

**Department of State Health Services  
Council Agenda Memo for State Health Services Council  
February 24, 2011**

**Agenda Item Title:** Amendments to rules and repeal of a rule concerning the determination of manifest dangerousness

**Agenda Number:** 4.a.i

**Recommended Council Action:**

For Discussion Only

For Discussion and Action by the Council

**Background:**

The State Hospital Section within the Mental Health and Substance Abuse Services Division operates the DSHS Review Board. The Review Board holds hearings of individuals considered manifestly dangerous and determines whether the individual meets clinical criteria to receive the specialized care in the maximum security unit. The term “manifest dangerous” is used to describe an individual who, despite receiving appropriate treatment, including treatment targeted to the individual's dangerousness, remains likely to endanger others and requires a maximum security environment in order to continue treatment and protect public safety.

The DSHS Review Board holds 12 annual hearings. In 2010, 470 persons presented to the Review Board, only some of whom were determined manifestly dangerous. When individuals are determined to be manifestly dangerous, they are transferred to the maximum security unit at North Texas State Hospital. Individuals whom the Review Board does not determine to be manifestly dangerous are returned to their state hospital with the Review Board determination that the individual can be appropriately cared for in the typical state hospital environment. In 2010, the average length of stay was 164.13 days for the 544 patients discharged from maximum security.

The State Hospital Section and the Review Board are funded with general revenue.

**Key Health Measures:**

The rules describe the policies and procedures of DSHS concerning the operation of the DSHS Review Board. The proposed amendments and repeal should allow state hospital clinicians additional time to treat patients by eliminating the requirement for a Letter of Attestation. The amended rules require the use of standardized assessment tools, which should result in findings that are more consistent from the Review Board. It should also help the state hospital clinicians develop uniform treatment protocols for patients who are determined manifestly dangerous. The amended rules should allow the State Hospital Section to measure which standardized assessment tools and measures are best for determining manifest dangerousness and the extent to which state hospital clinicians are able to clinically treat manifestly dangerous patients.

Program staff recommended proposed revisions based upon input from clinicians, Review Board members, mental health advocates, and other stakeholders. The elimination of the Letter of Attestation was based upon recommendations from state hospital clinicians and Review Board members who felt that the Letter of Attestation was no longer necessary. The initial purpose of the Letter of Attestation was to ensure that receiving facilities consulted with transferring facilities after individuals were determined not manifestly dangerousness. It required the transferring facility to provide clinical records and ensure continuity of clinical care. At the time this requirement was added, facilities rarely transferred these records. However the use of electronic records systems, as well as the transfer of medical records becoming common clinical practice, makes the Letter of Attestation an unnecessary requirement. The appropriateness of the elimination of the Letter of Attestation can be measured by

observing how many patients are transferred from maximum security with or without their medical records after the passage of the rule. Program staff expects to see no patient transfers without medical records. Additionally, the removal of the requirement for the Letter of Attestation should create more time for clinicians to treat patients, which may result in a decrease in patient length of stay. This can be measured by the hospital personnel.

**Summary:**

The purpose of the amendments is to update the agency name and statutory references, change the name of the DSHS Review Board to the DSHS Dangerousness Review Board, require the use of standardized tools for assessment of dangerousness, and eliminate the requirement for Letters of Attestation. The repeal removes the requirement for distribution of these rules to interested parties. The revisions also comply with the four-year review of rules required by Government Code, Section 2001.039.

The repeal will eliminate unnecessary parts of the rules while maintaining continued protection of the public health, welfare, and safety. Removal of the requirement for the Letter of Attestation will eliminate unnecessary administrative burdens and increase clinicians' time for clinical care. Finally, use of standardized assessment tools will help create consistent determinations from the Review Board.

**Summary of Input from Stakeholder Groups:**

Two stakeholder meetings were held on May 03, 2010, and July 06, 2010, to discuss the possible changes for the rules. Attendees included representation from Texas Medical Association; Texas Osteopathic Medical Association; Texas Society of Psychiatric Physicians; Texas Nurses Association; Coalition for Nurses in Advanced Practice; Mental Health Planning and Advisory Council; Advocacy, Inc.; Texas Psychological Association; State Hospital Section; DSHS attorneys; and National Association of Social Workers.

Stakeholders have also been contacted via email to solicit suggested changes to the rules. Feedback was positive and stakeholders are supportive of the proposed changes.

