TO: Health and Human Services Commission
Executive Council

DATE: May 31, 2018

FROM: Sonja Gaines, HHSC Associate Commissioner,
Intellectual and Developmental Disability and
Behavioral Health Services

AGENDA ITEM: 3.n

SUBJECT: Jail-Based Competency Restoration Program

BACKGROUND: □ Federal ☑ Legislative □ Other: Program Initiative

Senate Bill (S.B.) 1326, 85th Legislature, Regular Session, 2017, directs the
Health and Human Services Commission (HHSC) to adopt rules for a county
to develop and implement a jail-based competency restoration (JBCR)
program. Department of State Health Services (DSHS) originally adopted 25
Texas Administrative Code (TAC), Chapter 416, Subchapter C, relating to
Jail-Based Competency Restoration Pilot Program, pursuant to S.B. 1475,
83rd Legislature, Regular Session, 2013.

[This program was transferred from DSHS to HHSC as part of transformation
required by S.B. 200, 85th Regular Session, 2015.]

The current rules governing the provision of JBCR services took effect
January 2016. The current rules detail guidelines for the following:

• Criteria for provider eligibility;
• Service standards for competency restoration;
• Admission, assessment, and reassessment procedures for participants;
• Required staff member training;
• Provider responsibilities;
• Assessment and treatment planning for participants;
• Minimum program staffing;
• Participant’s rights; and
• Continuity of services and discharge planning.

The current rules do not reflect:

• JBCR services in a county-based JBCR program; and
• Services provided to individuals with intellectual disabilities.
The proposed rules:

- Cover the guidelines detailed in the current rule with the exception of those provisions that no longer align with statutory requirements such as staffing ratios for the JBCR pilot program;
- Apply to a provider of JBCR services in the JBCR pilot program and the county-based JBCR program; and
- Allow provision of services to individuals with intellectual disabilities.

ISSUES AND ALTERNATIVES:

Stakeholder organizations such as Disability Rights Texas and the Texas Sheriff’s Association do not believe individuals deemed incompetent to stand trial should receive services in a jail-based setting and expressed concerns about the rights and safety of individuals. To address these concerns, HHSC added provisions directing providers of JBCR services to:

- Inform individuals receiving JBCR services of individual rights in accordance with 25 TAC Chapter 404, Subchapter E (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;
- Provide individuals with a copy of the rights handbook published for individuals receiving mental health services or individuals with an intellectual disability;
- Explain to individuals receiving JBCR services how to initiate a complaint and contact the HHS Office of the Ombudsman for complaints against JBCR providers; and
- Explain to individuals receiving JBCR services how to initiate a complaint and contact the Texas Commission on Jail Standards for complaints against county jails.

STAKEHOLDER INVOLVEMENT:

HHSC convened a workgroup with internal and external stakeholders to draft new JBCR rules, which met from July 14, 2017, through September 29, 2017. External stakeholder organizations provided extensive feedback primarily focused on ensuring and protecting the rights of participants receiving JBCR services, establishing a minimum standard for competency restoration education to attain competency, and developing performance metrics for JBCR programs. HHSC aligned the rules with the statutory requirements under S.B. 1326. HHSC reviewed and took stakeholder comments into consideration.
External stakeholders included:

- Texas Commission on Jail Standards;
- Texas Department of Criminal Justice-Texas Correctional Office on Offenders with Medical or Mental Impairments;
- Texas Office of Court Administration;
- Communities for Recovery;
- Mental Health America Texas;
- Texas Indigent Defense Commission;
- Disability Rights Texas;
- Texas Council of Community Centers;
- National Alliance on Mental Illness Texas;
- The Harris Center for Mental Health and IDD;
- Bexar County Department of Behavioral and Mental Health;
- The University of Texas-Hogg Foundation for Mental Health;
- The Meadows Mental Health Policy Institute;
- The University of Texas Health Science Center at Houston;
- Texas Indigent Defense Commission;
- Texas Court of Criminal Appeals;
- Joint Committee on Access and Forensic Services;
- Harris County Sheriff’s Office;
- StarCare Specialty Health Systems;
- Kerrville State Hospital;
- Harris County Judge Ed Emmett;
- Lubbock Detention Facility;
- Lubbock County: County Court at Law #2; and
- Harris County District Attorney’s Office

HHSC posted the JBCR draft rules for informal stakeholder review from December 15, 2017, through January 5, 2018.

**FISCAL IMPACT:**

- Yes

The state could experience additional costs for monitoring if counties opt to establish JBCR programs. The expected costs would be related to developing a monitoring instrument, as well as to staff time and travel for monitoring. There is insufficient data available at this time to provide an estimate of possible costs.
SERVICES IMPACT STATEMENT:

The proposed rules:

- Provide greater flexibility in the operation of JBCR programs;
- Support the safe implementation of JBCR programs as an alternative to state hospitalization or state supported living centers;
- Reduce the number and wait times for individuals needing competency restoration treatment in the area where the JBCR program is operated;
- Allow provision of JBCR services to individuals with intellectual disabilities and mental illness; and
- Ensure prompt access for competency restoration services.

RULE DEVELOPMENT SCHEDULE:

April 13, 2018  Publish proposed rules in Texas Register
May 31, 2018  Present to HHSC Executive Council
May 2018  Publish adopted rules in Texas Register
June 2018  Effective date
PROPOSED PREAMBLE

The Texas Health and Human Services Commission (HHSC) proposes the repeal of Subchapter C in its entirety: §416.76, concerning Purpose; §416.77, concerning Application; §416.78, concerning Definitions; §416.79, concerning Program Eligibility; §416.80, concerning Program Standards; §416.81, concerning Admission, Assessment, and Reassessment; §416.82, concerning Written Policies and Procedures; §416.83, concerning Staff Member Training; §416.84 LMHA, LBHA, or MCO Responsibilities; §416.85, concerning Treatment Planning; §416.86, concerning Program Staffing; §416.87, concerning Participant's Rights; §416.88, concerning Competency Restoration Services; §416.89, concerning Competency Restoration Training Module; §416.90, concerning Transition Services; §416.91, concerning Discharge Planning; §416.92, concerning Compliance with Statutes, Rules, and Other Documents; and §416.93, concerning Outcome Measures.

