

**Department of State Health Services
Council Agenda Memo for State Health Services Council
February 24-25, 2016**

Agenda Item Title: Repeal of rules concerning the Inpatient Mental Health Services Advisory Committee and the Mental Health Planning and Advisory Council and new rules concerning the Joint Committee on Access and Forensic Services

Agenda Number: 4.h.

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background:

The Executive Unit of the Mental Health and Substance Abuse (MHSA) Division provides strategic direction and leadership to all units in MHSA, manages division operations, coordinates division-wide major initiatives, responds to legislative inquiries, manages division budgeting, and provides contract and financial oversight. The unit includes the Forensic Director position and provides administrative support for the Joint Committee on Access and Forensic Services. The majority of programs operated by the division are provided by contractors.

The MHSA Division is funded by federal funds, general revenue, grants, and interagency agreements.

Summary:

- Senate Bill (SB) 277, 84th Legislature, Regular Session, 2015, repealed Health and Safety Code, §571.027, abolishing the Inpatient Mental Health Services Advisory Committee in statute; therefore the rules associated with this statute must also be amended.

The committee was one of several advisory committees recommended for abolishment by the Sunset Advisory Commission during the 2014 review of the department. The committee is inactive and has no active members. It was statutorily directed to provide DSHS provide advice on issues and policies concerning mental health services in private mental hospitals and psychiatric units of general hospitals, coordination and communication regarding interpretation and enforcement of policies, and training for surveyors or investigators.

DSHS will continue to obtain input as needed on inpatient mental health services through other avenues.

- SB 200, 84th Legislature, Regular Session, 2015, amended Health and Safety Code by requiring the Executive Commissioner to establish and maintain advisory committees to consider issues and solicit public input across major areas of the health and human services system, including behavioral health. While not mentioned in statute, it was determined the Mental Health Planning and Advisory Council, currently referred to as the Council for Advising and Planning (CAP) for the Prevention and Treatment of Mental and Substance Use Disorders, will be reconstituted as a subcommittee of the Behavioral Health Advisory Committee to meet requirements for a mental health planning council under federal law.

The Behavioral Health Advisory Committee is created as an HHSC advisory committee; therefore the rules for the committee and subcommittees will be HHSC rules.

- SB 1507, 84th Legislature, Regular Session, 2015, amended Health and Safety Code by adding §532.0131 and §533.051(c). The new legislation requires the department to establish rules that govern both a forensic work group tasked with making recommendations relating to the effective coordination of forensic services and an advisory panel tasked with establishing the allocation methodology of outpatient mental health

services and beds. It was determined these two committees will be combined into one joint committee.

The proposed new rules are necessary to comply with this legislative mandate and will clarify roles and responsibilities of the Joint Committee on Access and Forensic Services.

Key Health Measures:

- Since the Inpatient Mental Health Services Advisory Committee is inactive, there is no anticipated impact to abolishing this committee. DSHS has other avenues to obtain input on rules and guidelines for inpatient mental health services.
- Since the Mental Health Planning and Advisory Council, currently referred to as the Council for Advising and Planning (CAP) for the Prevention and treatment of Mental and Substance Use Disorders, will be reconstituted as a subcommittee of the Behavioral Health Advisory Committee in order to continue to meet requirements for a mental health planning council under federal law, there is no anticipated impact to repealing rules of this committee and moving them to HHSC.
- Establishing the Joint Committee on Access and Forensic Services will provide an avenue for stakeholder input in the coordination of forensic services and the establishment of an allocation methodology of outpatient mental health services and beds. As directed by statute, the committee must report recommendations for the coordination of forensic services by July 1, 2016, and for the bed day allocation methodology and utilization review protocol by December 1, 2016.

Summary of Input from Stakeholder Groups:

The Health and Human Services Commission conducted a comprehensive analysis and sought stakeholder input on the continuation of advisory committees abolished in statute to determine if there was a need to re-create any of the committees in rule. The list of recommendations was posted on the HHSC and DSHS websites for three weeks in September 2015.