**Proposed Motion:**

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

<b>Approved by Assistant Commissioner/Director:</b>	Mike Maples	<b>Date:</b>	2/9/11		
<b>Presenter:</b>	Emilie Becker	<b>Program:</b>	Mental Health and Substance Abuse	<b>Phone No.:</b>	512-206-5936
<b>Approved by CCEA:</b>	Carolyn Bivens	<b>Date:</b>	2/10/11		

TITLE 25. Health Services  
Part 1. Department of State Health Services  
Chapter 415. Provider Clinical Responsibilities--Mental Health Services  
Subchapter G. Determination of Manifest Dangerousness  
Amendments §§415.301 - 415.315  
Repeal §415.316

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes amendments to §§415.301 - 415.315 and repeal of §415.316, concerning the Determination of Manifest Dangerousness.

BACKGROUND AND PURPOSE

The amendments and repeal are necessary to comply with Health and Safety Code, §§533.035(a) and §574.022; and Code of Criminal Procedure, Articles 46B and 46C, which require the department to operate a maximum security unit for individuals determined to be manifestly dangerous.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 415.301 - 415.316 have been reviewed and the department has determined that amendments were necessary to conform the proposed rules to statute and current department operations. The department has determined that reasons for adopting the rules continue to exist because rules on this subject are needed. However, §415.316 is no longer necessary and is being repealed.

SECTION-BY-SECTION SUMMARY

Amendments to §415.301 include minor editorial revisions. An amendment to §415.302 revises a rule reference to §415.306(8) and removes mental retardation facility from the applicable facilities in the proposed rule. Amendments to §415.303 define the terms and phrases used in the proposed rule relating to the assessment of risk for manifest dangerousness, commissioner, the department, the dangerousness review board, facility, hearing, mental health professional, and maximum security unit. Section 405.303 also removes the definitions of state mental retardation facility, TDMHMR, and the TDMHMR Review Board. An amendment to §415.304 and §415.315 revise the reference of Health and Safety Code, §593.044 to §574.022. Amendments to §415.303, §415.305, §415.306, and §§415.310 - 415.314 remove any references to TDMHMR and replace with DSHS. Amendments to §415.307 and §415.310 clarify that an assessment tool can be used to assess a risk of manifest dangerousness. Amendments to §415.308 and §415.309 revise the titles of the rules. Amendments to §415.310, §415.312, and §415.314 remove the requirement for the Letter of Attestation. Amendments to §415.303, §415.310, §415.12, and §415.315 correct the Code of Criminal Procedure Article references. Section 415.314 is also amended to include access of the Notice of Hearing by Facility Review Board and the Notice of Hearing by DSHS Dangerousness Review Board forms as an attached graphic.

The repeal of §415.316 will remove the requirement for distribution of the rules of this subchapter.

#### FISCAL NOTE

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

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Maples has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed for amendment and repeal. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the amended and repealed sections.

#### ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

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

#### PUBLIC BENEFIT

In addition, Mr. Maples has determined that for each year of the first five years the sections are in effect the public will benefit as a result of the repeal of these rules because unnecessary rules will be eliminated while maintaining continued protection of the public health, welfare, and safety. Removal of the requirement for the Letter of Attestation will eliminate unnecessary administrative burdens and increase clinician's time for clinical care. Finally, use of standardized assessment tools would help create more consistent results determinations from the review board.

#### REGULATORY ANALYSIS

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

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Comments on the proposal may be submitted to Nnenna Ezekoye, Mental Health and Substance Abuse Division, Department of State Health Services, Mail Code 2023, P. O. Box 149347, Austin, Texas 78714-9347, (512) 206-5268, or by email to Nnenna.Ezekoye@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

#### PUBLIC HEARING

A public hearing to receive comments on the proposal will be scheduled after publication in the *Texas Register*. The meeting date and location will be posted on the Behavioral Health Medical Director website (<http://www.dshs.state.tx.us/mhsa/medicaldirector/>) and the Mental Health and Substance Abuse Division Website (<http://www.dshs.state.tx.us/mentalhealth.shtm>). Please contact Nnenna Ezekoye at (512) 206-5268 or Nnenna.Ezekoye@dshs.state.tx.us if you have questions.

#### 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 and repeal are authorized by Health and Safety Code, 571.006, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules as necessary for the proper and efficient treatment of persons with mental illness; and by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

The amendments and repeal affect the Health and Safety Code, Chapters 531, 533, 571, 574, and 1001; and Code of Criminal Procedure, Articles 46B and 46C.

Section for Repeal.  
§415.316. Distribution.

Legend: (Proposed Amendment(s))

Single Underline = Proposed new language

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

Regular Print = Current language

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

Subchapter G. Determination of Manifest Dangerousness.

