Department of State Health Services
Council Work Session Agenda Memo for State Health Services Council
May 18, 2016

Agenda Item Title: Repeal of rules and new rules concerning the regulation of chemical dependency treatment facilities

Agenda Number: 1.a.

Recommended Council Action:

__X__ For Discussion Only

_____ For Discussion and Action by the Council

Background:

The Facility Licensing and Substance Abuse Compliance Groups are located in the Health Care Quality Section, of the Division for Regulatory Services. DSHS regulates chemical dependency treatment facilities to protect and promote the public health and safety of clients receiving services in those facilities. DSHS issues licenses to these facilities and conducts inspections and investigations of them to determine compliance with the rules.

Evidence of noncompliance obtained during facility investigations and inspections may result in referral for enforcement action. There are 651 licensed chemical dependency treatment facilities. In fiscal year 2015, 306 inspections and 143 investigations were conducted with 4 facilities found in noncompliance.

Chemical dependency treatment facility licensure and regulatory functions are funded by federal grant funds and general revenue and program costs are offset by licensure fees and federal funds.

Summary:

The purpose of the repeal and the new rules is to update, reorganize, and clarify the rules governing the licensing of chemical dependency treatment facilities. These rule changes will better delineate the types of treatment services, such as individual and group counseling, education, training, and other planned and structured activities, that facilities must provide to clients for different levels of care and service. These changes address existing and emerging industry trends that will align the rules with industry standards, including standards published by the federal Substance Abuse and Mental Health Services Administration.

These new rules will provide more explicit physical plant requirements to better protect the health and safety of clients. Licensure changes will allow more options for facility licensure, which can be expected to enable providers to reach more clients in underserved areas. The licensure changes will also enable DSHS to recover more of the direct and indirect costs to the department for administering and enforcing the program.

These rule changes are also expected to contribute to greater provider compliance, and improve consistency and reliability in conducting inspections, investigations, licensing and enforcement activities initiated by DSHS staff. These rules include enhanced requirements for providers to perform their own quality assessments. Clearer, more objective rules will enable facilities to prepare their own internal corrective action plans and, as needed, DSHS to enforce these rules. Providers and other stakeholders' involvement throughout the rule review process should contribute to their understanding and compliance with the revised rules.

The review of the rules complies with the four-year review required by Government Code, Section 2001.039.

Key Health Measures:

DSHS monitors the number of licensed facilities meeting state regulations at the time of their inspection, the number of complaint investigations conducted, and the number of alleged rule violations and facilities referred

for enforcement action consideration. DSHS will evaluate shifts in these numbers following adoption of the revised rules, considering whether shifts suggest changes in compliance levels, changes in enforceability of rules, or both. Resource limitations will likely prohibit increases in the number of inspections or any systematic analysis of trends; however, experienced inspectors and investigators evaluating facilities under the new rules will be a good resource for DSHS in interpreting changes in tracked data. Increased clarity and objectivity of standards should also provide increased efficiency of staff performance during inspections and improve the compliance of providers.

Summary of Input from Stakeholder Groups:

DSHS staff held four stakeholder meetings in 2014, and one meeting in 2016 regarding the rules, which were posted on the DSHS website before the meeting. Stakeholders included the Texas Juvenile Justice Division, Salvation Army, Travis County Juvenile Probation, Austin Travis County Integral Care, Behavioral Health Alliance of Texas, Texas Department of Criminal Justice, Association of Addiction Professionals, Alcohol and Drug Abuse Council for the Concho Valley, Hays Caldwell Council on Alcohol and Drug Abuse, independent substance abuse facility owners and administrators, general hospital representatives, advocacy organizations, and interested individuals.

The topic of the discussions in stakeholder meetings in 2014 included:

- licensing structure;
- co-location of different facility and service types;
- comprehensive assessment conducted before admission;
- Licensed Vocational Nurse scope of practice;
- incorporation of applicable restraint and seclusion standards of 25 TAC, Chapter 415, Interventions in Mental Health Programs;
- denial of admission prohibited based solely on a client taking medication as prescribed;
- client confidentiality resulting in limitation on integration of services;
- client work hours and fundraising activities in residential treatment;
- hiring of current or recently discharged clients;
- background checks for staff and/or clients transporting clients;
- tobacco use in facilities; and
- fire safety and physical plant requirements.

An additional stakeholder meeting was held on April 8, 2016 to discuss rule changes required as a result of Senate Bill 1560, 84th Legislature, Regular Session, 2015. The topics of discussion of primary concern included:

- licensing structure and fees;
- Licensed Vocational Nurse scope of practice;
- staffing requirements in withdrawal management facilities;
- hiring of recently discharged clients;
- tobacco use in facilities;
- restraint and seclusion standards;
- maintaining separation of minors from adults;
- minimum counselor caseloads; and
- fire safety and physical plant requirements.

Approved by Assistant Commissioner/Director:	Kathryn C. Perkins, R.N., M.B.A.			**Date:**	4/19/2016
Presenter:	Allison J. Hughes, RN	**Program:**	Health Care Quality Section	**Phone No.:**	512/834-6775
Approved by CPEA:	Carolyn Bivens			**Date:**	4/21/2016