HHSC proposes new §416.76, concerning Purpose; §416.77, concerning Application; §416.78, concerning Definitions; §416.79, concerning Program Eligibility Requirements; §416.80, concerning Service Standards; §416.81, concerning Provider Staff Member Training; §416.82, concerning Policies and Procedures; §416.83, concerning Individual Eligibility, §416.84, concerning Admission; §416.85, concerning Rights of Individuals Receiving JBCR Services; §416.86, concerning Treatment Planning; §416.87, concerning Competency Restoration Education; §416.88, concerning Procedures for Determining Competency Status in a JBCR Program; §416.89, concerning Preparation for Discharge from a JBCR Program; §416.90, concerning Outcome Measures; and §416.91, concerning Compliance with Statutes, Rules, and Other Documents.

BACKGROUND AND PURPOSE

Senate Bill 1475, 83rd Legislature, Regular Session, 2013, authorized the Department of State Health Services (DSHS) to establish a pilot program to provide jail-based competency restoration (JBCR) services and directed the agency to adopt related rules. DSHS adopted 25 TAC Chapter 416, Subchapter C (relating to Jail-Based Competency Restoration Program) to implement this legislation.

Senate Bill 200, 84th Legislature, Regular Session, 2015, transferred certain DSHS mental health responsibilities to HHSC, including JBCR programs, local mental health authorities (LMHAs), and local behavioral health authorities (LBHAs). In accordance with Texas Government Code, §§531.0011 and 531.0012, in interpreting the laws authorizing or affecting this subchapter,
references to DSHS should be read to indicate HHSC. Both the pilot program and the county-based program are HHSC programs.

Senate Bill 1326, 85th Legislature, Regular Session, 2017, provided authority for a county or counties to jointly implement a JBCR program and directed HHSC to adopt rules as necessary for a county to develop and implement a JBCR program. In addition, Senate Bill 1326 revised statutory requirements for the operation of a JBCR pilot program.

Current rules do not reflect the new statutory authority for counties to implement JBCR programs or the requirements that apply to JBCR programs implemented by counties. In addition, current rules do not reflect an integrated approach to care in serving individuals with mental illness or intellectual disability (ID). Further, the current rules reference DSHS, but the programs are now HHSC programs.

The proposed new rules:
1. clarify that providers of JBCR services must be an LMHA, an LBHA, an LMHA or LBHA subcontractor, a private provider, a local unit of general purpose government or city unit of government, or a subcontractor of the unit of government;
2. outline the requirements for operating a JBCR pilot program or county-based JBCR program;
3. in accordance with the Texas Code of Criminal Procedure, Chapter 46B, provide greater flexibility in operating a JBCR pilot program, including removing a staffing ratio no longer required by law;
4. reflect an integrated approach to care by authorizing individuals with mental illness or ID to receive services; and
5. increase readability.

SECTION-BY-SECTION SUMMARY

HHSC proposes to repeal and replace §416.76, §416.77, §416.78, §416.79, §416.80, §416.81, §416.82, §416.83, §416.84, §416.85, §416.86, §416.87, §416.88, §416.89, §416.90, §416.91, and repeal §416.92 and §416.93 as described below.

HHSC proposes the repeal of §416.76, which states the purpose of the subchapter.

Proposed new §416.76 identifies the purpose of the subchapter as establishing standards for JBCR services in pilot and county-based programs. The programs include mental health services, ID services, co-occurring psychiatric and substance use disorder treatment services, competency
restoration education in the county jail for an individual found incompetent to stand trial, and discharge planning services.

HHSC proposes the repeal of §416.77, which states that the subchapter applies to JBCR providers, including LMHAs, LBHAs, and managed care organizations (MCOs).

Proposed new §416.77 states that the subchapter applies to JBCR providers, including LMHAs, LBHAs, LMHA or LBHA subcontractors, private providers, and local units of general purpose government or city units of government or subcontractors of the unit of government delivering authorized JBCR services in accordance with the Texas Code of Criminal Procedure, Chapter 46B.

HHSC proposes the repeal of §416.78 regarding definitions. Current §416.78 includes terminology and definitions not used in the subchapter.

Proposed new §416.78 establishes terminology and definitions used in the subchapter.

HHSC proposes the repeal of §416.79 which establishes eligibility requirements for participant admission to a JBCR program. Eligibility requirements include a determination of incompetence to stand trial, ineligibility for outpatient competency restoration, and assessment and testing.

Proposed new §416.79 establishes eligibility requirements for programs to operate as JBCR pilot programs or county-based JBCR programs, and entities to operate and provide JBCR services. In addition, a JBCR pilot program must meet the requirements of the Texas Code of Criminal Procedure, §46B.090, and a county-based JBCR program must meet the requirements of the Texas Code of Criminal Procedure, §46B.091. Further, the proposed new rule requires LMHAs and LBHAs that contract with a county to provide a county-based JBCR program to comply with the rules of Chapter 412, Subchapter B of this title (relating to Contracts Management for Local Authorities).

HHSC proposes the repeal of §416.80 which sets forth program standards in accordance with Texas Code of Criminal Procedure, §46B.090(f), requiring a provider to be an LMHA in good standing with DSHS, have a history of providing competency restoration services, and demonstrate a successful history of competency restoration outcomes. A provider other than an LMHA must be certified by a nationwide nonprofit organization that accredits health care organizations and programs. The provider must maintain this accreditation while under contract with DSHS to provide competency
restoration services under this subchapter. The provider must have a history of providing JBCR services with successful outcomes. The provider must ensure a county jail requires specially trained security officers demonstrate competency in preventing and managing aggressive behavior. Subcontractors must comply with the sections contained in this subchapter.

