TITLE 26 HEALTH AND HUMAN SERVICES

PART 1 HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 307 BEHAVIORAL HEALTH PROGRAMS

SUBCHAPTER E CHILDREN’S MENTAL HEALTH--RESIDENTIAL TREATMENT CENTER PROJECT

§307.201. Purpose.

The purpose of this subchapter is to implement the relinquishment avoidance program in accordance with Family Code Chapter 261, Subchapter E, which provides beds in residential treatment center facilities to prevent the relinquishment of parental conservatorship to the Texas Department of Family and Protective Services solely to obtain mental health services for a child with a serious emotional disturbance. For this subchapter, the relinquishment avoidance program is called the Residential Treatment Center (RTC) Project.

§307.203. Application.

This subchapter applies to:

 (1) residential treatment center (RTC) providers that contract with the Texas Health and Human Services Commission to provide RTC Project services;

 (2) local mental health authorities and local behavioral health authorities, which have the RTC Project administrative responsibilities; and

 (3) a child, and their legally authorized representative, who is an applicant for, or recipient of, services from the RTC Project.

§307.205. Definitions.

The following words and terms, when used in this subchapter, have the following meanings:

 (1) Business day--Any day except a Saturday, Sunday, or legal holiday listed in Texas Government Code, §662.021.

 (2) Case manager--An employee of the local mental health authority (LMHA) or local behavioral health authority (LBHA) who provides mental health case management services.

 (3) Child--A person under 18 years of age as defined under Texas Human Resources Code §42.002 and not emancipated under state law.

 (4) DFPS--The Texas Department of Family and Protective Services.

 (5) Eligibility assessment--The process an LMHA or an LBHA uses to gather information from a child and the child’s legally authorized representative to determine if the child meets eligibility criteria for receiving services through the Residential Treatment Center (RTC) Project.

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

 (7) LAR--Legally authorized representative. A person authorized by law to act on behalf of a child regarding a matter described in this subchapter, and may include a parent, guardian, or managing conservator of a child.

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

 (9) LMHA--Local mental health authority. An entity designated as the local mental health authority by HHSC in accordance with Texas Health and Safety Code, §533.035(a).

 (10) LPHA--Licensed practitioner of the healing arts. A person who is:

 (A) a physician;

 (B) a physician assistant;

 (C) an advanced practice registered nurse;

 (D) a licensed psychologist;

 (E) a licensed professional counselor;

 (F) a licensed clinical social worker; or

 (G) a licensed marriage and family therapist.

 (11) Ombudsman--The Ombudsman for Behavioral Health Access to Care established by Texas Government Code §531.02251 serves as a neutral party to help individuals, including individuals who are uninsured or have public or private health benefit coverage, and behavioral health care providers navigate and resolve issues related to the individual's access to behavioral health care, including care for mental health conditions and substance use disorders.

 (12) RTC--Residential treatment center. A general residential operation regulated under Texas Human Resources Code Chapter 42 and Chapter 748 of this title (relating to Minimum Standards for General Operations) that exclusively provides treatment services for children with serious emotional disturbances.

 (13) RTC Project--The HHSC relinquishment avoidance program that provides residential mental health services to a child with a serious emotional disturbance without the child entering the managing conservatorship of DFPS, in accordance with Texas Family Code Chapter 261, Subchapter E.

 (14) RTC project team--The HHSC team that provides oversight of the RTC Project.

 (15) RTC contractor--A residential treatment center that contracts with HHSC to provide services under this subchapter.

 (16) SED--Serious emotional disturbance. A mental, behavioral, or emotional disorder of sufficient duration to result in functional impairment that substantially interferes with or limits a person's role or ability to function in family, school, or community activities in accordance with Government Code, §531.251.

 (17) Service planning team--A team that must develop, review, and revise the service plan and discharge plan. The team must consist of:

 (A) an RTC contractor;

 (B) in addition to the requirements outlined in Chapter 748, Subchapter I of this title (relating to Admission, Service Planning, and Discharge), the service planning team includes:

 (i) the child;

 (ii) the child’s LAR;

 (iii) a representative from the LMHA or LBHA assigned to work with the child and family; and

 (iv) the child’s individual and family therapist; and

 (C) other participants on the service planning team may include other individuals as requested by the child, the child’s LAR, the LMHA or LBHA, or the RTC and agreed upon by the child’s LAR.

§307.207. Eligibility Criteria to Participate in the RTC Project.

