



**Report on the
Jail-Based Competency Restoration
Pilot Program
Second Quarter Fiscal Year 2017**

**As Required By
The 2016-17 General Appropriations Act, H.B. 1,
84th Legislature, Regular Session, 2015 (Article II,
Department of State Health Services, Rider 70)**

**Health and Human Services Commission
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1. Executive Summary

The 2016-17 General Appropriations Act, H.B. 1, 84th Legislature, Regular Session, 2015 (Article II, Department of State Health Services, Rider 70), required the Department of State Health Services (DSHS) to conduct a Jail-Based Competency Restoration (JBCR) Pilot Program. Rider 70 states "[o]ut of funds appropriated...in Strategy B.2.3 Community Mental Health Crisis Services, the Department of State Health Services shall allocate \$1,743,000 in...the 2016-17 biennium in General Revenue to be used only for the purpose of conducting a JBCR pilot program established under Article 46B.090 of the Texas Code of Criminal Procedure, as a continuation of the pilot program started by the [S.B. 1475] 83rd Legislature, [Regular Session, 2013]."

Pursuant to S.B. 200, 84th Legislature, Regular Session, 2015, the DSHS Mental Health and Substance Abuse (MHSA) Division transferred to the Health and Human Services Commission (HHSC) on September 1, 2016. As a result, HHSC is now responsible for the JBCR Pilot Program and is required to continue the submittal of interim quarterly progress reports no later than 15 business days after the end of each fiscal quarter. This report covers the second quarter of fiscal year 2017, from December 2016 to February 2017.

The JBCR Pilot Program will provide JBCR services to individuals with mental health or co-occurring psychiatric and substance abuse disorders (COPSD). Participants will also receive individualized behavioral health treatment services. Goals of the JBCR Pilot Program include:

- reducing the number of defendants on the State Mental Health Program Clearinghouse waiting list determined to be incompetent to stand trial due to mental illness and/or COPSD issues;
- providing prompt access to clinically appropriate treatment; and
- providing access to services to restore competency.

Texas Administrative rules governing the provision of JBCR services were adopted January 2016. The JBCR Pilot Program experienced delays in implementation due to a lack of a strong competitive pool during the procurement process. Since the procurement effort in fiscal year 2016 closed with no awardee identified, HHSC is now exploring the option of contracting with a local mental health authority (LMHA) with the required experience and capacity to operate a JBCR Pilot Program. The LMHA will be required to be in good standing with HHSC and meet the additional statutory requirements as outlined in 25 Texas Administrative Code (TAC), Part 1, Chapter 416. HHSC anticipates services will begin the first quarter of fiscal year 2018 pending decisions regarding availability of funding. Revisions to the rule would allow greater flexibility in required staffing patterns and would allow existing community resources to be leveraged for the provision of competency restoration services.

2. Introduction

The 2016-17 General Appropriations Act, H.B. 1, 84th Legislature, Regular Session, 2015 (Article II, DSHS, Rider 70), required DSHS to conduct a JBCR Pilot Program. Rider 70 states "[o]ut of funds appropriated...in Strategy B.2.3 Community Mental Health Crisis Services, the Department of State Health Services shall allocate \$1,743,000 in...the 2016-17 biennium in General Revenue to be used only for the purpose of conducting a jail-based restoration of competency pilot program established under Article 46B.090 of the Texas Code of Criminal Procedure, as a continuation of the pilot program started by the [S.B. 1475,] 83rd Legislature, [Regular Session, 2013]."

Pursuant to S.B. 200, 84th Legislature, Regular Session, 2015, the DSHS MHSA Division transferred to HHSC on September 1, 2016. As a result, HHSC is now responsible for the JBCR Pilot Program and is required to submit interim quarterly progress reports to the Legislative Budget Board, Chair of the House Appropriations Committee, Chair of the Senate Finance Committee, Speaker of the House of Representatives, and the Lieutenant Governor no later than 15 business days after the end of each fiscal quarter.

This second quarter report for fiscal year 2017 provides a brief summary of activities for the JBCR Pilot Program.

3. Background

S.B. 1475, 83rd Legislature, Regular Session, 2013, amended Article 46B.090 of the Texas Code of Criminal Procedure to establish a JBCR Pilot Program. The 2014-15 General Appropriations Act, S.B. 1, 83rd Legislature, Regular Session, 2013 (Article II, DSHS, Rider 74) appropriated funds to develop and implement the pilot program in one or two counties in the state. DSHS was permitted to adopt rules in consultation with external stakeholders, for implementation of the pilot program.

The legislation requires the provider of JBCR services under the pilot program to meet the following requirements:

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

3.1 Stakeholder Workgroup

S.B. 1475 directed DSHS to establish a workgroup of external stakeholders for input and guidance in the development of rules governing the pilot. Entities or individuals represented on the workgroup included:

- Dallas County Sheriff
- Andrews Center Behavioral Healthcare System

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

The workgroup met in fiscal year 2014 to provide input on the development of JBCR Pilot Program rules, as well as the development of an exhibit to the rule, *Rights of Participants Receiving Jail-based Competency Restoration Services*. A copy of the exhibit to the rule is included in Appendix A. The workgroup dissolved at the end of fiscal year 2014 after completing its charge.

