA/LBHA is responsible for identifying the community resources to be offered to the patient. If community placement is a nursing facility the nursing facility will participate in the first interdisciplinary team meeting. The

final diagnosis is based on the current addition of the diagnostic statistical manual of mental disorders (DSM) and approved by DSHS. Language has been added specific to processes when there is a disagreement between the LMHA/LBHA and the hospital treatment team. In addition, language was added to address individuals committed pursuant to TCCP, 46C or 46.03 and the responsibilities of the SMHF.

Section 412.202 sets forth special considerations for populations of individuals admitted to SMHFs/CPB such as those admitted three or more times in a 180-day period, those eligible for Preadmission Screening and Resident Review, those on absence for trial placement, those appropriate for assisted living post discharge, those eligible for Home and Community Based Services-Adult Mental Health Recovery, and special needs offenders.

The language related to ATP have been deleted and replaced with subsection (b), preadmission screening and evaluation (PASRR) language has been added as described in 42 Code of Federal Regulations, Part 483, Subpart C. Subsection (d)(1) added language specific to referrals to a Crisis stabilization Unit (CSU) in that the facility must be licensed. In subsection (g), Home and Community Based services-Adult mental health (HCBS-AMH) language has been added to be consistent with the provider manual. In subsection (i), Special Needs offenders, language has been added to reflect the processes and responsibilities of the LMHA/LBHA when an SNO is released afterhours from state jail or prison. Also, language has been modified specific to the SMHF notifying Texas Correctional office on Offenders with Medical or Mental Impairments (TCOOMMI) prior to the discharge of an individual known to be on parole.

Section 412.203 sets forth the requirements for the discharge of voluntary patients from a SMHF. Language was added specific to the patient no longer benefitting from inpatient services as required by §412.201 of this title (relating to Discharge Planning).

Section 412.204 sets forth the requirements for the discharge of involuntary patients from an SMHF. Language was added specifically to direct the administrator of a SMHF to forward the discharge packet of an individual committed under Texas Criminal Codes to the jail and the LMHA/LBHA.

Section 412.205 sets forth the requirements for the discharge of minors from the Waco Center for Youth. New section and includes language specific to the responsibilities of Waco Center for Youth and the requirement of the coordination of a CRCG with the LMHA or LBHA.

Section 412.206 sets forth the requirements for absences from an SMHF. Also, a reference to an LBHA was added.

Section 412.207 sets forth the requirements for absence for trial placement from an SMHF.

Section 412.208 sets forth the procedures that must be enacted upon discharge or absence for trial placement from an SMHF. Language was added for the SMHF to make reasonable effort to contact the patient's family of discharge if the patients grants this permission. Language has been deleted specific to individuals younger than 16 years of age and is or has been married per THSC, Chapter 572; section 572.001

Section 412.209 sets forth the requirements for contact and implementation of a continuing care plan post discharge and absence for trial placement from an SMHF. Language added specific to provider responsibilities for treatment planning and service authorization in accordance with §412.322 of this title.

Division 6: Discharge from LMHA or LBHA

Section 412.221 sets forth the requirements for discharge from LMHA/LBHA services. Language added specific to the LHMA/LBHA responsibilities upon discharge regardless of the reasons for discharge and the authorization of transitional service package for 90 days.

#### Division 7: Training

Section 412.231 sets forth assessment and intake training requirements at an SMHF. Language added specific to the requirements of training at a SMHF specific to assessment and intake.

#### FISCAL NOTE

Lauren Lacefield Lewis, Assistant Commissioner for the MHSA Division, has determined that for each year of the first five years 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 IMPACT ANALYSIS

Ms. Lacefield Lewis has also determined that the proposed rules will have no direct adverse economic impact on small businesses or micro-businesses. This was determined by interpretation that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

The rules may have direct application to the 37 LMHA/LBHAs, two Community Centers, one LBHA, one Behavioral Health Organization (ValueOptions, Incorporated), and private providers who deliver appropriate and adequate mental health services to the citizens of Texas, none of which meet the definition of small or micro-business under the Government Code, §2006.001. Therefore, an economic impact statement and regulatory flexibility analysis for small 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 sections as proposed. There is no anticipated impact on local employment.

#### PUBLIC BENEFIT

In addition, Ms. Lewis 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 reduce or eliminate barriers to accessing care and to transitioning between and among system components for individuals receiving DSHS-funded mental health services by ensuring:

- clinically appropriate treatment based on level of acuity and needs;
- timely access to evaluation and treatment services in the least restrictive, most appropriate setting of care; and
- uninterrupted services during transition between service types or providers.

#### REGULATORY ANALYSIS

DSHS 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

DSHS 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 Vicky Hall, Crisis Services and Client Rights Unit, Department of State Health Services, 8317 Cross Park Drive, Suite 350-D, Mail Code 2018, P.O. Box 149347, Austin, Texas 78754, phone (512) 838-4349 or by email to MHSARules@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 §534.0535, which requires the board to adopt rules requiring continuity of services and planning for patient or client care between DSHS facilities and local mental health or mental retardation authorities; 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 DSHS and for the administration of Health and Safety Code, Chapter 1001.

The amendments affect Government Code, §531.0055; and Health and Safety Code, §534.053, §534.058, and §1001.075.

TITLE 25. HEALTH SERVICES  
PART 1. DEPARTMENT OF STATE HEALTH SERVICES  
CHAPTER 412 LOCAL MENTAL HEALTH AUTHORITY RESPONSIBILITIES  
SUBCHAPTER D. Mental Health Services--Admission, Continuity, and Discharge

DIVISION 1: GENERAL PROVISIONS

§412.151. Purpose.

The purpose of this subchapter is to reduce or eliminate barriers to accessing care and to transitioning between and among system components for individuals receiving Department of State Health Services (DSHS) Mental Health and Substance Abuse (MHSA) Division services by ensuring:

- (1) clinically appropriate treatment based on level of acuity and needs;
- (2) timely access to evaluation and treatment services in the least restrictive, most appropriate setting of care; and
- (3) uninterrupted services during transition between service types or providers.

§412.152. Application and Responsibility for Compliance.

(a) Application. This subchapter applies to:

- (1) a state mental health facility (SMHF);
- (2) contracted psychiatric beds (CPB);
- (3) a local mental health authority (LMHA) or local behavioral health authority (LBHA) whose local service area is not served by a managed care organization (MCO);
- (4) an LMHA or LBHA whose local service area is served by an MCO, to the extent compliance with one or more provisions of this subchapter is required in the LMHA's or LBHA's contract with DSHS; and
- (5) an MCO, to the extent compliance with one or more provisions of this subchapter is required in the MCO's contract with DSHS.

(b) Responsibility for Compliance. The LMHA or LBHA, and MCO shall:

- (1) obligate by contract that the providers in their networks comply with §412.163 of this title (relating to Most Appropriate and Available Treatment Alternative) and §412.202 of this title (relating to Special Considerations) and Divisions 2 and 5 of this Subchapter; and

(2) monitor the providers for compliance with §412.163 of this title (relating to Most Appropriate and Available Treatment Alternative) and §412.202 of this title (relating to Special Considerations) and Divisions 2 and 5 of this Subchapter.

§412.153. Definitions.

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

(1) Absence -- When a patient, who has not been discharged, is physically away from the SMHF for any purpose, such as for hospitalization, a home visit, a special activity, unauthorized departure or advanced trial placement.

(2) Absence for trial placement (ATP) -- When a patient, who has not been discharged, is physically away from the SMHF for the purpose of evaluating the patient's adjustment to a particular placement in the community prior to discharge. An ATP is a type of furlough, as referenced in Texas Health and Safety Code (THSC), Chapter 574, Subchapter F.

(3) Admission--

(A) To an SMHF or CPB: The acceptance of person to an SMHF's or CPB's custody and care for inpatient services, based on:

(i) a physician's order issued in accordance with §412.176(g) of this title (relating to Voluntary Admission);

(ii) a physician's order issued in accordance with §412.177(c)(3) of this title (relating to Emergency Detention);

(iii) an order of protective custody issued in accordance with THSC §574.022;

(iv) an order for temporary inpatient mental health services issued in accordance with THSC, §574.034, or Texas Family Code (TFC), Chapter 55;

(v) an order for extended inpatient mental health services issued in accordance with THSC, §574.035, or TFC, Chapter 55; or

(vi) an order for commitment issued in accordance with the Texas Code of Criminal Procedure (TCCP), Chapter 46B, Article 46.02, 46.03 or Chapter 46C.

(B) Into LMHA or LBHA services: The acceptance of a person in the priority population into LMHA or LBHA services.

(4) Adolescent -- An individual who is at least 13 years of age, but younger than 18 years of age.

(5) Advance directive --

(A) a directive, as that term is defined by THSC, Chapter 166, §166.031;

(B) an out-of-hospital DNR order, as that term is defined by THSC, Chapter 166, §166.081;

(C) a medical power of attorney under Subchapter D; or

(D) Declaration for mental health treatment” means a document making a declaration of preferences or instructions regarding mental health treatment as defined by Civil Practices and Remedies Code, Chapter 137.

(6) Advanced practice registered nurse (APRN) -- A staff member who is a registered nurse approved by the Texas Board of Nursing as a clinical nurse specialist in psychiatric/mental health or nurse practitioner in psychiatric/mental health, in accordance with Texas Occupations Code, Chapter 301.

(7) Alternate provider -- An entity that provides mental health services, substance abuse treatment services, or both in the community, but not pursuant to a contract or memorandum of understanding with an LMHA or LBHA.

(8) Assessment -- A systematic process for measuring an individual's service needs.

(9) Assisted living facility -- An establishment as defined in THSC, Chapter 247, and regulated by the Texas Department of Aging and Disability Services (DADS), 40 TAC Part 1, Chapter 92, that:

(A) furnishes, in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor of the establishment;

(B) provides:

(i) personal care services; or

(ii) administration of medication by a person licensed or otherwise authorized in this state to administer the medication; and

(C) may provide assistance with or supervision of the administration of medication.

(10) Capacity -- The ability to understand and appreciate the nature and consequences of a decision and the ability to reach an informed decision about matters that in involve informed consent.

(11) Client Assignment and Registration System (CARE) -- Clinical Management for Behavioral Health Services (CMBHS) -- The DSHS electronic health record system that merges legacy automated health management systems from the former Texas Department of Mental Health and Mental Retardation and the former Texas Commission on Alcohol and Drug Abuse.

(12) Community Resource Coordination Group (CRCG) -- A local interagency group comprising public and private providers who come together to develop individual services plans for children, youth, and adults whose needs can be met only through interagency coordination and cooperation.

(13) Continuity of services -- Activities that are designed to ensure uninterrupted services are provided to a person, especially during a transition between service types or providers (e.g., inpatient services or LMHA or LBHA services and county jail, nursing home, Texas Juvenile Justice Department, or other settings) and that provide assistance to the person and the person's legally authorized representative (LAR) in identifying, accessing, and coordinating LMHA or LBHA services and other appropriate services and supports in the community that are needed by the person, including:

(A) assisting with admissions and discharges;

(B) facilitating access to appropriate services and supports in the community, including identifying and connecting the individual with community resources, and coordinating the provision of services;

(C) participating in the individual's treatment plan development and reviews;

(D) promoting implementation of the individual's treatment plan or continuing care plan;

(E) coordinating between the individual and the individual's family, as appropriate, as well as with available community resources; and

(F) while the person is receiving inpatient services:

(i) participating in staffing and reviews to the extent possible to monitor the person's treatment progress;

(ii) identifying appropriate and available community resources;  
and

(iii) participating in discharge planning.

(14) Contracted psychiatric beds (CPB) -- Beds that are State funded inpatient psychiatric beds in private hospitals or general hospitals with a psychiatric unit that are used for inpatient care in the community.

(15) Co-occurring psychiatric and substance use disorder (COPSD) -- A diagnosis of both a mental illness and a substance use disorder.

(16) Crisis -- A situation in which:

(A) the individual presents an immediate danger to self or others; or

(B) the individual's mental or physical health is at risk of serious deterioration; or

(C) an individual believes that he or she presents an immediate danger to self or others or that his or her mental or physical health is at risk of serious deterioration.

(17) Crisis services – LMHA or LBHA or alternate provider services provided to a person in crisis.

(18) Crisis stabilization unit -- A crisis stabilization unit licensed under THSC, Chapter 577 and whose standards of care are governed by 25 TAC, Chapter 134 (relating to Private Psychiatric Hospitals and Crisis Stabilization Units).

(19) Day -- Calendar day, unless specified otherwise.