§415.301. Purpose.

The purpose of this subchapter **[is to]**:

(1) establishes **[establish]** the two types of review boards that conduct hearings to determine whether an individual is manifestly dangerous;

(2) defines **[define]** the elements to be considered in the determination of manifest dangerousness by review boards;

(3) describes **[describe]** which persons may and may not be subject to a hearing to determine manifest dangerousness;

(4) enumerates **[enumerate]** the rights of an individual who is subject to a hearing to determine manifest dangerousness;

(5) provides **[provide]** due process for individuals who have been determined manifestly dangerous; and

(6) provides **[provide]** procedures governing the transfer of an individual to the maximum security unit/secure adolescent unit (MSU/SAU) and from the MSU/SAU.

§415.302. Application.

**[(a)]** This subchapter applies to facilities, as defined in §415.303(8) **[\$415.303(6)]** of this title (relating to Definitions).

**[(b) Sections 415.312 and 415.310(5) of this subchapter apply to a state mental retardation facility that is identified as the receiving facility, as defined in §415.303(19) of this title (relating to Definitions).]**

§415.303. Definitions.

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

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

(3) Assessment of risk for manifest dangerousness--An age and developmentally appropriate comprehensive evaluation of the commonly accepted risk factors for violence and the results of evidence based tools that assess and/or measure risk of violence. **[behavioral and social factors that may indicate an individual is manifestly dangerous, including:]**

**[(A) past history of violence including:]**

**[(i) history of violence in family of origin;]**

**[(ii) past use of violence;]**

**[(iii) at risk behavioral traits;]**

**[(iv) organic brain disease affecting perception;]**

**[(v) impulse control or arousal thresholds; and]**

**[(vi) history of violent behavior when chronically institutionalized;]**

**[(B) situational factors related to violent acts;]**

**[(C) environmental factors related to risk for violence;]**

**[(D) factors identified in the current mental status examination related to risk for violence;]**

**[(E) analysis of the level of external controls needed to ensure the continuity of safe and effective treatment; and]**

**[(F) summary and formulation of the elements contained in subparagraphs (A)-(E) of this paragraph.]**

(4) (No change.)

(5) Commissioner--The commissioner of the Texas Department of State Health Services **[Mental Health and Mental Retardation]** or designee.

(6) DSHS--The Texas Department of State Health Services.

(7) DSHS Dangerousness Review Board (DRB)--Five mental health professionals impaneled in accordance with §415.305(e) of this title (relating to Procedures and Requirements for All Review Boards) to conduct a hearing to determine whether or not an individual served in the MSU/SAU is manifestly dangerous.

(8) [(6)] Facility--Any state hospital, or a state center with an inpatient component, that is operated by DSHS **[TDMHMR]**, excluding Waco Center for Youth.

(9) [(7)] Facility CEO (chief executive officer)--The superintendent or director of a facility or his/her designee.

(10) [(8)] Facility review board--Five mental health professionals impaneled in accordance with §415.305(e) of this title [(relating to Procedures and Requirements for All Review Boards)] to conduct a hearing to determine whether or not an individual served in a facility is manifestly dangerous.

(11) [(9)] Hearing--An oral proceeding conducted by a review board in accordance with §415.305(g) of this title [(relating to Procedures and Requirements for All Review Boards)] in which evidence relating to an individual's possible manifest dangerousness is heard.

(12) [(10)] Independent evaluator--A licensed physician or mental health professional (as defined) retained by an individual or LAR who conducts an evaluation or examination of the individual.

(13) [(11)] Individual--An adult or adolescent committed to a facility (as defined) who is to be the subject of a hearing to determine manifest dangerousness or who has been determined manifestly dangerousness in accordance with this subchapter.

(14) [(12)] LAR or legally authorized representative--A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, and who may include a parent, guardian, or managing conservator of a minor individual, or a guardian of an adult individual.

(15) [(13)] Local authority --An entity designated by the commissioner in accordance with the Texas Health and Safety Code, §533.035(a).

(16) [(14)] Manifestly dangerous--The term used to describe an individual who, despite receiving appropriate treatment, including treatment targeted to the individual's dangerousness, remains likely to endanger others and requires a maximum security environment in order to continue treatment and protect public safety.

