



CBHDA and CSAC IST Working Group #3: Initial County Competency Evaluations Recommendations

AB 1962 (Dodd) Chapter 405, Statutes of 2016, required the Department of State Hospitals (DSH) to adopt guidelines for education and training standards for a psychiatrist or licensed psychologist to be considered for appointment by the court to do competency evaluations. The court is required to appoint experts who meet the guidelines unless there is no reasonably available expert. In those cases, the court shall have the discretion to appoint an expert who does not meet those guidelines. While California has done work to attempt to standardize competency evaluations across the state, there is more that must be done to improve the quality of competency evaluations as well as the need to increase the workforce completing competency evaluations.

CBHDA members have shared that they have experienced individuals that are not incompetent but have a serious mental illness are placed on the wait list inappropriately and in one extreme case that a competent individual feigning symptoms had been placed on the waitlist twice. Alienist evaluations vary in quality between evaluation and across courts in counties. If you have any questions, please feel free to reach out to Michelle Cabrera (mcabrera@cbhda.org) or Farrah McDaid Ting (fmcting@counties.org).

Proposed Short-Term Solutions:

- **Additional Funding for Alienist Evaluations.** Currently, the workforce required to perform alienist evaluations is in high demand statewide. Because the amount paid to alienists varies considerably by county, (counties report that alienists are typically paid in the range of \$375-\$750 CBHDA and CSAC recommend increasing funding to ensure a floor of \$1,000 per evaluation and a base rate of \$150/ hour for evaluation and testimony required by the alienist. CBHDA and CSAC also recommend DSH establish regional rate schedules across superior courts in order to account for workforce shortages in rural communities, cost of living, and other cost of business factor differences between counties. These increased rates should be time-limited with future rate increases contingent upon alienists acquiring certification by 2024.
- **Establish an Alienist Evaluation Checklist.** Dr. Scott presented research on the lack of consistency and quality across evaluations. CBHDA and CSAC recommend the state develop a simple checklist, and recommends courts amend their contracts to require evaluators to complete the standard domains in their alienist evaluations. This simple tool, a clinician checklist, is evidence based and used throughout health and other industries to improve quality, particularly where health and safety are at risk. Given that an inappropriate IST evaluation may result in inappropriate jail time, we believe this rises to the level of requiring that minimum standards are met 100% of the time.
- **Establish Independent Quality Management Oversight within DSH for Alienists.** DSH should conduct routine clinical audits to ensure quality and consistency and target specific counties which are found to have higher numbers of feigning or malingering ISTs for one-on-one technical assistance and support.

- **Begin Stopgap Training for Alienists.** One short-term solution that DSH can quickly stand up is to begin offering formal training process in a continuing education structure where upon receiving 8, 16, 24 hours of training they receive a certificate to turn into their local superior court. Training should cover, but not be limited to:
 - California laws and rules relevant to competence to stand trial evaluations;
 - Clinical protocols and procedures based on California competency evaluation laws;
 - Training in how to apply these protocols and procedures in performing forensic evaluations and providing reports to the courts;
 - Malingering assessment through the use of a validated tool (Structured Interview of Reported Symptoms, 2nd Edition or Personality Assessment Inventory) ; and,
 - The effects of substance use disorders on competency.

Long-Term Solutions:

- **Require Alienist Certification.** CBHDA and CSAC recommend establishment of a statewide alienist certification process to be overseen by DSH, contracted for operation through a third-party public university or non-profit organization, including developing the curriculum for the workshop. DSH should establish the statewide requirements including the qualifications, practice guidelines, curriculum, and core competencies required of the certification process, in consultation with county behavioral health, psychologists, psychiatrists, and Judicial Council of California, by July 1, 2022. In order to determine the curriculum of the certification program, DSH should be required to establish a curriculum committee to develop the initial and ongoing requirements for certification to complete competency evaluations. This curriculum committee should include, but not be limited to, representatives from county behavioral health, DSH, national competency experts, psychiatrists, and psychologists.

At a minimum, the curriculum committee should consider the following elements as part of the curriculum:

- Virtual Competency Evaluation Training;
- Site visits to DSH facilities (recommendation aligns with Massachusetts certification);
- Individual alienist mentoring;
- Report peer review;
- Renewal process with built out continuing education; and
- Ongoing quality assurance by DSH per CBHDA and CSAC's additional recommendations

CHBDA recommends DSH provide ongoing quality assurance of evaluations through providing continuing education training requirements for certification and the ability to independently assess and provide TA on evaluations. Once the certification program is established under a third-party public university or non-profit organization in California, there should be a limited timeframe allowed for current alienists across the state to become certified to continue to receive the rate increases described in the short-term solution.

- **Require use of a validated, standardized tool to assess malingering.** Require that alienists/evaluators use a validated tool to assess malingering such as the Structured Interview of Reported Symptoms, 2nd Edition or Personality Assessment Inventory.

- **Increase Diversity of Alienists and Language Capacity.** CBHDA and CSAC strongly believe that evaluators and the overall behavioral health workforce should reflect the communities served. As the state looks to expand the alienist workforce and improve the quality of reports, we need to be conscious to promote diversity and also add alienists with language capacity that reflects the language needs of those individuals requiring competency evaluation.
- **Require DSH to Directly Contract with Alienists to Complete Competency Evaluations.** The DSH currently contracts with forensic evaluators to complete sexually violent predator (SVP) and offenders with mental disorders (OMD) assessments. This model under Welfare and Institutions Code 6601 requires DSH to designate psychologists to evaluate individuals if they meet the criteria of an SVP, utilized a structured standardized assessment protocol, developed, and updated by DSH. Currently DSH holds an annual 4-day training for SVP evaluators.

We believe that in the long-term there is a strong benefit in having DSH directly contract and oversee alienists performing competency evaluations as this will allow the state to standardize and improve the quality of competency reports across the state, while maintaining a flexible pool of competent contracted alienists.

- **Consolidate alienist evaluations and community program director evaluations.** Currently, defendants must undergo multiple, uncoordinated evaluations which are duplicative at a higher financial cost, and which creates unnecessary delays. In order to expedite the process of defendants with felony charges moving through the competency process, CBHDA and CSAC recommend that the state could consolidate the evaluation performed by the alienist and the evaluation performed by the DSH contracted community program director which is used to determine whether a defendant should undergo outpatient treatment or be committed to DSH under Penal Code Section 1370 (a) (2) (A).

The current evaluations by the Community Program Director cause additional delays in the individual receiving competency and treatment services and it is unclear what grounds the existing CONREP programs are evaluating where individuals should receive services. CBHDA and CSAC request additional information on the differences between these evaluations to further assess whether a consolidated single evaluation has merit.

Based on the experience of county behavioral health departments, it appears that consolidating these functions and as well as alienist contracts under DSH will create more equitable access to evaluators across the state and allow for a more centralized quality management and oversight structure.