(20) Designated LMHA or LBHA -- The LMHA or LBHA:

(A) that serves the person's county of residence, which is determined in accordance with §412.162 of this title (relating to Determining County of Residence); or

(B) that does not serve the person's county of residence, but has taken responsibility for ensuring the person's provision of LMHA or LBHA services.

(21) Designated Local intellectual developmental disability authority (LIDDA) -- The LIDDA assigned to an individual in CARE.

(22) Discharge--

(A) From inpatient services: The release of a patient from the custody and care of a provider of inpatient services.

(B) From LMHA or LBHA services: The termination of LMHA or LBHA services delivered to a person by an LMHA or LBHA.

LBHA: (23) Discharged unexpectedly -- A discharge from an SMHF, CPB, or LMHA or

- (A) due to a patient's unauthorized departure;
- (B) at the request of a voluntary patient;
- (C) due to a court releasing the patient;
- (D) due to the death of the patient; or
- (E) due to the execution of an arrest warrant for the patient.

(24) Emergency medical condition -- A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain, psychiatric disturbances or symptoms of substance abuse) such that the absence of immediate medical attention could reasonably be expected to result in:

- (A) placing the health of the person (or with respect to a pregnant woman, the health of the woman or her unborn child) or others in serious jeopardy;
- (B) serious impairment to bodily functions;
- (C) serious dysfunction of any bodily organ or part; or
- (D) in the case of a pregnant woman who is having contractions:
  - (i) that there is inadequate time to effect a safe transfer to another hospital before delivery; or
  - (ii) that transfer may pose a threat to the health or safety of the woman or the unborn child.

(25) Family violence -- An act by a member of a family or household against another member of the family or household that is:

- (A) intended to result in physical harm, bodily injury, or assault;
- (B) a threat that reasonably places the member in fear of imminent physical harm, bodily injury, or assault, but does not include defensive measures to protect oneself; or
- (C) intended to inflict emotional harm, including an act of emotional abuse.

(26) Inpatient services -- Residential psychiatric treatment provided to a patient in an SMHF or hospital licensed under the THSC, Chapter 241.

(27) Intake process -- The activities performed by SMHF staff when an individual has been accepted for services, to include:

(A) obtaining relevant information about the patient, including information about finances, third-party coverage or insurance benefits, and advance directives;

(B) explaining, orally and in writing, the person's rights described in Chapter 404, Subchapter E of this title (concerning Rights of Persons Receiving Mental Health Services):

(C) explaining, orally and in writing, the SMHF's services and treatment as they relate to the person;

(D) explaining, orally and in writing, the existence, purpose, telephone number, and address of the protection and advocacy system established in Texas, which is Disability Rights Texas, pursuant to THSC, §576.008;

(E) explaining, orally and in writing, the patient trust fund account, charges for services, and the financial responsibility form; and

(F) explaining the trust fund and exemptions available under THSC, §576.010 hospital licensed under the THSC, Chapter 241.

(28) Intellectual developmental disability (IDD) -- A disability characterized by significant limitations that are determined by standard objective assessment measures both in intellectual functioning (e.g., reasoning, learning, problem solving) and in adaptive behavior, which covers a range of everyday social and practical skills, and which originates before the age of 18, including cognitive developmental disabilities.

(29) Involuntary patient -- A patient who is receiving inpatient services based on an admission made in accordance with:

(A) §412.177 of this title (relating to Emergency Detention);

(B) §412.178 of this title (relating to Admission under Order of Protective Custody or Court-ordered Inpatient Mental Health Services);

(C) an order for temporary inpatient mental health services issued in accordance with THSC, §574.034, or Texas Family Code, Chapter 55;

(D) an order for extended inpatient mental health services issued in accordance with THSC, §574.035, or Texas Family Code, Chapter 55;

(E) an order for commitment issued in accordance with TCCP, Chapter 46B or Article 46.02; or

(F) an order for commitment issued in accordance with TCCP, Chapter 46C or Article 46.03.

(30) Legally authorized representative (LAR) -- A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, including, but not limited to, a parent, guardian, or managing conservator of a minor, or the guardian of the person.

(31) LMHA or LBHA designated staff member -- an identified staff with the responsibility to provide continuity of care services such as a peer with lived experience, recovery manager, family partner, or jail liaison.

(32) LMHA or LBHA liaison staff -- The staff at the designated LMHA or LBHA who is responsible for providing continuity of services. The liaison staff may be a continuity of care staff, case coordinator, or service coordinator.

(33) LMHA or LBHA-network provider -- an entity that provides mental health services in the community pursuant to a contract or memorandum of understanding with an LMHA or LBHA, including that part of an LMHA or LBHA directly providing mental health services.

(34) LMHA or LBHA services -- Mental health services identified in the LMHA or LBHA performance contract with DSHS that are provided by an LMHA or LBHA-network provider to a person in the person's home community.

(35) Local behavioral health authority (LBHA) -- An entity designated as the local behavioral health authority in accordance with THSC, §533.0356.

(36) Local Intellectual Developmental Disability Authority LIDDA -- As defined in THSC, §531.002, an entity designated in accordance with the THSC, §533.035(a), to which the Health and Human Services Commission executive commissioner delegates the state's authority and responsibility within a specified region for planning, policy development, coordination, including coordination with criminal justice entities, and resource development and allocation and for supervising and ensuring the provision of IDD services to persons with IDD in the most appropriate and available setting to meet individual needs in one or more local service areas.

(37) Local mental health authority (LMHA) -- An entity designated as the local mental health authority in accordance with THSC, §533.035(a).

(38) Local service area -- A geographic area composed of one or more Texas counties defining the population that may receive services from an LMHA, LBHA, or SMHF.

(39) Managed care organization (MCO) -- An entity that has a current Texas Department of Insurance certificate of authority to operate as a Health Maintenance Organization (HMO) under Texas Insurance Code (TIC), Chapter 843, or as an approved nonprofit health corporation under TIC, Chapter 844, and that provides mental health community services pursuant to a contract with the DSHS Mental Health and Substance Abuse Services Division.

(40) Mental illness -- An illness, disease, or condition (other than a sole diagnosis of epilepsy, dementia, substance use disorder, IDD, or pervasive developmental disorder) that:

(A) substantially impairs an individual's thought, perception of reality, emotional process, or judgment; or

(B) grossly impairs an individual's behavior as demonstrated by recent disturbed behavior.

(41) MH priority population -- As identified in the strategic plan of the Health and Human Services Commission and operationalized in DSHS performance contracts with LMHA or LBHAs, those groups of adults, adolescents, and children with mental illness or serious emotional disturbance most in need of mental health services.

(42) Minor -- A person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.

(43) Non Third-Party Payor-- An individual identified as receiving services through the State General Revenue fund.

(44) Nursing facility -- An institution that provides organized and structured nursing care and service, and is subject to licensure under THSC, Chapter 242. The nursing facility may also be certified to participate in the Medicaid Title XIX program. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care to the residents; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

(45) Ombudsman -- A rights protection officer with the DSHS Office of Consumer Services and Rights Protection who is responsible for assisting an individual or LAR if the individual is denied a service by DSHS, a DSHS program or facility, an LMHA or LBHA, or MCO.

(46) Other inpatient provider -- An LMHA or LBHA-network provider or contracted psychiatric beds.

(47) Patient -- A person admitted to inpatient services who has not been discharged.

(48) Permanent residence -- The physical address where an individual or, if a minor, his or her parents or legal guardian lives; a post office box is not a permanent residence.

(49) Personal care services --

(A) Assistance with meals, dressing, movement, bathing, or other personal needs or maintenance; or

(B) general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in an assisted living facility or who needs assistance to manage the person's personal life, regardless of whether a guardian has been appointed for the person.

(50) Physician assistant (PA) -- A staff member who is licensed as a physician assistant by the Texas State Board of Physician Assistant Examiners in accordance with Texas Occupations Code, Chapter 204.

(51) Prescriber of medication -- A physician or designee who is authorized by state law to prescribe medication.

(52) Priority population--As identified in DSHS's strategic plan and operationalized in its performance contracts with LMHAs, LBHA's those groups of persons with mental illness or mental retardation most in need of mental health or mental retardation services.

(53) Qualified mental health professional -- community services (QMHP-CS) -- as defined in Chapter 412, Subchapter G (relating to Mental Health Community Services and Standards).

(54) Screening -- Activities performed by a Qualified Mental Health Professional -- Community Services (QMHP-CS) to gather triage information to determine the need for in-depth assessment. The QMHP-CS collects this information through face-to-face or telephone interviews with the individual or collateral.

(55) Special needs offender (SNO) -- A person with mental illness for whom criminal charges are pending or who after conviction or adjudication is in custody or under any form of criminal justice supervision.

(56) State mental health facility (SMHF) -- A state hospital or a state center with an inpatient psychiatric component operated by DSHS.

(57) State supported living center (SSLC) -- A state-supported living center or a state center with an IDD residential component that is operated by the Department of Aging and Disability Services (DADS).

(58) Special needs offenders with serious mental illnesses (SNO-SMI) -- Individuals with terminal or serious medical conditions, IDD, physical disabilities, and those

who are elderly who are served by the Texas **Correctional Office on Offenders with Medical or Mental Impairments** (TCOOMMI).

(59) Substance use disorder -- The use of one or more drugs, including alcohol, which significantly and negatively impacts one or more major areas of life functioning and which currently meets the criteria for substance abuse or substance dependence as described in the current edition of the *Diagnostic Statistical Manual of Mental Disorders* (DSM) published by the American Psychiatric Association.

(60) Transfer -- To move from one institution to another institution. In this subchapter, "institution" does not include a nursing facility.

(61) Treating physician -- A physician who coordinates and oversees a patient's treatment.

(62) Uniform assessment -- The approved assessment tool(s) designated by DSHS.

(63) Voluntary patient -- A patient who is receiving inpatient services based on an admission made in accordance with:

(A) §412.176 of this title (relating to Voluntary Admission); or

(B) §412.180 of this title (relating to Voluntary Treatment Following Involuntary Admission).

§412.154. Utilization Management Agreement between SMHF and LMHA or LBHA.

An SMHF that has a defined local service area, and an LMHA or LBHA served by the SMHF shall enter into a utilization management agreement that:

(1) describes the SMHF's specific medical exclusionary criteria;

(2) describes the utilization management process relating to level of care, discharge, and ATP, including the duties and responsibilities of the SMHF and the LMHA or LBHA; and

(3) requires the LMHA or LBHA to fund a person's admission to, and inpatient services in, an SMHF if the LMHA or LBHA is the person's designated LMHA or LBHA and the person does not have third-party coverage, regardless of whether the LMHA or LBHA referred the person to the SMHF.

§412.155. Non Third-Party Payor Notification and Appeals Process for LMHA or LBHA.

The process described in this section provides a notification and appeals process for individuals who are non-Medicaid eligible. The notification and appeals process for individuals who are

Medicaid eligible is described in 1 TAC Chapter 357, Subchapter A, concerning Uniform Fair Hearings Rules.

(1) LMHA or LBHA Appeal Process for the decision to involuntarily:

- (A) deny, reduce, suspend, or terminate LMHA or LBHA services;
- (B) deny services to an individual who is changing LMHA or LBHA;
- (C) deny a transfer request between LMHA or LBHA; or
- (D) discharge the individual from an LMHA or LBHA.

(2) Notification timeframe and content. The written notification required by paragraph (1) of this subsection must:

(A) at LMHA or LBHA:

(i) be given or mailed to the individual or LAR within 10 working days of the date the decision was made;

(ii) state the reason for the decision;

(iii) explain that the individual or LAR may contact the LMHA or LBHA within 30 days of receipt of notification, if dissatisfied with the decision and request that the decision be reviewed in accordance with subsection (f) of this section;

(iv) include name(s), phone number(s) and address(s) of one or more accessible staff to contact during office hours; and

(3) Timeframes for requesting an appeal. The individual or LAR must request an appeal within 30 days of the date on the notification letter.

(4) Process for local appeal. During the local appeal, the LMHA or LBHA or SMHF shall continue providing services to the individual at the same level the individual was receiving before the appeal. The appeal will

(A) be conducted by:

(i) the LMHA or LBHA within 10 working days of receiving the request for review of routine services;

(ii) the LMHA or LBHA within one working day of receiving the request for review of crisis services;

(iii) a person who was not involved in the initial decision or a member of the individual's treatment team;

(B) include a review of the original decision that led to the individual's or LAR's appeal;

(C) result in a decision to uphold, reverse, or modify the original decision;

(D) provide the individual or LAR an opportunity to express his or her concerns in person, in writing, or by telephone to the person reviewing the decision; and

(E) allow the individual or LAR to:

(i) have a representative talk with the reviewer; or

(ii) submit his or her concerns in writing, on tape, or in some other fashion.