(17) [(15)] Mental health professional--A person, licensed in the State of Texas, who has at least one year of experience as a provider of mental health services within the past five years and who is:

(A) a licensed physician who has successfully completed a psychiatric residency;

(B) a licensed psychologist or licensed psychological associate;

(C) a licensed master social worker (LMSW);

(D) a licensed registered nurse with a bachelor's degree in nursing with American Nurses Credentialing Center (ANCC) certification in psychiatric/mental health nursing; [or]

(E) an advanced practice registered nurse licensed to practice in the area of psychiatric/mental health nursing; or

(F) ~~[(E)]~~ a licensed registered nurse with a master's degree in psychiatric/mental health nursing.

(18) ~~[(16)]~~ Maximum security unit--A facility unit designated by the commissioner to treat adults who are determined manifestly dangerous in accordance with this subchapter and persons who have been committed pursuant to the Texas Code of Criminal Procedure, Article 46B or 46C **[46.02 or 46.03]**.

(19) ~~[(17)]~~ MSU/SAU (maximum security unit/secure adolescent unit)--Either the maximum security unit or the secure adolescent unit, as appropriate to the individual.

(20) ~~[(18)]~~ MSU/SAU CEO (chief executive officer)--The superintendent or director, or his/her designee, of the facility at which the MSU/SAU is located.

(21) ~~[(19)]~~ Receiving facility--

(A) For an individual who was transferred to the MSU/SAU--The receiving facility is the facility that transferred the individual to the MSU/SAU unless another facility is identified as the receiving facility.

(B) For an individual who was committed to the MSU/SAU pursuant to the Texas Code of Criminal Procedure--The receiving facility is the facility in the service area of the local authority that serves the individual's county of residence unless another facility or state mental retardation facility is identified as the receiving facility.

(22) ~~[(20)]~~ Risk management plan--A plan for managing the factors contributing to an individual's potential for dangerousness that is implemented following transfer from the MSU/SAU and which includes a description of the level of external controls needed to ensure the safety of others and effective treatment for the individual, the type of commitment needed to support these controls, and recommendations for continuing care.

(23) ~~[(21)]~~ Secure adolescent unit--A facility unit designated by the commissioner to treat adolescents who are determined manifestly dangerous in accordance with this subchapter.

(24) ~~[(22)]~~ Spokesperson--A person appointed by an individual or LAR to represent the individual or LAR at a hearing. A spokesperson may be an attorney, a relative, a friend, or advocate.

**[(23) State mental retardation facility--A state school, or a state center with a mental retardation residential component, that is operated by TDMHMR.]**

**[(24) TDMHMR--The Texas Department of Mental Health and Mental Retardation.]**

**[(25) TDMHMR Review Board--Five mental health professionals impaneled in accordance with §415.305(e) of this title (relating to Procedures and Requirements for All Review Boards) to conduct a hearing to determine whether or not an individual served in the MSU/SAU is manifestly dangerous.]**

§415.304. Persons Who May and May Not Be Subject to a Hearing to Determine Manifest Dangerousness.

(a) (No change.)

(b) The following persons may not be subject to a hearing to determine manifest dangerousness:

(1) an adult, adolescent, or child who is voluntarily admitted to a facility (as defined) or who is under an order of protective custody in accordance with the Texas Health and Safety Code, §574.022 [**or §593.044**]; and

(2) (No change.)

§415.305. Procedures and Requirements for All Review Boards.

(a) Pool of mental health professionals.

(1) (No change.)

(2) DSHS Dangerousness [TDMHMR] Review Board. The commissioner will appoint a pool of at least 16 mental health professionals who will be available to be impaneled as members on the DSHS Dangerousness [TDMHMR] Review Board.

(b) Chair.

(1) (No change.)

(2) DSHS Dangerousness [TDMHMR] Review Board. The commissioner will appoint the chair of the DSHS Dangerousness [TDMHMR] Review Board from the pool of mental health professionals described in subsection (a)(2) of this section. If the chair is unable to serve on the review board during a convening date of the board or for a particular hearing, then the chair will appoint another review board member to act as chair for the convening date or the particular hearing, as appropriate. If the chair is unable to appoint an acting chair, then the commissioner will make the appointment.

(c) (No change.)

(d) Disqualification from being impaneled as a review board member for a hearing.

(1) A mental health professional in a pool may not be impaneled as a facility review board member or as a DSHS Dangerousness [TDMHMR] Review Board member for the hearing of an individual if:

(A) - (B) (No change.)

(2) (No change.)

(3) A mental health professional in a pool may not be impaneled as a DSHS Dangerousness [TDMHMR] Review Board member for the hearing of an individual if the professional served on the facility review board that determined the individual to be manifestly dangerous and which resulted in the individual's transfer to the MSU/SAU.

(e) (No change.)

