

TITLE 25 HEALTH SERVICES

PART 1 DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 416 MENTAL HEALTH COMMUNITY-BASED SERVICES

SUBCHAPTER C JAIL-BASED COMPETENCY RESTORATION PROGRAM

§416.76 Purpose

The purpose of this subchapter is to provide standards for jail-based competency restoration services in pilot and county-based programs, as required by the Texas Code of Criminal Procedure, Chapter 46B, relating to Incompetency to Stand Trial. The programs include:

- (1) mental health services;
- (2) intellectual disability services;
- (3) co-occurring psychiatric and substance use disorder treatment services;
- (4) competency restoration education in the county jail for an individual found incompetent to stand trial; and
- (5) discharge planning services.

§416.77 Application

This subchapter applies to an LMHA, LBHA, an LMHA or LBHA subcontractor, a private provider, and a local unit of general purpose government or city unit of government or a subcontractor of the unit of government delivering jail-based competency restoration services authorized by the Texas Code of Criminal Procedure, Chapter 46B.

§416.78 Definitions

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

- (1) Competency restoration--The treatment and education process for restoring an individual's ability to consult with the individual's attorney with a reasonable degree of rational understanding and a rational and factual understanding of the court proceedings and charges against the individual.
- (2) Competency restoration training module (training module)--An HHSC-reviewed training module used by provider staff members to provide legal education to an individual receiving competency restoration services.
- (3) Court--A court of law presided over by a judge, judges, or a magistrate in civil and criminal cases.
- (4) HHSC--Texas Health and Human Services Commission or its designee.
- (5) ID--Intellectual disability. Consistent with Texas Health and Safety Code, §591.003, significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and originating before age 18.

- (6) Individual--A person receiving services under this subchapter.
- (7) Inpatient mental health facility--A mental health facility providing 24-hour residential and psychiatric services and is:
- (A) a facility operated by HHSC;
 - (B) a private mental hospital licensed by HHSC;
 - (C) a community center, facility operated by or under contract with a community center or other entity HHSC designates to provide mental health services;
 - (D) a local mental health authority or a facility operated by or under contract with a local mental health authority;
 - (E) an identifiable part of a general hospital in which diagnosis, treatment, and care for an individual with mental illness is provided and is licensed by HHSC; or
 - (F) a hospital operated by a federal agency.
- (8) IST--Incompetent to stand trial. A situation when an individual does not have:
- (A) sufficient present ability to consult with the individual's lawyer with a reasonable degree of rational understanding; or
 - (B) a rational as well as factual understanding of the proceedings against the individual.
- (9) JBCR--Jail-based competency restoration. Competency restoration conducted in a county jail setting provided in a designated space separate from the space used for the general population of the county jail.
- (A) County-based program--A jail-based competency restoration program developed and implemented by a county or joint counties in accordance with the Texas Code of Criminal Procedure, Article 46B.091.
 - (B) Pilot program--A jail-based competency restoration pilot program implemented in accordance with the Texas Code of Criminal Procedure, Article 46B.090.
- (10) LBHA--Local behavioral health authority. An entity designated as the local behavioral health authority by HHSC in accordance with Texas Health and Safety Code §533.0356.
- (11) LIDDA--Local intellectual and developmental disability authority. An entity designated as the local intellectual and developmental disability authority by HHSC in accordance with Texas Health and Safety Code, §533A.035.
- (12) LMHA--Local mental health authority. An entity designated as the local mental health authority by the executive commissioner of HHSC in accordance with Texas Health and Safety Code, §533.035(a).
- (13) Local unit of general purpose government--The government of a county, municipality, township, Indian tribe, or other unit of government (other than a state) which is a unit of general government as defined in 13 United States Code §184.
- (14) LPHA--Licensed practitioner of the healing arts. A person who is:

- (A) a physician;
- (B) a physician assistant;
- (C) an advanced practice registered nurse;
- (D) a licensed psychologist;
- (E) a licensed professional counselor;
- (F) a licensed clinical social worker; or
- (G) a licensed marriage and family therapist.

(15) **Serious mental illness**--An illness, disease, or condition (other than a sole diagnosis of epilepsy, **neurocognitive disorder**, substance use disorder, or ID) that:

- (A) substantially impairs an individual's thought, perception of reality, emotional process, or judgment; or
- (B) grossly impairs an individual's behavior as demonstrated by recent disturbed behavior.