4. Program Development and Implementation

The JBCR Pilot Program will provide JBCR services to individuals with mental health or COPSD. JBCR services include behavioral health treatment services and competency education for individuals found incompetent to stand trial (IST), consistent with competency restoration services provided in state mental health facilities. In addition, the Behavioral Health Services Section established the following goals of the JBCR Pilot Program:

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

4.1 Rules Development

Based on feedback from the stakeholder workgroup, draft rules for the JBCR Pilot Program were initially presented at the February 2014 DSHS Council meeting and published in the *Texas Register* on March 21, 2014. However, necessary changes to the rules related to staffing and programmatic activities were identified; therefore, DSHS formally withdrew the rules in September 2014.

In October 2014, revised draft rules were distributed to a broad spectrum of stakeholders for informal comment. In February 2015, DSHS reintroduced the revised JBCR Pilot Program rules at the DSHS Council meeting.

The 2015 proposed rules differed from the 2014 draft proposed rules in the areas of program staffing, standards, assessment, transition services, and outcome measures. The most significant change was in required staffing. Under the revised staffing requirements, the day shift will have more substantial services and the JBCR Pilot Program providers will be responsible for collaborating with jail staff to ensure the safety and welfare of individuals admitted into the pilot program, also referred to as “participants,” in the evening, night, and weekend hours. The rules were published in the June 26, 2015, edition of the *Texas Register* for public comment.

In January 2016, HHSC adopted final rules, 25 TAC, Part 1, Chapter 416, Subchapter C, which incorporated stakeholder feedback.

4.2 Pilot Program Implementation

HHSC Behavioral Health Services staff prepared to initially implement the JBCR Pilot Program in December 2013. A Request for Information was distributed to solicit stakeholder input and assess interest among potential providers. As a result, several LMHAs and private organizations expressed an interest in operating the pilot program. In February 2014, HHSC developed and distributed a formal request for proposal (RFP) procurement document. In response to this RFP, HHSC received one proposal.

In May 2014, HHSC selected the tentative contractor and began negotiations. During the course of negotiations, issues arose regarding the program staffing ratio and the staffing requirements for day, evening, and night shifts as defined in 25 TAC, Chapter 416, Subchapter C. Additionally, the RFP changed the contract type from a vendor to sub-recipient which impacted the viability of the procurement. As a result, the RFP was withdrawn since the change could result in additional interest among possible vendors.

HHSC Behavioral Health Services staff distributed a second RFP on January 13, 2016. A vendor conference was held on January 27, 2016. In attendance were LMHAs and private organizations expressing an interest in operating the pilot program. Vendors submitted questions regarding the RFP and HHSC formally responded on February 26, 2016. Per the request of the vendors, HHSC extended the deadline for submission of the proposals from February 29, 2016, to March 4, 2016. In response to this RFP, HHSC received one proposal.

On March 4, 2016, contract negotiations failed with the sole respondent due to the inability to reach resolution regarding the staffing pattern requirements as defined in statute and rule, as well as the RFP change from contractor to sub-recipient status. As a result, HHSC explored the option of contracting with an LMHA with the required experience and capacity to operate a JBCR Pilot Program. The LMHA will be required to be in good standing with HHSC and meet the statutory requirements as outlined in 25 TAC, Part 1, Chapter 416.

4.2.1 Implementation Update

On September 30, 2016, LMHAs were notified of an opportunity to submit proposals for the development of the pilot program based on local need and capacity. HHSC received one proposal and is in discussions with the provider regarding implementation. The potential vendor requested HHSC explore the feasibility of modifying the JBCR TAC rules regarding staffing patterns to include the following, as examples:

- Use of a part-time psychiatrist versus a full-time psychiatrist
- Use of a part-time program coordinator versus a full-time program coordinator
- Require a registered nurse to be on-call, available to respond when needed, during evening and night shifts versus face-to-face

The LMHA also requested rule revisions to allow greater flexibility in leveraging existing community resources in the provision of competency restoration services to include county jail staff and community hospital medical personnel. HHSC is in the process of evaluating these recommendations.

5. Conclusion

The JBCR Pilot Program has experienced delays in implementation due to a lack of strong interest in the procurement opportunity and a competitive pool. Rules governing the provision of JBCR services were adopted in January 2016.

Since the procurement effort in fiscal year 2016 closed with no awardee identified, HHSC is now actively exploring the option of contracting with an LMHA with the required experience and capacity to operate the JBCR Pilot Program. The LMHA will be required to be in good standing with HHSC and meet the statutory requirements as outlined in 25 TAC, Chapter 416, Subchapter C. HHSC anticipates services will begin in the first quarter of fiscal year 2018 pending decisions regarding availability of funding. Revisions to the rule would allow greater flexibility in required staffing patterns, and would allow existing community resources to be leveraged for the provision of competency restoration services.

List of Acronyms

Acronym	Full Name
COPSD	Co-occurring Psychiatric and Substance Abuse Disorders
DSHS	Department of State Health Services
H.B.	House Bill
HHSC	Health and Human Services Commission
IST	Incompetent to Stand Trial
JBCR	Jail-Based Competency Restoration
LMHA	Local Mental Health Authorities
MHSA	Mental Health Substance Abuse
RFP	Request for Proposals
S.B.	Senate Bill

Appendix A: Rights of Participants Receiving Jail-Based Competency Restoration Services

Section 1. Purpose.

