

**Department of State Health Services
Council Agenda Memo for State Health Services Council
November 20-21, 2013**

Agenda Item Title: New rule concerning training requirements for state mental health facilities

Agenda Number: 4.a

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background:

The State Hospitals Section is located within the Mental Health and Substance Abuse Services Division. The state hospitals have a bed capacity of 2,531 and DSHS staff provide voluntary, civil, and forensic mental health services for ten state mental health hospitals and one infectious diseases hospital. The state hospitals have approximately 16,000 unique admissions every year. There are 7,936 total state hospital employees, which includes 810 nurses and 143 physicians.

Funding for state hospitals come from General Revenue and third party payers, such as Medicare, Medicaid, and private insurance.

Summary:

The purpose of the new rule is to comply with Senate Bill (SB) 152, 83rd Legislature, Regular Session, 2013, which added Health and Safety Code, Section 552.052. SB 152 requires a state hospital to provide training on mental health treatment, first aid, co-occurring mental health and substance abuse, rights of individuals with mental illness, use of restraints, abuse and neglect reporting, and other topics. SB 152 requires specialized trainings for specialized populations.

The new rule adds training requirements for geriatric and multiple disabilities units in state hospitals. The new rule also creates a requirement for refresher training courses to employees at least annually.

Key Health Measures:

The impact of this new rule will be measured in the number of initial trainings and the annual refresher trainings. Management staff will monitor abuse and neglect confirmations, substantiated rights complaints, and incident reporting following implementation of the rule to identify trends and/or additional training needs.

Summary of Input from Stakeholder Groups:

The proposed rules have been distributed to the state hospitals and their training coordinators via email. The proposed rules have also be distributed to mental health advocates. The informal comment period will end November 18, 2013.

TITLE 25. HEALTH SERVICES
Part 1. Department Of State Health Services
Chapter 417. TDMHMR and Facility Responsibilities
Subchapter A. Standard Operating Procedures
New §417.47

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes new §417.47, concerning training requirements for state mental health facilities.

BACKGROUND AND PURPOSE

The new section is necessary to comply with Texas Health and Safety Code, §552.052, which requires a state hospital to provide training on mental health treatment, first aid, co-occurring mental health and substance abuse, rights of individuals with mental illness, use of restraints, and abuse and neglect reporting, and other topics. The new section creates a requirement for refresher training courses to employees at least annually in accordance with Senate Bill 152, 83rd Legislature, Regular Session, 2013.

SECTION-BY-SECTION SUMMARY

New §417.47 adds training requirements for all state hospital employees, training requirements for direct care state hospital employees, and training requirements for staff that work on specialty units for individuals with intellectual disabilities, medical impairments, or geriatric individuals. The new section also adds a requirement for annual training recertification.

FISCAL NOTE

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

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Maples has also determined that there will be no effect on small businesses or micro-businesses required to comply with the section as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section 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 section 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 section is in effect the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section will ensure the safety and effectiveness of state hospital treatment and care.

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 new rule does not restrict or limit an owner’s right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Nnenna Ezekoye, Senior Policy Analyst, Division of Mental Health and Substance Abuse, Office of the Behavioral Health Medical Director, Department of State Health Services, Mail Code 2053, P.O. Box 149347, Austin, Texas 78714-9347, (512) 206-5036 or nnenna.ezekoye@dshs.state.tx.us. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies’ authority to adopt.

STATUTORY AUTHORITY

The new rule is authorized by Texas Health and Safety Code, §552.052, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules relating to state hospital employee training; and Texas Government Code, §531.0055, and Texas 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 Texas Health and Safety Code, Chapter 1001.

The new rule affects Texas Health and Safety Code, Chapters 552 and 1001; and Texas Government Code, Chapter 531.

Legend: (Proposed New Rule)
Regular Print = Proposed new language

§417.47. Training Requirements for State Mental Health Facilities.

(a) All State Hospital Employees. As required by Texas Health and Safety Code, §552.052(b), before performing the employee's duties without direct supervision, all state mental health facility (SMHF) staff members shall receive competency training and instruction on general duties.

(b) Direct Care Employees. Before an employee who provides direct delivery of services to a patient begins to perform direct care duties without direct supervision, a SMHF staff member shall receive training and instruction, in addition to the training outlined in subsection (a) of this section, on implementation of the interdisciplinary treatment program for each patient, a person admitted to a state hospital under the management and control of the department, for whom they will provide care.

(c) Specialized Training. Direct care employees shall receive additional training and instructional information in accordance with the specialized needs of the population being served, including services on units for individuals with intellectual disabilities, medical impairments, or geriatric patients.

(d) All SMHF staff members shall receive annual refresher training on the topics outlined in subsection (a) of this section throughout the staff member's employment or association with the SMHF, unless the department determines in good faith and with good reason a particular employee's performance will not be adversely affected in the absence of such refresher training.

(e) Direct Care Employees whose duties require delivery of services to a patient shall receive annual refresher training on the topics outlined in subsections (a) and (b) of this section throughout the staff member's employment or association with the SMHF, unless the department determines in good faith and with good reason a particular employee's performance will not be adversely affected in the absence of such refresher training.

(f) Direct Care Employees whose duties require delivery of services on units for individuals with intellectual disabilities, medical impairments, or geriatric patients shall receive annual refresher training on the topics outlined in subsections (a), (b), and (c) of this section, throughout the staff member's employment or association with the SMHF, unless the department determines in good faith and with good reason a particular employee's performance will not be adversely affected in the absence of such refresher training.