



**Report on the  
Jail Based Competency Restoration  
Pilot Program  
First Quarter Fiscal Year 2016**

**As Required By  
The 2016-2017 General Appropriations Act, H.B. 1,  
84th Legislature, Regular Session, 2015  
(Article II, Department of State Health Services, Rider 70)**



**Department of State Health Services  
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## **Introduction**

[The 2016-2017 General Appropriations Act, H.B. 1, 84th Legislature, Regular Session, 2015, \(Article II, Department of State Health Services, Rider 70\)](#) requires the Department of State Health Services (DSHS) to develop and implement a JBCR Pilot Program established under [Article 46B.090 of the Code of Criminal Procedure](#) with \$1.75 million in appropriated funds. In addition, DSHS is required to submit interim quarterly progress reports to the Legislative Budget Board, Chair of the House Appropriations Committee, Chair of the Senate Finance Committee, Speaker of the House, and Lieutenant Governor no later than 15 business days after the end of each fiscal quarter. This first quarterly report provides a brief summary of activities for the JBCR Pilot Program.

## **Background**

S.B. 1475, 83<sup>rd</sup> Legislature, Regular Session, 2013, amended Article 46B.090 of the Code of Criminal Procedure to establish a JBCR pilot program. The 2014-2015 General Appropriations Act, H.B. 1, Regular Session, 2013 (Article II, Department of State Health Services, Rider 74) appropriated funds to DSHS. DSHS was required to develop and implement the pilot program in one or two counties in the state that choose to participate in the pilot program and implement with input from the counties. DSHS was allowed to adopt any rules necessary, in consultation with a stakeholder workgroup, to implement the pilot program. Additionally, S.B. 1475 directed DSHS to establish a stakeholder workgroup comprised of specific representatives.<sup>1</sup> The Department was also directed to contract with a provider who met specific requirements, including providers who:

- Use a multidisciplinary team to provide clinical treatment;
- Employ or contract for the services of at least one psychiatrist;
- Assign staff members to defendants participating in the program at an average ratio not lower than 3.7 to 1; and
- Provide weekly treatment services commensurate to the treatment services provided as part of the competency restoration program at an inpatient mental health facility.

Because the pilot program was not implemented in the 2014-2015 biennium, a majority of the \$3.05 million appropriation lapsed. Some of the funding was used to address other state funding needs. Although the JBCR pilot was not implemented in the 2014-2015 biennium, DSHS is completing preparation activities for implementation in calendar year 2016.

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<sup>1</sup> The stakeholder workgroup must be composed of one member who is a sheriff, one member who represents a local mental health authority (LMHA); one member who is a county commissioner, county judge, or elected county officer; one member who is a district attorney or county attorney with criminal jurisdiction; one member who is a defense attorney; one member who is a judge of a district criminal court or county criminal court; two members who are mental health advocates; and any other member DSHS considers appropriate to appoint to the workgroup.

## **Program Development**

The JBCR Pilot Program, developed by DSHS, will provide jail-based competency restoration services to individuals with mental illness or co-occurring psychiatric and substance abuse disorders (COPSD). Jail-based competency restoration services include behavioral health treatment services and competency education for individuals found incompetent to stand trial (IST), consistent with competency restoration services provided in state mental health facilities. In addition, DSHS established the following goals of the JBCR Pilot Program:

- Reduce the number of maximum security and non-maximum security defendants on the State Mental Health Program clearinghouse waiting list determined to be IST due to mental illness and/or COPSD issues;
- Provide prompt access to clinically appropriate JBCR services for individuals determined IST who do not qualify for the Outpatient Competency Restoration (OCR) program.
- Provide a cost-effective alternative to restoration in a state hospital;
- Minimize or ameliorate the stress of incarceration, to the extent possible, for participants in the JBCR Pilot Program; and
- Collect data to support the effectiveness and cost savings of the pilot.

## **Rule Development**

Consistent with provisions of S.B. 1475, DSHS established a stakeholder workgroup composed of the required members. This workgroup met in fiscal year 2014 to provide input on the development of JBCR pilot program rules. This also included development of Exhibit A, *Rights of Participants Receiving JBCR Services*, which is referenced in the rule. Entities/individuals represented on the workgroup included the following:

- Dallas County sheriff
- Andrews Center Behavioral Healthcare System
- Mental Health and Mental Retardation Center Tarrant County
- Burnet County Judge
- Dallas County District Attorney Office
- Travis County Mental Health Public Defender's Office
- Dallas County Chief Public Defender
- Harris County District Court Judge
- Resource Care
- Disability Rights Texas
- Recovery-Based Services
- Mental Health Advocates
- Travis County Forensic Psychiatrist

The draft rules were discussed by the workgroup, and feedback addressed the following components: definitions, determinations of participant housing locations in the jail, staffing requirements, program eligibility criteria, concerns of the jail, utilization of incentives, program standards, admission and assessment procedures, policies and procedures, and participant rights.

The rules were presented at the February 2014 DSHS State Health Services Council meeting and published in the *Texas Register* on March 21, 2014. As the rules were promulgated, it was determined that the pilot should be more consistent with JBCR models in other states and the JBCR pilot program should focus its staffing and programmatic activities from Monday through Friday, 8:00 a.m. to 5:00 p.m.

Due to these changes, DSHS formally withdrew the rules effective September 22, 2014. On October 1, 2014, revised draft rules were distributed to a broad spectrum of stakeholders for informal comment.<sup>2</sup> The deadline for submitting informal comments regarding the rules was October 15, 2014.

In February 2015, DSHS reintroduced the revised JBCR Pilot Program rules at the DSHS State Health Services Council meeting. The 2015 proposed rules differ from the 2014 rules in the areas of program staffing, standards, assessment, transition services, and outcome measures. The most significant change was in the required staffing: Under the revised staffing, the day shift has services that are more substantial and the JCBR program providers will be responsible for collaborating with jail staff to ensure the safety and welfare of participants in the evening, night, and weekend hours. The rules were published in the June 26, 2015, edition of the *Texas Register*. The formal comment period ended July 27, 2015. Comments were received from the following entities:

- Texas Council of Community Centers
- Disability Rights Texas
- Council for Advising and Planning (CAP) Rules Subcommittee
- MHMR Tarrant County
- Liberty Healthcare Corporation
- Dallas County Department of Criminal Justice
- Texas Commission on Jail Standards

### **Program Implementation**

DSHS prepared to implement the JBCR Pilot Program in December 2013. A Request for Information (RFI) was distributed to solicit stakeholder input and assess interest among potential providers. As a result, several local mental health authorities and private organizations expressed an interest in operating the pilot program. In February 2014, DSHS developed and distributed a formal RFP procurement document. In response to this RFP, DSHS received one proposal.

In May 2014, DSHS selected a tentative contractor, Liberty Healthcare Corporation, and began negotiations. During the course of negotiations, the issue of program staffing for the pilot program and technical considerations related to changing the RFP from a sub-recipient to vendor contract arose that impacted the viability of the procurement. Because possible changes related to program staffing and type of contract from what was originally envisioned in the RFP could result in additional interest among possible vendors, HHSC and DSHS decided to withdraw the RFP. DSHS plans to distribute a second RFP in the second quarter of fiscal year 2015, and anticipates a contract will be executed with a program start date of May 1, 2016.

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2. Stakeholders included the Texas Council of Community MHMR Centers, LMHAs, Disability Rights Texas, the Local Area Network Advisory Committee, the Council for Advising and Planning for the Prevention and Treatment of Mental and Substance Use Disorders, ValueOptions of Texas, Incorporated and North Texas Behavioral Health Authority.