The purpose of this document is to:

- (1) provide participants receiving JBCR program services:
 - (A) a list of the specific rights guaranteed to them unless otherwise restricted by rules of the Commission on Jail Standards;
 - (B) assurance that these rights will be made known to them, and, when applicable, to their legally authorized representative (LAR); and
 - (C) assistance in exercising their rights in a manner which does not conflict with the rights of other participants;
- (2) require the development of rights handbooks and their distribution to participants receiving JBCR program services and, when applicable, to the participant's LAR and other interested parties;
- (3) require the appointment of a rights protection officer at each jail where competency restoration services are provided; and
- (4) make the provider's staff members and specially trained security officer(s) aware of the rights of participants receiving JBCR program services.

Section 2. Application.

The provisions set forth in this document shall apply to providers of JBCR program services. Although program participants are incarcerated while receiving program services, their rights as set forth in this Rights of Participants Receiving Jail-based Competency Restoration Services, Exhibit A are paramount. The provider shall comply with this Exhibit A, unless otherwise limited by the rules of the Texas Commission on Jail Standards.

Section 3. Definitions.

The following words and terms, when used in this document, shall have the following meanings, unless the context clearly indicates otherwise:

Aversive conditioning-- A highly restrictive behavior intervention designed to eliminate undesirable behavior patterns through learned associations with unpleasant stimuli or tasks.

Behavior interventions--The actions taken to increase socially adaptive behavior and to modify maladaptive or problem behaviors and replace them with behaviors and skills that are adaptive and socially productive. Also referred to as "behavior management," "behavior training," "behavior therapy," and similarly related terms.

Behavioral emergency--A situation that in the opinion of the treating physician, the immediate use of medication, or, in the opinion of the treating physician or other appropriate professional, the immediate use of restrictive techniques is essential to interrupt imminent physical danger to self or others.

Community center--A community mental health center established under Texas Health and Safety Code, Chapter 534.

Competency restoration services--The treatment process for restoring one's ability to consult with his or her attorney with a reasonable degree of rational understanding, as well as a rational and factual understanding of the proceedings against them.

Department--The Department of State Health Services.

Hospital--

- (1) A general or specialty hospital, or, any part of a hospital in which diagnosis, treatment, and care for persons with mental illness is provided and that is licensed by the department under the Texas Health and Safety Code, Chapter 241 as defined in the Texas Health and Safety Code, §241.003(4) and §241.003(11).
- (2) A psychiatric hospital licensed by the Department of State Health Services under the Texas Health and Safety Code, Chapter 577 offering inpatient services, including treatment, facilities, and beds for use beyond 24 hours, for the primary purpose of providing psychiatric assessment and diagnostic services and psychiatric inpatient care and treatment for mental illness. Such services must be more intensive than room, board, personal services, and general medical and nursing care. Although substance abuse services may be offered, a majority of beds (51%) must be dedicated to the treatment of mental illness in adults. Services other than those of an inpatient nature are not licensed or regulated by the Department of State Health Services and are considered only to the extent that they affect the stated resources for the inpatient components.

Informed consent--The knowing written consent of a participant or the participant's legally authorized representative, so situated as to be able to exercise free power of choice without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion. The basic elements of information necessary for informed consent include all of the following presented in language or format easily understood by the participant:

- (1) a thorough explanation of the procedures to be followed and their purposes, including identification of any experimental procedures;
- (2) a description of any attendant discomforts and reasonably expected risks;
- (3) a description of any reasonably expected benefits;
- (4) a disclosure of any appropriate alternative procedures as well as their reasonably expected risks and benefits, including those that might result if no procedure is utilized; and
- (5) an offer to answer any questions about the procedures.

Intrusive searches--The tactile and/or visual examination of a participant's partially clothed (a state of undress that would not be acceptable in public) or fully unclothed body, personal belongings, or space designated for the storage of the participant's personal belongings. Intrusive searches do not include:

- (1) routine searches of belongings for contraband at the time of admission, return from pass, or transfer as allowed by the Texas Commission on Jail Standards;
- (2) superficial external pat-downs by staff as allowed by the Texas Commission on Jail Standards ;
- (3) daily room checks for housekeeping and chore completion;
- (4) physical assessments by nurses and physicians; and
- (5) searches of the participant's outer clothing, hair, or mouth, unless the search is resisted by or objected to by the person, in which case all procedures for intrusive searches are to be followed.

Jail-based competency restoration (JBCR)--The mental health and educational services for people found incompetent to stand trial. Incompetency and presumptions of incompetency are defined and outlined in the Texas Code of Criminal Procedure, Chapter 46B.

Legally authorized representative (LAR)--A person authorized by law to act on behalf of an adult with regard to a matter described in this document including, but not limited to, a parent, guardian, or managing conservator.

Mental health services--Includes all services concerned with research, prevention, and detection of persons deemed IST and all services necessary to treat, care for, supervise, and rehabilitate persons deemed IST.

Office of Consumer Services and Rights Protection (CSRP)--The office located within the department, Mental Health and Substance Abuse Services Division, which maintains the toll-free telephone line (1-800-252-8154), and toll free TDD number (1-800-735-2988) to receive rights-related complaints from participants receiving competency restoration services. The CSRP is responsible for assisting participants receiving competency restoration services with needed services and rights protection.