(f) Legal assistance. An attorney from the DSHS Office of General Counsel [TDMHMR Legal Services Division] will provide legal assistance to a review board as needed.

(g) Conduct of hearings.

(1) (No change.)

(2) The review board must consider all pertinent and relevant information including the hearing documentation submitted in accordance with §415.307(3)(A) of this title (relating to Procedures and Requirements Specific to a Facility Review Board) or §415.310(4)(A) of this title (relating to Procedures and Requirements Specific to the DSHS Dangerousness [TDMHMR] Review Board) and the source documents that correspond to the hearing documentation.

(3) - (6) (No change.)

(7) All persons attending and participating in a [an] hearing must conduct themselves with proper dignity, courtesy, and respect for the hearing. Disorderly conduct will not be tolerated. Attorneys must observe and practice the standards of ethical behavior prescribed for attorneys at law by the State Bar of Texas.

(8) - (9) (No change.)

(h) (No change.)

(i) Review board determination.

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

(3) The DSHS Dangerousness [TDMHMR] Review Board may determine that an individual is not manifestly dangerous only if the vote by review board members is unanimous.

(4) (No change.)

(j) (No change.)

#### §415.306. Rights of the Individual.

(a) (No change.)

(b) The individual and LAR and their spokesperson(s) have the right to:

(1) (No change.)

(2) examine before the date of the hearing:

(A) the hearing documentation referenced as §415.307(3)(A) of this title (relating to Procedures and Requirements Specific to a Facility Review Board) unless an exception exists as provided by §415.307(3)(B) of this title;

(B) the hearing documentation referenced as §415.310(4)(A) of this title (relating to Procedures and Requirements Specific to the DSHS Dangerousness [TDMHMR] Review Board).

(c) - (d) (No change.)

#### §415.307. Procedures and Requirements Specific to a Facility Review Board.

If the facility CEO has reason to believe that a person receiving services in the facility may be manifestly dangerous and in need of transfer to the MSU/SAU, then the facility CEO may convene the facility review board to conduct a hearing to determine whether the person is manifestly dangerous in accordance with this section.

(1) Convening the board. The facility CEO will inform the chair of the facility review board of the need to convene the board. The chair will impanel a review board in accordance with §415.305(e) of this title (relating to Procedures and Requirements for All Review Boards) and identify the time and location of the hearing. The chair will serve as one of the five members unless the chair is disqualified as described in §415.305(d) of this title. If the chair is disqualified, then the chair will appoint one of the five impaneled members to act as chair for the hearing.

(2) Notice and statement(s). The facility CEO will provide notice of the hearing and receive statement(s) in accordance with this paragraph.

(A) Notice. At least three days before the hearing, the facility CEO will complete the Notice of Hearing by Facility Review Board, referenced [as **Exhibit A**] in §415.314 of this title (relating to Notice of Hearing Forms [Exhibits]), and deliver it to the individual and LAR, if any, for signature.

(i) - (ii) (No change.)

(B) (No change.)

(3) Hearing documentation.

(A) At least one day before the hearing the facility CEO will ensure the following documentation is distributed to each impaneled review board member, the individual, LAR, and spokesperson(s):

(i) a written summary, prepared by the individual's treatment team, of all pertinent background information, including:

(I) - (IV) (No change.)

(V) an assessment of risk for manifest dangerousness, including the results of any applicable standardized assessment tools; and

(VI) (No change.)

(ii) - (iii) (No change.)

(B) (No change.)

(4) Hearing, deliberations, and determination. The chair will ensure the hearing, deliberations, and determination are conducted in accordance with §415.305(g)-(i) of this title [(relating to **Procedures and Requirements for All Review Boards**)].

(5) Action taken upon determination.

(A) Notification. Within 24 hours after the facility review board's determination, the facility CEO will provide written notification to the individual, LAR, and spokesperson(s) of:

(i) (No change.)

(ii) if the review board determines that the individual is manifestly dangerous, the right of the individual or LAR to appeal the determination and the procedures for requesting an appeal as described in §415.309 of this title (relating to Appealing [Appeal of] a Facility Review Board's [Board] Determination of Manifest Dangerousness).

(B) Determined manifestly dangerous.

(i) If the facility review board determines that an individual is manifestly dangerous, then the facility CEO will ensure compliance with §415.308 of this title (relating to Transfer of [Transferring] an Individual to the MSU/SAU).

(ii) (No change.)

(C) (No change.)

§415.308. Transfer of [Transferring] an Individual to the MSU/SAU.

(a) - (c) (No change.)