Proposed new §416.80 establishes service standards for a JBCR pilot program, based on Texas Code of Criminal Procedure, §46B.090, and a county-based JBCR program, based on Texas Code of Criminal Procedure, §46B.091. The rule requires a JBCR pilot program to use a multidisciplinary treatment team to provide clinical treatment similar to that provided at an inpatient mental health facility, employ or contract with a psychiatrist, and use a qualified mental health professional-community services (QMHP-CS) or qualified intellectual disability professional (QIDP) to provide JBCR program services. The rule requires a county-based JBCR program to use a multidisciplinary treatment team to provide services similar to other competency restoration programs, employ or contract with a psychiatrist or psychologist, use a QMHP-CS or QIDP to provide JBCR program services, ensure coordination of general health care for individuals, provide treatments necessary for competency restoration, and obligate a subcontractor to comply with the provisions in this subchapter.

HHSC proposes the repeal of §416.81 which addresses admission of a participant in a JBCR program and requires assessment and reassessment of the participant.

Proposed new §416.81 establishes requirements for provider staff member training and competency. The rule requires staff members demonstrate documented competency in accordance with 25 TAC Chapter 412 (relating to Organizational Standards). In addition, before providing services, providers must train and ensure competency of staff members in the rights of individuals receiving mental health services; rights of individuals with an ID; identifying, preventing, and reporting abuse, neglect, and exploitation; and using a protocol for the prevention and management of aggressive behavior.

HHSC proposes the repeal of §416.82 which requires the development and implementation of written policies and procedures describing eligibility, intake and assessment, treatment planning processes, and coordination and continuity of care; individualized suicide and homicide prevention plan; monitoring and reporting on restoration of competency and readiness for return to court; additions to the Clearinghouse; tracking commitment expirations; addressing ongoing care and treatment; maintaining a participant’s competency after restoration; and placement after competency is restored.
Proposed new §416.82 requires providers develop and implement written policies and procedures describing eligibility, intake and assessment, treatment planning, and transition and discharge planning processes, including coordination and continuity of care planning with an LMHA, LBHA, or local intellectual and developmental disability authority (LIDDA), or an LMHA, LBHA, or LIDDA subcontractor; describing assessment methods and development of individualized suicide and homicide prevention plans; monitoring and reporting on restoration of competency and readiness for return to court; and maintaining a therapeutic environment during evening and weekend shifts.

HHSC proposes the repeal of §416.83 which sets forth requirements for staff member maintenance of competency and training in rights of participants receiving JBCR services; identifying, preventing, and reporting abuse, neglect, and exploitation; using the protocol for preventing and managing aggressive behavior; and using the training module to provide legal education to participants.

Proposed new §416.83 establishes the requirements for individual eligibility to participate in a JBCR pilot program or a county-based JBCR program. As required by Texas Code of Criminal Procedure, Chapter 46B, a judge or jury must first determine an individual is incompetent to stand trial. The LMHA, LBHA, or LMHA or LBHA subcontractor must screen the individual for outpatient competency restoration services and determine that the individual is not eligible or appropriate for outpatient competency restoration. If an outpatient competency restoration provider is not within the LMHA's or LBHA's local service area to participate in screening an individual for outpatient competency restoration services, the JBCR provider must admit the individual to the JBCR program, if otherwise eligible.

HHSC proposes the repeal of §416.84 which sets forth LMHA, LBHA, or MCO responsibilities for screening participants for outpatient competency restoration services prior to admission to the JBCR program, participating in continuity of care planning, and reporting encounters with participants in the DSHS-approved clinical records management system.

Proposed new §416.84 establishes the process for admission to a JBCR pilot program and a county-based JBCR program once individuals are determined eligible for JBCR services. JBCR services must begin within 72 hours after arriving at the program, or if the program is at capacity, the provider must inform the court and HHSC for placement of the individual on the Clearinghouse. The rule also requires providers to seek a court order for
psychoactive medications when necessary, generally when the medication is medically necessary and the patient refuses the medication.

HHSC proposes the repeal of §416.85 which sets forth requirements for JBCR pilot program provider staff members to complete a treatment plan with the participant within five business days and address applicable treatments needs.

Proposed new §416.85 requires providers to provide a participant in a JBCR program information about the individual’s rights, a copy of the rights handbook, and explain how to initiate a complaint.

HHSC proposes the repeal of §416.86 which sets forth requirements for program staff members and shift staffing including the program coordinator, the participant's multidisciplinary team, and the specially trained security officers.

Proposed new §416.86 establishes requirements for treatment planning for individuals receiving JBCR services. Providers must develop an individual’s treatment plan within five days of admission to the JBCR program. The treatment plan is based on the individual’s competency evaluation and provider assessment and must include the enumerated components.

HHSC proposes the repeal of §416.87 which directs the JBCR provider to comply with the Rights of Participants Receiving Jail-based Competency Restoration Services handbook and provides directions to access the handbook.

Proposed new §416.87 establishes requirements for participant education in the subject of competency restoration. The provider must incorporate multiple learning formats, accommodate individuals with accommodation needs, and submit the competency restoration training module for HHSC review. The section requires the provider to review the participant’s progress towards attaining competency no later than the 14th day after the competency restoration services began.