(5) Decision notification. Following the appeal, the LMHA or LBHA shall, in a language and/or method understood by the individual or LAR:

(A) explain the decision to the individual or LAR, in writing and

(B) notify the individual or LAR of the process for requesting and review of the local appeal decision in accordance with paragraph (2) of this subsection.

(6) Limitations. The notification and appeal process described in this section:

(A) is applicable only to services funded by the department and provided or contracted for by its LMHAs or LBHAs;

(B) does not preclude an individual's or LAR's right to appeals or other actions that accompany other funds administered through an LMHA or LBHA or to other appeals processes provided for by other state and federal laws, 42 USC §1396 (Medicaid statute); and Texas Human Resources Code, Chapter 73 and Chapter 621 of this title (relating to Early Childhood Intervention), Early Childhood Intervention programs as funded by the Texas Interagency Council for Early Childhood Intervention.

(7) Review of local appeal decision and timeframes. If the individual or LAR is dissatisfied with the local appeal decision, then the individual or LAR may request a review of the local appeal from the department's Office of Consumer Services and Rights Protection – Ombudsman. A request for review may be submitted in writing to the DSHS Office of Consumer Services and Rights Protection -- Ombudsman, Mail Code 2019, P.O. Box 12668, Austin, Texas 78751, or telephone by calling toll free 1-(800) 252-8154.

(8) Timeframe for requesting a review. If the request for review is from an individual or LAR who received services from: an LMHA or LBHA, the request must be received within 10 working days of receiving the local appeal decision.

(9) Maintain current services. If the individual or LAR requests a review within the prescribed timeframe, the LMHA or LBHA may not take the proposed action while the review is pending and shall maintain the current level of services authorized while the review is pending.

(10) Review requested outside the timeframe. If the individual or LAR does not request a review within the timeframe prescribed in subparagraph (i) of this paragraph the appeal decision upholds the decision to take the proposed action. If the individual or LAR requests the appeal within the prescribed timeframe:

(A) the individual or LAR who requests an appeal may choose to have the reviewer conduct the review:

(i) by telephone conference with the individual or LAR and a representative from the LMHA or LBHA and make a decision based upon verbal testimony made during the telephone conference and any documents provided by the individual or LAR and the LMHA or LBHA; or

(ii) by making a decision based solely upon documents provided by the individual or LAR and the LMHA or LBHA without the presence of any of the parties involved.

(B) unless an extension is granted by the director of the department's Office of Consumer Services and Rights Protection – Ombudsman the review is conducted within 10 working days of receiving the request for routine services. The review will:

(i) include an examination of the pertinent information concerning the proposed action and ~~may~~ include consultation with an equally credentialed professional within the department's Mental Health and Substance Abuse clinical and program staff; and

(ii) result in a final decision which will uphold, reverse, or modify the original decision to take the proposed action.

(11) Final step. This is the final step of the appeal process for involuntarily denying, reducing, or terminating the individual's services.

(A) Within five working days after the review, the reviewer will send written notification of the final decision to the individual or LAR and the LMHA or LBHA.

(B) The LMHA or LBHA will take appropriate action consistent with the final decision.

DIVISION 2: SCREENING AND ASSESSMENT FOR CRISIS SERVICES AND  
ADMISSION TO LMHA OR LBHA SERVICES – LMHA OR LBHA RESPONSIBILITIES

§412.161. Screening and Assessment.

(a) Crisis services. An LMHA or LBHA shall ensure immediate screenings and assessments of any person found in the LMHA or LBHA local service area who is in crisis in accordance with §412.321 of this title (relating to Crisis Services). When the crisis is resolved, the LMHA or LBHA must assess the individual utilizing the Uniform Assessment to determine which is more appropriate:

- (A) referral for ongoing services at the LMHA or LBHA; or
- (B) referral to a private provider.

(b) Admission into LMHA or LBHA services. Individuals must be assessed for eligibility of services by using the approved Uniform Assessment and Utilization Management guidelines.

(1) In accordance with THSC, §572.001(a) and (c), a request for voluntary admission of a person with a mental illness may only be made by:

(A) the person, if:

(i) he or she is 16 years of age or older; or

(ii) the LAR if the person is younger than 18 years of age requests admission the person must consent or:

(B) the LAR, if the person is younger than 18 years of age, except that a guardian or managing conservator acting as an employee or agent of the state or a subdivision of the state may request voluntary admission of the person only with the person's consent.

(2) The LMHA or LBHA shall screen each person presenting for services at an LMHA or LBHA as follows:

(A) an LMHA or LBHA staff shall determine whether the person's county of residence is within the LMHA or LBHA's local service area; and

(B) an LMHA or LBHA staff who is at least a QMHP-CS shall gather triage information and determine the need for an assessment.

(3) If the person's county of residence is within the LMHA or LBHA's local service area and a screening is needed, then the LMHA or LBHA shall conduct a screening in accordance with §412.322 of this title (relating to Provider Responsibilities for Treatment Planning and Service Authorization) of Chapter 412, Subchapter G of this title (relating to Mental Health Community Services Standards).

(A) For a person determined to be in the MH priority population, the LMHA or LBHA shall identify which services the person may be eligible to receive and, if appropriate, determine whether the person receive services immediately or be placed on a waiting list for services and referred to other community resources. Individuals who have Medicaid must not be placed on a waitlist for services.

(B) For a person determined not to be in the MH priority population, including those with a sole diagnosis of substance use disorder, the LMHA or LBHA shall provide the person with written notification regarding:

(i) the denial of services and the opportunity to appeal in accordance with §412.155 of this title (relating to Non Third-Party Payors Notification and Appeals Process); and

(ii) the opportunity to appeal to the-ombudsman by writing to the Office of Consumer Services and Rights Protection -- Ombudsman, DSHS, P.O. Box 12668, Austin, Texas, 78711-2668, or by calling 1-800-252-8154.

#### §412.162. Determining County of Residence.

(a) Adults. An adult's county of residence is the county in which the evidence indicates is the adult's permanent residence.

(1) If an adult will not or is unable to communicate the location of his/her permanent residence and there is no evidence indicating the location of his/her permanent residence, then the adult's county of residence is the county in which the adult is physically present when he/she requests or requires services.

(2) If an LMHA or LBHA is paying for an adult's community mental health services that are delivered in the local services area of another LMHA or LBHA, or if an LMHA or LBHA is paying for an adult's residential placement that is located outside the LMHA or LBHA's local service area, then the county in which the paying LMHA or LBHA is located is the adult's county of residence.

(b) Minors.

(1) Except as provided by paragraph (2) of this subsection, a minor's county of residence is the county in which the evidence indicates the minor's LAR's permanent residence is located.

(2) A minor's county of residence is the county in which the minor currently resides if:

(A) the county of permanent residence of the minor's LAR cannot be determined;

(B) a state agency is the minor's LAR; or

(C) the minor does not have an LAR.

(c) Disputes initiated by the LMHA or LBHA. The LMHA or LBHA must initiate or continue providing clinically necessary services, including discharge planning, during the dispute resolution process. If a dispute initiated by an LMHA or LBHA cannot be resolved by the executive directors of the affected LMHA or LBHAs, it shall be resolved by the DSHS performance contract manager(s) of the affected LMHA or LBHAs.

(d) Disputes initiated by or on behalf of a person. A dispute initiated by or on behalf of an individual shall be resolved by the ombudsman in consultation with the performance contract manager of the affected LMHA or LBHA.

#### §412.163. Most Appropriate and Available Treatment Alternative.

The designated LMHA or LBHA is responsible for recommending the most appropriate, available treatment alternative for persons in need of mental health services in accordance with this section.

##### (1) Inpatient services.

(A) Before an LMHA or LBHA refers a person for inpatient services, the LMHA or LBHA shall screen and assess the person to determine if the person requires inpatient services.

(B) If the screening and assessment indicates the person requires inpatient services and inpatient services represent the least restrictive setting available, then the LMHA or LBHA shall refer the person:

(i) to an SMHF or CPB, if the LMHA or LBHA determines that the person meets the criteria for admission to the SMHF or CPB;

(ii) to an LMHA or LBHA-network provider of inpatient services;

(iii) to a crisis stabilization unit; or

(iv) to an alternate provider of inpatient services, if the patient was receiving LMHA or LBHA services from the designated LMHA or LBHA at the time of admission.

(C) If the person is identified in CARE/CMBHS as having IDD, then the LMHA or LBHA shall inform the designated LIDDA that the person has been referred for inpatient services.

(D) If the LMHA or LBHA refers the person for inpatient services, then the LMHA or LBHA is responsible for communicating necessary information to the SMHF or other provider of inpatient services prior to or at the time of admission, to include:

- (i) identifying data, including address;
- (ii) legal status (e.g., regarding guardianship, charges pending, custody, if person is a minor);
- (iii) pertinent medical and medication information, including known disabilities;
- (iv) behavioral data, including information regarding COPSD;
- (v) other pertinent treatment information;
- (vi) finances, third-party coverage, and other benefits, if known;
- (vii) advanced directive(s).

(E) If the LMHA or LBHA that refers the person for inpatient services is not the person's designated LMHA or LBHA, then the LMHA or LBHA shall notify the designated LMHA or LBHA of the referral by the end of the next business day.

(F) The designated LMHA or LBHA shall assign an LMHA or LBHA liaison staff to a person admitted to an SMHF or alternate provider of inpatient services upon notification of admission IDD. If the LMHA or LBHA refers a person to a mental health facility, as described in subparagraph (B)(ii) or (B)(iii) of this paragraph, and the person is admitted, the designated LMHA or LBHA shall assign an LMHA or LBHA liaison staff. The LMHA or LBHA liaison staff, and LIDDA liaison staff if any, are responsible for the person's continuity of services.

(2) Crisis services. An LMHA or LBHA is responsible for ensuring the provision of crisis services to any person who is in crisis in its local service area.

(3) LMHA or LBHA services. If an LMHA or LBHA admits a person to LMHA or LBHA services, then the LMHA or LBHA shall ensure the provision of services in the least restrictive, most community-integrated setting available. The LMHA or LBHA shall assign to a person receiving LMHA or LBHA services a staff person who is responsible for the person's continuity of services.

(4) Competency restoration services.

(A) The LMHA or LBHA shall offer services to a person ordered by a court to participate in outpatient mental health services, or competency restoration services if

available, when the court identifies the LMHA or LBHA as being responsible for those services in accordance with the THSC, §574.037; TCCP, Article 46B or 46.03.

(B) Upon request or when informed, the LMHA or LBHA shall make recommendations to the courts and jails regarding the least restrictive and most expedient options for all such persons when a competency evaluation has been ordered or a person has been found incompetent to stand trial. These options may include, but are not limited to:

(i) enrollment of an individual in outpatient services with the LMHA or LBHA if the individual is willing, appropriate services are available, and charges are dropped;

(ii) pursuit of civil commitment if individual meets criteria for hospitalization and charges are dropped;

(iii) initiation of an outpatient competency restoration commitment rather than an inpatient competency restoration commitment in accordance with the TCCP, Chapter 46B, if charges allow, individual is willing, and appropriate services are available;

(iv) initiation of treatment with psychoactive medication, including compelled psychoactive medication when appropriate, in accordance with the TCCP, Chapter 46B; or

(v) reassessment and discussion of alternatives to incarceration and advantages and disadvantages of treatment options for an individual whose rational understanding or overall stability has improved while waiting to gain admission to a forensic hospital bed.

(5) Referral to alternate provider.

(A) If a person requests to be referred to an alternate provider, then the LMHA or LBHA shall make a referral to an alternate provider in accordance with the request.

(B) If a person has third-party coverage, but the coverage will not pay for needed services because the designated LMHA or LBHA does not have a provider on its network that is approved by the third-party coverage, then the designated LMHA or LBHA shall take action in accordance with §412.106(c)(2) of this title (relating to Determination of Ability to Pay) of Chapter 412, Subchapter C of this title (concerning Charges for Community Services).

### DIVISION 3: ADMISSION TO SMHF AND OTHER INPATIENT PROVIDERS.

#### §412.171. General Admission Criteria and Contracted Psychiatric Beds

(a) Except as otherwise specified in this division, a person may be admitted to a SMHF or other inpatient provider only if the person has a mental illness and, as a result of the mental illness, the person:

(1) presents a substantial risk of serious harm to self or others; or

(2) evidences a substantial risk of mental or physical deterioration.