§415.309. Appealing [Appeal of] a Facility Review Board's Determination of Manifest Dangerousness.

The individual, LAR, or facility CEO may appeal a facility review board's determination that the individual is manifestly dangerous on the grounds that the determination was substantively flawed or on the grounds that the determination was affected by an error in a procedure specified in this subchapter. Transfer of the individual to the MSU/SAU is not stayed pending appeal.

(1) - (3) (No change.)

§415.310. Procedures and Requirements Specific to the DSHS Dangerousness [TDMHMR] Review Board.

The DSHS Dangerousness [TDMHMR] Review Board must convene at least once every month in accordance with this section.

(1) Schedule of hearings. The DSHS Dangerousness [TDMHMR] Review Board chair, in consultation with the MSU/SAU CEO, is responsible for scheduling hearings in accordance with this paragraph.

(A) Initial hearing.

(i) A hearing for an individual committed to the MSU/SAU under the Texas Code of Criminal Procedure must be scheduled to occur on such a date so as to ensure the individual, if determined not manifestly dangerous, will be transferred from the MSU/SAU within 60 days after arrival at the MSU/SAU, as required by the Texas Code of Criminal Procedure, Article 46B.105 or 46C.260 [46.02§8(a) or 46.03§4(b)].

(ii) (No change.)

(B) - (C) (No change.)

(2) (No change.)

(3) Notice and statement(s). The MSU/SAU CEO will provide notice of a hearing and receive statement(s) in accordance with this paragraph.

(A) Notice. At least 10 days before the hearing, the MSU/SAU CEO will complete the Notice of Hearing by DSHS Dangerousness [TDMHMR] Review Board, referenced **[as Exhibit B]** in §415.314 of this title (relating to Notice of Hearing Forms [Exhibits]), and deliver it to the individual and LAR, if any, for signature.

(i) - (ii) (No change.)

(B) (No change.)

(4) Hearing documentation.

(A) At least seven days before the hearing the MSU/SAU CEO will ensure the following documentation is distributed to each review board member impaneled for the hearing, the individual, LAR, and spokesperson(s):

(i) a written summary, prepared by the individual's MSU/SAU treatment team, of all pertinent background information, including:

(I) - (IV) (No change.)

(V) an assessment of risk for manifest dangerousness, including the results of any applicable standardized assessment tools; and

(VI) (No change.)

(ii) - (iv) (No change.)

(B) - (C) (No change.)

(5) Preparing for possible transfer from the MSU/SAU. At least seven days prior to the hearing, the MSU/SAU CEO must ensure:

(A) that **[a Letter of Attestation (referenced as Exhibit C in §415.314 of this title (relating to Exhibits)), with]** a copy of the hearing documentation (referenced in paragraph (4)(A) of this section), is sent to the receiving facility CEO; and

(B) that the individual's MSU/SAU treating physician consults with a physician at the identified receiving facility **[physician]** regarding the individual's characteristics, including those with implications for risk management, to facilitate the development of an appropriate risk management plan by the receiving facility.

(6) (No change.)

(7) Action taken upon determination.

(A) Notification. Within 24 hours after the DSHS Dangerousness [TDMHMR] Review Board's determination, the MSU/SAU CEO will provide written notification to the individual, LAR, and spokesperson(s) of:

(i) (No change.)

(ii) the right of the individual or LAR to request that the MSU/SAU CEO refer the matter to the commissioner and the procedures for requesting a referral as described in §415.311 of this title (relating to Disagreement with DSHS Dangerousness [TDMHMR] Review Board Determination and Referral to Commissioner) if the individual or LAR disagrees with the determination.

(B) Determined manifestly dangerous. If the DSHS Dangerousness [TDMHMR] Review Board determines that an individual is manifestly dangerous, then the individual will remain at the MSU/SAU [**and the MSU/SAU CEO will rescind the Letter of Attestation that was sent in accordance with paragraph (5)(A) of this section**]. A subsequent hearing will be scheduled for the individual in accordance with paragraph (1) of this section.

(C) Determined not manifestly dangerous. If the DSHS Dangerousness [TDMHMR] Review Board determines that an individual is not manifestly dangerous, then the MSU/SAU CEO will:

(i) - (ii) (No change.)

(D) New hearing. The DSHS Dangerousness [TDMHMR] Review Board may conduct a new hearing at any time upon request by the MSU/SAU CEO or upon its own motion. The new hearing must be conducted in accordance with paragraphs (2)-(6) of this section.

§415.311. Disagreement with DSHS Dangerousness [TDMHMR] Review Board Determination and Referral to Commissioner.

