

Title 25. Health Services
Part 1. Department of State Health Services
Chapter 412. Local Mental Health Authority Responsibilities
Subchapter D. Mental Health Services--Admission, Continuity, and Discharge
Division 5. Discharge and ATP from SMHF
Amendment §412.202

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §412.202, concerning the Mental Health Services--Admissions, Continuity, and Discharge.

BACKGROUND AND PURPOSE

In accordance with 42 Code of Federal Regulations Part 483, Subpart C, concerning Preadmission Screening and Resident Review (PASRR), the amended section sets forth the requirements for state mental health facilities (SMHFs) and local mental health authorities (LMHAs) to perform PASRR screenings and evaluations of patients who are being considered for nursing home placement upon discharge.

The purpose of PASRR is to ensure that placement of the patient in a nursing facility is necessary, to identify alternate placement options when applicable, and to identify specialized services that may benefit the person with a diagnosis of mental illness, intellectual disability, or developmental disability. To promote a clear, consistent implementation of the PASRR Program, the Department of Aging and Disability Services (DADS), who is designated with the responsibility for administering the PASRR Program in Texas, is promulgating PASRR Program rules to which LMHAs and SMHFs must comply. The department is amending an applicable rule in Chapter 412, Subchapter D, §412.202, concerning admission, continuity, and discharge to require that LMHAs and SMHFs comply with federal regulations and the rules in 40 TAC Chapter 17, concerning substantially the same matter. DADS' new PASRR rules, which are being published in the same issue of the *Texas Register* as the amendment and repeals in this preamble, may be found at 40 TAC Chapter 17, and the existing DADS' PASRR rule at 40 TAC Chapter 19 is being repealed.

The department rules in Chapter 415, Subchapter J, concerning PASARR are being repealed because they are no longer necessary.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 412.202 has been reviewed and the department has determined that the reasons for adopting the rule continue to exist.

SECTION-BY-SECTION SUMMARY

Amendments to §412.202(b) cite the federal PASRR regulations; set forth the basic requirements

for LMHAs and SMHFs in the conduct of preadmission screenings, evaluations, and resident reviews; and require compliance with federal regulations and DADS rules concerning PASRR in 40 TAC Chapter 17. Also, amendments to subsection (b)(5)(D) corrected the legacy agency name from the “Texas Department of Human Services (TDHS)” to the “Department of Aging and Disability Services.”

FISCAL NOTE

Mike Maples, Assistant Commissioner, Mental Health and Substance Abuse Division has determined that for each year of the first five years that the section will be in effect, there will be no fiscal implications to the 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 the proposed rule 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 section.

The rule has direct application only to local mental health authorities and state mental health facilities, neither of which meet the definition of small or micro-business under the Government Code, §2006.001. Therefore, an economic impact statement and regulatory flexibility analysis for small businesses are not required.

ECONOMIC COST TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

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

PUBLIC BENEFIT

Mr. Maples has also 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 is that individuals are appropriately discharged to the least restrictive setting that meets their needs and if a nursing facility is determined the least restrictive setting, ensure that individuals receive appropriate specialized services to address their diagnosis of mental illness, intellectual disability, or developmental disability.

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 as 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 proposal 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 Janet Fletcher, Department of State Health Service, P.O. Box 149347, Austin, TX 78714-9347, Mail Code 2018/552 or by email to mhsarules@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 rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The amendment is authorized by Government Code, §531.0055(e), and Health and Safety Code, Chapter 35 and §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 amendment affects Government Code, Chapter 531, and Health and Safety Code, Chapters 35 and 1001. The review of the rules implement Government Code, §2001.039.

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

§412.202. Special Considerations.

(a) (No change.)

(b) Preadmission Screening and Evaluation (PASRR). As described in 42 Code of Federal Regulations Part 483, Subpart C, all patients who are being considered for nursing home placement shall be screened prior to nursing facility admission. The purpose of the PASRR Level I Screening and PASRR Level II Evaluation is:

(1) to ensure that placement of the patient in a nursing facility is necessary;

(2) to identify alternate placement options when applicable; and

(3) to identify specialized services that may benefit the person with a diagnosis of mental illness, intellectual disability, or developmental disability.

(A) PASRR Level I Screening. The SMHF shall complete, and may collaborate with a nursing facility, a PASRR Level I Screening in accordance with the rules of the Department of Aging and Disability Services (DADS) set forth in the 40 TAC Chapter 17 (relating to Preadmission Screening and Resident Review (PASRR)).