(a) The child must:

 (1) be a resident of the State of Texas;

 (2) be at least five years of age but younger than 18 years of age;

 (3) have an SED based on the current edition of the *Diagnostic Statistical Manual of Mental Disorders*;

 (4) require residential treatment services, as outlined in §307.213 of this subchapter (relating to Assessing Eligibility); and

 (5) not be in DFPS managing conservatorship by written court order issued under Texas Family Code, Title 5.

(b) The child’s LAR must be at risk of relinquishing parental conservatorship of the child if there are no community-based mental health or financial resources available to adequately protect the safety and well-being of the child or others, including household members, because of the child’s SED. The child’s LAR must attest to the appropriate referral source as described in §307.209(a) of this subchapter (relating to Referral Process) that the family is at risk of relinquishing the child for the sole purpose of accessing mental health services.

(c) The RTC Project limits the number of children for participation in the RTC Project based on funding and placement availability.

§307.209. Referral Process.

(a) An LAR interested in the RTC Project must request a referral for treatment services through:

 (1) the child’s designated LMHA or LBHA, and then the LMHA and LBHA submits the referral to the RTC Project team; or

 (2) DFPS, that then submits the referral to the RTC Project team.

(b) Upon receipt of a referral from the RTC Project, the LMHA or LBHA schedules the child’s eligibility assessment with the child’s LAR.

(c) The LMHA or LBHA must notify the RTC Project team and the child’s LAR of the child’s eligibility assessment results in accordance with §307.219(b) of this subchapter (relating to Local Mental Health Authority and Local Behavioral Health Authority Requirements). The LMHA or LBHA must send a complete application packet as outlined in §307.217 of this subchapter (relating to Application Packet) to the RTC Project team.

(d) If the child is eligible for RTC Project services, the RTC Project team places the child on the RTC Project interest list.

(e) If the child’s eligibility for the RTC Project is not approved at the time of the referral, the RTC Project notifies the LMHA or LBHA within seven business days. The LMHA or LBHA notifies the child’s LAR, in writing, within seven business days. The child’s LAR may request a review of this decision as outlined in §307.215 of this subchapter (relating to Notification and Appeal Process.

§307.211. Interest List Management.

(a) The RTC Project team removes a child’s name from the interest list if:

 (1) the RTC Project team determines the child is ineligible in accordance with §307.207 of this subchapter (relating to Eligibility Criteria to Participate in the RTC Project);

 (2) the child’s LAR submits the request to remove the child’s name from the RTC Project interest list verbally or in writing;

 (3) the child’s LAR declines RTC Project services verbally or in writing;

 (4) the child’s LAR declines LMHA or LBHA services verbally or in writing;

 (5) the child is placed in DFPS managing conservatorship by written court order issued under Texas Family Code, Title 5;

 (6) the child is no longer a resident of Texas;

 (7) the child is committed to the Texas Juvenile Justice Department or the Texas Department of Criminal Justice;

 (8) the child is deceased;

 (9) The child has been on the interest list for over 30 calendar days as described in subsection (b) of this section;

 (10) the LMHA, LBHA, or RTC Project team has been unable to contact the child’s LAR to complete the activities or documents required for the application packet;

 (11) the child is admitted for treatment through the RTC Project; or

 (12) the child has exhausted all placement options or has been denied admission into all eligible RTC facilities participating in the RTC Project more than once, as outlined in the HHSC RTC Project policy manual.

(b) If the child is no longer in need of RTC Project services, the child’s LAR may request that the child remain on the RTC Project interest list for 30 calendar days in case such services are needed in the future. While the child is on the interest list, the LMHA or LBHA must monitor the child’s need for RTC Project services and offer, provide, or secure services for the child at the appropriate level of care indicated by the child’s eligibility assessment.

§307.213. Assessing Eligibility.

(a) The LMHA or LBHA must designate a staff person who is a qualified mental health professional-community services, as defined in §301.303 of this title (relating to Definitions), or LPHA, to assess the child for eligibility within two business days after a request for referral is received from the LAR or the RTC Project team. The LMHA or LBHA must determine:

 (1) the most appropriate and available treatment options in accordance with §306.163 of this title (relating to Most Appropriate and Available Treatment Options); and

 (2) there are no other mental health services available to support the child in their community.

(b) If the child's LAR informs the LMHA or LBHA that the child is at immediate risk of relinquishment to DFPS conservatorship, the LMHA or LBHA must assess the child within 24 hours for emergency eligibility. The children’s mental health director must evaluate if the child is at immediate risk of relinquishment to DFPS and if so, follow the procedures outlined under §307.217 of this subchapter (relating to Application Packet) and in the RTC Project policy manual posted on the HHSC website.

§307.215. Notification and Appeal Process.