(16) Provider--An entity that contracts with HHSC or a county to provide JBCR program services.

(17) Provider staff member--An employee or person whom the provider contracts or subcontracts for the provision of JBCR program services. A provider staff member includes specially trained security officers, all licensed and credentialed staff, and other persons directly contracted or subcontracted to provide JBCR services to an individual.

(18) QIDP--Qualified intellectual disability professional as defined in 42 CFR §483.430(a).

(19) QMHP-CS--Qualified mental health professional-community services. As defined in Chapter 412, Subchapter G, of this title (relating to Mental Health Community Services Standards).

(20) Residential care facility--A state supported living center or the Intermediate Care Facilities for Individuals with an Intellectual Disability (ICF-IID) component of the Rio Grande State Center.

(21) Serious injury--An injury determined by a physician to require medical treatment by a licensed medical professional (e.g., physician, dentist, physician's assistant, or advance practice nurse) or requires medical treatment in an emergency department or licensed hospital.

(22) Significantly sub-average general intellectual functioning--Consistent with Texas Health and Safety Code, §591.003, measured intelligence on standardized general intelligence tests of two or more standard deviations (not including standard error of measurement adjustments) below the age-group mean for the test used.

(23) Specially trained jailer--A person appointed or employed as a county jailer assigned to work for the JBCR provider.

(24) State mental health facility--A state hospital or a state center with an inpatient psychiatric component.

(25) Subcontractor--A person or entity that contracts with the provider of JBCR program services.

(26) Texas Commission on Jail Standards--The regulatory agency for all county jails and privately operated municipal jails in the state, as established in the Texas Government Code, Chapter 511.

§416.79 Program Eligibility Requirements

(a) The JBCR pilot program must meet the standards set forth in the Texas Code of Criminal Procedure, Article 46B.090, and upon operation of program services, the provider of the JBCR pilot program must be:

(1) an LMHA:

(A) in good standing with HHSC; and

(B) that demonstrates a history of successful competency restoration outcomes; or

(2) a private provider or a local unit of general purpose government or city unit of government, or a subcontractor of the unit of government:

(A) certified by a nationwide nonprofit organization that accredits health care organizations and programs;

(B) that maintains the accreditation in subparagraph (A) of this paragraph while under contract with HHSC to provide competency restoration services under this subchapter;

(C) that demonstrates a history of successful JBCR program outcomes; and

(D) has previously provided JBCR services for one or more years.

(b) The county-based JBCR program must meet the standards set forth in the Texas Code of Criminal Procedure, Article 46B.091 and upon operation of program services, the provider of the county-based JBCR program must be:

(1) an LMHA or LBHA in good standing with HHSC; or

(2) a subcontractor of an LMHA or LBHA in good standing with HHSC.

(c) An LMHA or LBHA that contracts with a county to provide jail-based competency restoration services must comply with the rules found in Chapter 412, Subchapter B of this title (relating to Contracts Management for Local Authorities) and the contract management and oversight requirements of the Texas Comptroller of Public Accounts.

§416.80 Service Standards

(a) A JBCR pilot program must:

(1) use a multidisciplinary treatment team to provide clinical treatment:

(A) focused on the objective of restoring the individual to competency to stand trial; and

(B) similar to the clinical treatment provided as part of a competency restoration program at an inpatient mental health facility;

(2) employ or contract for the services of at least one psychiatrist;

- (3) use QMHP-CSs or QIDPs to provide JBCR program services; and
 - (4) provide weekly competency restoration hours commensurate to the treatment hours provided as part of a competency restoration program at an inpatient mental health facility.
- (b) A county-based JBCR program must:
- (1) use a multidisciplinary treatment team:
 - (A) focused on the objective of restoring the individual to competency to stand trial; and
 - (B) similar to other competency restoration programs;
 - (2) employ or contract for the services of at least one psychiatrist;
 - (3) use QMHP-CSs or QIDPs to provide JBCR program services;
 - (4) provide weekly competency restoration hours commensurate to the treatment hours provided as part of a competency restoration program at an inpatient mental health facility;
 - (5) ensure coordination of general health care;
 - (6) provide mental health treatment, ID services, and substance use disorder treatment, as necessary, for competency restoration; and
 - (7) through contract, obligate a subcontractor to comply with this subchapter.