Program--A jail-based competency restoration program.

Provider--A person or entity that contracts with the department to provide jail-based competency restoration services.

Psychiatric emergency--A situation in which, in the opinion of the physician, it is immediately necessary to administer medication to ameliorate the signs and symptoms of a patient's mental illness and to prevent:

(A) imminent probable death or substantial bodily harm to the patient because the patient:

(i) is threatening or attempting to commit suicide or serious bodily harm; or

(ii) is behaving in a manner that indicates that the patient is unable to satisfy the patient's need for nourishment, essential medical care, or self-protection; or

(B) imminent physical or emotional harm to others because of threats, attempts, or other acts the patient makes or commits.

Rights protection officer--A staff member appointed by the provider administrator to protect and advocate for the rights of participants.

Staff member-- An individual hired by the program administrator or, a subcontractor for delivery of jail-based competency restoration services.

Texas Commission on Jail Standards--The regulatory agency for all county jails and privately operated municipal jails in the state which maintains the telephone line (512-463-5505) that can be used to make a rights-related complaint from persons receiving services at facilities regulated by the Texas Commission on Jail Standards.

Unusual medications--Medication that has not been approved by the Food and Drug Administration for use in the United States, or medication that is being used to treat conditions for which its use has not been demonstrated through rational scientific theory and evidence in biomedical literature, controlled clinical trials, or expert medical opinion.

Section 4. Rights of All Participants Receiving JBCR Services.

Participants receiving competency restoration services from a provider have the following rights.

- (1) The rights, benefits, responsibilities, and privileges guaranteed by the constitutions and laws of the United States and the State of Texas, unless they have been restricted by specific provisions of law. These rights include, but are not limited to, the right to impartial access to and provision of treatment, regardless of race, nationality, religion, sex, ethnicity, sexual orientation, age or disability; the right to petition for *habeas corpus*; the right to register and vote at elections; the right to acquire, use, and RIGHTS OF PARTICIPANTS –EXHIBIT A. dispose of property including contractual rights; the right to sue and be sued; all rights

- relating to the granting, use, and revocation of licenses, permits, privileges, and benefits under law; the right to religious freedom; and rights concerning domestic relations.
- (2) The right to a humane treatment environment that ensures protection from harm, provides privacy to as great a degree as possible with regard to personal needs, and promotes respect and dignity for each participant.
 - (3) The right to appropriate treatment in the least restrictive appropriate setting available consistent with the protection of the participant and the protection of the community.
 - (4) The right to be informed of those rules and regulations of the provider relating to expectations of the participant's conduct. A staff member shall document in the medical record the date and manner in which this information was provided.
 - (5) The right to communication in a language and format understandable to the participant for all services provided.
 - (6) The right to participate actively in the development and periodic review of an individualized treatment plan (extending to the LAR, when applicable and a designated advocate, when applicable); and the right to a timely consideration of any request for the participation of any other person in this process, with the right to be informed of the reasons for any denial of such a request. A staff member shall document in the medical record that the LAR or other person was notified of the date, time, and location of each meeting so that he or she could participate.
 - (7) The right to explanations of the care, procedures, and treatment to be provided; the risks, side effects, and benefits of all medications and treatment procedures to be used, including those that are unusual or experimental; the alternative treatment procedures that are available; and the possible consequences of refusing the treatment or procedure. This right extends to the LAR when applicable, and to any other person authorized by the participant.
 - (8) The right to meet with the professional staff members responsible for the participant's care and to be informed of their professional discipline, job title, and responsibilities. In addition, the participant has the right to an explanation of the justification involving any proposed change in the appointment of staff members responsible for the participant's care.
 - (9) The right to obtain an independent psychiatric, psychosocial, psychological, or medical examination or evaluation by a psychiatrist, physician, or non-physician mental health professional of the participant's choice at the participant's own expense. The JBCR program administrator shall allow the participant to obtain the examination or evaluation at any reasonable time.
 - (10) The right to be granted an in-house review of the participant's treatment plan or specific procedure upon reasonable request as described in the provider's written procedures.
 - (11) The right to an explanation of the justification of any transfer of the participant to any program outside of the JBCR program.
 - (12) The right to participate actively in the development of a discharge plan addressing aftercare issues which include the participant's mental health, physical health, and social needs. This right extends to any family members or other members of a participant's natural support system, as well as a designated advocate, when applicable. The participant also has the right to a timely consideration of any request for the participation of any other person in this discharge planning, with the right to be informed of the reasons for any denial of such a request. Staff must document in the medical record that the LAR or other person was notified of the date, time, and location of each meeting so that he or she could participate.