(b) A person may not be admitted to any SMHF or other inpatient provider if the person:

(1) requires specialized care that is not available at the SMHF or other inpatient provider; or

(2) has a physical medical condition that is unstable and could reasonably be expected to require inpatient treatment for the condition.

(c) If a person presents for services at an SMHF or other inpatient provider, then an SMHF or other inpatient provider physician shall determine if the person has an emergency medical condition.

(1) If a request is made for examination or treatment for a medical condition, the hospital must provide an appropriate medical screening examination within its capability to determine whether an emergency medical condition exists as required by the Emergency Medical Treatment and Active Labor Act (EMTALA) (42 USC §1395dd).

(2) If the SMHF or other inpatient provider determines that the person has a medical condition that is unstable and could reasonably be expected to require inpatient treatment, then the SMHF or other inpatient provider shall provide evaluation and treatment within its capability to stabilize the person and shall arrange for the person to be transferred to a hospital that has the capability to treat the medical condition.

(d) If the individual was not screened or referred by the LMHA or LBHA, then the SMHF or other inpatient provider shall notify the designated LMHA or LBHA by the next business day that the person has presented for services at the SMHF or other inpatient provider.

(e) If the SMHF or other inpatient provider determines that the person does not have a psychiatric condition that necessitates inpatient treatment, then the SMHF or other inpatient provider shall contact the designated LMHA or LBHA to coordinate alternate services as appropriate.

#### §412.172. Admission Criteria for a Maximum Security Unit.

A person may be admitted to a maximum security unit such as at only if the person:

(1) is committed pursuant to TCCP, Chapter 46B or Article 46.02 or Article 46.03, or Chapter 46C; or

(2) is determined manifestly dangerous in accordance with Chapter 415, Subchapter G of this title (relating to Determination of Manifest Dangerousness).

§412.173. Admission to an Adolescent Forensic Unit.

(a) An adolescent may be admitted to an adolescent forensic unit only if the person is at least 13 but younger than 18 years of age and meets the criteria described in paragraph (1), (2), (3), or (4) of this subsection.

(1) Condition of probation or parole. The adolescent's admission to an adolescent forensic unit will fulfill a condition of probation or parole for a juvenile offense and the adolescent:

(A) on the basis of a clinical evaluation, is determined to be in need of specialized mental health treatment in a secure treatment setting to address violent behavior or delinquent conduct;

(B) has co-occurring psychiatric and substance use disorder; and

(C) has exhausted available community resources for treatment and has been recommended for admission by the local Community Resource Coordinating Group (CRCG).

(2) Commitment under TFC, Chapter 55, Unfit to Proceed, Not Responsible for Conduct. The adolescent has been committed to a residential care facility under the Texas Family Code, Chapter 55, Subchapter C or D.

(3) Determined manifestly dangerous. The adolescent has been determined manifestly dangerous in accordance with Chapter 415, Subchapter G of this title (relating to Determination of Manifest Dangerousness).

(b) An adolescent may not be admitted to an adolescent forensic unit if the person is determined to have IDD.

§412.174. Transfer Criteria for Kerrville State Hospital.

A person may be admitted to Kerrville State Hospital only if the person:

(1) is committed pursuant to TCCP, Chapter 46B or Chapter 46C;

(2) is an adult aged 18 years or older; and

(3) has been determined to not be manifestly dangerous in accordance with Chapter 415, Subchapter G of this title (relating to Determination of Manifest Dangerousness).

§412.175. Admission Criteria for Waco Center for Youth.

(a) An adolescent may be admitted to Waco Center for Youth only if the adolescent:

(1) is at least 10 but younger than 18 years of age and whose age at admission allows adequate time for treatment programming prior to reaching age 18 years;

(2) is diagnosed as emotionally or behaviorally disturbed;

(3) has a history of behavior adjustment problems;

(4) needs a structured treatment program in a residential facility; and

(5) is currently receiving LMHA or LBHA services or inpatient services at an SMHF or other inpatient provider and has been referred for admission by:

(A) the LMHA or LBHA after endorsement by the local CRCG; or

(B) the SMHF or other inpatient provider.

(b) An adolescent may not be admitted to Waco Center for Youth if the adolescent:

(1) has been found to have engaged in delinquent conduct or conduct indicating a need for supervision under the TFC, Title 3; or

(2) is acutely psychotic, suicidal, homicidal, or seriously violent IDD.

(c) When admission to services is denied, Waco Center for Youth shall provide the LAR of the adolescent written notification stating:

(1) the reason for the denial of services; and

(2) that the denial can be appealed to the ombudsman.

(d) If an adolescent receiving services at Waco Center for Youth requires admission to an SMHF or other inpatient provider, the SMHF or other inpatient provider discharge planning process shall include the joint determination of the SMHF or other inpatient provider and Waco Center for Youth of the clinical appropriateness of readmission to Waco Center for Youth. With the agreement of the adolescent's treatment team, the Waco Center for Youth representative, the SMHF or other inpatient provider, and the adolescent's LAR, the adolescent shall be prioritized for readmission to Waco Center for Youth.

§412.176. Voluntary Admission to State Mental Health Facility or Contracted Psychiatric Beds.

(a) Request for voluntary admission.

(1) In accordance with THSC, §572.001(a) and (c), a request for voluntary admission of a person with a mental illness may only be made by:

(A) the person, if the individual is 16 years of age or older; or

(B) the LAR, if the person is younger than 18 years of age and is not-a guardian or managing conservator acting as an employee or agent of the state or a political subdivision of the state, may request voluntary admission of the person only with the person's consent.

(C) If the person does not consent, the person may be admitted for inpatient services only pursuant to an emergency detention, an order for protective custody or application for court-ordered mental health services.

(2) In accordance with THSC, §572.001(b) and (e), a request for admission shall:

(A) be in writing and signed by the person making the request;

(B) include a statement that the person making the request:

(i) agrees that the person will remain in the SMHF or other inpatient provider until the individual's discharge; and determine the patient has capacity as set forth in 412.176(f) of this title.

(ii) consents to diagnosis, observation, care, and treatment of the individual until the earlier of:

(I) the discharge of the person; or

(II) the person is entitled to leave the SMHF or other inpatient provider, in accordance with THSC, §572.004, after a request for discharge is made.

(3) The consent given under paragraph (2)(B)(ii) of this subsection does not waive a patient's rights described in the following rules:

(A) Chapter 414, Subchapter E of this title (concerning Rights of Persons Receiving Mental Health Services);

(B) Chapter 405, Subchapter E of this title (concerning Electroconvulsive Therapy);

(C) Chapter 414, Subchapter I of this title (relating to Consent to Treatment with Psychoactive Medication--Mental Health Services); and

(D) Chapter 415, Subchapter F of this title (relating to Interventions in Mental Health Programs).

(b) Determine least restrictive environment. If the SMHF or other inpatient provider physician determines that the individual may be appropriately served in the community, then the

SMHF or other inpatient provider physician or designee shall contact the LMHA or LBHA to discuss whether appropriate LMHA or LBHA services that are less restrictive than the SMHF or other inpatient provider are available.

(c) Examination.

(1) A physician shall conduct an examination on each person requesting voluntary admission in accordance with this subsection.

(2) The examination of the person shall be conducted face-to-face by a physician or by using telemedicine and include:

(A) an assessment for medical stability; and

(B) a psychiatric examination to include, if indicated, a substance abuse assessment.

(3) The physician may not delegate the examination to a non-physician.

(d) Meets admission criteria. If, after examination, the physician determines that the person meets the SMHF's or other inpatient provider's admission criteria, the person shall be admitted. If the SMHF or other inpatient provider determines that the person may be served in another setting that is clinically appropriate and available, then the SMHF or other inpatient provider shall contact the designated LMHA or LBHA to coordinate alternate services as clinically indicated.

(e) Does not meet admission criteria. If, after the examination, the physician determines that the person does not meet admission criteria, then the SMHF or other inpatient provider shall contact the designated LMHA or LBHA to coordinate alternate services as clinically indicated.

(f) Capacity to consent. If a physician determines that a person whose consent is necessary for a voluntary admission does not have the capacity to consent to diagnosis, observation, care, and treatment, then the SMHF or other inpatient provider may not voluntarily admit the person. When appropriate, the SMHF or other inpatient provider may initiate an emergency detention proceeding in accordance with THSC, Chapter 573, or file an application for court-ordered inpatient mental health services in accordance with THSC, Chapter 574.

(g) Intake process. In accordance with THSC, §572.0025(b), an SMHF or other inpatient provider shall, prior to voluntary admission of a person, conduct an intake process that includes:

(1) obtaining relevant information about the patient, including information about finances, third-party coverage or insurance benefits, and advance directives;

(2) explaining, orally and in writing, the person's rights described in Chapter 414, Subchapter E of this title (concerning Rights of Persons Receiving Mental Health Services):

(3) explaining, orally and in writing, the SMHF's or other inpatient provider's services and treatment as they relate to the person;

(4) explaining, orally and in writing, the existence, purpose, telephone number, and address of the protection and advocacy system established in Texas, which is Disability Rights Texas, pursuant to THSC, §576.008;

(5) explaining, orally and in writing, the patient trust fund account, charges for services, and the financial responsibility form; and

(6) explaining the patient trust fund charges for services, the financial responsibility form, and exemptions available under THSC, §576.010.

(h) Requirements for voluntary admission. An SMHF or other inpatient provider may voluntarily admit a person only if:

(1) a request for admission is made in accordance with subsection (a) of this section;

(2) a physician has:

(A) in accordance with THSC, §572.0025(f)(1), conducted, within 72 hours prior to admission, or has consulted with a physician who has conducted, within 72 hours prior to admission, an examination in accordance with subsection (c) of this section;

(B) determined that the person meets the SMHF's or other inpatient provider's admission criteria and that admission is clinically justified; and

(C) issued an order admitting the person; and

(3) in accordance with THSC, §572.0025(f)(2), the SMHF or other inpatient provider administrator or designee has signed a written statement agreeing to admit the person.

(i) Documentation of admission order. In accordance with THSC, §572.0025(f)(1), the order described in subsection (g)(2)(C) of this section shall be:

(1) issued in writing and signed by the issuing physician; or

(2) issued orally or electronically and within 24 hours after its issuance, signed by the issuing physician.

(j) Periodic evaluation. To determine the need for continued inpatient treatment, a physician shall evaluate a voluntary individual receiving inpatient treatment every month. In accordance with THSC, §572.003, the evaluation shall include the determination that the individual can benefit from continued inpatient treatment and that the individual has capacity to consent to continued inpatient treatment.

§412.177. Emergency Detention.

(a) Acceptance for preliminary examination. In accordance with THSC, §573.022, an SMHF or other inpatient provider shall accept for a preliminary examination:

(1) a person who has been apprehended and transported to the SMHF or other inpatient provider by a peace officer in accordance with THSC, §573.001 or §573.012; or

(2) an adult who has been transported to the SMHF or other inpatient provider by the adult's LAR in accordance with THSC, §573.003.

(b) Preliminary examination.

(1) A physician, shall conduct a preliminary examination of the person as soon as possible but not more than 12 hours after the person was apprehended by the peace officer or transported for emergency detention.

(2) The preliminary examination shall include:

(A) an assessment for medical stability; and

(B) a psychiatric examination to include, if indicated, a substance abuse assessment, to determine if the person meets the criteria described in subsection (c)(1) of this section.

(c) Requirements for emergency detention. An SMHF or other inpatient provider shall admit a person for emergency detention if:

(1) in accordance with THSC, §573.022(a)(2), a physician determines from the preliminary examination that:

(A) the person has a mental illness;

(B) the person evidences a substantial risk of serious harm to himself or others;

(C) the described risk of harm is imminent unless the person is immediately detained and

(D) emergency detention is the least restrictive means by which the necessary detention can be accomplished.

(2) in accordance with THSC, §573.022(a)(3), a physician makes a written statement documenting the determination described in paragraph (1) of this subsection and describing:

(A) the nature of the person's mental illness;

(B) the risk of harm the person evidences, demonstrated either by the person's behavior or by evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain at liberty; and

(C) the detailed information on which the physician based the determination described in paragraph (1) of this subsection.

(3) the physician issues and signs a written order admitting the person for emergency detention; and

(4) the person meets the SMHF's or other inpatient provider's admission criteria.

(d) Release.

(1) An SMHF or other inpatient provider shall release a person accepted for a preliminary examination if:

(A) a preliminary examination of the person has not been conducted within 12 hours after the person was apprehended by the peace officer or transported for emergency detention; or

(B) in accordance with THSC, §573.023(a), the person is not admitted for emergency detention on completion of the preliminary examination.