(a) The LMHA or LBHA must inform the child’s LAR, in writing, within seven business days of the child’s removal from the interest list for RTC Project services, in accordance with §307.211 of this subchapter (relating to Interest List Management).

(b) If the child’s name is removed from the interest list, the written notification to the child’s LAR includes:

 (1) the reasons for the removal of the child’s name from the interest list and the process for appealing the decision in accordance with this section;

 (2) the availability of information and assistance from the HHSC Ombudsman by contacting the Ombudsman at 1-800-252-8154 or online at hhs.texas.gov/ombudsman;

 (3) the telephone number and address of the protection and advocacy system established in Texas; and

 (4) information developed by DFPS regarding joint managing conservatorship if RTC Project resources are exhausted.

(c) An LAR whose child is determined ineligible for RTC Project services may appeal the decision by:

 (1) submitting a written request for review of the decision to the RTC Project team, as provided in the written notification, within 30 calendar days after the date of the RTC Project team’s written denial;

 (2) including an explanation why the child’s LAR disagrees with the denial; and

 (3) submitting any relevant supporting documentation for RTC Project eligibility.

(d) The RTC Project team reviews and responds to the child’s LAR’s appeal within ten business days after receiving the appeal and informs the child’s LAR, in writing, of the appeal’s outcome unless there are extenuating circumstances necessitating an extension. The extension will be communicated with the child’s LAR.

§307.217. Application Packet.

(a) The LMHA or LBHA must ensure an application packet is completed for every child on the interest list who meets eligibility criteria for the RTC Project.

 (1) The LMHA or LBHA assists the child’s LAR to complete the application packet and submits the completed application packet on behalf of the child’s LAR to the RTC Project team.

(2) The RTC Project team looks for RTC treatment for the child after eligibility is determined and the application packet is complete.

 (3) After the RTC Project team submits the child’s application packet to the RTC contractor, the RTC contractor must:

 (A) review the application packet to determine eligibility for RTC contractor admission in accordance with Chapter 748, Subchapter I of this title (relating to Admission, Service Planning, and Discharge); and

 (B) notify the RTC Project team, in writing, of the child’s eligibility for admission after the RTC contractor’s determination is made.

 (4) If the RTC contractor determines they can admit and treat the child, the RTC Project team authorizes the RTC treatment and notifies the appropriate LMHA or LBHA, and the LMHA or LBHA notifies the LAR. If there are multiple RTC treatment options, the RTC Project team authorizes the child’s LAR’s choice of available RTC options.

 (5) If the RTC contractor determines they are unable to meet the treatment needs of the child at the RTC, the RTC contractor must notify the RTC Project team within seven business days and describe the reasons why the child cannot be admitted.

(b) If all RTC contractors associated with the RTC Project deny the child’s admission, the RTC Project team will notify the LMHA or LBHA that the child is denied by all RTC contractors within seven business days after the last contractor denial. The LMHA or LBHA must notify the child’s LAR, in writing, within seven business days.

§307.219. Local Mental Health Authority and Local Behavioral Health Authority Requirements.

(a) The LMHA or LBHA must not require an LAR to contact DFPS to initiate a referral to the RTC Project in accordance with Texas Family Code, §262.353.

(b) The LMHA or LBHA must designate a staff person as an RTC Project liaison responsible for receiving and submitting referrals to the RTC Project in accordance with §307.209 of this subchapter (relating to Referral Process).

(c) The LMHA or LBHA assigns a case manager after the child is determined eligible for the RTC Project. The LMHA or LBHA case manager must:

 (1) offer the child services at the appropriate level of care indicated by the eligibility assessment, including referrals to community resources as appropriate;

 (2) offer the child’s LAR Certified Family Partner services, as defined in §306.305 of this title (relating to Definitions);

 (3) assist the child’s LAR in applying for Medicaid or Medicaid Buy-In;

 (4) assist the child’s LAR with completing the application packet after determined eligible for the RTC Project;

 (5) as part of the application packet, assist the child’s LAR with obtaining either a psychiatric evaluation, psychosocial assessment, or psychological evaluation of the child that includes a mental health diagnosis and intelligence quotient testing after determined eligible for the RTC Project, if one has not been completed within the past year or if it is not available;

 (6) enroll the child in an RTC level of care, provided in the Utilization Management Guidelines and Manual posted on the HHSC website after the child’s admission to the RTC;

 (7) attend service planning team meetings conducted by the RTC contractor;

 (8) submit monthly progress reports to the RTC Project team;

 (9) attend the child’s discharge planning meeting conducted by the RTC contractor;

 (10) schedule a discharge follow-up appointment with the child and family after the child’s discharge from the RTC; and

 (11) schedule a child’s appointment with a physician, or designee authorized by law, to prescribe needed medications after the child’s discharge from the RTC.