- (13) The right to be free from unnecessary or excessive medication, which includes the right to give or withhold informed consent to treatment with psychoactive medication, unless the right has been limited by court order or in an emergency. This right extends to the legal guardian of the person, if applicable. For participants receiving inpatient services at department facilities, community centers, or other mental health facilities, including JBCR when those services are operated by the department or funded by the department through a contractual or other agreement, this right may only be limited in accordance with the provisions of 25 TAC Chapter 414, Subchapter I concerning Consent to Treatment with Psychoactive Medication—Mental Health Services.
- (14) The right to give or withhold informed consent to participate in research programs without compromising access to services to which the participant is otherwise entitled in accordance with applicable statutes, policies, or rules.
- (15) The right to give or withhold informed consent for the use or performance of any of the following (exceptions to this right must be in accordance with applicable laws, standards, or, for department facilities and community centers, department rules, and must be fully explained to the participant and the LAR , if applicable):
 - (A) surgical procedures;
 - (B) unusual medications;
 - (C) hazardous assessment procedures;
 - (D) audiovisual equipment; and
 - (E) other procedures for which consent is required by law.
- (16) The right to withdraw consent at any time in any matter in which the participant has previously granted consent, without limiting or compromising access to services or other treatment(s).
- (17) The right to be informed of the current and future use and disposition of products of special observation and audiovisual techniques, such as one-way vision mirrors, tape recorders, television, movies, or photographs.
- (18) The right to confidentiality of records and the right to be informed of the conditions under which information can be disclosed without the participant's consent. The provider shall only disclose participant-identifying information in accordance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191; Texas Health and Safety Code §576.005 and §§611.001-611.005; and 42 Code of Federal Regulations, Part 2.
- (19) The right to be informed of a treating physician's intent to disclose information (when the physician determines such disclosure is in the participant's best interest) to a law enforcement officer or the participant's legally authorized representative when the disclosure is not specifically permitted by other law (e.g., information provided to law enforcement officers legally authorized to conduct investigations concerning complaints of abuse or denial of rights) as outlined in Texas Health and Safety Code §611.004(2). Unless the participant is unavailable, this includes the right to be informed:
 - (A) of the intent to disclose the information;
 - (B) to whom the information will be disclosed; and
 - (C) of the participant's right to prohibit the information from being disclosed by providing contrary written instructions.
- (20) The right to have access to information contained in one's own record. The right extends to the LAR.

- (A) Confidential information about another person who has not consented to the release shall be deleted from the record prior to its release, unless it is:
 - (i) information relating to the participant that another person has provided;
 - (ii) the identity of the person responsible for that information; or
 - (iii) the identity of any person who provided information that resulted in the participant's commitment.
- (B) Any denial of access to information shall be in keeping with, documented, and reviewed regularly according to provisions outlined in Texas Health and Safety Code, §611.004 or §611.0045. Participants also have the right to an independent review of any denial of access in accordance with Public Law 99-319 (The Protection and Advocacy Act for Mentally Ill Individuals) or Texas Health and Safety Code, §611.0045.
- (21) The right to be free from mistreatment, abuse, neglect, and exploitation as set forth in Title 25 TAC, Chapter 417, Subchapter K concerning Abuse, Neglect, and Exploitation in TXMHMR Facilities; and 40 TAC, Part 19, Chapter 711, concerning Investigations in DADS and DSHS Facilities and Related Programs.
- (22) The right to reasonable protection of personal property from theft or loss. The provider shall institute procedures to protect and adequately secure participants' personal property, including clothing. The provider shall develop and post procedures regarding the protection and security of participants' personal property.
- (23) The right not to be secluded or have physical or, mechanical restraint applied to the participant, unless there is a behavioral emergency and a physician has ordered it. If physical or, mechanical restraint or seclusion is utilized, the reason for the medical order, the length of time restraint or seclusion has been ordered, and the behaviors necessary for the participant to be removed from restraint or seclusion shall be explained to the participant, and the restraint or seclusion shall be discontinued as soon as possible. Any use of restraint or seclusion shall be in accordance with 25 TAC, Chapter 415, Subchapter F, concerning Interventions in Mental Health Programs.
- (24) The right to be free from intrusive searches of person or possessions unless justified by clinical necessity, ordered by a physician, and witnessed. Any searches involving removal of any item of clothing shall be ordered by a physician and witnessed by a person of the same sex as the participant being searched and shall be conducted in a private area. Only physicians will perform searches of body orifices.
- (25) The right to be transported to or from community centers, and psychiatric hospitals in a way that protects the dignity and safety of the participant. This includes:
 - (A) the right of all participants not to be physically restrained, unless necessary to protect the health and safety of the participant or of a person traveling with the participant, in which case procedures outlined in Texas Health and Safety Code, §574.045(g); and
 - (B) the right of all participants to be provided reasonable opportunities to get food and water and use a bathroom.
- (26) The right to initiate a complaint. This includes the right to be informed of how to contact the Office of Consumer Services and Rights Protection (toll free telephone number 1-800-252-8154, toll free TDD number 1-800-735-2988) for clinical and programmatic complaints, and the Texas Commission on Jail Standards at (512-463-5505) for complaints related to jail standards.
- (27) The right of any participant to make a complaint regarding denial of rights without any form of retaliation.

