

**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 rules concerning standards for services to persons with co-occurring psychiatric and substance use disorders (COPSD)

Agenda Number: 4.a.iii

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background:

The Mental Health and Substance Abuse (MHSA) Division, State Hospital Section, provides oversight and direction to state mental health facilities serving individuals with mental illness and substance use disorders in Texas. The Program Services Section provides oversight of contracts with community-based programs serving individuals with mental illness and substance use disorders.

The MHSA Division requires all of its state-operated and contracted programs to provide services for people with co-occurring psychiatric and substance abuse disorders (COPSD). The rules under consideration apply specifically to state mental health facilities, managed care organizations, and local mental health authorities (LMHAs).

These programs are funded through general revenue, federal block grant, and Medicaid.

Key Health Measures:

The rules seek to improve outcomes for individuals with COPSD by defining minimum competencies for staff and providing minimum standards for assessing and providing services to this population. The standards clarify the current performance contract requirement that members of the priority population not be restricted from services due to substance use disorders. Providers are expected to find the revised rules easier to follow as a result of the updates.

Each provider is required to monitor compliance with the provisions of the rules. Programs are monitored by DSHS-MHSA Quality Management staff. Quarterly reviews and risk assessments are completed by a variety of DSHS staff who may request or require additional reporting information. Compliance with the requirements for staff providing COPSD services and not restricting persons with substance use disorders are part of the monitoring process. As a result of these rule changes and enforcement after their implementation, a key outcome that will be measured is an increase in enrollment into COPSD services at LMHAs. It is expected that more persons will be enrolled in COPSD services if they are not denied because of their substance abuse and they will be served better if their providers are appropriately trained. Additionally, DSHS program staff may identify "best practices" and program and service delivery success is continuously being evaluated.

Summary:

The purpose of the amendments and repeals is to reflect changes in organization and provide consistency with other rules adopted in 2004 and later. The rule revisions also comply with the four-year agency review of rules required by Government Code, Section 2001.039.

The rules continue regulation of a program that began in 2003. The basic premise of the program and its governing rules is the integration of psychiatric and substance abuse services for individuals who are dually diagnosed. Similar rules govern substance abuse programs that serve individuals who are also diagnosed with psychiatric disorders.

Summary of Input from Stakeholder Groups:

A group of stakeholders with representatives from state mental health facilities, LMHAs, and advocates met to discuss the rules on two occasions. The revised rules were sent to providers to whom the subchapter applies for written comments.

Workgroup participants identified areas of the rules that needed to be updated. The following changes were made were in response to the members of the workgroup or written comments from providers:

- “Child” is redefined to be “A person who is 3 through 12 years of age,” because children under the age of three are served through the Early Childhood Intervention program.
- A psychiatric disorder in a child or adolescent is considered an emotional disturbance, not a mental illness.
- The definition of “staff” uses the term “interns” instead of “students.”
- Criteria for COPSD services include the requirement that services must be culturally appropriate.
- The list of knowledge competencies for staff includes basic knowledge of withdrawal symptoms and their potential risks to individuals.
- It is not necessary for individuals who have previously done so to demonstrate the required competencies within 90 days of the effective date of the subchapter.

One issue, which was considered outside the scope of the subchapter, related to a perceived need for more uniformity in the approach to assessment of individuals who move throughout the system of care. The discrepancies in approach between hospital and community-based programs were referred to the leadership of the Clinical Oversight Committee for state mental health facilities and of the Clinical Management of Behavioral Health Services program for community-based programs. It was determined that although the format for information gathering differed between the medical records systems, that both systems appropriately address COPSD assessments and that the lack of identical forms and formats is not an obstacle to appropriate care and continuity of services.

Proposed Motion:

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

Approved by Assistant Commissioner/Director: Mike Maples **Date:** 2/9/11

Presenter: Ross Robinson **Program:** MHSA **Phone No.:** 206-5021

Approved by CCEA: Carolyn Bivens **Date:** 2/10/11

Title 25. Health Services
Part 1. Department of State Health Services
Chapter 411. State Mental Health Authority Responsibilities
Subchapter N. Standards for Services to Persons **[Individuals]** with Co-Occurring Psychiatric and Substance Use Disorders (COPSD)
[Division 1. General Provisions]
Amendments §§411.651 - 411.656
[Division 2. Organizational Standards]
Amendments §§411.657 - 411.659
[Division 3. Standards of Care]
Amendment §411.660
[Division 4. References and Distribution]
Repeals §411.661 and §411.662

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 §§411.651 - 411.660, and the repeal of §411.661 and §411.662, concerning standards for services to persons with co-occurring psychiatric and substance use disorders (COPSD).

