

**\*\*This subchapter is being repealed in its entirety and re-proposed as new. Please refer to the current version of the rules on the Texas Administrative Code [website](#).**

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 JBCR 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; and
- \_\_\_\_\_ (4) competency restoration education in the county jail for an individual found incompetent to stand trial.

§416.77. Application.

This subchapter applies to an LMHA, LBHA, an LMHA or LBHA subcontractor, and a private provider delivering JBCR services authorized by TCCP, 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) CFR--Code of Federal Regulations.
- \_\_\_\_\_ (2) Competency restoration--The treatment 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.
- \_\_\_\_\_ (3) 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.

(4) Court--A court of law presided over by a judge, judges, or a magistrate in civil and criminal cases.

(5) COPSD--Co-occurring psychiatric and substance use disorder. A diagnosis of both a mental illness and a substance use.

(6) HHSC--Texas Health and Human Services Commission or its designee.

(7) ID--Intellectual disability. Consistent with THSC §591.003, significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and originating before age 18.

(8) Individual--A person receiving services under this subchapter.

(9) 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.

(10) 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.

(11) 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 TCCP §46B.091.

(B) Pilot program--A jail-based competency restoration pilot program implemented in accordance with TCCP §46B.090.

(12) LBHA--Local behavioral health authority. An entity designated as the local behavioral health authority by HHSC in accordance with THSC §533.0356.

(13) LIDDA--Local intellectual and developmental disability authority. An entity designated by the executive commissioner of HHSC in accordance with THSC §533A.035.

(14) LMHA--Local mental health authority. An entity designated by the executive commissioner of HHSC in accordance with THSC, §533.035(a).

(15) 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.

(16) 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.

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

(18) 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.

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

(20) 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).

(21) 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.

(22) Significantly sub-average general intellectual functioning--Consistent with THSC §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) Serious injury--An injury determined by a physician to require medical treatment by a licensed medical professional (e.g., physician, osteopath, dentist, physician's assistant, or advance practice nurse) or requires medical treatment in an emergency department or licensed hospital.

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

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

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

(27) TCCP--Texas Code of Criminal Procedure.

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

(29) THSC--Texas Health and Safety Code.

#### §416.79. Program Eligibility Requirements.

(a) The JBCR pilot program must meet the standards set forth in TCCP §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:

(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 TCCP §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.

#### §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:

(1) recruit, train, and maintain qualified provider staff members with documented competency in accordance with Subchapter A of this chapter (relating to Mental Health Rehabilitative Services); and

(2) comply with:

(A) §412.314(e) of this title (relating to Access to Mental Health Community Services);

(B) §412.315 of this title (relating to Medical Records System); and

(C) §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 TCCP §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 TCCP, 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.

§416.84. Admission.

(a) When a provider determines an individual 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 psychiatric medications in accordance with THSC §574.106 and TCCP, Chapter 46B.

(c) A provider must provide to and review with the individual a copy of the rights handbook as described in 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).

§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 contact the HHS Office of the Ombudsman for complaints against the JBCR provider; and

(4) explain to the individual receiving JBCR services how to initiate a complaint and contact the Texas Commission on Jail Standards for complaints against the county jail.

§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) trauma-informed care;

(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 COPSD 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 TCCP, 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 restored to competency, is unlikely to restore to competency in the foreseeable future, or will not restore to competency. If the psychiatrist or psychologist determines the individual:

(1) restored to competency, the psychiatrist or psychologist must send a report to the court demonstrating this determination;

(2) is unlikely to restore 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 TCCP, Chapter 46B, Subchapter E or Subchapter F; or

(B) release the defendant on bail under TCCP, Chapter 17; or

(3) has not restored to competency but will likely restore 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 TCCP §46B.080;
- (ii) proceed under TCCP, Chapter 46B, Subchapter E or Subchapter F;
- (iii) release the defendant on bail under TCCP, Chapter 17; or
- (iv) dismiss the charges in accordance with TCCP §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 restores to competency, the psychiatrist or psychologist for the JBCR program must coordinate with provider staff members to link the individual for 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 restore to competency in the foreseeable future, the psychiatrist or psychologist must coordinate with provider staff members to link the individual for 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 does not restore 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 restore to competency;

\_\_\_\_\_ (D) the average number of days for an individual charged with a misdemeanor to restore 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;

\_\_\_\_\_ (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; 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) A provider must comply with:

\_\_\_\_\_ (1) THSC, 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) THSC, Chapter 81, Subchapter F;

(4) THSC, Chapter 241, Subchapter G;

(5) THSC, Chapters 181, 595, and 611;

(6) THSC, §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.