- (28) The right to have these rights and any additional rights explained aloud in a way the participant or LAR can understand within 24 hours of admission to services according to Section 6, Communicating Rights to Participants and upon request.
- (29) The right to communicate with persons outside the JBCR program, in keeping with the general rules of the facility, including:
 - (A) receiving visitors at reasonable times and places, allowing for as much privacy as possible, without compromising the provisions set forth by the county jail and the Texas Commission on Jail Standards;
 - (B) making phone calls at reasonable times, allowing for as much privacy as possible, without compromising the provisions set forth by the county jail and the Texas Commission on Jail Standards.
- (30) If the participant is unable to open personal mail because of a physical limitation, a staff member may assist if documentation of the need for assistance is provided in the participant's record and if the participant requests or agrees to such assistance. An order authorizing this assistance must be signed by the treating physician and must be reviewed every seven days, except in the case of a participant with a chronic physical limitation, when the order may remain in effect until there is an improvement in the participant's condition. Other orders may be renewed as long as the condition exists. Staff members may offer to read mail to participants unable to read because of illiteracy, blindness, or other reason, but staff members may not read the mail if the participant declines the offer or, if incoming mail is being sent by a legal entity (e.g., an attorney) or Disability Rights Texas or, if outgoing mail is being sent to a legal entity or Disability Rights Texas a court order must be sought to read participant's mail.
- (31) The right to have an opportunity for physical exercise in accordance with the Texas Commission on Jail Standards.
- (32) The exercise of these rights may be limited by the treating physician only to the extent that the restriction is necessary to maintain the participant's physical and/or emotional well-being or to protect another person. If a restriction is imposed, the treating physician shall document the reasons for the restriction and the duration of the restriction in the participant's record. Unless otherwise specified, the written order must be reviewed within 72 hours, and if renewed, it must be renewed in writing at intervals no greater than every 72 hours. The treatment team should consider strategies to help the participant regain or resume the practice of the right.
 - (A) A physician or physician's designee shall inform the participant of the clinical reasons for the restriction and its duration as soon as possible. The LAR, if applicable, shall also be informed of the restriction and its duration as appropriate.
 - (B) The right to communicate with legal counsel, the department, the courts, participant's advocate, or the state attorney general may not be restricted.
- (33) Except for the general rules of the JBCR program, and the stipulations described in paragraph (31) of this section, there is no provision for limiting the rights for participants admitted to a JBCR program described in paragraphs (32)-(35) of this section.
- (34) The right to have visits from attorneys, internal advocates, and representatives of Disability Rights Texas in accordance with the Texas Commission on Jail Standards.
- (35) The right to be informed in writing and by any other means necessary for communication, at the time of admission to and discharge from a JBCR program and upon request, of the existence and purpose of the protection and advocacy system in this state under the federal

Protection and Advocacy for Mentally Ill Individual Act of 1986 (Public Law 99-319). The notice must include the protection and advocacy system's telephone number and address. In Texas, the system is called Disability Rights Texas.

- (36) The right to wear suitable clothing which is neat, clean, and well-fitting in accordance with the Texas Commission on Jail Standards. At department facilities and community centers and JBCR program, clothing will be obtained and provided for participants not having such clothing.
- (37) The right to religious freedom. No person shall be forced to attend or engage in any religious activity.
- (38) The right to receive appropriate treatment for any physical ailments essential to the treatment of a mental disorder and for a physical disorder arising in the course of a participant's treatment in a JBCR program. The manner in which these physical disorders are treated is the decision of the physician, consistent with good professional judgment. If the physician determines the procedures required for treatment to be elective rather than essential, the participant has the right to consult with a provider outside the facility for treatment at the participant's own expense.
- (39) The right of each participant admitted to the JBCR program to have the provider notify a person chosen by the participant of the admission if the participant grants permission. Documentation of the participant's granting or denial of that permission must be entered into the participant's clinical record. If such notification is refused upon admission, the participant served shall be re-informed of this right as the participant's condition changes.
- (40) The right of each participant to have a staff member notify a person chosen by the participant prior to discharge or release if the participant grants permission. Documentation of the participant's granting or denying that permission must be entered into the participant's clinical record.
- (41) The right to written information, in the participant's primary language, if possible, about any prescription medications ordered by the treating physician. This information shall, at minimum, identify the major types of prescription medications; specify the conditions for which the medications are prescribed; identify the risks, side effects, and benefits associated with each type of medication; and include sources of detailed information about each particular medication. This right extends to the participant's family on request unless prohibited by state or federal confidentiality laws.
- (42) The right to receive, within four hours after the provider receives a written request, a list of the medications prescribed for administration to the participant while the participant is in the care of a provider. The list must include the name, dosage, and administration schedule of each medication and the name of the physician who prescribed each medication. This right extends to a person designated by the participant and to the LAR, if applicable. If sufficient time to prepare the list before discharge is not available, the list may be mailed within 24 hours after discharge to the participant or another appropriate designated party. In the event that the inmate, after discharge from the JBCR program, is transferred or released to another criminal justice agency, the Texas Uniform Health Status Update Form, in the format prescribed by the Texas Commission on Jail Standards, shall be completed and forwarded to the receiving criminal justice entity at the time the inmate is transferred or released from custody.
- (43) The right to have a periodic review of the need for continued competency restoration services, as allowed in the Texas Code of Criminal Procedure, Article 46B.

- (44) The right to contact an attorney of the participant's own choosing with opportunities to contact that attorney.
- (45) The right to be informed that anything the participant says to the provider's staff may be used in the proceeding for further detention.
- (46) The right to a preliminary examination by a physician within 48 hours of admission to the JBCR program
- (47) The right to refuse medication, unless there is a court order or psychiatric emergency, in accordance with Chapter 415, Subchapter A.
- (48) The right to be informed that beginning on the 24th hour before a hearing for court-ordered treatment, the participant may refuse to take medication unless the medication is necessary to save the participant's life.