BACKGROUND AND PURPOSE

The amendments and repeals are necessary to reflect organizational changes that occurred in September 2004 when the Texas Department of Mental Health and Mental Retardation (TDMHMR) merged with the department. The amendments and repeals are also necessary to reflect changes in references to other rules.

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 411.651 - 411.662 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed. Sections 411.661 and 411.662 have been reviewed and the department has determined that reasons for adopting the sections no longer exist.

SECTION BY SECTION SUMMARY

Sections 411.651 - 411.660 are proposed for amendments to enable the updating of names of governing agencies and references to other rules that have changed since September 7, 2003. All references to TDMHMR are deleted and replaced with references to DSHS as appropriate.

Sections 411.661 - 411.662 are being repealed because the department no longer codifies sections relating exclusively to references and distribution.

Section 411.651 replaces the word “enhance” with “improve” for clarification of the purpose of the rules.

Section 411.652 identifies the entities to which the subchapter applies. Subsection (b) changes references to TDMHMR to DSHS.

Section 411.653 provides definitions of terms used in the subchapter. Paragraph (4), “child,” is redefined consistent with the department’s policy; i.e., “A person who is 3 through 12 years of age.” Subparagraphs (8)(B) and (10)(B) are changed to reference MCO, not MMCO, consistent with other department rules. Subparagraphs (8)(D) and (10)(D) reference mental health case management rules, not service coordination rules, which were repealed. Paragraph (13), the definition of “local mental health authority,” is updated consistent with other department rules. Paragraph (14) is changed to delete reference to Medicaid in the definition of “managed care organization,” consistent with other department rules. Paragraph (15) is changed to replace the reference to the TDMHMR strategic plan with reference to the Health and Human Services System Strategic Plan 2011-2015 and to clarify that a psychiatric disorder in a child or adolescent is considered an emotional disturbance, not a mental illness. In paragraph (18), which defines “staff,” the term “interns” replaces the term “students.” Paragraph (21) updates the reference to department rules governing treatment planning consistent with recent changes to rules governing mental health community services standards (Chapter 412, Subchapter G).

The amendment to §411.654 revises the name of the rule to “Services to Individuals with COPSD”.

Section 411.655 delineates who is responsible for compliance with the subchapter. Subsections (b) and (d) are updated to reference MCOs, not MMCOs. Subsection (c) is revised to include rules references to §§411.657 – 411.660.

Section 411.656 is retitled “DSHS Responsibilities” and references to TDMHMR are deleted.

Section 411.657 describes criteria that cannot be used to exclude an individual from services. Subsection (c) is changed to update “MMCOs” to “MCOs.”

Section 411.658 describes required competencies of providers. Subsection (a) is revised to broaden criteria for services to include that services must be culturally appropriate. A requirement for basic knowledge of withdrawal symptoms and their potential risk factors to clients has been added to the list of required knowledge competencies. Subsection (b) is changed to add language that clarifies that the demonstration of competence within 90 days of the effective date of the subchapter does not apply to individuals who have previously demonstrated competence with when the subchapter was previously adopted.

Section 411.659 describes quality management requirements. Subsection (a) changes reference of MMCOs to MCOs and the reference to the community mental health standards rule on quality management is updated to reflect the latest version of that subchapter (Chapter 412, Subchapter G).

Section 411.660 describes requirements for screening, assessment, and treatment planning. Subsection (e) is changed to update the reference to treatment planning in the latest version of Chapter 412, Subchapter G, governing community mental health standards.

FISCAL NOTE

Mike Maples, Assistant Commissioner for Mental Health and Substance Abuse Services, has determined that for each year of the first five-year period that the 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

Mr. Maples 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 have direct application only to those entities that the department directly operates or with which the department contracts to provide community mental health services, none of which meet the definition of small business under the Government Code, §2006.001. To the extent that the rules may have any indirect effect on small businesses with which the department's contractors may contract to provide services, maintaining the standards applicable to the department's contractors under these rules is essential to protecting the health and welfare of the state. 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, Mr. Maples has also 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 rules is to ensure adequate and appropriate provision of mental health community services throughout the state.

REGULATORY ANALYSIS

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

of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments and repeals 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 Linda Logan, Adult Mental Health Services Section, Department of State Health Services, Mail Code 2018, P. O. Box 149347, Austin, Texas 78714-9347, (512) 206-5865 or by email to linda.logan@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 proposed amendments and repeals are authorized by Health and Safety Code, §534.058, which requires the department to develop standards of care for the services provided by local mental health authorities and their subcontractors; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed amendments and repeals affect Government Code, §531.0055; and Health and Safety Code, §§533.047, 534.053, 534.058, and 1001.075.