(a) If the MSU/SAU CEO disagrees with the DSHS Dangerousness [TDMHMR] Review Board's determination, then the CEO will refer the matter to the commissioner for resolution. The referral must be in writing and include the CEO's reason(s) for disagreeing with the determination and documentation supporting the reason(s). Transfer of the individual from the MSU/SAU is stayed pending resolution.

(b) (No change.)

(c) If the individual, LAR, or treatment team member disagrees with the DSHS Dangerousness [TDMHMR] Review Board's determination, then he/she may request that the MSU/SAU CEO refer the matter to the commissioner for resolution. The request must be in writing and received by the CEO within five days after receipt of the written report as described

in §415.305(j) of this title (relating to Procedures and Requirements for All Review Boards). The request must include the reason(s) for disagreeing with the determination and documentation supporting the reason(s). Upon receipt, the CEO will review the request and decide whether to refer the matter to the commissioner in accordance with subsection (a) of this section.

§415.312. Transferring an Individual from the MSU/SAU.

(a) An individual committed to the MSU/SAU pursuant to the Texas Code of Criminal Procedure, Article 46B or 46C [**46.02** or **46.03**], who has been determined not manifestly dangerous by the DSHS Dangerousness [TDMHMR] Review Board or the commissioner at the initial hearing (described in §415.310(1)(A)(i) of this title (relating to Procedures and Requirements Specific to the DSHS Dangerousness [TDMHMR] Review Board)) must be transferred from the MSU/SAU within 60 days following his/her arrival at the MSU/SAU.

(b) In addition to the timeframe for transfer described in subsection (a) of this section, an individual must be transferred from the MSU/SAU within 14 days after being determined not manifestly dangerous by the DSHS Dangerousness [TDMHMR] Review Board or the commissioner.

(c) As soon as possible after an individual has been determined not manifestly dangerous by the DSHS Dangerousness [TDMHMR] Review Board or the commissioner, [:]

[**(1)**] the MSU/SAU staff will notify the committing court of the pending transfer. [**;** **and**]

[**(2)** the receiving facility CEO will complete the Letter of Attestation (referenced as Exhibit C in §415.314 of this title (relating to Exhibits)), if it has not already been completed.]

(d) Prior to the individual's transfer from the MSU/SAU, the MSU/SAU CEO will ensure that [**the following documents become a part of the individual's medical record:**]

[**(1)**] the hearing documentation described in §415.310(4)(A) of this title (relating to Procedures and Requirements Specific to the DSHS Dangerousness [TDMHMR] Review Board) becomes a part of the individual's medical record [**;** **and**]

[**(2)** a copy of the completed Letter of Attestation].

(e) - (h) (No change.)

§415.313. Competency of Review Board Members.

(a) Using a DSHS-approved [TDMHMR-approved] orientation and training program:

(1) (No change.)

(2) the MSU/SAU CEO and the chair of the DSHS Dangerousness [TDMHMR] Review Board are responsible for conducting annual training for all mental health professionals appointed in all pools.

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

(d) The commissioner may waive for emergent or special circumstances, as minimally necessary to assure the efficient operation of a review board, the responsibility for a mental health professional appointed to a pool to **[attend initial orientation and]** annual training. There is no waiver of the requirement to attend initial orientation.

§415.314. Notice of Hearing Forms. [Exhibits.]

The following forms [exhibits] are referenced in this subchapter. **[, copies of which may be obtained by contacting TDMHMR, Office of Policy Development, P.O. Box 12668, Austin, Texas 78711-2668:]**

(1) **[Exhibit A-]** Notice of Hearing by Facility Review Board; and

Figure: 25 TAC, §415.314(1)

(2) **[Exhibit B-]** Notice of Hearing by DSHS Dangerousness [TDMHMR] Review Board. **[and;]**

Figure: 25 TAC, §415.314(2)

**[(3) Exhibit C- Letter of Attestation.]**

§415.315. References.