One comment in opposition was received regarding the recommended discontinuation of the Inpatient Mental Health Services Advisory Committee which questioned the prudence of discontinuing or combining committees focused on mental health and substance use disorders as it may diminish focus. This same comment was made in opposition to consolidating functions of the Council on Advising and Planning (CAP). Additionally, two other commenters suggested keeping the CAP; one suggested revising its functions and membership and another noted that the CAP is mandated by the federal block grant and provides an avenue for consumer/advocate advice. Retaining CAP as a subcommittee of the Behavioral Health Advisory Committee will meet the federal mandate and provide a continued avenue for consumer/advocate input.

Proposed Motion:

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

Approved by Assistant Commissioner/Director: Lauren Lacefield Lewis **Date:** 12/17/15

Presenter: Lauren Lacefield Lewis **Program:** Assistant Commissioner **Phone No.:** (512) 206-5145

Approved by CPEA: Carolyn Bivens **Date:** 12/17/15

Title 25. HEALTH SERVICES
Part 1. DEPARTMENT OF STATE HEALTH SERVICES
Chapter 411. State Mental Health Authority Responsibilities
Subchapter A. Joint Committee on Access and Forensic Services
Repeals §§411.1 - 411.4, 411.7, 411.12, 411.20, and 411.21
New §§411.1 and 411.3

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department), proposes the repeal of §§411.1 - 411.4, 411.7, 411.12, 411.20, and 411.21, concerning Advisory Committees and proposes new §411.1 and §411.3, concerning the Joint Committee on Access and Forensic Services.

BACKGROUND AND PURPOSE

The proposed repeals of §§411.1 - 411.4, 411.7, 411.12, 411.20, and 411.21 will comply with Senate Bill (SB) 277, 84th Legislature, Regular Session, 2015, which amended Health and Safety Code, §571.027, by abolishing the Inpatient Mental Health Services Advisory Committee in §411.12. The committee was one of several advisory committees recommended for abolishment by the Sunset Advisory Commission during the 2014 review of the department. The committee is inactive and has no active members. It was statutorily directed to provide the department with advice on issues and policies concerning mental health services in private mental hospitals and psychiatric units of general hospitals, coordination and communication regarding interpretation and enforcement of policies, and training for surveyors or investigators.

In addition, the repeals are necessary to comply with SB 200, 84th Legislature, Regular Session, 2015, which amended Health and Safety Code, Section 531.012, by requiring the Executive Commissioner to establish and maintain advisory committees to consider issues and solicit public input across major areas of the health and human services system, including behavioral health. While not mentioned in either of these statutes, it was determined the Mental Health Planning and Advisory Council in §411.7, currently referred to as the Council for Advising and Planning (CAP) for the Prevention and treatment of Mental and Substance Use Disorders will be reconstituted as a subcommittee of the Behavioral Health Advisory Committee to meet requirements for a mental health planning council under federal law in 42 U.S.C. §300x-3.

New §411.1 and §411.3 are necessary to comply with SB 1507, 84th Legislature, Regular Session, 2015, which added Health and Safety Code, §532.0131 and §533.051(c). The new legislation requires the department to establish rules that govern both a forensic work group tasked with making recommendations relating to the effective coordination of forensic services and an advisory panel tasked with establishing the allocation methodology of outpatient mental health services and beds. It was determined these two committees will be combined into one joint committee.

SECTION-BY-SECTION SUMMARY

Section 411.1 is proposed to be repealed in order to remove references to outdated terminology for the “Texas Department of Mental Health and Mental Retardation” and to reorganize the rule text. References to the “Department of State Health Services” and Texas Government Code, §2110, will be included in new §411.1 and 411.3.

Section 411.2 is proposed to be repealed in order to remove references to outdated terminology for “Texas Department of Mental Health and Mental Retardation.”

Section 411.3 is proposed to be repealed concerning outdated definitions. New definitions are included in the new §411.1.

Section 411.4 is proposed to be repealed concerning the outdated advisory committee requirements and new requirements are included in new §411.3.

Section 411.7 is proposed to be repealed which requires this committee be abolished on January 1, 2012, unless abolished on an earlier date or reauthorized.