(2) If the person is not admitted on emergency detention, then the SMHF or other inpatient provider shall contact the designated LMHA or LBHA to coordinate alternate services as clinically indicated.

(3) In accordance with THSC, §576.007(a), if the person is not admitted on emergency detention, then the SMHF or other inpatient provider shall make a reasonable effort to notify the family of an adult person before he/she is released, if the person grants permission for the notification.

(e) Intake process. A SMHF shall conduct an intake process as soon as possible, but not later than 12 hours after a patient is admitted for emergency detention.

#### §412.178. Admission Under Order of Protective Custody or Court-ordered Inpatient Mental Health Services.

(a) Requirements for order of protective custody and court-ordered inpatient mental health services. An SMHF or other inpatient provider shall admit a person:

(1) under a protective custody order only if a court has issued a protective custody order in accordance with THSC, §574.022; or

(2) for court-ordered inpatient mental health services only if a court has issued:

(A) an order for temporary inpatient mental health services issued in accordance with THSC, §574.034, or TFC, Chapter 55;

(B) an order for extended inpatient mental health services issued in accordance with THSC, §574.035, or TFC, Chapter 55; or

(C) an order for commitment issued in accordance with the TCCP, Chapter 46B or Article 46.02.

(3) A person younger than 18 years of age may not be involuntarily committed unless provided by this chapter, other state law, or department rule.

(b) Order. If an SMHF or other inpatient provider admits a person in accordance with subsection (a) of this section, then a physician or designee, APRN with delegated authority or PA with delegated authority, shall issue and sign a written order admitting the person.

(c) Intake process. An SMHF or other inpatient provider shall conduct an intake process according to §412.176(g) of this title (relating to Voluntary Admission) as soon as possible, but not later than 24 hours after the patient is admitted under a protective custody order or court-ordered inpatient mental health services.

#### §412.179. Admission Procedures.

(a) When an SMHF or other inpatient provider admits a person, the SMHF or other inpatient provider shall promptly notify the designated LMHA or LBHA of the admission and the admission status (i.e., voluntary, emergency detention, order of protective custody, court-ordered).

(1) If the LMHA or LBHA that screened the person is not the person's designated LMHA or LBHA, then the SMHF or other inpatient provider shall also notify the LMHA or LBHA that screened the person.

(2) If the SMHF or other inpatient provider suspects that the person's county of residence status in CARE/CMBHS is incorrect, then the SMHF or other inpatient provider shall notify the affected LMHA or LBHAs of the possible error.

(b) In addition to the requirement in subsection (a) of this section, Waco Center for Youth shall notify the entity that referred the person for admission to Waco Center for Youth (i.e., Department of Family and Protective Services (DFPS), LMHA or LBHA, or SMHF).

#### §412.180. Voluntary Treatment Following Involuntary Admission.

An SMHF or other inpatient provider may continue to provide inpatient services to an involuntary patient after the involuntary patient is eligible for discharge as described in §412.204 of this title (relating to Discharge of Involuntary Patients), if, after consultation with the designated LMHA or LBHA:

(1) the SMHF or other inpatient provider obtains written consent for voluntary inpatient services that meets the requirements of a request for voluntary admission, as described in §412.176(a) of this title (relating to Voluntary Admission to State Mental Health Facility or Contracted Psychiatric Beds); and

(2) the patient's treating physician:

(A) examines the patient;

(B) determines the patient has capacity to consent as set forth in §412.176 of this title; and

(C) based on that examination, issues an order for voluntary inpatient services that meets the requirements of §412.176(h) of this title.

#### DIVISION 4: TRANSFERS AND CHANGING LMHA OR LBHA

##### §412.191. Transfers between SMHFs.

(a) A request to transfer from one SMHF to another SMHF may be initiated by a patient, the patient's LAR, SMHF staff, the designated LMHA or LBHA, or another interested person.

(b) A transfer between a SMHF may be made when deemed advisable by the administrator of the transferring of either the SMHF with the agreement of the administrator of the receiving SMHF or based on:

(1) condition and desires of patient;

(2) geographic residence of the patient;

(3) program and bed availability;

(4) geographical proximity to the patient's family; and

(5) input from the designated LMHA or LBHA.

(c) A voluntary patient may not be transferred without the consent of the individual who made the request for voluntary admission in accordance with §412.176(a)(1) of this title (relating to Voluntary Admission to State Mental Health Facility or Contracted Psychiatric Beds).

(d) If a patient receiving court-ordered inpatient mental health services is transferred from one SMHF to another SMHF, then the transferring SMHF shall notify the committing court of the transfer.

(e) If a prosecuting attorney has notified the administrator of the SMHF that a patient has criminal charges pending, then the administrator shall notify the judge of the court before which charges are pending if the patient is transferred to another SMHF.

(f) Chapter 415, Subchapter G of this title (relating to Determination of Manifest Dangerousness) governs transfer of a patient between an SMHF, CPB and a maximum security unit or adolescent secure unit.

#### §412.192. Transfers between an SMHF and a SSLC.

(a) TAC, Title 40, Part 1, Chapter 2, Subchapter F, Division 3 of this title (relating to Continuity of Services-State Facilities) and THSC, §575.013 and §575.017, govern transfer of a patient from an SMHF to an SSLC. The patient may not be transferred before the judge of the committing court enters an order approving the transfer.

(b) TAC, Title 40, Part 1, Chapter 2, Subchapter F of this title IDD and THSC, §594.034, govern transfer of a person from an SSLC to an SMHF. The receiving SMHF shall notify the designated LMHA or LBHA and the designated LIDDA of the transfer.

#### §412.193. Transfers between an SMHF and an Out-of-State Institution.

Title 1, Part 15, Chapter 383 (relating to Interstate Compact on Mental Health and Mental Retardation) governs transfer of a patient between an SMHF and an out-of-state institution.

#### §412.194. Transfers Between an SMHF and Another Institution in Texas.

(a) THSC, §575.011, §575.014, and §575.017, govern transfer of a patient between an SMHF and a psychiatric hospital. A voluntary patient may not be transferred without the consent of the person who made the request for voluntary admission in accordance with §412.176(a)(1) of this title (relating to Voluntary Admission to State Mental Health Facility or Contracted Psychiatric Beds).

(b) THSC, §575.015 and §575.017, govern transfer of a patient from an SMHF to a federal institution. The transferring SMHF shall notify the designated LMHA or LBHA of the transfer.

(c) THSC, §575.016 and §575.017, govern transfer of a person from a facility of the institutional division of the Texas Department of Criminal Justice to an SMHF.

#### §412.195. Changing LMHAs or LBHAs.

(a) While receiving LMHA or LBHA services.

(1) If a person currently receiving LMHA or LBHA services informs the LMHA or LBHA that he/she intends to move his/her permanent residence to a county within the local service area of another LMHA or LBHA and to seek services from the new LMHA or LBHA, then:

(A) the original LMHA or LBHA shall initiate transition planning with the new LMHA or LBHA, and shall:

(i) notify the new LMHA or LBHA of the person's intent to move his/her permanent residence;

(ii) schedule an appointment for a screening assessment for the person at the new LMHA or LBHA;

(iii) at least five days before the appointment, submit to the new LMHA or LBHA a copy of information pertinent to the person's treatment;

(iv) ensure the person has sufficient medication to last until the appointment date at the new LMHA or LBHA; and

(v) maintain the person's case in open status in CARE/CMBHS for 90 days or until notified that the person has been admitted to services at the new LMHA or LBHA, whichever occurs first; and

(B) the new LMHA or LBHA shall conduct a screening assessment in accordance with §412.322 of this title (relating to Provider Responsibilities for Treatment Planning and Service Authorization) and shall authorize an initial 180 days period of services for adults and 90 days for children of services for transitioning and receiving ongoing care, including provision of medications.

(2) When a person currently receiving LMHA or LBHA services moves his/her permanent residence to a county within the local service area of another LMHA or LBHA and seeks services from the new LMHA or LBHA without prior knowledge of the original LMHA or LBHA, then:

(A) the new LMHA or LBHA shall initiate transition planning with the original LMHA or LBHA, and shall:

(i) promptly contact the original LMHA or LBHA and request a copy of information pertinent to the person's treatment; and

(ii) conduct a screening assessment in accordance with §412.322 of this title and shall authorize an initial 90-day period of services for children and 180 days for adults transitioning and receiving ongoing care, including provision of medications; and

(B) the original LMHA or LBHA shall:

(i) submit the requested information to the new LMHA or LBHA within seven days of request; and

(ii) maintain the person's case in open status in CARE/CMBHS for 90 days or until notified that the person has been admitted to services at the new LMHA or LBHA, whichever occurs first.

(3) If the new LMHA or LBHA denies services to the individual during the transition period, or reduces or terminates services at the conclusion of the transition period, the new LMHA or LBHA must notify the person or LAR in writing of the proposed action (i.e., to involuntarily reduce or terminate the person's services or refer the person to his/her non third-party coverage) and the right to appeal the proposed action in accordance with §412.155 of this title (relating to Non Third-Party Payor Notification and Appeals Process for LMHA or LBHA).

(b) While receiving inpatient services at an SMHF. If a patient at an SMHF informs the SMHF that he/she intends to move his/her permanent residence to a county within the local service area of another LMHA or LBHA (referenced in this subsection as the "new LMHA or LBHA") and to seek services from the new LMHA or LBHA, then:

(1) the SMHF shall notify the following of the patient's intent to move his/her permanent residence upon discharge:

(A) the original LMHA or LBHA if the patient was receiving LMHA or LBHA services from the original LMHA or LBHA prior to admission to the SMHF; and

(B) the new LMHA or LBHA;

(2) the following shall participate in the patient's discharge planning in accordance with §412.201 of this title (relating to Discharge Planning):

(A) the SMHF;

(B) the new LMHA or LBHA; and

(C) the original LMHA or LBHA if the patient was receiving LMHA or LBHA services from the original LMHA or LBHA prior to admission to the SMHF; and

(3) if the patient was receiving LMHA or LBHA services from the original LMHA or LBHA prior to admission to the SMHF, then the original LMHA or LBHA shall maintain the patient's case in open status in CARE/CMBHS for 90 days or until notified that the person has been admitted to services at the new LMHA or LBHA, whichever occurs first.

Division 5: DISCHARGE AND ATP FROM SMHF OR CONTRACTED PSYCHIATRIC BEDS

§412.201. Discharge Planning.

(a) Discharge planning at an SMHF or contracted CPB. The SMHF social worker and the LMHA or LBHA assigned staff member or LMHA or LBHA liaison are responsible for coordinating all discharge planning activities and ensuring the completion of the discharge plan prior to the patient's discharge. However, the overall plan is the responsibility of both the SMHF/CPB social worker and the LMHA or LBHA assigned staff member or LMHA or LBHA liaison. If there is an unexpected discharge, the social worker will document the reason for not completing discharge planning activities.

(1) Upon admission of a patient to an SMHF or CPB, the SMHF and the designated LMHA or LBHA assigned staff or LMHA or LBHA liaison shall begin discharge planning for the patient.

(2) Discharge planning shall involve the SMHF/CPB treatment team, the designated LMHA or LBHA liaison staff or other LMHA or LBHA designated staff, the designated LIDDA liaison staff if appropriate, the patient, the patient's LAR, if any, and any other person authorized by the patient. Except for the SMHF/CPB treatment team and the patient, involvement in discharge planning may be via teleconference or video-conference. The SMHF is responsible for notifying people involved in discharge planning of scheduled staffing's and reviews.

(3) Without regard to diagnosis at discharge or assessment of current functioning, each patient discharged from an SMHF is eligible for services:

(A) in a transition service for 90 days; or

(B) in an ongoing service

(4) Discharge planning shall include the assessment of eligibility for specific available LMHA or LBHA services.

(5) Discharge planning shall include the following activities:

(A) identifying and recommending specific, available clinical services and supports needed by the patient after discharge or while on absence for trial placement (ATP);

(B) identifying and recommending specific, available non-clinical services and supports needed by the patient after discharge or while on ATP, including appropriate housing, food, and clothing;

(C) identifying the providers and community resources for the services and supports recommended, including nursing facilities;

(D) counseling the patient and the patient's LAR, if any, to prepare them for care after discharge or while on ATP;

(6) If a long term placement (e.g., group home, housing, or nursing home) is needed, the LMHA or LBHA is responsible for identifying the community resources to be offered to the patient as the liaison will have more knowledge of and access to options available in that community. The SMHF will ensure all pertinent information about the patient's clinical needs and recommendations are provided to the liaison for optimal planning. Furthermore, the SMHF social worker will liaison with the community placement once identified. If the community placement is a nursing facility, the LMHA or LBHA are required to comply with the Preadmission Screening Resident Review processes as described in 40 TAC, Chapter 17, Subchapters A - E.