§416.81 Provider Staff Member Training

- (a) A provider must recruit, train, and maintain qualified provider staff members with documented competency in accordance with Chapter 412, Subchapter G, Division 2 of this title (relating to Organizational Standards), specifically:
- (1) §412.314(e) of this title (relating to Access to Mental Health Community Services);
 - (2) §412.315 of this title (relating to Medical Records System); and
 - (3) §412.316 of this title (relating to Competency and Credentialing).
- (b) Before providing services, a provider must train each provider staff member and ensure demonstrated competence in:
- (1) Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services);
 - (2) 40 TAC Chapter 4, Subchapter C (relating to Rights of Individuals with an Intellectual Disability);
 - (3) identifying, preventing, and reporting abuse, neglect, and exploitation in accordance with the Texas Commission on Jail Standards or the HHSC Office of the Ombudsman as set forth in applicable state laws and rules; and
 - (4) using a protocol for preventing and managing aggressive behavior, including preventative de-escalation intervention strategies.

§416.82 Policies and Procedures

A provider must develop and implement written policies and procedures:

- (1) describing eligibility, intake and assessment, and treatment planning as described in §416.86 of this subchapter (relating to Treatment Planning), and transition and discharge processes to include coordination and continuity of care planning with an LMHA, LBHA, or LIDDA, or an LMHA, LBHA, or LIDDA subcontractor;
- (2) describing how an individual is assessed for:
 - (A) suicidality and homicidality;
 - (B) the degree of suicidality and homicidality; and
 - (C) the development of an individualized suicide and homicide prevention plan;
- (3) outlining a provider staff member's ability to monitor and report to the court an individual's restoration to competency status and readiness for return to court as specified in the Texas Code of Criminal Procedure, Article 46B.079; and
- (4) addressing how a provider staff member ensures ongoing care, treatment, and overall therapeutic environment during evenings and weekends, including behavioral health crisis or physical health crisis consistent with §412.321(a) and (e) of this title (relating to Crisis Services).

§416.83 Individual Eligibility

- (a) To be eligible to participate in a JBCR program, the court must determine the individual as IST pursuant to the Texas Code of Criminal Procedure, Chapter 46B.
- (b) An LMHA, LBHA, or an LMHA or LBHA subcontractor must:
 - (1) screen an individual for outpatient competency restoration; and
 - (2) determine an individual ineligible for those services before the individual is admitted into the JBCR program.
- (c) If an outpatient competency restoration provider is not within the LMHA's or LBHA's local service area or contracted to provide outpatient competency restoration services for the area to participate in screening an individual for outpatient competency restoration services, the JBCR provider must admit the individual to the JBCR program, if eligible.

§416.84 Admission

- (a) When a provider determines an individual is eligible for a JBCR program:
 - (1) the provider must ensure the individual will receive competency restoration services no later than 72 hours after arriving at the JBCR program; or
 - (2) the provider must inform the court that the JBCR program is at capacity, and immediately report the individual's name to HHSC for placement on the Clearinghouse, which HHSC uses to track the list of pending admissions of criminal code commitments for non-violent offenses.

(b) A provider must, when necessary, seek a court order for psychoactive medications in accordance with Texas Health and Safety Code, §574.106 and the Texas Code of Criminal Procedure, Chapter 46B.

§416.85 Rights of Individuals Receiving JBCR Services

A provider of JBCR services must:

(1) inform the individual receiving JBCR services of the individual's rights in accordance with Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services) or 40 TAC Chapter 4, Subchapter C (relating to Rights of Individuals with an Intellectual Disability), as applicable;

(2) provide the individual with a copy of the rights handbook published for an individual receiving mental health services or an individual with an ID; and

(3) explain to the individual receiving JBCR services how to initiate a complaint and how to contact:

(A) the HHS Office of the Ombudsman for complaints against the JBCR provider;

(B) the Texas Commission on Jail Standards for complaints against the county jail; and

(C) the Texas protection and advocacy system.