HHSC proposes the repeal of §416.88 which sets forth requirements of competency restoration services including weekly treatment hours, competency education, rehabilitative skills training, case management, and treatment services. The provider must, when necessary, seek a court order for psychiatric medications in accordance with the Texas Health and Safety Code, §574.106 and the Texas Code of Criminal Procedure, Chapter 46B.
Proposed new §416.88 establishes the procedures for determining competency status in a JBCR program. A psychiatrist for a JBCR pilot program, and a psychiatrist or psychologist for a county-based JBCR programs, must conduct at least two full psychiatric or psychological evaluations for each individual. By the 60th day after the date the individual began the JCBR program, the psychiatrist or psychologist must determine that the individual is: restored to competency; unlikely to restore to competency in the foreseeable future; or not yet restored to competency but will likely restore in the foreseeable future. The section includes requirements for reporting these determinations to the courts and coordinating with provider staff members, courts, and county jails for the transfer or release of individuals pursuant to court action.

HHSC proposes the repeal of §416.89 which requires providers to use a DSHS-approved competency training module to provide legal education for each participant in multiple learning formats by multiple provider staff members with necessary accommodations.

Proposed new §416.89 establishes discharge requirements for individuals determined to have been restored to competency or determined to be unlikely to restore to competency. The section also addresses individuals who have not been restored to competency by the 60th day following their entry into the JBCR program, differentiating those charged with felonies from those charged with misdemeanors.

HHSC proposes the repeal of §416.90 which requires providers to provide transition services to minimize program participation time and provides for a single court-ordered 60-day extension pursuant to the Texas Code of Criminal Procedure, Chapter 46B.

Proposed new §416.90 requires providers to collect and report data to HHSC. The outcome measures include individual outcomes, such as the number of individuals with a felony charge and the number of individuals with a misdemeanor charge restored to competency, and administrative outcomes, such as the cost associated with operating the JBCR pilot program or county-based JBCR program.

HHSC proposes the repeal of §416.91 which sets forth requirements for discharge planning upon discharge or transfer of a participant.

Proposed new §416.91 establishes that providers must comply with all applicable federal and state laws.
HHSC proposes the repeal of §416.92 which enumerates statutes, rules, and other documents with which providers must comply.

HHSC proposes the repeal of §416.93 which establishes outcome measures to be used to determine if a participant's outcomes justify continuing the program.

FISCAL NOTE

Greta Rymal, HHSC Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the proposed repeals and new rules will be in effect, there could be an impact on costs of state government as a result of enforcing and administering the sections as proposed. The state would incur costs for monitoring, should counties opt to establish JBCR programs. There is insufficient data at this time to allow HHSC to provide an estimate of costs.

There could be a cost to local governments if they opt to establish JBCR programs. HHSC assumes these costs would be related to contracting with an LMHA or LBHA to perform the functions of the program, and equipping the county jail to accommodate a mental health treatment program, but HHSC lacks sufficient data to provide an estimate of these costs at this time.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the sections will be in effect:

(1) the proposed rules will not create or eliminate a government program;

(2) implementation of the proposed rules will not create new employee positions;

(3) implementation of the proposed rules will not require an increase or decrease in future legislative appropriations;

(4) the proposed rules will not affect fees paid to the agency;

(5) the proposed rules will create new rules;

(6) the proposed rules will repeal existing rules;

(7) the proposed rules will increase the number of individuals subject to the rules; and
(8) the proposed rules will positively affect the state’s economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Greta Rymal, HHSC Deputy Executive Commissioner for Financial Services, has also determined that there will be no adverse economic impact on small businesses, micro-businesses, or rural communities. Currently, none of these entities operate a JCBR program. Implementation of JCBR programs is voluntary.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

There is no anticipated negative impact on a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to these rules because the rules are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT

Enrique Marquez, HHSC Deputy Executive Commissioner for Medical and Social Services, has determined that for each year of the first five years the rules are in effect, the public will benefit from adoption of the rules. The public benefit anticipated as a result of enforcing or administering the rules is ensuring JBCR providers have standards for delivering competency restoration services in a county jail setting. JBCR services have the potential to reduce the number of non-maximum security defendants on the Clearinghouse determined to be incompetent to stand trial, provide a cost-effective alternative to restoration in a state hospital, and in areas where a JBCR program exists, reduce the demand for state hospital bed days for an individual placed on a forensic commitment.

TAKINGS IMPACT ASSESSMENT

HHSC 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

Written comments on the proposal may be submitted to the Rules Coordination Office, P.O. Box 149030, Mail Code H600, Austin, Texas 78714-9030; or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or by email to HHSRulesCoordinationOffice@hhsc.state.tx.us within 30 days of publication of this proposal in the Texas Register.

To be considered, comments must be submitted no later than 30 days after the date of this issue of the Texas Register. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) e-mailed by midnight on the last day of the comment period. When e-mailing comments, please indicate "Comments on Proposed Rule 25R053" in the subject line.

STATUTORY AUTHORITY

The proposed rules are authorized by the Texas Code of Criminal Procedure, Chapter 46B, relating to Incompetency to Stand Trial, Articles 46B.090 and 46B.091, to adopt rules as necessary to implement the JBCR Pilot Program and for a county to develop and implement a JBCR Program; Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by HHSC and for the administration of Texas Health and Safety Code, Chapter 1001. The proposed rules affect Texas Government Code, §531.0055; and Texas Health and Safety Code, §534.053, §534.058, and §1001.075.

This agency hereby certifies that this proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

For further information, please call: (512) 838-4346.
§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; and

(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
(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 by HHSC in accordance with Texas Health and Safety Code, §533.0356.

(11) LIDDA--Local intellectual and developmental disability authority. An entity designated by HHSC in accordance with Texas Health and Safety Code, §533A.035.

(12) LMHA--Local mental health authority. An entity designated 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 licensed professional counselor;

(C) a licensed clinical social worker;

(D) a licensed psychologist;

(E) an advanced practice registered nurse;

(F) a physician assistant; or

(G) a licensed marriage and family therapist.

(15) Mental illness--An illness, disease, or condition (other than a sole diagnosis of epilepsy, dementia, or substance use disorder) 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. A provider staff member 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; and

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

(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 or psychologist;

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 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 Waitlist, 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;

(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) submit a separate report for each psychiatric or psychological evaluation to the court.