(7) The patient's treatment team shall develop a continuing care plan unless the physician documents in the medical record that the patient does not require continuing care. The plan shall include:

(i) the results of the uniform assessment;

(ii) a description of the patient's placement after discharge or while on ATP that reflects the patient's preferences, choices, and available community resources;

(iii) a description of services and supports the patient will receive after discharge or while on ATP;

(iv) a description of problems identified at discharge or ATP, which may include any issues that disrupt the patient's stability in the community;

(v) the patient's goals, interventions, and objectives as stated in the patient's treatment plan in the SMHF;

(vi) a final diagnosis based of the *Diagnostic Statistical Manual of Mental Disorders* (DSM) published by the American Psychiatric Association and approved by the department;

(vii) the provider(s) to whom the patient will be referred to for any services or supports after discharge or while on ATP; and

(viii) in accordance with THSC, §574.081(c), a description of:

(I) the amount of medication the patient will need after discharge or while on ATP until the patient is evaluated by a physician; and

(II) the individual or entity that is responsible for providing and paying for the medication.

(8) The SMHF and the designated LMHA or LBHA shall make reasonable efforts to provide discharge planning for patient's who are discharged unexpectedly.

(9) If a disagreement between the LMHA or LBHA and the treatment team concerning a discharge arises, the disagreement will be resolved through the following process. The SMHF/CPB treating physician will confer with the LMHA or LBHA physician to resolve the disagreement. If resolution is not reached, the SMHF/CPB Clinical Director will confer with the LMHA or LBHA Medical Director. If resolution is not reached, the disagreement is referred to the MHSO Office of the Behavioral Health Medical Director for final decision.

(10) For patients committed to the SMHF pursuant to TCCP, 46C or §46.03, the SMHF shall invite the LMHA or LBHA to conduct a special staffing not less than 30 days before the patient's annual review. The purpose of the staffing is to review the patient's clinical status and less restrictive options which may include an assessment of the patient's risk factors. The staff will also address the patient's right to participate in the hearing. This may be part of the regularly scheduled treatment team reviews, staffing requirements, or other hospital procedures.

(b) Discharge planning at a non-SMHF. A designated LMHA or LBHA staff member or liaison must participate in discharge planning for a patient admitted to:

(1) an LMHA or LBHA-network provider of inpatient services; or

(2) an alternate provider of inpatient services, if the patient was receiving LMHA or LBHA services from the designated LMHA or LBHA at the time of admission.

#### §412.202. Special Considerations.

(a) Persons admitted to an SMHF, CPB three times in 180 days. Persons who are admitted to an SMHF three times in 180 days are considered to be at risk for future admission to inpatient services. Pursuant to the Texas Government Code, §531.0244(b)(4), to prevent the unnecessary placement in an institution, the SMHF and designated LMHA or LBHA shall:

(1) during discharge planning, review the patient's previous continuing care plans to determine the effectiveness of the clinical and non-clinical services and supports identified, and recommend in the patient's current continuing care plan those services and supports that have been effective and as well as those designed to prevent unnecessary admission to the SMHF;

(2) determine the availability and appropriateness of clinical and non-clinical services and supports in the intensity needed by the patient (i.e., type, amount, scope, and duration) that will prevent unnecessary admission to the SMHF, CPB; and

(3) consider appropriateness of the patient's continued stay in the SMHF.

(b) Preadmission Screening and Evaluation (PASRR). As described in 40 TAC, Chapter 17, Subchapters A - E, all patients who are being considered for nursing home placement shall be

screened prior to nursing facility admission. The purpose of the PASRR Level I Screening and PASRR Level II Evaluation is:

- (1) to ensure that placement of the patient in a nursing facility is necessary;
- (2) to identify alternate placement options when applicable; and
- (3) to identify specialized services that may benefit the person with a diagnosis of mental illness, intellectual disability, or developmental disability.

(A) PASRR Level I Screening. The SMHF shall complete, and may collaborate with a nursing facility, a PASRR Level I Screening in accordance with the rules of the Department of Aging and Disability Services (DADS) set forth in the 40 TAC Chapter 17 (relating to Preadmission Screening and Resident Review (PASRR)).

(B) PASRR Level II Evaluation. The LMHA or LBHA shall complete the evaluation for individuals whose PASRR Level I Screening indicates they are suspected of having a mental illness, intellectual disability, or developmental disability in accordance with 40 TAC Chapter 17, Subchapter C, Responsibilities.

(C) Resident Review. The LMHA or LBHA shall conduct PASRR Level II Evaluations as part of the resident review process required by 40 TAC Chapter 17.

(4) ATP. If a patient is admitted to a nursing facility on ATP, then the designated LMHA or LBHA shall conduct and document, including justification for its recommendations, the activities described in this paragraph.

(A) The designated LMHA or LBHA shall make at least one face-to-face contact with the patient at the nursing facility. The contact shall include:

(i) a review of the patient's medical record at the nursing facility;  
and

(ii) discussions with the patient and LAR, if any, the nursing facility staff, and other staff who provide care to the patient regarding:

- (I) the needs of the patient and the care he/she is receiving;
- (II) the ability of the nursing facility to provide the appropriate care;
- (III) the provision of mental health services, if needed by the patient; and
- (IV) the patient's adjustment to the nursing facility.

(B) Before the end of the initial ATP period as described in §412.207(b)(2) of this title (relating to Absence for Trial Placement (ATP)), the designated LMHA or LBHA shall recommend to the SMHF one of the following:

(i) discharging the patient if the LMHA or LBHA determines that:

(I) the nursing facility is capable of providing, and willing to provide, appropriate care to the patient after discharge;

(II) any mental health services needed by the patient are being provided to the patient while he/she is residing in the nursing facility; and

(III) the patient and LAR, if any, agrees to the nursing facility placement;

(ii) extending the patient's ATP period in accordance with §412.207(b)(3) of this title;

(iii) returning the patient to the SMHF in accordance with §412.206(b)(2) of this title (relating to Absences from an SMHF); or

(iv) initiating involuntary admission to the SMHF in accordance with §412.206(a)(2) of this title.

(5) Discharge. If a person is admitted to a nursing facility directly upon discharge, then the designated LMHA or LBHA shall conduct and document the activities described in this paragraph.

(A) The designated LMHA or LBHA shall make face-to-face contact with the person at the nursing facility within seven days after discharge to determine if the nursing facility is providing adequate and appropriate care to the person. The contact shall include:

(i) a review of the person's medical record at the nursing facility;  
and

(ii) discussions with the person, or the person's LAR, if any, the nursing facility staff, and other staff who provide care to the person regarding:

(I) the needs of the person and the care he/she is receiving;

(II) the ability of the nursing facility to provide the appropriate care;

(III) the delivery of mental health services, if needed by the person; and

(IV) the person's adjustment to the nursing facility.

(B) If the designated LMHA or LBHA determines from its contact that the nursing facility is not providing adequate and appropriate care to the person, then the LMHA or LBHA shall make a reasonable effort to encourage the nursing facility to provide adequate and appropriate care.

(C) If the designated LMHA or LBHA's efforts to encourage the nursing facility to provide adequate and appropriate care are unsuccessful and the LMHA or LBHA determines that the nursing facility is unable or unwilling to provide adequate and appropriate care, then the LMHA or LBHA shall:

(i) make recommendations to the person and the person's LAR, if any, regarding alternate residential placement; and

(ii) provide assistance in accessing alternate placement, if requested by the person or LAR to do so.

(D) If the designated LMHA or LBHA identifies or suspects any instance of mistreatment, abuse or neglect, or injuries of unknown origin at the nursing facility, then the LMHA or LBHA shall make a report to the Texas Department of Aging and Disability Services (DADS) via its complaint hotline (1-800-458-9858).

(c) Assisted living.

(1) If an SMHF or LMHA or LBHA discharges or refers an individual to an assisted living facility, it must be licensed as such under THSC, Chapter 247.

(2) As required by the THSC, §247.063(b), if an SMHF or LMHA or LBHA gains knowledge of an assisted living facility that is not operated or licensed by DADS an LMHA or LBHA or DSHS and that has four or more residents who are unrelated to the proprietor of the facility, then the SMHF or LMHA or LBHA shall report the name, address, and telephone number of the facility to DADS.

(3) If clinically indicated and agreed to by the patient, the patient may be discharged to a domestic violence shelter.

(d) Crisis stabilization units (CSUs). If an SMHF or LMHA or LBHA refers a person to a CSU, it must be licensed as such under THSC, Chapter 577, and Chapter 134 of this title (relating to Private Psychiatric Hospitals and Crisis Stabilization Units). If an SMHF or LMHA or LBHA gains knowledge of a program meeting the definition of a CSU that is not licensed as a CSU, then the SMHF or LMHA or LBHA shall report the name, address, and telephone number of the facility to the DSHS Regulatory Division.

(e) Minors.

(1) The SMHF and designated LMHA or LBHA shall make a reasonable effort to involve a minor's LAR, the LAR's designee, or the Department of Family and Protective Services' representative.

(2) A minor committed to or placed in an SMHF under the Texas Family Code, Chapter 55, Subchapter C or D, shall be discharged in accordance with the Texas Family Code, Chapter 55, Subchapter C or D, as appropriate.

(f) Patients suspected of having IDD. If the SMHF suspects a patient has an IDD, then the SMHF shall notify the designated LMHA or LBHA liaison staff and the designated LIDDA. The designated LIDDA shall be encouraged to assign an LIDDA liaison staff to the patient to ensure compliance with Texas Administrative Code, Title 40, Part I, Chapter 5, Subchapter D (concerning Diagnostic Eligibility for Services and Supports -- IDD Priority Population and Related Conditions).

(g) Home and Community Based Services-Adult Mental Health (HCBS-AMH) Recovery Manager (RM). Consistent with the Home and Community-Based Services Adult Mental Health (HCBS-AMH) Provider Manual, if a patient residing in an SMHF is enrolled in HCBS-AMH, the HCBS-AMH RM shall be included in discharge planning and coordinating treatment services with the LMHA or LBHA and SMHF social worker. The description of the RM and related responsibilities include the following;

(1) An HCBS-AMH RM contracts directly with DSHS, and may be an employee of the LMHA or LBHA or other contracted provider.

(2) An HCBS-AMH RM is responsible for coordinating HCBS-AMH services provided in the SMHF for up to 180 days prior to discharge from the SMHF. If the patient is in an SMHF at the time of enrollment in HCBS-AMH program, discharge planning is a coordinated effort between the patient or LAR, RM, LMHA or LBHA, and the SMHF social worker.

(3) An HCBS-AMH RM is responsible for coordinating HCBS-AMH services when a patient is discharged from an SMHF.

(h) Criminal Code

(1) TCCP, Chapter 46B, or, Article 46.02 or 46.03: Incompetency to stand trial.

(A) Discharge of a patient committed under TCCP, Article 46.02, §6 (Civil commitment – charges pending) or Article 46B.102 (Commitment Hearing: Mental Illness), shall be in accordance with the TCCP, Article 46.02, §8 (General) or Article 46B.107 (Release of Defendant after Commitment).

(B) Discharge of a patient committed under TCCP, Article 46.02, §5 (Criminal commitment) or Article 46B.073 (Commitment For Restoration to Competency), shall be in accordance with TCCP, Article 46.02, §5 (Criminal commitment) or Article 46B.083 (Report By Facility Head).

(C) For a patient committed under TCCP, Chapter 46B or Article 46.02, who is discharged and returned to the committing court, the SMHF shall, within 24 hours after discharge, notify the following of the discharge:

(i) the patient's designated LMHA or LBHA; and

(ii) the Texas Correctional Office on Offenders with Medical or Mental Impairments.

(2) TCCP, Chapter 46C or Article 46.03: Insanity defense. A person acquitted by reason of insanity and committed to an SMHF under TCCP, Chapter 46C or Article 46.03, may be discharged only upon order of the committing court in accordance with TCCP, Chapter 46C or Article 46.03, §4(d)(5) (Disposition following acquittal by reason of insanity) (Judicial release).

(3) Released from jail within 90 days of discharge from SMHF.

(A) The designated LMHA or LBHA shall make a good faith effort to locate and contact the person within the seven days following release from jail.

(B) If the designated LMHA or LBHA does not have a face-to-face contact with a person, then the LMHA or LBHA shall document the reasons for not doing so.

(4) Renewal of the outpatient commitment and the responsibilities of the LMHA or LBHA.