§416.86 Treatment Planning

Within five days after admission to the JBCR program, based on an individual's competency evaluation and provider assessment, the provider must develop the individual's treatment plan to include:

(1) the individual's strengths, to assist the individual in:

(A) overcoming barriers to achieving a factual and rational understanding of legal proceedings; and

(B) consulting with the individual's lawyer with a reasonable degree of rational understanding;

(2) the individual's trauma history;

(3) physical health concerns or issues;

(4) medication and medication management;

(5) level of family and community support;

(6) mental health concerns or issues;

(7) ID concerns or issues; and

(8) substance use disorder or co-occurring psychiatric and substance use disorder concerns or issues.

§416.87 Competency Restoration Education

(a) A provider must submit the competency restoration training module for HHSC review.

(b) Each individual must be educated in multiple learning formats, which may include:

- (1) discussion;
- (2) written text;
- (3) video; and
- (4) experiential methods such as role-playing or mock trial.

(c) A provider must ensure an individual with accommodation needs receives adapted materials and approaches as needed.

(d) Not later than the 14th day after the date on which an individual's competency restoration services begin, the provider must review the individual's progress towards attaining competency in accordance with the Texas Code of Criminal Procedure, Chapter 46B.

§416.88 Procedures for Determining Competency Status in a JBCR Program

(a) The psychiatrist for a JBCR pilot program, or psychiatrist or psychologist for a county-based JBCR program, must conduct at least two full psychiatric or psychological evaluations for each individual. The psychiatrist or psychologist must:

- (1) conduct the first evaluation no later than the 21st day after the date JBCR program services began;
- (2) conduct the second evaluation no later than the 55th day after the date JBCR program services began; and
- (3) subsequent to evaluations completed in paragraphs (1) and (2) of this subsection, promptly submit a separate report for each psychiatric or psychological evaluation to the court.

(b) At any time during the commitment for JBCR services consistent with the Texas Code of Criminal Procedure, Article 46B.091(h), but no later than the 60th day after the date JBCR services begin, the psychiatrist for a JBCR pilot program, or psychiatrist or psychologist for a county-based JBCR program, must determine if the individual is restored to competency, is unlikely to be restored to competency in the foreseeable future, or has not been restored to competency but will likely be restored in the foreseeable future. If the psychiatrist or psychologist determines the individual:

- (1) is restored to competency, the psychiatrist or psychologist must send a report to the court demonstrating this determination;
- (2) is unlikely to be restored to competency in the foreseeable future, the psychiatrist or psychologist must send a report to the court demonstrating this determination, and coordinate with provider staff members, the court, and the county jail to ensure the transfer or release of the individual pursuant to the court's action to:
 - (A) proceed under the Texas Code of Criminal Procedure, Chapter 46B, Subchapter E or Subchapter F; or
 - (B) release the defendant on bail under the Texas Code of Criminal Procedure, Chapter 17; or
- (3) has not been restored to competency but will likely be restored in the foreseeable future, if the individual is charged with:
 - (A) a felony offense, the psychiatrist or psychologist must coordinate with provider staff members, the court, and the county jail to ensure the transfer of the individual to the first available mental health facility or residential care facility for the remainder of the commitment period; or

(B) a misdemeanor offense, the psychiatrist or psychologist must coordinate with provider staff members, the court, and the county jail to ensure the transfer or release of the individual pursuant to the court's action to:

(i) order a single extension under the Texas Code of Criminal Procedure, Article 46B.080 and transfer of the individual to the first available mental health facility or residential care facility;

(ii) proceed in accordance with the Texas Code of Criminal Procedure, Chapter 46B, Subchapter E or Subchapter F;

(iii) release the defendant on bail in accordance with the Texas Code of Criminal Procedure, Chapter 17; or

(iv) dismiss the charges in accordance with the Texas Code of Criminal Procedure, Article 46B.010.

§416.89 Preparation for Discharge from a JBCR Program

(a) At any time an individual is restored to competency, the psychiatrist or psychologist must collaborate with provider staff members to coordinate the individual's continued services and supports after discharge from the JBCR program to:

(1) the county jail;

(2) the LMHA;

(3) the LBHA;

(4) the LIDDA; or

(5) another mental health provider.