(b) By the end of the 60th day after the date JBCR program services began, 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) If an individual is charged with a misdemeanor or felony, and the 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
§416.76. Purpose.

The purpose of this subchapter is to provide standards, which are consistent with the state mental health facility standards for competency restoration for the Jail-based Competency Restoration Program (program), as required by Texas Code of Criminal Procedure, Articles 46B.073 and 46B.090, through Acts of the 83rd Texas Legislature, Regular Session, as Senate Bill 1475. The program shall include mental health and co-occurring psychiatric and substance use disorder (COPSD) treatment services, as well as competency education in the jail for adult men or adult women found incompetent to stand trial (IST), under Texas Code of Criminal Procedure, Chapter 46B.

§416.77. Application.

This subchapter applies to potential and current providers of jail-based competency restoration services authorized by Texas Code of Criminal Procedure, Chapter 46B, including local mental health authorities (LMHAs), local behavioral health authorities (LBHAs), and managed care organizations (MCOs).

§416.78. Definitions.

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

—(1) Co-occurring psychiatric and substance disorder (COPSD)--The co-occurring diagnoses of psychiatric and substance use disorders.

—(2) Community provider--Any person or legal entity that contracts with DSHS, an LMHA, LBHA, or MCO to provide mental health and substance disorder community services to individuals, including that part of an LMHA, LBHA, or MCO directly providing mental health community services to individuals. The term includes providers of mental health case management services and providers of mental health rehabilitative services.

—(3) Competency restoration--The treatment process for restoring one's ability to consult with his or her attorney with a reasonable degree of rational understanding and a rational and factual understanding of the court
proceedings and charges against them.

—(4) Competency restoration training module (training module)—The DSHS-approved training module to be used by provider staff members who provide competency education during competency restoration.

—(5) Dedicated mental health unit—A designated, separate space in the jail for the provider to conduct the program and where the participant is housed and receives competency restoration education.

—(6) DSHS—The Department of State Health Services.

—(7) DSHS Statewide Forensic Hospital Clearinghouse Waitlist or clearinghouse waitlist—A forensic waiting list for persons committed to one of the state mental health hospitals under the Texas Code of Criminal Procedure, Chapter 46B as incompetent to stand trial (IST) or 46C not guilty by reason of insanity.

—(8) Incompetent to stand trial (IST)—A person is incompetent to stand trial if the person does not have:

——(A) sufficient present ability to consult with the person's lawyer with a reasonable degree of rational understanding; and

——(B) a rational as well as factual understanding of the proceedings against the person.

—(9) Inpatient forensic facility—An entity that provides inpatient forensic mental health treatment such as a state mental health facility.

—(10) Jail-based competency restoration—Competency restoration conducted in a county jail setting that is provided in a dedicated mental health unit.

—(11) Legally authorized representative (LAR)—A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, who may be a parent, guardian, or managing conservator of a minor, the guardian of an adult, or the legal representative of a deceased individual.

—(12) Licensed practitioner of the healing arts (LPHA)—A staff member who is:

——(A) a physician;
(B) a licensed professional counselor;

(C) a licensed clinical social worker (formally a licensed master social worker—advanced clinical practitioner) as determined by the Texas State Board of Social Work Examiners in accordance with Texas Occupations Code, Chapter 505;

(D) a psychologist;

(E) an advanced practice nurse recognized by the Board of Nurse Examiners for the State of Texas as a clinical nurse specialist in psych/mental health or nurse practitioner in psych/mental health; or

(F) a licensed marriage and family therapist.

(13) Local behavioral health authority (LBHA)—An entity designated as the local behavioral health authority in accordance with Texas Health and Safety Code, §533.0356.

(14) Local mental health authority (LMHA)—An entity designated as the local mental authority by DSHS in accordance with the Texas Health and Safety Code, §533.035(a). For purposes of this subchapter, the term includes an entity designated as a local behavioral health authority pursuant to Texas Health and Safety Code, §533.0356.

(15) Managed care organization (MCO)—An entity that has a current Texas Department of Insurance certificate of authority to operate as a health maintenance organization (HMO) in the Texas Insurance Code, Chapter 843, or as an approved nonprofit health corporation in the Texas Insurance Code, Chapter 844, and that provides mental health community services pursuant to a contract with the DSHS.

(16) Mental illness—An illness, disease, or condition (other than a sole diagnosis of epilepsy, senility, substance use disorder or dependency, intellectual or developmental disorder, or autism) 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.

(17) Peer provider—A staff member who:
(A) has received:

(i) a high school diploma; or

(ii) a high school equivalency certificate issued in accordance with the law of the issuing state;

(B) has at least one cumulative year of receiving mental health community services; and

(C) is under the direct clinical supervision of an LPHA.

(18) Program staff member--A person who employed or subcontracted by the jail-based competency restoration program to provide services. Included in program staff are specially trained security officers, all licensed and credentialed staff, and other individuals who are directly contracted or subcontracted to provide services to participants.

(19) Provider--A person or entity that contracts with the DSHS to provide jail-based competency restoration services.

(20) Provider staff member--A person who is employed or subcontracted with the provider for the provision of jail-based competency restoration services.

(21) Qualified mental health professional-community services (QMHP-CS)--A staff member who is credentialed as a QMHP-CS who has demonstrated and documented competency in the work to be performed and:

(A) has a bachelor's degree from an accredited college or university with a minimum number of hours that is equivalent to a major (as determined by the LMHA or MCO in accordance with §412.316(d) of this title (relating to Competency and Credentialing) in psychology, social work, medicine, nursing, rehabilitation, counseling, sociology, human growth and development, physician assistant, gerontology, special education, educational psychology, early childhood education, or early childhood intervention);

(B) is a registered nurse; or

(C) completes an alternative credentialing process identified by the DSHS.
§416.79. Program Eligibility.