Section 411.12 is proposed to be repealed as a result of the abolished Inpatient Mental Health Services Advisory Committee.

Section 411.20 is proposed to be repealed as the statutory authority will be revised and included in the new §411.3.

Section 411.21 is proposed to be repealed to remove the outdated distribution of the advisory committees and will not be included in the new proposed rules.

New §411.1 contains definitions for the subchapter and new §411.3 sets forth the statutory authority, applicability, purpose, tasks, reporting requirements, abolition, membership, quorum and presiding officers of the Joint Committee on Access and Forensic Services.

The title of Subchapter A has been revised to reflect “Joint Committee on Access and Forensic Services Advisory” instead of “Advisory Committees.”

FISCAL NOTE

Ms. Lauren Lacefield Lewis, 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 the state or local governments as a result of enforcing or administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Lacefield Lewis has determined that there will be an effect on small businesses or micro-businesses or persons who are required to comply with the sections as proposed. 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 sections as proposed.

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, Ms. Lacefield Lewis has also determined that for each year of the first five years that the sections will be in effect, the public will benefit as a result of adoption of rules for the new Joint Committee on Access and Forensic Services because consistent rules will ensure that policies and decisions made by the committee are governed by accepted standards, accessible to the public and informed by committee members representing a diverse group of stakeholder and experts. The public benefit anticipated from enforcing or administering the repealed sections is to remove rules from the department's rules database that are moving to another agency.

REGULATORY ANALYSIS

The department has determined that this 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 repeals and proposed new rule 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 Carissa Dougherty, Department of State Health Services, P. O. Box 149347, Mail Code 2018, Austin, Texas 78714-9347, (512) 206-5347, or by email to Carissa.Dougherty@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

STATUTORY AUTHORITY

The new rules are authorized by Health and Safety Code, §531.0131 and §533.051(c), which define membership requirements and prescribe duties of the Joint Committee on Access and Forensic Services; Health and Safety Code, §533.0515, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules as necessary to implement its provisions; and Government Code, §532.012, which authorizes the Executive

Commissioner to adopt rules for advisory committees. The repeals and new rules are authorized 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 rules affect Government Code, Chapters 531, 532 and 533; and Health and Safety Code, Chapter 1001.

Sections for Repeal.

§411.1. Purpose.

§411.2. Applications.

§411.3. Definitions.

§411.4. Advisory Committee Requirements.

§411.7. Mental Health Planning and Advisory Council.

§411.12. Inpatient Mental Health Services Advisory Committee.

§411.20. References.

§411.21. Distribution.

TITLE 25
PART 1
CHAPTER 411
SUBCHAPTER A

HEALTH SERVICES
DEPARTMENT OF STATE HEALTH SERVICES
STATE MENTAL HEALTH AUTHORITY RESPONSIBILITIES
ADVISORY COMMITTEES

[§411.1 Purpose]

~~[The purpose of this subchapter is to state the purposes, tasks, duration, and reporting requirements of advisory committees of the Texas Department of Mental Health and Mental Retardation (TDMHMR) as required by the Texas Government Code, Chapter 2110.]~~

[§411.2 Application]

~~[This subchapter applies to the operations of the Texas Department of Mental Health and Mental Retardation.]~~

[§411.3 Definitions]

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

~~[(1) Board—The Texas Board of Mental Health and Mental Retardation.]~~

~~[(2) Department—The Texas Department of Mental Health and Mental Retardation (TDMHMR).]~~

~~[(3) Facility—Any state hospital, state school, state center, or state-operated services (SOCS) operated by the department.]~~

~~[(4) Local authority—An entity to which the Texas Board of Mental Health and Mental Retardation delegates its authority and responsibility within a specified region for the planning, policy development, coordination, resource development and allocation, and/or for supervising and ensuring the provision of mental health community services to people with mental illness and/or mental retardation services to persons with mental retardation in one or more local service areas.]~~

[§411.4 Advisory Committee Requirements]

~~[(a) Reporting.]~~

~~[(1) On or before March 1 of each year, the chair of each advisory committee shall submit a report to the board outlining:]~~