Repeal of rules.

§411.661. References.

§411.662. Distribution.

Legend: (Proposed Amendments)

Single Underline = Proposed new language

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

Regular Print = Current language

§411.651. Purpose.

The purpose of this subchapter is to improve **[enhance]** existing mental health services provided by the entities defined in §411.653 of this title (relating to Definitions) by establishing standards to ensure the effective and coordinated provision of services to individuals who require specialized support or treatment due to co-occurring psychiatric and substance use disorders (COPSD).

§411.652. Application.

(a) (No change.)

(b) The provisions of this subchapter are in addition to requirements contained in other DSHS **[TDMHMR]** rules. This subchapter does not supercede other DSHS **[TDMHMR]** rules that may also apply to the provision of services to individuals as defined in §411.653 of this title **[(relating to Definitions)]**.

§411.653. Definitions.

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

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

(4) Child--A person who is 3 **[0]** through 12 years of age.

(5) - (7) (No change.)

(8) Entity or entities--The terms used to refer to the following:

(A) (No change.)

(B) Managed **[Medicaid managed]** care organizations (MCOs) **[(MMCOs)]**;

(C) (No change.)

(D) Medicaid providers who are required to comply with Chapter 419, Subchapter L of this title, governing Medicaid Rehabilitative Services, or Chapter 412, Subchapter I of this title, governing Mental Health Case Management Services **[J of this title, governing Service Coordination]**.

(9) (No change.)

(10) Individual--

(A) (No change.)

(B) For an MCO [**MMCO**]--An enrolled adult with COPSD, adolescent with COPSD, or child with COPSD seeking or receiving services from or through the MCO [**MMCO**] or its provider.

(C) (No change.)

(D) For a provider of rehabilitative services or a provider of mental health case management services [**service coordination**] reimbursed by Medicaid--An adult with COPSD, adolescent with COPSD, or child with COPSD seeking or receiving rehabilitative services or mental health case management services [**service coordination**] reimbursed by Medicaid.

(11) - (12) (No change.)

(13) Local mental health authority (LMHA)--An entity designated as the local mental authority by the DSHS in accordance with the Health and Safety Code, §533.035(a). [**A governmental entity to which the Texas MHMR Board delegates its authority and responsibility for any, all, or portions of planning, policy development, coordination, resource development and allocation, and oversight of the delivery of mental health services in a local service area.**]

(14) Managed [**Medicaid managed**] care organization (MCO) [**MMCO**]--An entity that has a current [**Texas**] Department of Insurance certificate of authority to operate as a health maintenance organization (HMO) under Insurance Code, Subchapter C of Chapter 843 [**Article 20A of the Texas Insurance Code**] or as an approved nonprofit health corporation under Insurance Code, Chapter 884 [**Article 21.52F of the Texas Insurance Code and that provides mental health services to Medicaid recipients**].

(15) Psychiatric disorder--An emotional disturbance in a child or adolescent or a psychiatric disorder in an [**A mental illness in a child, adolescent, or**] adult who is a member of the mental health priority population as defined in the Health and Human Services System Strategic Plan 2011 - 2015 [**current TDMHMR strategic plan**].

(16) - (17) (No change.)

(18) Staff--Full- or part-time employees, contractors, and interns [**students**] of an entity.

(19) - (20) (No change.)

(21) Treatment plan--A written document developed by the provider, in consultation with the individual (and LAR on the individual's behalf), that is based on assessments of the

individual and which addresses the individual's strengths, needs, goals, and preferences regarding service delivery as referenced in §412.322 of this title (relating to Provider Responsibilities for Treatment Planning and Service Authorization) [**§412.315 (relating to Assessment and Treatment Planning)**] of Chapter 412, Subchapter G of this title, governing Mental Health Community Services Standards.

§411.654. Services to Individuals with COPSD.

(a) - (b) (No change.)

§411.655. Responsibility for Compliance.

(a) (No change.)

(b) Entities that are LMHAs, MCOs [MMCOs], or [and] SMHFs must require providers, by contract, to comply with §411.654 of this title (relating to Services to Individuals with COPSD), §411.657 of this title (relating to Access to Services), §411.658 of this title (relating to Specialty Competencies of Staff Providing Services to Individuals with COPSD), and §411.660 of this title (relating to Screening, Assessment, and Treatment Planning).