(B) PASRR Level II Evaluation. If the PASRR Level I Screening indicates that the patient might have a mental illness, intellectual disability, or developmental disability, the SMHF shall arrange with LMHA who shall conduct a PASRR Level II Evaluation in accordance with 40 TAC Chapter 17.

(C) Resident Review. The LMHA shall conduct PASRR Level II Evaluations as part of the resident review process required by 40 TAC Chapter 17.

[(b) Nursing facilities.]

[(1) Information regarding alternate services and supports. Prior to a person being admitted to a nursing facility on absence for trial placement (ATP) or directly after discharge, the designated LMHA shall provide the person, the person's LAR, and, unless the LAR is a family member, at least one family member of the person, if possible, with information about alternative services and supports for which the person may be eligible.]

[(2) Preadmission screening. Prior to a person being admitted to a nursing facility on ATP or directly after discharge, the SMHF shall contact the Texas Department of Human

Services to conduct a preadmission screening as required by 40 TAC §19.2500 (relating to Preadmission Screening and Resident Review (PASARR)).]

(4) [(3)] ATP. If a patient is admitted to a nursing facility on ATP, then the designated LMHA shall conduct and document, including justification for its recommendations, the activities described in this paragraph.

(A) The designated LMHA shall make at least one face-to-face contact with the patient at the nursing facility. The contact shall include:

(i) a review of the patient's medical record at the nursing facility;
and

(ii) discussions with the patient and LAR, if any, the nursing facility staff, and other staff who provide care to the patient regarding:

(I) the needs of the patient and the care he/she is receiving;

(II) the ability of the nursing facility to provide the
appropriate care;

(III) the provision of mental health services, if needed by
the patient; and

(IV) the patient's adjustment to the nursing facility.

(B) Before the end of the initial ATP period as described in §412.206(b)(2) of this title (relating to Absence for Trial Placement (ATP)), the designated LMHA shall recommend to the SMHF one of the following:

(i) discharging the patient if the LMHA determines that:

(I) the nursing facility is capable of providing, and willing to provide, appropriate care to the patient after discharge;

(II) any mental health services needed by the patient are being provided to the patient while he/she is residing in the nursing facility; and

(III) the patient and LAR, if any, agrees to the nursing
facility placement;

(ii) extending the patient's ATP period in accordance with §412.206(b)(3) of this title;

(iii) returning the patient to the SMHF in accordance with §412.205(b)(2) of this title (relating to Absences From a SMHF); or

(iv) initiating involuntary admission to the SMHF in accordance with §412.205(a)(2) of this title.

(5) [(4)] Discharge. If a person is admitted to a nursing facility directly upon discharge, then the designated LMHA shall conduct and document the activities described in this paragraph.

(A) The designated LMHA shall make face-to-face contact with the person at the nursing facility within seven days after discharge to determine if the nursing facility is providing adequate and appropriate care to the person. The contact shall include:

(i) a review of the person's medical record at the nursing facility;
and

(ii) discussions with the person, or the person's LAR, if any, the nursing facility staff, and other staff who provide care to the person regarding:

(I) the needs of the person and the care he/she is receiving;

(II) the ability of the nursing facility to provide the appropriate care;

(III) the delivery of mental health services, if needed by the person; and

(IV) the person's adjustment to the nursing facility.

(B) If the designated LMHA determines from its contact that the nursing facility is not providing adequate and appropriate care to the person, then the LMHA shall make a reasonable effort to encourage the nursing facility to provide adequate and appropriate care.

(C) If the designated LMHA's efforts to encourage the nursing facility to provide adequate and appropriate care are unsuccessful and the LMHA determines that the nursing facility is unable or unwilling to provide adequate and appropriate care, then the LMHA shall:

(i) make recommendations to the person and the person's LAR, if any, regarding alternate residential placement; and

(ii) provide assistance in accessing alternate placement, if requested by the person or LAR to do so.

(D) If the designated LMHA identifies or suspects any instance of mistreatment, abuse or neglect, or injuries of unknown origin at the nursing facility, then the

LMHA shall make a report to the Department of Aging and Disability Services [Texas Department of Human Services (TDHS)] via its complaint hotline (1-800-458-9858).

(c) - (g) (No change.)