(A) The person responsible for administering a regimen of outpatient or community-based treatment and supervision shall:

(i) monitor the condition of the acquitted person; and

(ii) determine whether the acquitted person is complying with the regimen of treatment and supervision.

(B) The person responsible for administering a regimen of outpatient or community-based treatment and supervision shall notify the court ordering that treatment and supervision and the attorney representing the state if the person:

(i) fails to comply with the regimen; and

(ii) becomes likely to cause serious harm to another.

(i) Special needs offenders.

(1) Assessment after release from county or city jail. If a county or city jail refers a special needs offender (SNO-SMI) in the priority population to an LMHA or LBHA and notifies the LMHA or LBHA of the referral at least 24 hours prior to the SNO-SMI's release from a county or city jail, then the LMHA or LBHA shall arrange for a face-to-face contact between the SNO-SMI and a QMHP-CS to occur within seven days after the SNO-SMI's release.

(A) If the SNO-SMI is currently receiving LMHA or LBHA services from the LMHA or LBHA that is notified of the referral, then at the face-to-face contact the LMHA or LBHA shall reassess the SNO-SMI and arrange for appropriate services.

(B) If the SNO-SMI is not currently receiving LMHA or LBHA services from the LMHA or LBHA that is notified of the referral, then at the face-to-face contact the LMHA or LBHA shall conduct a pre-admission assessment in accordance with §412.322 of this title (relating to Provider Responsibilities for Treatment Planning and Service Authorization) and comply with §412.161(b)(2)(A) or (B) of this title (relating to Screening and Assessment), as appropriate).

(C) If the LMHA or LBHA does not have a face-to-face contact with a SNO-SMI, then the LMHA or LBHA shall document the reasons for not doing so.

(2) Assessment after release from state prison or state jail. If an LMHA or LBHA is notified of the anticipated release from prison or a state jail of a SNO-SMI in the priority population who is currently taking psychoactive medication(s) for a mental illness and who will be released with a 10-day supply of the psychoactive medication(s), then the LMHA or LBHA shall arrange for a face-to-face contact between the SNO-SMI and QMHP-CS to occur within seven days after the SNO-SMI's release. If the SNO-SMI is released from state prison or state jail after hours or the LMHA or LBHA is otherwise unable to schedule the face-to-face contact prior to the SNO-SMI's release, the LMHA or LBHA shall make a good faith effort to locate and contact the individual. If the designated LMHA or LBHA does not have a face-to-face contact with the SNO-SMI within the seven days, then the LMHA or LBHA shall document the reasons for not doing so.

(A) At the face-to-face contact, the QMHP-CS shall conduct a pre-admission assessment in accordance with §412.322 of this title (relating to Provider Responsibilities for Treatment Planning and Service Authorization) and comply with §412.161(b)(2)(A) or (B) of this title, as appropriate). If the LMHA or LBHA determines that the SNO-SMI should receive services immediately, then the LMHA or LBHA must arrange for the SNO-SMI to meet with a prescriber of medication before the SNO-SMI's entire supply of psychoactive medication has been administered.

(B) If the LMHA or LBHA does not have a face-to-face contact with the SNO-SMI, then the LMHA or LBHA shall document the reasons for not doing so.

(3) TCOOMMI SNO-SMIs on parole. The SMHF will notify a representative of the Texas Correctional Office on Offenders with Medical or Mental Impairments prior to the discharge of an individual known to be on parole.

§412.203. Discharge of Voluntary Patients.

(a) Patient no longer benefits from inpatient services. An SMHF shall discharge a voluntary patient if the SMHF administrator or designee determines, based on a physician's determination, that the patient can no longer benefit from inpatient services as required by §412.201 of this title (relating to Discharge Planning).

(b) Request for discharge. If a written request for discharge is made by a voluntary patient or the patient's LAR, then the patient may be discharged in accordance with THSC, §572.004. The request shall be signed, timed, and dated by the patient or the patient's LAR.

(1) If a patient informs an SMHF staff member of the patient's desire to leave the SMHF, the staff member shall, as soon as possible, assist the patient in creating the written request and present it to the patient for the patient's signature. Without regard to whether the individual agrees to sign the paperwork, the request will be documented and processed by staff.

(2) Within four hours after a written request is made known to the SMHF, the SMHF shall notify the treating physician or if the treating physician is not available during that time period, notify another physician who is an SMHF staff member.

(3) In accordance with THSC, §572.004(i), after a written request from a minor patient admitted under §412.176(a)(1)(B) of this title (relating to Voluntary Admission to State Mental Health Facility or Contracted Psychiatric Beds) is made known to the SMHF, the SMHF shall notify the patient's parent, managing conservator, or guardian of the request.

(4) Once a written request is made known to the SMHF, the SMHF shall file the request in the patient's medical record.

(c) Discharge or examination. In accordance with THSC, §572.004(c) and (d):

(1) the SMHF shall, based on a physician's determination, discharge the patient within the four-hour time period described in subsection (b)(2) of this section; or

(2) if the physician who is notified in accordance with subsection (b)(2) of this section has reasonable cause to believe that the patient may meet the criteria for court-ordered inpatient mental health services or emergency detention, then the physician shall examine the patient as soon as possible within 24 hours after the request for discharge is made known to the SMHF.

(d) Discharge if not examined within 24 hours or if criteria not met.

(1) If a patient, who a physician believes may meet the criteria for court-ordered inpatient mental health services or emergency services, is not examined within 24 hours after the request for discharge is made known to the SMHF, then the SMHF shall discharge the patient.

(2) In accordance with THSC, §572.004(d), if the physician examining the patient as described in subsection (c)(2) of this section determines that the patient does not meet the criteria for court-ordered inpatient mental health services or emergency detention, then the SMHF shall discharge the patient upon completion of the examination.

(e) Discharge or filing application if criteria met. In accordance with THSC, §572.004(d), if the physician examining the patient as described in subsection (c)(2) of this section, determines that the patient meets the criteria for court-ordered inpatient mental health services or emergency detention, then the SMHF shall, by 4:00 p.m. on the next business day:

(1) file an application for court-ordered inpatient mental health services or emergency detention and obtain a court order for further detention of the patient; or

(2) discharge the patient.

(f) Notification by physician. In accordance with THSC, §572.004(d), if the SMHF intends to detain a patient to file an application and obtain a court order for further detention of the patient, a physician shall:

(1) notify the patient of such intention; and

(2) document in the patient's medical record the reasons for the decision to detain the patient.

(g) Withdrawal of request for discharge. In accordance with THSC, §572.004(f), an SMHF is not required to complete the discharge process described in this section if the patient makes a written statement withdrawing the request for discharge.

#### §412.204. Discharge of Involuntary Patients.

(a) Discharge from emergency detention.

(1) Except as provided by §412.180 of this title (relating to Voluntary Treatment Following Involuntary Admission) and in accordance with THSC, §573.023(b) and §573.021(b), an SMHF shall immediately discharge a patient under emergency detention if either of the following occurs:

(A) the SMHF administrator or designee determines, based on a physician's determination, that the patient no longer meets the criteria described in §412.177 of this title (relating to Emergency Detention); or

(B) except as provided in paragraph (2) of this subsection, 48 hours has elapsed from the time the patient was presented to the SMHF and the SMHF has not obtained a court order for further detention of the patient.

(2) In accordance with THSC, §573.021(b), if the 48-hour period described in paragraph (1)(B) of this subsection ends on a Saturday, Sunday, or legal holiday, or before noon, on the next business day after the patient was presented to the SMHF, then the patient may be detained until noon on such business day.

(b) Discharge under order of protective custody. Except as provided by §412.180 of this title and in accordance with THSC, §574.028, an SMHF shall immediately discharge a patient under an order of protective custody if any of the following occurs:

(1) the SMHF administrator or designee determines that, based on a physician's determination, the patient no longer meets the criteria described in THSC, §574.022(a);

(2) the SMHF administrator or designee does not receive notice that the patient's continued detention is authorized after a probable cause hearing held within the time period prescribed by THSC, §574.025(b);

(3) a final order for court-ordered inpatient mental health services has not been entered within the time period prescribed by THSC, §574.005; or

(4) an order to release the patient is issued in accordance with THCS, §574.028(a).

(c) Discharge under court-ordered inpatient mental health services.

(1) Except as provided by §412.180 of this title and in accordance with THSC, §574.085 and §574.086(a), a SMHF shall immediately discharge a patient under a temporary or extended order for inpatient mental health services if either of the following occurs:

(A) the order for inpatient mental health services expires; or

(B) the SMHF administrator or designee determines that, based on a physician's determination, the patient no longer meets the criteria for court-ordered inpatient mental health services.

(2) In accordance with THSC, §574.086(b), before discharging a patient in accordance with paragraph (1) of this subsection, the SMHF administrator designee shall consider whether the patient should receive court-ordered outpatient mental health services in accordance with a modified order described in THSC, §574.061.

(d) The SMHF administrator shall forward the discharge packet of any patient ~~individual~~ committed under Texas criminal codes to the jail and the LMHA or LBHA.

§412.205. Discharge of Minors Initiated by Waco Center for Youth.

(a) Prior to the discharge of an adolescent a who has not completed treatment that is initiated by the residential treatment center, Waco Center for Youth must notify the LMHA or

LBHA to initiate a CRCG meeting to determine the most appropriate and least restrictive treatment alternatives available.

(b) Waco Center for Youth must provide the adolescent and the adolescent's LAR with written notice of the proposed discharge from services, the date of proposed discharge, the date of the planned CRCG, and information on how to request an appeal from the ombudsman.

§412.206. Absences from an SMHF.

(a) Voluntary patients.

(1) The SMHF administrator may, in coordination with the designated LMHA or LBHA, authorize absences for a voluntary patient.

(2) A voluntary patient who is absent from the SMHF, authorized (e.g., ATP or unauthorized), may not be detained and returned to the SMHF unless the patient consents to the return. If the patient's condition has deteriorated to the extent that the patient's continued absence from the SMHF is inappropriate and there is a question of competency or willingness to consent to return, then the designated LMHA or LBHA or SMHF shall initiate involuntary admission in accordance with THSC, Chapter 573 or 574.

(b) Involuntary patients admitted under order for inpatient mental health services.

(1) In accordance with THSC, §574.082, the SMHF administrator may, in coordination with the designated LMHA or LBHA, authorize absences for an involuntary patient admitted under order for inpatient mental health services.

(A) If a patient's authorized absence is to exceed 72 hours, then the SMHF shall notify the committing court of the absence.

(B) An authorized absence may not exceed the expiration date of the patient's order for inpatient mental health services.

(2) In accordance with THSC, §574.083, a patient may be detained and returned to the SMHF if the SMHF administrator issues a certificate or affidavit establishing that the patient is receiving court-ordered inpatient mental health services and that:

(A) the patient is absent without authority from the SMHF (i.e., unauthorized departure);

(B) the patient has violated the conditions of the absence; or

(C) the patient's condition has deteriorated to the extent that the patient's continued absence from the SMHF is inappropriate.

(3) In accordance with THSC, §574.084, a patient's authorized absence that exceeds 72 hours may be revoked only after an administrative hearing held in accordance with this paragraph.

(A) The SMHF shall designate a hearing officer to conduct the hearing. The hearing officer may be a mental health professional, but may not be directly involved in treating the patient.

(B) The hearing shall be held within 72 hours after the patient is returned to the SMHF. The hearing shall be informal. The patient and SMHF staff shall be given the opportunity to present information and arguments. An SMHF staff member or another individual designated by the patient may act as the patient's advocate if the patient requests such advocacy.

(C) Within 24 hours after the conclusion of the hearing, the hearing officer shall decide if revocation of the authorized absence is justified (i.e., the patient violated the conditions of the absence or the patient's condition deteriorated to the extent that the patient's continued absence from the SMHF is inappropriate). The hearing officer's decision shall be in writing and include an explanation of the reasons for the decision and the information relied upon. A copy of the decision shall be placed in the patient's medical file.

(D) If the hearing officer's decision does not revoke the authorized absence, then the patient shall be permitted to leave the SMHF pursuant to the conditions of the absence.

#### §412.207. Absence for Trial Placement (ATP).

(a) A patient who is eligible for discharge as described in §412.203 of this title (relating to Discharge of Voluntary Patients) or §412.204(c) of this title (relating to Discharge of Involuntary Patients) may leave the SMHF on ATP if the SMHF and the designated LMHA or LBHA agree that ATP will be beneficial in implementing the patient's continuing care plan. The designated LMHA or LBHA is responsible for monitoring the patient while on ATP.

#### (b) Timeframes for ATP.

(1) A patient admitted under court-ordered inpatient mental health services may not be on ATP beyond the expiration date of the patient's order for inpatient mental health services.