Section 5. Rights, Handbooks, and Postings for Participants Receiving Jail-based Competency Restoration Services.

- (a) The provider will publish a rights handbook which will contain interpretations written in simple and non-technical language of the various rights afforded participants receiving competency restoration services, an explanation of the circumstances under which those rights may be limited, and an explanation of the appeals process. This handbook will be revised by the provider as necessary.
- (b) Each handbook distributed must include the toll free number of the Office of Consumer Services and Rights Protection (CSRP) (1-800-252-8154), the toll free TDD number of CSRP (1-800-735-2988), the toll free number of Disability Rights Texas (1-800-223-4206, both voice and TDD capabilities), the name, telephone number, and mailing address of the rights protection officer and the contact information for the Texas Commission on Jail Standards (512-463-5505).
- (c) The day of admission into services, each participant and the participant's legal guardian, when applicable, must be given the appropriate rights handbook.
- (d) All handbooks must be printed in English and Spanish, and must be made available in any other language used by a significant percentage of the service area's population. Copies of the rights handbook must be displayed prominently at all times in all areas frequented by participants (e.g., dayrooms, recreational rooms, waiting rooms, lobby areas). A sufficient number of copies will be kept on hand in each of these areas in order that a copy may be made readily available to anyone requesting one. The provider's administrator shall appoint a staff member to be responsible for ensuring that these requirements are met.
- (e) Nothing in this section shall preclude the use or distribution of additional brochures or materials outlining rights information provided the information does not conflict with information presented in the rights handbook.
- (f) The provider will display, in areas visited by participants, the toll free number of the Office of Consumer Services and Rights Protection (CSRP) (1-800-252-8154), the toll free TDD number of CSRP (1-800-735-2988), the toll free number of Disability Rights Texas (1-800-223-4206, both voice and TDD capabilities), the name, telephone number, and mailing address of the rights protection officer and the contact information for the Texas Commission on Jail Standards (512-463-5505).

Section 6. Communicating Rights to Participants.

In addition to receiving a rights handbook, each newly admitted participant and the LAR, if applicable, shall be informed orally of all rights in his or her primary language using plain and simple terms within 24 hours of admission into services. The notification will also include an explanation of the circumstances under which those rights may be limited, and an explanation of how a complaint may be filed. This notification also must occur when there are any changes to this information. The method used to communicate the information shall be designed for effective communication, tailored to meet each participant's ability to comprehend, and responsive to any visual or hearing impairment.

Section 7. Documenting the Communication of Rights

- (a) Oral communication of rights shall be documented on a form bearing the date and signatures of the participant or LAR, and the staff member who explained the rights. The form should be filed in the participant's record. Provider may develop and use a form of their own design which contains all of the applicable elements listed in Section 12, concerning Receipt of Information Record, in this exhibit, so long as the form is used only for the documentation of communication of rights.
- (b) When the participant receiving services is unable or unwilling to sign the document which confirms that rights have been orally communicated, a brief explanation of the reason shall be entered onto that document along with the signatures of the staff member who explained the rights and a third-party witness.
- (c) If the participant does not appear to understand the rights explanation, a staff member shall document repeated attempts to provide another explanation based on improved symptomatology, until understanding is reached or until discharge. The necessity for repeating the rights communication process must be documented, signed, and dated by a staff member.

Section 8. Rights Protection Officer for Provider.

- (a) The JBCR program administrator shall appoint a rights protection officer for the JBCR program. The rights protection officer must be able to perform the duties of this office without any conflicts of interest.
- (b) The name, telephone number, and mailing address of the rights protection officer must be prominently posted in every area frequented by participants. Participants desiring to contact the rights protection officer must be allowed access to do so.
- (c) Duties required of the rights protection officer are specified at the discretion of the JBCR program administrator, but must include the following:
 - (1) receiving complaints or allegations of violations of rights, allegations of inadequate provision of services, and requests for advocacy from service recipients, their families, their friends, service providers, other facility personnel, other agencies, the general public, and the Office of Consumer Services and Rights Protection;
 - (2) thoroughly investigating each such complaint or allegation received;
 - (3) representing the expressed desires of the participant and advocating for the resolution of his or her grievances;
 - (4) reporting the results of investigations and advocacy to service recipients and the complainants, consistent with the protection of the participant's right to have any identifying information remain confidential;

- (5) ensuring that the rights of participants have been thoroughly explained to provider staff members through periodic training. The rights protection officer may provide the training directly or by consulting with other training personnel;
- (6) reviewing all policies, procedures, and rules which affect the rights of participants; and
- (7) maintaining a log of all complaints/allegations received, to include original documents if the complaint was received in writing, the date and time of receipt, date and time of communications regarding the complaint, and date and time of resolution. Documentation of the complaint and points of resolution shall be placed in the participant's record, and provided to the LAR, when applicable.

Section 9. Staff Member Training in Rights of Participants Receiving Competency

Restoration Services. The rights of participants set forth in this document shall be thoroughly and periodically explained to all provider staff members, as well as, the specially trained security officer(s) as follows.