(c) Entities must monitor staff who provide services to an individual with COPSD and contract providers for compliance with the applicable provisions of §§411.657 - 411.660 of this title [Divisions 2 and 3].

(d) An entity that is an MCO [MMCOs] must comply and must require staff to comply with Chapter 404, Subchapter E of this title, governing Rights of Persons Receiving Mental Health Services.

§411.656. DSHS [TDMHMR Central Office] Responsibilities.

(a) DSHS [TDMHMR Central Office] must make available training resources for the competencies identified in §411.658 of this title (relating to Specialty Competencies of Staff Providing Services to Individuals with COPSD).

(b) DSHS [TDMHMR Central Office] must require LMHAs and SMHFs to develop quality management systems that ensure an appropriate integrated assessment for each individual and the appropriate delivery of services.

§411.657. Access to Services.

(a) - (b) (No change.)

(c) The LMHAs, MCOs [MMCOs], and SMHFs must ensure that individuals have access to staff who meet specialty competencies described in §411.658 of this title (relating to Specialty Competencies of Staff Providing Services to Individuals with COPSD).

(d) (No change.)

§411.658. Specialty Competencies of Staff Providing Services to Individuals with COPSD.

(a) Entities must ensure that services to individuals are age and culturally appropriate **[age-appropriate]** and are provided by staff within their scope of practice who have the following minimum knowledge, technical, and interpersonal competencies prior to providing services.[:]

(1) Knowledge competencies:

(A) - (H) (No change.)

(I) basic knowledge of withdrawal symptoms and their potential risk factors to clients;

(J) [(I)] knowledge of the phases of recovery for individuals;

(K) [(J)] knowledge of the relationship between COPSD and Axis III disorders; and

(L) [(K)] basic knowledge of self-help in recovery.

(2) - (3) (No change.)

(b) Within 90 days of the effective date of this subchapter, entities must ensure that staff who provide services to individuals with COPSD, and who have not previously done so, have demonstrated the competencies described in subsection (a) of this section. These competencies may be evidenced by compliance with current licensure requirements of the governing or supervisory boards for the respective disciplines involved in serving individuals with COPSD or by documentation regarding the attainment of the competencies described in subsection (a) of this section. For unlicensed staff delivering these services, these competencies are evidenced by documentation regarding their attainment as required in subsection (a) of this section.

§411.659. Quality Management.

(a) The LMHAs and MCOs **[MMCOS]** must develop and implement a plan for quality management of services to individuals with COPSD as required in §412.317 **[\$412.313]** (relating to Quality Management) of Chapter 412, Subchapter G of this title, governing Mental Health Community Services Standards.

(b) (No change.)

§411.660. Screening, Assessment, and Treatment Planning.

(a) - (d) (No change.)

(e) Episode of care summary. Upon discharge or transfer of an individual from one entity to another, the individual's medical record must identify the services provided according to this subchapter and the items referenced in §412.322 (relating to Provider Responsibilities for Treatment Planning and Service Authorization) [**§412.315 (relating to Assessment and Treatment Planning)**] of Chapter 412, Subchapter G of this title, governing Mental Health Community Services Standards.

Proposed Repealed Language
~~Strikethrough=~~repealed text

~~§411.661. References.~~

~~The following rules and laws are referenced in this subchapter:~~

~~_____ (1) Chapter 404, Subchapter E of this title, governing Rights of Persons Receiving Mental Health Services;~~

~~_____ (2) Chapter 412, Subchapter G of this title, governing Mental Health Community Services Standards;~~

~~_____ (3) Chapter 412, Subchapter J of this title, governing Service Coordination;~~

~~_____ (4) Chapter 419, Subchapter L of this title, governing Medicaid Rehabilitative Services; and~~

~~_____ (5) Texas Code of Insurance, Articles 20A and 21.52F;~~

~~§411.662. Distribution.~~

~~_____ (a) This subchapter will be distributed to:~~

~~_____ (1) members of the Texas Mental Health and Mental Retardation Board;~~

~~_____ (2) executive, management, and program staff of TDMHMR Central Office;~~

~~_____ (3) executive staff of the Texas Commission on Alcohol and Drug Abuse;~~

~~_____ (4) CEOs of all LMHAs, MMCOs, and SMHFs; and~~

~~_____ (5) advocacy organizations.~~

~~_____ (b) The CEO of each LMHA, MMCO, and SMHF shall disseminate the information contained in this subchapter to appropriate staff members and contract providers.~~