

January 6, 2020

Via electronic submission to:
HHSRulesCoordinationOffice@hhsc.state.tx.us

COMMENT LETTER

HHSC Rules Coordination Office

Re: Draft 26 TAC, Part 1, Chapter 307, Behavioral Health Delivery System, concerning Outpatient Competency Restoration (OCR), Project No. #18R054

To whom it may concern:

On behalf of our more than 470 member hospitals and health systems, including rural, urban, children's, teaching and specialty hospitals, the Texas Hospital Association is pleased to submit the comments on the Texas Health and Human Services Commission's draft 26 TAC, Part 1, Chapter 307, Behavioral Health Delivery System, concerning Outpatient Competency Restoration (OCR). THA appreciates the THHSC's commitment to an open and transparent rulemaking process.

With regard to the draft rules, THA urges HHSC to reconsider its approach to draft section 307.175, entitled "Compliance with Statutes and Rules." Administrative rules should provide clear, pertinent guidance to the affected individuals. However, as proposed, section 307.175 would require an OCR provider to comply with a long list of statutory and regulatory references, many of which do not apply and others that present a questionable nexus to the outpatient competency restoration process. Our concern is that section 307.175 could potentially create confusion as to whether a provider is required to comply with statutes or regulations that it would not otherwise be subject to merely by serving as an outpatient competency restoration provider. For example, the reference to the provisions in Health & Safety Code, chapter 241, apply only to general and special hospitals. By consulting the list of statutes and rules, an OCR provider may very well believe compliance with hospital licensing laws is required as a condition to being an OCR provider. Other cited chapters only apply to licensed psychiatric hospitals or a licensed psychiatric unit within a general or special hospital. It is further unclear whether the referenced rules and regulations would apply only during the provision of OCR services or to an OCR provider at all times. Finally, implementing a regulation that references compliance with other statutes and regulations is unnecessary and burdensome. The OCR provider either is or is not required to comply with the referenced provisions by virtue their provider classification and the type of services undertaken. The references to extraneous sections and chapters only serves to create an atmosphere of ambiguity and potential regulatory compliance trap for providers who are not otherwise subject to the provisions contained in the draft rule. Including a list of potentially implicated rules and statutes and regulations within a proposed rule offers no additional guidance to a provider because the provider must review each one — in many cases entire chapters — to discern whether it is applicable. If THHSC wishes to clarify a particular rule or statute, THHSC should expound upon it by way of meaningful, written guidance, rather than through rote citation.

We appreciate your consideration of these comments. Should you have any questions or need additional information, please do not hesitate to contact me at 512/465-1000 or swohleb@tha.org.

Respectfully submitted,

A handwritten signature in black ink that reads "Stephen G. Wohleb". The signature is written in a cursive, flowing style.

Stephen G. Wohleb
Senior Vice President and General Counsel
Texas Hospital Association