~~[(A) the committee's work for the calendar year, including any specific recommendations, products, and accomplishments;]~~

~~[(B) the costs related to the committee's existence for the calendar year, including the cost of department staff time spent in support of the committee's activities; and]~~

~~[(C) the work and costs of the committee for the previous calendar year.]~~

~~[(2) The chair of each advisory committee shall submit additional reports to the board as required by state statute or TDMHMR rules and as requested by the board.]~~

~~[(b) Membership.]~~

~~[(1) In accordance with the Texas Government Code, §2110.002, and notwithstanding other law, an advisory committee may have no more than 24 members. The composition of the committee must provide a balanced representation between:]~~

~~[(A) industries or occupations regulated or directly affected by the advised state agency; and]~~

~~[(B) consumers of services provided either by the advised state agency or by industries or occupations regulated by the agency.]~~

~~[(2) This subsection does not apply to advisory committees that must be composed in a manner which is inconsistent with this subsection under federal law or for federal funding purposes.]~~

~~[\$411.7 Mental Health Planning and Advisory Council]~~

~~[(a) The purpose of the Mental Health Planning and Advisory Council is to provide advice on issues and initiatives regarding mental health services.]~~

~~[(b) Tasks of the Mental Health Planning and Advisory Council include:]~~

~~[(1) submitting recommendations for strategic planning;]~~

~~[(2) developing recommendations for improved services; and]~~

~~[(3) developing recommendations for policy revisions.]~~

~~[(e) This advisory committee shall be abolished on January 1, 2012, unless abolished on an earlier date or reauthorized.]~~

~~[\§411.12 Inpatient Mental Health Services Advisory Committee]~~

~~[(a) The purpose of the Inpatient Mental Health Services Advisory Committee is to provide advice concerning:]~~

~~[(1) the coordination of activities between TDMHMR and the Texas Department of Health (TDH); and]~~

~~[(2) the development of proposed policies and other rules and the interpretation and enforcement of adopted policies and other rules that relate to mental health services in private mental hospitals licensed by TDH and psychiatric units of general hospitals licensed by TDH.]~~

~~[(b) In accordance with the Texas Health and Safety Code, §571.027, tasks of the Inpatient Mental Health Services Advisory Committee are to provide advice on:]~~

~~[(1) issues and policies related to the provision of mental health services in private mental hospitals licensed by TDH and psychiatric units of general hospitals licensed by TDH;]~~

~~[(2) coordination and communication between TDMHMR, TDH, private mental hospitals licensed by TDH, and psychiatric units of general hospitals licensed by TDH to address consistency between TDMHMR and TDH in interpretation and enforcement of department policies and other rules; and]~~

~~[(3) training for surveyors or investigators.]~~

~~[(c) This advisory committee shall be abolished on January 1, 2012, unless abolished on an earlier date or reauthorized.]~~

~~[\§411.20 References]~~

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

~~[(1) Texas Government Code, Chapter 2110; and]~~

~~[(2) Texas Health and Safety Code, §532.021, §532.020(a), §571.027, and §533.0351.]~~

~~[\§411.21 Distribution]~~

~~[This subchapter shall be distributed to:]~~

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

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

~~[(3) superintendents/directors of all TDMHMR facilities; and]~~

~~[(4) advocacy organizations.]~~

§411.1. Definitions

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

- (1) DSHS--The Texas Department of State Health Services.
- (2) Executive Commissioner--The HHSC Executive Commissioner or his or her designee.
- (3) HHSC--The Texas Health and Human Services Commission or its designee.

§411.3. Joint Committee on Access and Forensic Services

(a) Statutory authority. This section is authorized by:

(1) Texas Health and Safety Code §531.0131 and §533.051(c), which define membership requirements and prescribe duties of the Joint Committee on Access and Forensic Services (JCAFS);

(2) Texas Health and Safety Code §533.0515, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules as necessary to implement its provisions; and

(3) Texas Government Code §531.012, which authorizes the Executive Commissioner to adopt rules for advisory committees.