- (1) All new staff members shall receive instruction on the content of this document during their orientation training and prior to beginning work.
- (2) Within 60 days after the award of a contract for JBCR, all current staff members shall be briefed on its contents by the JBCR program administrator.
- (3) All supervisory staff members shall have a continuing responsibility to keep staff members informed about the rights of participants and shall ensure that each staff member receives rights training not less than once each calendar year. The provider shall develop and implement a means for maintaining rights training records as well as provide the department with a training record of how often training was conducted, names of trainees and content of training.
- (4) A training record shall be kept by JBCR program staff on each staff member receiving orientation, annual training, or additional instruction in compliance with this section, including the date training was provided and the name of the staff member conducting the training.

Section 10. Restriction of Rights as Part of Non-Emergency Behavioral Interventions.

- (a) The program shall collaborate with the department to ensure that any limitation on a participant's rights as part of a non-emergency behavioral intervention must be approved by the department and documented in the participant's treatment plan. The treatment plan must also include positive approaches and use positive behavioral interventions.
- (b) Except as otherwise noted in this exhibit, written informed consent must be obtained when a right guaranteed by law or department rule is limited.
 - (1) The participant and/or LAR must give written, informed consent.
 - (2) Informed consent must be documented in the participant's medical record.
 - (3) Informed consent may be withdrawn at any time. If informed consent is withdrawn, the program must be discontinued immediately, and the treatment team must meet within three working days to modify the participant's treatment plan. Withdrawal of consent may be in any form including, but not limited to, passive noncompliance, active resistance, or a verbal expression of unwillingness to continue participating in any aspect of the program.
 - (4) The limitation of rights must be reviewed at each treatment team review, unless otherwise specified.

- (5) Written informed consent must be reviewed and renewed every 30 days.
- (c) An entity is prohibited from limiting any rights or restricting privileges of an individual:
 - (1) in retribution, as punishment, or as a means of controlling a participant by eliciting fear;
 - (2) for the convenience of staff members or as a consequence of insufficient staff members;
 - (3) as a substitute for a comprehensive treatment plan; or
 - (4) in the absence of positive behavioral interventions.
- (d) An entity shall not impose any limitation on rights that:
 - (1) deprives a participant of a basic human need (e.g., a bed at night, food, personal clothing, appropriate environmental temperature, etc.) or the essentials of a normal clinical environment; or
 - (2) alters the texture of a food item or use techniques that could result in failure to provide a nutritiously adequate diet. Foods used as edible reinforcers within a behavior intervention program are evaluated by the treatment team, including a qualified dietitian and physician, with consideration of the participant's nutritional status, needs, and preferences.
- (e) The use of any procedures or programs employing aversive techniques such as, but not limited to faradic stimulation, are prohibited.

Section 11. Restriction of Rights During a Behavioral Emergency: Restraint and Seclusion. Restraint and seclusion shall be initiated, implemented, and monitored in keeping with the provisions of 25 TAC Chapter 415, Subchapter F concerning Interventions in Mental Health Programs.

Section 12. Receipt of Information Record.

- (a) The provider shall develop and implement use of a receipt of information form to document each participant's receipt of information record that is maintained in each participant's record. The form shall contain the following elements:
 - (1) whether the participant has an LAR; and
 - (2) a statement certifying that the participant has received a copy of and been given an explanation in his or her primary language or in a method he or she can understand. The form shall document how the explanation was provided, in which language, the date, and the participant's signature.
- (b) If the participant indicates that he or she has or wants any of the following, the provider shall develop and implement policies for follow-up:
 - (1) a Directive to Physician and Family or Surrogates;
 - (2) a Medical Power of Attorney; and
 - (3) a Declaration for Mental Health Treatment for use subsequent to discharge from the JBCR program.
- (c) The staff member providing explanations of following elements shall include his or her initials and indicate whether the explanation was provided orally or in writing:
 - (1) a Directive to Physician and Family or Surrogates;
 - (2) a Medical Power of Attorney;
 - (3) a Provider's Notice of Privacy Practices;
 - (4) a Provider's Rights of Participants document;
 - (5) a Patient Grievance Process;
 - (6) a Exchanging Patient Identifying Information with other department components;

- (7) a Services Provided by Disability Rights Texas;
- (8) a Right to Request Notification of Family/Private Physician;
- (9) a Participant, LAR, and Family Responsibilities;
- (10) a Right to Request Information Related to the Provider or Jail;
- (11) a Right to Register to Vote;
- (12) a Certification that the participant or LAR received information about the elements listed in this subsection with options indicating the response, yes or no;
- (13) a Statement that a participant may ask any questions about his or her rights of any staff member;
- (14) a Separate signature lines for the staff member who provided the right information, the participant, and a witness to sign and date;
- (15) a Statement that if the participant is unable or unwilling to sign the document confirming that rights have been communicated, write a brief explanation describing the reason, including signature lines for a witness and the staff member providing the reason to sign and date; and
- (16) a statement with blank lines to record the date of the court order and the name of the participant ordered to the JBCR program that "the participant was informed that communications with staff members during the participant's treatment would not be privileged for the purpose of future court proceedings, including a signature line for the staff member providing the information to the participant."