(a) To be eligible to participate in the program, participants shall be adult males or adult females who are determined by the court to be incompetent to stand trial (IST) pursuant to Texas Code of Criminal Procedure, Article 46B.

(b) Participants must be screened for outpatient competency restoration (OCR) by the LMHA, LBHA, or MCO and determined to be ineligible for those services before being admitted into the jail-based competency restoration program.

(c) Potential participants who are found to have an intellectual or developmental disability in the absence of any serious mental illness must be referred to the Local Intellectual and Developmental Authority through the LMHA, LBHA, or MCO for a decision regarding the appropriate services for these individuals.

(d) Evaluation for eligibility shall also include assessment and testing to include participant’s current psychological functioning, and the likeliness to restore to competency.

§416.80. Program Standards.

(a) The program shall meet the standards set forth in Texas Code of Criminal Procedure, Article 46B.090(f), as may be amended, and:
(1) upon operation of program services:
   (A) a provider other than an LMHA must be certified by a nationwide nonprofit organization that accredits health care organizations and programs and maintain this accreditation while under contract with DSHS to provide competency restoration services under this subchapter; or
   (B) the provider is an LMHA in good standing with DSHS: and
   (i) has demonstrated a history of successful jail-based competency restoration outcomes; or
   (ii) has demonstrated a history of successful competency restoration outcomes.

(2) use a non-punitive behavior management program; and

(3) use a DSHS-approved protocol for preventing and managing aggressive behavior.

(b) The provider shall ensure that the county jail requires specially trained security officers be trained and demonstrate competency in preventing and managing aggressive behavior such as the Prevention and Management of Aggressive Behavior, Satori Alternatives to Managing Aggression, or other approved preventative de-escalation intervention strategies.

(c) The provider shall through contract obligate sub-contractors to comply with the sections contained in this subchapter.

§416.81. Admission, Assessment, and Reassessment.

(a) Specific deficits in rational and factual understandings of legal proceedings and/or inability to consult with the person’s lawyer with a reasonable degree of rational understanding that result in incompetence to stand trial, as detailed in Texas Code of Criminal Procedure, Chapter 46B, shall be assessed upon admission to the program. These specific deficits, as appropriate, shall be listed individually in the treatment plan and targeted specifically in the participant’s treatment. The treatment team shall work to identify a participant strengths that may assist the participant in overcoming barriers to achieving a factual and rational understanding of legal proceedings and the ability to consult with his or her lawyer with a reasonable degree of rational understanding.

(b) If a potential participant is determined eligible for the program, he or she
shall be admitted to the program not later than 24 hours after the date of the order of commitment. If the jail-based competency restoration program is at capacity, a program staff member must inform the court of such and ensure the potential participant's name is immediately placed on the clearinghouse waitlist.

(c) The treatment team shall review at minimum every two weeks the participant's progression towards attaining competency.

§416.82. Written Policies and Procedures.

The provider shall develop and implement written policies and procedures that:

— (1) describe the eligibility, intake and assessment, and treatment planning processes and address coordination and continuity of care planning with the LMHA, LBHA, or MCO, beginning at admission. Any admission to the program requires a physician's confirmation of eligibility, an order of the court with jurisdiction over the participant, as well as cooperation and close coordination with the LMHA, LBHA, or MCO;

— (2) assess participants for suicidality and homicidality and address any facility-based issues as well as address the degree of suicidality and homicidality by developing an individualized suicide and homicide prevention plan;

— (3) outline the provider staff members' ability to monitor and report to the court a participant's restoration to competency status and readiness for return to court as specified in Texas Code of Criminal Procedure, Article 46.B.079;

— (4) by the 21st day, if it is determined that a participant is not likely to be restored by the 60th day, then the participant's name shall be added to the DSHS Statewide Forensic Clearinghouse Waitlist;

— (5) track the maximum length of stay for a participant based on criminal charges. The expiration date of the competency restoration commitment shall be forwarded to the clearinghouse waitlist in the event that the participant is transferred to a state mental health facility;

— (6) address how provider staff members ensure the ongoing care, treatment, and overall therapeutic environment during evenings and weekends including, but not limited to, behavioral health crisis or physical health crisis consistent with §412.321(a) and (e) of this title (relating to...
Crisis Services);  

(7) address how a participant’s competency is maintained after restoration and before adjudication or transfer to a forensic hospital or discharge to the community. If a person is deemed not likely to restore and is awaiting transfer to a state mental health facility, then treatment in the program (except for competency education) shall continue until the transfer is complete; and  

(8) if a participant is restored to competency he or she shall be placed in the mental health unit pending disposition of the criminal charges.

§416.83. Staff Member Training.

(a) The provider shall recruit, train, and maintain qualified provider staff members, with documented competency in accordance with Chapter 416, Subchapter A of this title (relating to Mental Health Rehabilitative Services) and shall also comply with the following:

(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, all program staff members shall be trained and demonstrate competence in:

(1) Rights of Participants Receiving Jail-Based Competency Restoration Services in §416.87 of this title (relating to Participant’s Rights);

(2) identifying, preventing, and reporting abuse, neglect, and exploitation in accordance with the Texas Commission on Jail Standards; Department of Family and Protective Services; Adult Protective Services; or DSHS Office of Consumer Services and Rights Protection as set forth in applicable state laws and rules concerning abuse, neglect, and exploitation;

(3) using the protocol for preventing and managing aggressive behavior; and

(4) using the training module to provide legal education to participants.
§416.84. LMHA, LBHA, or MCO Responsibilities.

The LMHA, LBHA, or MCO is responsible for:

— (1) screening participants who are determined by the court to be IST for OCR services prior to their admission to the program;

— (2) participating in continuity of care planning for participants; and

— (3) reporting encounters with participants in the DSHS-approved clinical records management system (e.g., Clinical Management for Behavioral Health Services).