(2) The initial ATP period for any patient may not exceed 30 days.

(3) The SMHF may extend an initial ATP period up to 30 days if requested by the designated LMHA or LBHA and if clinically justified.

(4) Approval from by the following people is required for any ATP that exceeds 60 days:

(A) the SMHF administrator or designee; and

(B) the designated LMHA or LBHA executive director or designee.

§412.208. Procedures upon Discharge or ATP.

(a) Arrangements and referrals. Prior to a patient's discharge or absence for trial placement (ATP), the SMHF and designated LMHA or LBHA (and designated LIDDA, if appropriate) shall make arrangements and referrals for the services and supports recommended in the patient's continuing care plan.

(1) The SMHF shall document the arrangements and referrals in the referral instructions.

(2) The SMHF shall request that the patient or LAR, as appropriate, sign the referral instructions. If the patient or LAR refuses to sign, then the SMHF shall document in the patient's medical record the circumstances of the refusal.

(b) Notice of protection and advocacy system. Upon discharge, the SMHF shall provide the patient with written notification of the existence, purpose, telephone number, and address of the protection and advocacy system established in Texas, which is Disability Rights Texas, as required by THSC, §576.008.

(c) Discharge notice to family or LAR.

(1) In accordance with THSC, §576.007, before discharging a patient who is 18 years of age or older an SMHF shall make a reasonable effort to notify the patient's family of the discharge if the patient grants permission for the notification.

(2) Before discharging a patient who is 16 or 17 years of age, an SMHF shall make a reasonable effort to notify the patient's family of the discharge if the patient grants permission for the notification.

(3) Before discharging a patient who is younger than 16 years of age, an SMHF shall notify the patient's LAR of the discharge.

(d) Release of minors. Upon discharge, the SMHF may release a minor younger than 16 years of age only to the minor's LAR or the LAR's designee.

(1) If the LAR or the LAR's designee is unwilling to assume physical custody of the minor from the SMHF and the LAR is not a state agency, then the SMHF shall notify Child Protective Services (CPS) of its responsibility to assume physical custody of the minor from the SMHF. If CPS is unwilling to assume physical custody of the minor, then the SMHF or the designated LMHA or LBHA may transport the minor to the administrative offices of CPS.

(2) If the LAR is unwilling to assume physical custody of the minor from the SMHF and the LAR is a state agency, then the SMHF or designated LMHA or LBHA may transport the minor to the administrative offices of the state agency.

(e) Transportation. The SMHF and designated LMHA or LBHA shall ensure that the patient has transportation upon discharge or ATP.

(f) Notice to designated LMHA or LBHA. At least 24 hours prior to a patient's discharge or ATP, but no later than 24 hours after discharge for a patient who is discharged unexpectedly, the SMHF shall notify the designated LMHA or LBHA of the anticipated or unexpected discharge and convey the following information about the patient:

- (1) identifying data, including address;
- (2) legal status (e.g., regarding guardianship, charges pending, custody, if patient is a minor);
- (3) the day and time the patient will be discharged or ATP;
- (4) the patient's destination after discharge or ATP;
- (5) pertinent medical information;
- (6) current medications;
- (7) behavioral data, including information regarding COPSD; and
- (8) other pertinent treatment information, including the continuing care plan.

(g) Discharge packet.

- (1) At a minimum, the discharge packet shall include:
  - (A) the continuing care plan;
  - (B) referral instructions, including:
    - (i) SMHF contact person;
    - (ii) name of the designated LMHA or LBHA liaison staff;
    - (iii) names of providers and community resources the person is referred to, including contacts, appointment dates and times, addresses, and phone numbers;

(iv) a description of to whom and where the person is released upon discharge, including intended residence (address and phone number) or alternate arrangements for shelter if the person does not have an identified residence at discharge;

(v) instructions for the person, LAR, and primary care giver;

(vi) medication regimen; and

(vii) signature, with date, of the person or LAR and a member of the SMHF treatment team;

and (C) copies of all available pertinent current summaries and assessments;

(D) treating physician's orders.

(2) At discharge or ATP, the SMHF shall provide to the patient a copy of the documents described in paragraph (1)(A), (B), and (D) of this subsection.

(3) Within 24 hours after discharge or ATP, the SMHF shall send a copy of the discharge packet to:

(A) the designated LMHA or LBHA; and

(B) the providers described in the referral instructions to which the person is referred, which may be:

(i) an LMHA or LBHA-network provider, if the LMHA or LBHA is responsible for ensuring the person's services after discharge or while on ATP;

(ii) an alternate provider, if the person requested referral to the alternate provider; or

(iii) a county jail, if the person will be taken to the county jail upon discharge and the county jail has agreed to provide the needed services.

(h) Discharge summary. Within 10 days after discharge, the SMHF shall complete a discharge summary and send a copy to:

(1) the designated LMHA or LBHA; and

(2) the providers described in the referral instructions to which the person is referred.

§412.209. Post Discharge/ATP: Contact and Implementation of Continuing Care Plan.

The designated LMHA or LBHA is responsible for contacting a person following discharge or absence for trial placement (ATP) from the SMHF and for implementing a person's continuing care plan in accordance with this section.

(1) LMHA or LBHA contact after discharge or ATP.

(A) The designated LMHA or LBHA shall make face-to-face contact within seven days after discharge or ATP of a person who was:

(i) discharged or on ATP from an SMHF and referred to the LMHA or LBHA for services or supports as indicated in the continuing care plan;

(ii) discharged from an LMHA or LBHA-network provider of inpatient services and referred to the LMHA or LBHA for services or supports as indicated in the continuing care plan;

(iii) discharged from an alternate provider of inpatient services and receiving LMHA or LBHA services from the designated LMHA or LBHA at the time of admission and who, upon discharge, is referred to the LMHA or LBHA for services or supports as indicated in the continuing care plan; and

(iv) discharged from the LMHA or LBHA's crisis stabilization unit and referred to the LMHA or LBHA for services or supports as indicated in the discharge plan.

(B) At the face-to-face contact, the designated LMHA or LBHA shall:

(i) re-assess the person and ensure the provision of the clinical services and supports specified in the person's continuing care plan by making the services and supports available and accessible; and

(ii) assist the person in accessing the non-clinical services and supports specified in the person's continuing care plan.

(C) The designated LMHA or LBHA shall develop or review a person's treatment plan in accordance with §412.322 of this title (relating to Provider Responsibilities for Treatment Planning and Service Authorization), within three weeks after the face-to-face contact described in paragraph (1)(B) of this section. The treatment plan shall include all clinical and non-clinical services and supports recommended in the continuing care plan or justification for their exclusion.

(D) The designated LMHA or LBHA shall make a good faith effort to locate and contact a person who fails to show up for the face-to-face contact. If the designated LMHA or LBHA does not have a face-to-face contact with a person, then the LMHA or LBHA shall document the reasons for not doing so.

(2) For a person identified in paragraph (1)(A)(i) of this section whose continuing care plan identifies the designated LMHA or LBHA as responsible for providing or paying for the person's psychoactive medications, the designated LMHA or LBHA is responsible for ensuring that the individual has an adequate supply of prescribed medication(s) following discharge.

(3) The designated LMHA or LBHA shall document in the person's record the LMHA or LBHA's activities described in this section, and the person's responses to those activities.

#### DIVISION 6: DISCHARGE FROM LMHA or LBHA

##### §412.221. Discharge from LMHA or LBHA Services.

(a) When an LMHA or LBHA determines that an individual can no longer benefit from LMHA or LBHA services, then the LMHA or LBHA shall discuss such determination with the individual and the person's LAR, if any, and discharge the individual from LMHA or LBHA services (i.e., enter "closed" in CARE/CMBHS). If the LMHA or LBHA discharges the individual from LMHA or LBHA services, then the LMHA or LBHA shall provide the person with written notification of the termination of services and of the opportunity to appeal in accordance with the LAR in §412.155 of this title (relating to Non Third-Party Payor Notification and Appeals Process for LMHA or LBHA .

(b) The LMHA or LBHA is responsible for ensuring the completion of the person's summary of care in accordance with §412.322 of this title (relating to Provider Responsibilities for Treatment Planning and Service Authorization) of Chapter 412, Subchapter G of this title (relating to Mental Health Community Services Standards).

(c) The LMHA or LBHA is responsible for discharge planning for all individuals it serves regardless of the reason for discharge.

(1) Without regard to diagnosis at discharge or assessment of current functioning, each patient determined to be no longer eligible for or meeting discharge criteria for LMHA or LBHA services is eligible for an additional 90 day service authorization for discharge/ transition planning

(A) a transition service for 90 days; or

(B) in ongoing care.

(2) Discharge planning shall include completion of the uniform assessment for community-based services prior to discharge.

(3) Discharge planning shall include the following activities:

(A) identifying and recommending specific, available clinical services and supports needed by the patient after discharge;

(B) identifying and recommending specific, available non-clinical services and supports needed by the patient after discharge;

(C) identifying the providers and community resources for the services and supports recommended, including nursing facilities; and

(D) counseling the patient and the patient's LAR, if any, to prepare them for care after discharge.

(4) If a long term placement (e.g., group home, housing, or nursing home) is needed, the LMHA or LBHA is responsible for identifying the community resources to be offered to the patient.

(5) The LMHA or LBHA shall develop a continuing care plan for the individual. The plan shall include:

(i) the results of the final uniform assessment;

(ii) a description of the patient's living arrangements after discharge that reflects the patient's preferences, choices, and available community resources;

(iii) a description of services and supports the patient will receive after discharge;

(iv) a description of problems identified at discharge or ATP, which may include any issues that disrupt the patient's stability in the community;

(v) the patient's goals, interventions, and objectives as stated in the patient's treatment plan at the LMHA or LBHA;

(vi) a final diagnosis based on all five axes of the current edition of the *Diagnostic Statistical Manual of Mental Disorders* (DSM) published by the American Psychiatric Association and approved and used by DSHS;

(vii) the provider(s) to whom the patient will be referred for any services or supports after discharge; and

(viii) the individual or entity that is responsible for providing and paying for medication.

(ix) the LMHA or LBHA shall provide to the individual or LAR written information about how to obtain crisis services.

(d) An individual has the right to appeal the LMHA or LBHA's determination in accordance with §412.155 of this title.

## DIVISION 7: TRAINING

§412.231. Assessment and Intake Training Requirements at an SMHF.

(a) As required by THSC, §572.0025(e), an SMHF staff member whose responsibilities include conducting the intake process as defined in §412.153 of this title (relating to Definitions) and required in Division 3 of this subchapter (relating to Admission to SMHFs -- SMHF Responsibilities) shall receive at least eight hours of training in the SMHF's intake process.

(1) The intake training shall provide instruction regarding:

(A) obtaining relevant information about patients, including information about finances, third-party coverage or insurance benefits, and advance directives;

(B) explaining, orally and in writing, the person's rights described in Chapter 414, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services):

(C) explaining, orally and in writing, the SMHF's services and treatment as they relate to patient; and

(D) explaining, orally and in writing, the existence, purpose, telephone number, and address of the protection and advocacy system established in Texas, which is Disability Rights Texas, pursuant to THSC, §576.008; and

(E) determining whether a patient comprehends the information provided in accordance with subparagraphs (B)-(D) of this paragraph.

(2) Up to six hours of the training described in the following references may be used toward the training required by this subsection:

(A) §417.515 of this title (relating to Staff Training in Identifying, Reporting, and Preventing Abuse, Neglect, and Exploitation) of Chapter 417, Subchapter K of this title (relating to Abuse, Neglect, and Exploitation in TDMHMR Facilities);

(B) §414.165 of this title (relating to Staff Training in Rights of Persons Receiving Mental Health Services) of Chapter 414, Subchapter E of this title (concerning Rights of Persons Receiving Mental Health Services); and

(C) §8(b) (Designation of Privacy Official and Workforce Training) of the "Interpretive Guidance on Laws Pertaining to Privacy of Mental Health and IDD Records for the compliance with HIPAA.

(3) An SMHF staff member whose responsibilities include conducting the intake process shall receive the training:

(A) prior to conducting the intake process; and

(B) annually throughout the staff member's employment or association with the SMHF.

(b) Documentation of training. An SMHF shall document that each assessment professional and each staff member whose responsibilities include conducting the intake process has successfully completed the training described in subsection (a) of this section, including:

(1) the date of the training;

(2) the length of the training session; and

(3) the name of the instructor.

(c) Performance in accordance with training. Each assessment professional and each staff member whose responsibilities include conducting the intake process shall perform his/her responsibilities in accordance with the training required by this section.