(b) Applicability. Texas Government Code Chapter 2110 and Texas Government Code Chapter 551 apply to the JCAFS.

(c) Purpose. The purposes of the JCAFS are:

(1) to make recommendations for a comprehensive plan for effective coordination of forensic services;

(2) to make recommendations and monitor implementation of updates to a bed day allocation methodology; and

(3) to make recommendations and monitor implementation of an utilization review protocol for state funded beds in hospitals and other inpatient mental health facilities.

(d) Tasks. The JCAFS considers and makes recommendations to the Executive Commissioner consistent with the committee's purpose.

(e) Reporting requirements.

(1) The JCAFS files an annual written report to the Executive Commissioner by December 1st of each year. The report includes:

(A) the committee's meeting dates for the previous fiscal year;

(B) the activities it has completed to achieve the defined purpose; and

(C) the committee's recommendations.

(2) The JCAFS files an annual written report to the Texas Legislature by December 1st of each year that includes any policy recommendations made to the Executive Commissioner.

(3) In accordance with Texas Health and Safety Code §533.0515, the committee sends a proposal for an updated bed day allocation methodology and bed day utilization review protocol to the Executive Commissioner no later than December 1st of each even-numbered year.

(4) In accordance with Texas Health and Safety Code §532.0131, the committee submits a report with recommendations concerning the creation of a comprehensive plan for coordination of forensic services to the lieutenant governor, the speaker of the house of representatives, and the standing committees of the senate and the house of representatives with primary jurisdiction over forensic services no later than July 1, 2016.

(f) Abolition. Unless reauthorized, the committee is abolished on November 1, 2019.

(g) Membership.

(1) Number of members. The JCAFS is composed of 24 members nominated by the designating organization and appointed by the Executive Commissioner. The membership includes:

(A) two representatives designated by DSHS, including a superintendent of a state hospital with a maximum security forensic unit;

(B) two representatives designated by the Texas Department of Criminal Justice, including a representative of the Texas Correctional Office on Offenders with Medical or Mental Impairments;

(C) one representative designated by the Texas Juvenile Justice Department;

(D) one representative from a State Supported Living Center that provides forensic services designated by the Texas Department of Aging and Disability Services or its successor agency;

(E) one representative designated by the Texas Association of Counties;

(F) two representatives designated by the Texas Council of Community Centers, including one representative of an urban local service area and one representative of a rural local service area;

(G) two representatives designated by the County Judges and Commissioners Association of Texas, including one representative who is the presiding judge of a court with jurisdiction over mental health matters;

(H) one representative designated by the Sheriffs' Association of Texas;

(I) two representatives designated by the Texas Municipal League, including one representative who is a municipal law enforcement official;

(J) one representative designated by the Texas Conference of Urban Counties;

(K) two representatives designated by the Texas Hospital Association, including one representative who is a physician;

(L) one representative designated by the Texas Catalyst for Empowerment;

(M) one representative of Disability Rights Texas;

(N) one representative designated by the Texas District and County Attorneys Association; and

(O) four representatives designated by the DSHS Council for Advising and Planning for the Prevention and Treatment of Mental and Substance Use Disorders (CAP):

(i) including the chair of the council, one representative of the council's members who is a consumer of or advocate for mental health services, one representative of the council's members who is a consumer of or advocate for substance abuse treatment, and one representative of the council's members who is a family member of or advocate for persons with mental health and substance abuse disorders;

(ii) at least one of the designated individuals represents consumers involved with forensic services; and

(iii) with the dissolution of the CAP, responsibility for designating representatives transfers to the HHSC Behavioral Health Advisory Committee.

(2) The DSHS Forensic Director serves as a non-voting ex officio member of the JCAFS.

(3) Each member serves until a replacement is nominated by the designating organization and appointed by the Executive Commissioner.

(h) Quorum. A majority of the voting members of the JCAFS constitutes a quorum.

(i) Presiding officers.

(1) The JCAFS selects from among its members a presiding officer.

(2) Unless re-elected, the term of the presiding officer is one year. A member serves no more than two consecutive terms as presiding officer.