



Health Facility Compliance Guidance Letter

Number: GL 19-2001
Title: Consent to Treatment with Psychoactive Medication
Provider Types: General and Special Hospitals
Date Issued: [Date]

1.0 Subject and Purpose

The Health and Human Services Commission (HHSC) provides interpretive rule guidance to licensed providers. This letter provides guidance regarding a licensed hospital's responsibility under Texas Health and Safety Code (HSC) Chapter 241 and related rules to obtain a patient's informed consent prior to providing treatment with psychoactive medication.

This letter outlines provider responsibilities and expectations.

2.0 Policy Details & Provider Responsibilities

Under Texas Administrative Code Title 25 (25 TAC) §133.41(l)(3), a hospital providing mental health services is required to comply with mental health rules regarding:

- (A) standards of care and treatment at 25 TAC Chapter 411, Subchapter J;
- (B) rights of persons receiving mental health services at 25 TAC Chapter 404, Subchapter E;
- (C) electroconvulsive therapy at 25 TAC Chapter 405, Subchapter E;
- (D) consent to treatment with psychoactive medication at 25 TAC Chapter 414, Subchapter I; and
- (E) interventions in mental health programs at 25 TAC Chapter 415, Subchapter F.

This requirement applies to any hospital that provides mental health services, whether or not the hospital has an identifiable mental health services unit. Neither the operational requirement nor the definition of

mental health services limits provision of such services to a psychiatric unit of a hospital. Therefore, according to the rule, if a hospital provides a mental health service—regardless of whether the hospital has an inpatient psychiatric unit—the hospital is required to comply with the mental health rules referenced at §133.41(l)(3).

The language of the hospital operating requirements at 25 TAC §133.41(l)(3) indicates the intent of the Texas Department of State Health Services (Department), which originally adopted the rule, and now HHSC, which assumed the Department's regulatory authority over hospitals, to require hospitals to comply with these mental health rules. This language was adopted by the Department and again by HHSC in compliance with the Administrative Procedure Act and has not changed in 12 years.

2.1 Definitions

The definition of mental health services is reprinted here for reference:

RULE §133.2 Definitions.

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

(34) Mental health services—**All services concerned with** research, prevention, and detection of mental disorders and disabilities **and all services necessary** to treat, care for, supervise, and rehabilitate persons who have a mental disorder or disability, including persons whose mental disorders or disabilities result from alcoholism or drug addiction. [Emphasis added.]

2.2 Applicability of 25 TAC § 414.402(3)

HHSC has the authority to incorporate other rules by reference into its hospital rules. Therefore, the provisions of §133.41(l)(3) prevail over and expand the applicability criteria outlined in §414.402. While 25 TAC §414.402(3) states the psychoactive medication consent rules apply to a hospital's "identifiable mental health service unit[,]" that rule was adopted in 2004 and has not been amended since. 25 TAC §133.41(l)(3) was amended at a later date to incorporate the provisions of 25 TAC §414.402(3).

2.3 Consent Requirements

A hospital licensed under HSC Chapter 241 that provides mental health services is required to comply with HHSC rules relating to consent to mental

health treatment with psychoactive medication.¹ Therefore, whenever a hospital provides mental health services, regardless of whether that hospital has a designated mental health unit, it is the responsibility of the hospital to comply with the consent requirements for psychoactive medication, as well as other requirements for persons receiving mental health services.²

Informed consent for the administration of each psychoactive medication must be evidenced by a signed document containing all required information set forth by rule.³ The informed consent document must be executed by the patient or the patient's legally authorized representative.⁴

Notice: The general consent obtained when a patient is admitted to a hospital is not sufficient to document consent for mental health services as required by 25 TAC, Chapter 414.

2.4 Timeframe Allotted for Compliance

Hospitals are expected to comply with the required consent for psychoactive medication.

3.0 Background/History

The Department adopted the predecessor rule to 25 TAC §133.41(l)(3) in 1994. HHSC assumed the duties of the Department on September 1, 2017.

3.1 Legislative History

Senate Bill 207, passed by the 73rd Legislature in 1993, established the psychoactive medication requirement. The background section of the Senate Research Center bill analysis of SB 207 stated that "patients need to have access to information about prescription medication and the right to give consent or refuse medication[.]" Furthermore, the bill's stated purpose included "establish[ing] standards for the provision of prescription medication to patients; ... grant[ing] patients a right to refuse medication ... and set[ting] forth guidelines for obtaining informed consent[.]" Neither the stated purpose of this legislation, nor the language of the bill itself, limited consent requirements to psychiatric hospitals and inpatient psychiatric units of general or special hospitals.

¹ 25 TAC, [§133.41\(l\)\(3\)\(D\)](#).

² 25 TAC, [§133.41\(l\)\(3\)\(A\)-\(C\), \(E\)](#).

³ 25 TAC, [§414.404](#) and [§414.405](#).

⁴ 25 TAC, [§414.404](#) and [§414.405](#).

3.2 TAC History

The predecessor rule to §133.41(l)(3) was adopted by the Department in 1994 as §133.52. Although this predecessor rule had the heading “Standards for the Provision of Mental Health Services In an Identifiable Part of a Hospital”, the language at issue was identical to the present-day rule. When this rule was revised in 1997, the Department amended the language to clarify that the requirement to comply with the other mental health regulations applied only to the “identifiable part of the hospital.” This language carried over into the 1998 rule revision at §133.41(l)(3).

However, §133.41(l)(3) was amended in 2007 to remove the language “in an identifiable part of the hospital” from the rule. The Department did not receive any public comments regarding clarification of the language at §133.41(l)(3) at that time, nor upon subsequent amendments to this rule in 2010, 2012, 2013, 2014, and 2018.

4.0 Resources

QA 20-2000, Psychoactive Medication Consent Requirements Questions and Answers, provided at [\[INSERT LINK ONCE PUBLISHED\]](#).

MHRS 9-7, Consent to Treatment with Psychoactive Medication form, provided at [\[INSERT LINK ONCE PUBLISHED\]](#).

HSC Chapter 241, Hospitals, provided at <https://statutes.capitol.texas.gov/Docs/HS/htm/HS.241.htm>.

25 TAC Chapter 133, Hospital Licensing, provided at [https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=4&ti=25&pt=1&ch=133](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=25&pt=1&ch=133).

25 TAC Chapter 414, Consent To Treatment With Psychoactive Medication--Mental Health Services, provided at [https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=4&ti=25&pt=1&ch=414](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=25&pt=1&ch=414).

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5.0 Contact Information

If you have any questions about this letter, please contact Health Care Regulation’s Policy, Rules, and Training unit by email at HCR_PRT@hhs.texas.gov.