Reference is made to the following statutes:

(1) Texas Health and Safety Code, §533.035(a)[,] and §574.022 [, **and §593.044**];  
and

(2) Texas Code of Criminal Procedure, Articles 46B and 46C [**46.02 and 46.03**]

Proposed Repealed Language  
~~Strikethrough=~~repealed text

~~§415.316. Distribution.~~

~~\_\_\_\_\_ (a) This subchapter will be distributed to:~~

~~\_\_\_\_\_ (1) all members of the Texas Board of Mental Health and Mental Retardation;~~

~~—————(2) executive, management, and program staff at TDMHMR Central Office;~~

~~—————(3) all facility CEOs; and~~

~~—————(4) executive directors at all local authorities.~~

~~—————(b) Each facility CEO is responsible for disseminating the information contained in this subchapter to the facility rights protection officer and all mental health professionals employed at the facility who are appointed to a pool.~~

~~—————(c) The MSU/SAU CEO is responsible disseminating the information contained in this subchapter to the facility rights protection officer and all MSU/SAU staff who provide mental health services.~~

~~—————(d) A copy of this subchapter will be provided to each individual subject to its provisions.~~

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Figure: 25 TAC §415.314(1)

NOTICE OF HEARING BY FACILITY REVIEW BOARD

DATE:

TO: (NAME OF INDIVIDUAL AND LAR, IF ANY)

(NAME OF INDIVIDUAL) has exhibited behavior indicating he/she may be manifestly dangerous. The facility review board at (NAME OF FACILITY) will conduct a hearing to determine whether or not he/she is manifestly dangerous. The hearing is scheduled for (DATE AND TIME) at (LOCATION OF HEARING). If (NAME OF INDIVIDUAL) is determined manifestly dangerous, then he/she will be transferred to the maximum security unit/secure adolescent unit (MSU/SAU) at the Vernon campus of North Texas State Hospital for treatment.

You will be provided:

- a copy of the documentation of evidence indicating possible manifest dangerousness that will be submitted to the facility review board; and
- a copy of DSHS rules governing the determination of manifest dangerousness (25 Texas Administrative Code, Part 1, Chapter 415, Subchapter G).

You have the right to represent yourself at the hearing or be represented by a spokesperson of your choice. You and your spokesperson have the right to be present at the hearing. You or your spokesperson have the right to:

- present witnesses on behalf of (NAME OF INDIVIDUAL);
- present evidence and establish all pertinent facts and circumstances;
- present an argument on any issue involved;
- cross-examine witnesses; and
- respond to or refute any testimony or evidence.

If you have any questions concerning this notice, the hearing, or your rights you may contact (NAME AND PHONE NUMBER OF CONTACT PERSON) who will assist you.

\*\*\*\*\*  
I hereby acknowledge receipt of this NOTICE OF HEARING BY FACILITY REVIEW BOARD.

\_\_\_\_\_  
(Signature of individual who is the subject of the hearing) (Date received)

\_\_\_\_\_  
(Signature of LAR, if any) (Date received)

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\_\_\_\_\_  
(Signature of person delivering notice) (Date delivered)

Figure: 25 TAC §415.314(2)

Notice of Hearing by DSHS Dangerousness Review Board

DATE:

TO: (NAME OF INDIVIDUAL AND LAR, IF ANY)

The DSHS Dangerousness Review Board will conduct a hearing to determine whether or not (NAME OF INDIVIDUAL) is manifestly dangerous. The hearing is scheduled for (DATE AND TIME) at (LOCATION OF HEARING). If (NAME OF INDIVIDUAL) is determined manifestly dangerous, then he/she will remain at the maximum security unit/secure adolescent unit (MSU/SAU) at the Vernon Campus of North Texas State Hospital for treatment. If (NAME OF INDIVIDUAL) is determined not manifestly dangerous, then he/she will be transferred from the MSU/SAU to another DSHS facility.

You will be provided:

a copy of the documentation that will be submitted to the DSHS Dangerousness Review Board; and a copy of DSHS rules governing the determination of manifest dangerousness (25 Texas Administrative Code, Part 1, Chapter 415, Subchapter G).

You have the right to represent yourself at the hearing or be represented by a spokesperson of your choice. You and your spokesperson have the right to be present at the hearing. You or your spokesperson have the right to:

- present witnesses on behalf of (NAME OF INDIVIDUAL);
- present evidence and establish all pertinent facts and circumstances;
- present an argument on any issue involved;
- cross-examine witnesses; and
- respond to or refute any testimony or evidence.

If you have any questions concerning this notice, the hearing, or your rights you may contact (NAME AND PHONE NUMBER OF CONTACT PERSON) who will assist you.

\*\*\*\*\*

I hereby acknowledge receipt of this NOTICE OF HEARING BY FACILITY REVIEW BOARD.

\_\_\_\_\_  
(Signature of individual who is the subject of the hearing)

\_\_\_\_\_  
(Date received)

\_\_\_\_\_  
(Signature of LAR, if any)

\_\_\_\_\_  
(Date received)

\*\*\*\*\*

\_\_\_\_\_  
(Signature of person delivering notice)

\_\_\_\_\_  
(Date delivered)