(b) If the individual is charged with a misdemeanor or felony and the individual is unlikely to be restored to competency in the foreseeable future, the psychiatrist or psychologist must collaborate with provider staff members to coordinate the individual's continued services and supports after discharge from the JBCR program to:

(1) a mental health facility;

(2) a residential care facility;

(3) the LMHA;

(4) the LBHA;

(5) the LIDDA;

(6) another mental health provider; or

(7) the care of a responsible person.

(c) If an individual is not restored to competency by the 60th day, the psychiatrist or psychologist must, if the individual is charged with:

(1) a felony, coordinate with provider staff members to link the individual for continued services and

supports post discharge from the JBCR program to:

(A) a mental health facility; or

(B) residential care facility; or

(2) a misdemeanor, coordinate with provider staff members to link the individual for continued services and supports post discharge from the JBCR program to:

(A) the county jail,

(B) a mental health facility;

(C) a residential care facility;

(D) the LMHA;

(E) the LBHA;

(F) the LIDDA; or

(G) another mental health provider.

§416.90 Outcome Measures

A provider must collect and report data to HHSC on:

(1) individual outcomes:

(A) the number of individuals on felony charges;

(B) the number of individuals on misdemeanor charges;

(C) the average number of days for an individual charged with a felony to be restored to competency;

(D) the average number of days for an individual charged with a misdemeanor to be restored to competency;

(E) the number of individuals charged with a misdemeanor and not restored to competency, for whom an extension was sought;

(F) the number of individuals restored to competency;

(G) the average length of time between determination of non-restorability and transfer to a state mental health facility or residential care facility;

(H) the percentage of individuals restored to competency in 60 days or less;

(I) the number of jail inmates found IST who were screened out of or deemed inappropriate for the program and the reason why; and

(J) the number of individuals not restored to competency and who were transferred to a state mental health facility or residential care facility; and

(2) administrative outcomes:

(A) the costs associated with operating the JBCR pilot program or county-based JBCR program; and

(B) the number of:

(i) reported and confirmed cases of abuse, neglect, and exploitation;

(ii) reported and confirmed cases of rights violations;

(iii) restraints and seclusions used;

(iv) emergency medications used;

(v) serious injuries; and

(vi) deaths, in accordance with §415.272 of this title (relating to Documenting, Reporting, and Analyzing Restraint or Seclusion).

§416.91 Compliance with Statutes, Rules, and Other Documents

(a) In addition to any applicable federal or state law or rule, a provider must comply with:

(1) Texas Health and Safety Code, Chapter 574 (relating to Court-Ordered Mental Health Services);

(2) 25 TAC:

(A) Chapter 405, Subchapter K (relating to Deaths of Persons Served by TXMHMR Facilities or Community Mental Health and Mental Retardation Centers);

(B) Chapter 411, Subchapter N (relating to Standards for Services to Individuals with Co-occurring Psychiatric and Substance Use Disorders (COPSD));

(C) Chapter 414, Subchapter I (relating to Consent to Treatment with Psychoactive Medication--Mental Health Services);

(D) Chapter 414, Subchapter K (relating to Criminal History and Registry Clearances);

(E) Chapter 414, Subchapter L (relating to Abuse, Neglect, and Exploitation in Local Authorities and Community Centers);

(F) Chapter 415, Subchapter A (relating to Prescribing of Psychoactive Medication); and

(G) Chapter 415, Subchapter F (relating to Interventions in Mental Health Services); and

(3) 37 TAC Part 9 (relating to Texas Commission on Jail Standards).

(b) Concerning confidentiality, a provider must comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and other applicable federal and state laws, including:

(1) 42 CFR Part 2 and Part 51, Subpart D;

- (2) 45 CFR Parts 160 and 164, and §1386.22;
- (3) Texas Health and Safety Code, Chapter 81, Subchapter F;
- (4) Texas Health and Safety Code, Chapter 241, Subchapter G;
- (5) Texas Health and Safety Code, Chapters 181, 595, and 611;
- (6) Texas Health and Safety Code, §§533.009, 533.035(a), 572.004, 576.005, 576.007, and 614.017;
- (7) Texas Government Code, Chapters 552 and 559, and §531.042;
- (8) Texas Human Resources Code, Chapter 48;
- (9) Texas Occupations Code, Chapter 159; and
- (10) Texas Business and Commerce Code, §521.053.