§416.85. Treatment Planning.

Based on a comprehensive assessment, provider staff members shall complete the treatment plan with the participant within five business days of a participant’s admission to the program. Treatment planning shall include the participant and any family members or other members of a participant’s natural support system. The treatments shall address the following needs as applicable:

— (1) trauma-informed care;

— (2) physical health concerns/issues;

— (3) medication and medication management;

— (4) level of family and community support;

— (5) mental health concerns or issues;

— (6) intellectual and developmental disabilities;

— (7) substance use disorder or COPSD concerns or issues; and

— (8) discharge plans developed in conjunction with the participant, LAR, and LMHA, LBHA, or MCO, as appropriate, in the event that participant is released to the community upon restoration.

§416.86. Program Staffing.

(a) The program coordinator shall be a licensed practitioner of the healing arts (LPHA), who shall also act as a liaison between the program and the courts. A multidisciplinary treatment team (team) is used to provide clinical
treatment that is directed toward the specific objective of restoring the participant's competency to stand trial and is similar to the clinical treatment provided as part of a competency restoration program at a state mental health facility. The team shall include a psychiatrist, a registered nurse, a psychologist, and an LPHA, each of whom must be licensed by his or her respective Texas licensing board. The provider is encouraged to employ peer providers in addition to the program staff members required in subsection (b) of this section whenever possible.

(b) Program staff members shall be on-site 24 hours per day, seven days per week, which is consistent with a state mental health facility setting.

(c) Program staff members, including specially trained security officers shall be assigned to participants at an average ratio of not lower than 3.7 program staff members to 1 participant.

——(1) Day shift program staffing shall include a minimum of a psychiatrist, a registered nurse, a half-time psychologist, and an LPHA. Two specially trained security officers shall be present as well.

——(2) Evening shift program staffing shall include a registered nurse on site and a psychiatrist shall be available on call. Consistent with jail standards, two specially trained security officers shall be present as well.

——(3) Night shift program staffing shall include a registered nurse on site and a psychiatrist shall be available on call. Consistent with jail standards, two specially trained security officers shall be present as well.

§416.87. Participant’s Rights.

Although program participants are incarcerated while receiving program services, their rights are paramount. The provider shall comply with the Rights of Participants Receiving Jail-based Competency Restoration Services, unless otherwise limited by the rules of the Texas Commission on Jail Standards. The Rights of Participants Receiving Jail-based Competency Restoration Services can be obtained by written request addressed to The Department of State Health Services, Mental Health and Substance Abuse Services, Texas Administrative Code (TAC) rules, P.O. Box 149347, Mail Code 2018-552, Austin, Texas 78714-9347, or by visiting http://www.dshs.state.tx.us/mhsa-rights/.


(a) Competency restoration services shall include the treatment of the
underlying mental illness by a psychiatrist, and the provision of competency restoration education, rehabilitative skills training, case management, and counseling as clinically indicated for competency restoration.

(b) Provider staff members shall provide weekly treatment hours consistent with the treatment hours provided as part of a competency restoration program at a state mental health facility, including but not limited to 15 hours weekly, of rehabilitative services, skills training, substance use disorder treatment and counseling.

(c) The provider shall deliver competency restoration services that provide a full array of mental health and COPSD treatment services that are effective, responsive, individualized, culturally competent, trauma informed, and person-centered. Services shall include, but are not limited to:

— (1) psychiatric evaluation;
— (2) medications;
— (3) nursing services;
— (4) general medical care;
— (5) psychoactive medication, including court-ordered medication;
— (6) rehabilitative services, including skills training or psychosocial rehabilitation provided in accordance with the Chapter 416, Subchapter A of this title (relating to Mental Health Rehabilitative Services);
— (7) competency restoration education; and
— (8) peer provider services, if available.

(d) The provider shall, when necessary, seek a court order for psychiatric medications in accordance with the Texas Health and Safety Code, §574.106 and Texas Code of Criminal Procedure, Chapter 46B.

§416.89. Competency Restoration Training Module.

(a) The provider shall use a DSHS-approved competency training module to provide legal education for each participant.

(b) Each participant shall be educated in multiple learning formats by multiple provider staff members, including but not limited to: discussion,
reading, video and experiential methods such as role-playing, or mock trial. Participants with accommodation needs shall receive adapted materials and approach as needed.

§416.90. Transition Services.

(a) While waiting for his or her case to be resolved, provider staff members shall provide transition services in an effort to minimize the length of time a participant is in the program. Transition services shall be provided in a mental health unit, if a participant is:

—(1) restored to competency;

—(2) deemed not likely to restore and waiting for an inpatient forensic hospital bed; or

—(3) deemed not likely to restore and awaiting return to the community.

(b) The court may order a single extension of 60 days under the Texas Code of Criminal Procedure, Article 46B.080 and the transfer of the defendant without unnecessary delay to the appropriate state mental health facility or residential care facility as provided by the Texas Code of Criminal Procedure, Article 46B.073(d) for the remainder of the period under the extension.

§416.91. Discharge Planning.

(a) Upon discharge or transfer of a participant, the participant's medical record shall identify the services provided, diagnoses, treatment plan, medication and medication allergies and/or other known precautions.

(b) A reasonable and appropriate discharge plan developed in accordance with Chapter 412, Subchapter D of this title (relating to Mental Health Services—Admission, Continuity, and Discharge), shall be jointly developed by the provider staff, the participant, the LAR if available, the courts, the LMHA, LBHA, or MCO, state mental health facility, or other inpatient forensic facility. If applicable, discharge planning shall include, at a minimum, the following activities.