§307.221. Residential Treatment Center Contractor Requirements.

(a) RTC contractors must be licensed by HHSC Child Care Regulation and have a contract with HHSC to provide RTC Project services.

(b) The RTC contractor must provide comprehensive residential treatment services as outlined in this subchapter, in the HHSC contract, and as described in the HHSC child-care minimum standards for general residential operations. The RTC must:

 (1) provide psychotherapy services that include individual and family therapy;

 (2) psychopharmacological therapy for the treatment of psychiatric illness with psychotropic medication on an ongoing basis if indicated based on psychiatric evaluation;

 (3) integrate a trauma-informed care approach into the care, treatment, and supervision of each child. Trauma-informed care is care that is child and family-centered and takes into consideration:

 (A) the unique culture, experiences, and beliefs of the child and family;

 (B) the impact traumatic experiences have on the life of the child;

 (C) the symptoms of childhood trauma;

 (D) an understanding of the child’s personal trauma history;

 (E) the recognition of the child’s trauma triggers;

 (F) methods of responding that improve the child’s ability to trust, to feel safe, and to adapt to changes in the child’s environment; and

 (G) the impact traumatic experiences have on the child’s family;

 (4) include habilitation activities, such as vocational services, as appropriate; and

 (5) provide services in accordance with the HHSC provider contract.

(c) The RTC contractor must assign an LPHA for each child. The LPHA or treatment director must:

 (1) ensure the delivery of therapeutic services to the child;

 (2) provide recommendations for the child’s service plan, in consultation with the service planning team; and

 (3) provide recommendations for the child’s discharge plan in consultation with the service planning team.

(d) The RTC contractor must provide advance notice, in writing, of a service planning team meeting to all members of the service planning team.

(e) If the child’s service planning team determines the child needs continued residential treatment beyond six months, and the RTC contractor does not have an agreement for an extended treatment curriculum with HHSC, the RTC must:

 (1) submit a request to the RTC Project team for the child’s ongoing treatment before the sixth month of treatment in accordance with the RTC Project policy manual posted on the HHSC website; and

 (2) document in the child’s service plan the need for an anticipated length of stay beyond the six-month timeframe, and why a less intensive level of care is not appropriate.

(f) The service plan must:

 (1) be approved by the service planning team and must meet the requirements outlined in Chapter 748, Subchapter I of this title (relating to Admission, Service Planning, and Discharge); and

 (2) be reviewed monthly, and updated at least every 90 calendar days, in accordance with Chapter 748, Subchapter I of this title. If the child’s needs change, the service plan must be updated to address the changes.

§307.223. Discharge Plan.

(a) The child may be discharged from the RTC:

 (1) when the service planning team determines that the child completed treatment and no longer requires a residential level of care;

 (2) when the child’s LAR requests discharge from the facility; or

 (3) in accordance with Chapter 748, Subchapter I of this title (relating to Admission, Service Planning, and Discharge).

(b) If the RTC contractor determines at any point throughout treatment that the child is not appropriate for continued treatment at the RTC and must be discharged in less than 14 calendar days:

 (1) the RTC contractor must notify the child’s LAR and the LMHA or LBHA within 24 hours after the determination and before discharge;

 (2) the RTC contractor must notify the RTC Project team, in writing, within 24 hours, but no later than one business day, after the determination; and

 (3) the RTC contractor must conduct an emergency staffing with the child’s service planning team for continuity of care services.

(c) If the RTC contractor determines at any point throughout treatment that the child requires an emergency discharge, the RTC contractor must follow emergency discharge and transfer requirements in accordance with Chapter 748, Subchapter I of this title, and:

 (1) notify the child’s LAR and LMHA or LBHA immediately after determining the child is not appropriate for continued treatment at the RTC and before the child’s discharge;

 (2) notify the RTC Project team, in writing, within one business day after the determination is made; and

 (3) conduct an emergency staffing with the child’s service planning team for continuity of care services.

(d) The RTC contractor must develop the discharge plan in consultation with the service planning team.

 (1) The discharge plan must be approved by the treating psychiatrist and must meet the requirements outlined in Chapter 748, Subchapter I of this title; and

 (2) The RTC contractor must submit a copy of the child’s:

 (A) final discharge plan to the child’s LAR, LMHA or LBHA, and RTC Project team 30 calendar days before discharge;

 (B) recommendations regarding the child’s educational needs to the child’s LAR at the time of discharge; and

 (C) discharge summary to the child’s LAR, LMHA or LBHA, and the RTC Project within seven calendar days after the child’s discharge.