—(1) If a participant is restored to competency and he or she is returning to the community or other provider (including jail), the provider shall:

——(A) deliver counseling to prepare the participant and LAR, if any, for care after discharge or transfer;
——(B) identify and recommend the clinical services and supports needed by the participant after discharge to the community or other provider, including jail;

——(C) identify a community provider in collaboration with the participant and LAR to determine where the participant will be referred for any services or supports after discharge or transfer;

——(D) prepare and forward to the LMHA, LBHA, MCO, or other provider (including jail) a continuing care plan signed by the participant's treating physician that includes all elements relating to discharge planning that are required by Chapter 412, Subchapter D of this title; and

——(E) provide seven days of psychoactive medication if a participant is being discharged to the community.

——(2) If a participant is not restored to competency and is transferring to a state mental health facility or other inpatient forensic facility, the provider shall:

——(A) notify the DSHS staff member responsible for maintaining the clearinghouse waitlist within 24 hours;

——(B) deliver counseling to prepare the participant and LAR, if any, for care after transfer;

——(C) identify and recommend the clinical services and supports needed by the participant after transfer; and

——(D) prepare and forward to the state mental health facility or other inpatient forensic facility a continuing care plan signed by the participant's treating physician that includes all elements relating to discharge planning that are required by Chapter 412, Subchapter D of this title.

(c) The psychiatrist for the provider shall conduct at least two full psychiatric evaluations of the defendant during the period the defendant receives competency restoration services in the jail. The psychiatrist must conduct one evaluation not later than the 21st day and one evaluation not later than the 55th day after the date the defendant begins to participate in the program. The psychiatrist shall submit to the court a report concerning each evaluation required under this subsection.

(d) If within 60 days of the participant’s admission to the program, the psychiatrist for the provider makes a determination in accordance with
paragraphs (1) or (2) of this subsection, the psychiatrist shall promptly notify, issue, and send to the court a report when a participant:

——(1) has attained competency to stand trial; or

——(2) is deemed not likely to attain competency within the foreseeable future.

(e) If the psychiatrist for the provider determines that a participant ordered to participate in the program and charged with a felony has not been restored to competency by the end of the 55th day after the date the participant entered the program, the psychiatrist shall advise the court whether the participant is likely to restore within the next five days. If the participant is deemed:

——(1) not likely to restore within the next five days, a provider staff member shall:

——(A) contact the DSHS staff member responsible for the clearinghouse waitlist to add the participant's name within 24 hours of the psychiatrist's determination;

——(B) send via fax or other electronic means all medical and legal records required by the staff member who maintains the clearinghouse waitlist within 48 hours of the psychiatrist's determination; and

——(C) ensure that the participant is transported to a state mental health facility for continued treatment within 48 hours; or

——(2) If likely to restore within the next five days, the participant may remain in the program until the 60th day.

(f) If the psychiatrist for the provider determines that a participant ordered to participate in the program and charged with a misdemeanor has not been restored to competency by the end of the 55th day after the date the participant entered the program, the psychiatrist shall advise the court whether the participant is likely to restore within the next five days. If the participant is deemed not likely to restore within the next five days:

——(1) the court may order a single extension under Texas Code of Criminal Procedure, Article 46B.080 and the transfer of the defendant without unnecessary delay to the appropriate state mental health facility or residential care facility as provided by the Texas Code of Criminal Procedure, Article 46B.073(d) for the remainder of the period under the extension:
(A) provider staff shall contact the DSHS staff member responsible for the clearinghouse waitlist to add the participant's name within 24 hours of the psychiatrist's determination;

(B) provider staff shall send via fax or other electronic means all medical and legal records required by the staff member who maintains the clearinghouse waitlist within 48 hours of the psychiatrist's determination; and

(C) provider staff shall ensure that the participant is transported to a state mental health facility for continued treatment within 48 hours; or

(2) the court may proceed under Subchapter E or F of the Texas Code of Criminal Procedure, Article 46B; or

(3) the court may release the participant on bail as permitted under the Texas Code of Criminal Procedure, Chapter 17; or

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

§416.92. Compliance with Statutes, Rules, and Other Documents.

(a) The provider shall comply with the following:

(1) Texas Code of Criminal Procedure, Chapter 46B;

(2) Texas Health and Safety Code, Chapter 574;

(3) 25 TAC Part 1:

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

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

(G) Chapter 417, Subchapter K (relating to Abuse, Neglect, and Exploitation in TDMHMR Facilities);

(4) 37 TAC Part 9 (relating to Texas Commission on Jail Standards); and

(5) Rights of Participants Receiving Jail-based Competency Restoration Services in §416.87 of this title (relating to Participant's Rights).

(b) Concerning confidentiality, the provider shall comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and other applicable federal and state laws, including, but not limited to:

(1) 42 Code of Federal Regulations (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; and §533.009, §533.035(a), §572.004, §576.005, §576.007, and §614.017;

(6) Texas Government Code, Chapters 552 and 559, and §531.042;

(7) Texas Human Resources Code, Chapter 48;

(8) Texas Occupations Code, Chapter 159; and

(9) Texas Business and Commerce Code, §521.053.

§416.93. Outcome Measures.

The following measures shall be used to determine if a participant's outcomes justify continuing the program. The provider shall collect data on the following:

(1) participant outcomes:
(A) the number of participants on felony charges;

(B) the number of participants on misdemeanor charges;

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

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

(E) the number of participants for whom an extension was sought;

(F) the number of participants who were restored to competency;

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

(H) the percentage of participants:

(i) who are restored to competency in 60 days or less; and

(ii) who are restored to competency and avoid re-arrest for six months following discharge to the community;

(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 participants who were not restored and who were transferred to a state mental health facility.

(2) Administrative outcomes:

(A) the costs associated with operating the program relative to an OCR program or hospitalization in a state mental health facility; and

(B) the number of reported, and confirmed cases of abuse, neglect, and exploitation, rights violations, use of restraint and seclusion, emergency medication, injury, and deaths.