



STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
Behavioral Health and Service Integration Administration
PO Box 45050, Olympia, WA 98504-5050

August 31, 2015

Dear County Commissioners:

SUBJECT: Community Competency Evaluations (formerly ‘SB5551 evaluations’)

Senate Bill 5177 (2015) made recent changes to RCW 10.77.073, relating to county eligibility for state reimbursement of costs for county-referred competency evaluations for in-custody defendants. This letter explains the following:

- The new law expanding county eligibility for reimbursement for local evaluation services when State Hospital evaluators are unable to meet the seven-day performance targets for in-custody competency evaluations;
- New legislative funding for the counties under the 2015-17 Biennial Operating Budget;
- New county data collection requirements under SB 5177;
- County obligations if they are not able to meet the seven-day timeline; and
- The reimbursement procedure to ensure payment by DSHS.

1. Statutory Eligibility

The recent federal district court decision in *Trueblood et al. v. DSHS et al.* ordered the Department of Social and Health Services (DSHS) to provide in-jail competency evaluations within seven days of the signing of a court order calling for an evaluation. The following laws allow the counties to be reimbursed for the cost of appointing evaluators if DSHS was unable to meet the seven-day performance target:

- **RCW 10.77.073 (Section 1 of Senate Bill 5551 – 2013):** Under 5551, if DSHS did not meet these performance targets during the most recent quarter in 50% of cases submitted by the referring county, as documented in the most recent quarterly report under RCW 10.77.068(3) or confirmed by records maintained by DSHS, DSHS must reimburse the county for the cost of appointing a qualified expert or professional person. This determination is made at the time of a referral for a competency evaluation in a jail for an in-custody defendant.

- **RCW 10.77.073 (Section 7 of Senate Bill 5177 – 2015):** SB 5177 retained the formula under SB 5551, and added the following new provision: DSHS must reimburse a county for the above costs if, during the most recent quarter, DSHS did not perform at least one-third of the number of jail-based competency evaluations for in-custody defendants as were performed by qualified experts or professional persons appointed by the court in the referring county.

If **either** of the above circumstances exists, DSHS must reimburse the county for competency evaluations. Evaluations may be for both felony and misdemeanor cases.

2. County Eligibility

County eligibility is determined for the most recent calendar quarter. For the latest quarter (from July to September, 2015), the following counties are eligible to participate in this program:

ESH Counties Eligible for Reimbursement (Eligible in Q3 Based on Performance in Q2 - 2015)

- Benton
- Chelan
- Franklin
- Grant
- Kittitas
- Spokane
- Yakima

WSH Counties Eligible for Reimbursement (Eligible in Q3 Based on Performance in Q2 - 2015)

- Clallam
- Clark
- Cowlitz
- Grays Harbor
- Island
- Jefferson
- King
- Kitsap
- Lewis

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- Mason
- Pierce
- Skagit
- Skamania
- Snohomish
- Thurston
- Wahkiakum
- Whatcom

Each quarter, DSHS will publish the names of the counties which are eligible for this program at the following website: <https://www.dshs.wa.gov/bhsia/office-service-integration/community-competency-evaluations>

3. Legislative Funding

The Legislature provided funding under the 2015-17 Biennial Operating Budget in the amount of \$402,000 to reimburse the counties for local evaluation services when State Hospital evaluators are unable to meet statutory timelines. Currently, competency evaluations are limited to a maximum rate of \$800.00 per evaluation.

4. Data Collection

Senate Bill 5177 also amended RCW 10.77.073(3) to require eligible counties that elect to participate in this program to develop and maintain critical data elements in consultation with DSHS, including data on the timeliness of competency evaluations completed under this section, and to share this data with DSHS upon request. This data will help DSHS to assess the department's compliance with RCW 10.77.068(3) and (4).

We will be scheduling a meeting with all of the counties that are interested in pursuing community competency evaluations to discuss the types of data elements that should be collected each month. One of our goals is to ensure consistency between the counties' data elements and our data dictionary to ensure that we send consistent data to the *Trueblood* court monitor each month regarding the timeliness of these competency evaluations.

We will send you additional information about this upcoming meeting in the near future.

5. Counties' requirement to meet the 7-day timeline

If the county determines that it will not be able to meet the seven-day timeline, it must take one of the following actions:

- Alert DSHS at least 48 hours prior to the conclusion of the seven-day period that transport to the state hospital is necessary, and transport the individual to the nearest State Hospital for admission by day seven for State Hospital evaluators to finish conducting the evaluation; or
- Secure a good cause exception from the ordering court if needed, unless the good cause exception is related to medical clearance for purposes of transport to the State Hospital, in which case DSHS would pursue that exception. The only basis for requesting an exception is individualized clinical good cause or the need to delay admission to the hospital pending medical clearance. Clinical good cause means good cause based on the unique medical or psychiatric needs of the particular individual. If the individual cannot be medically cleared for immediate transport on day seven because of the class member's health, the county must timely notify DSHS of the need to secure a good cause exception from the ordering court. The county must provide timely notice of the medical issue that impacts medical clearance because DSHS must be able to demonstrate a documented history of attempting to timely secure medical clearance in order to secure an exception.

6. Reimbursement Process

To facilitate reimbursement, we ask that you send us the following:

- If you have not already done so, you must complete the Statewide Payee Registration form found at:
<http://des.wa.gov/SiteCollectionDocuments/HRPayroll/SACS/vendorPayeeReg.pdf> This process authorizes the Department of Enterprise Services (DES) and the Office of the State Treasurer (OST) to initiate credit entries for payee payments to your account.
- Once you have completed this documentation, you will be in DSHS's accounting system and we can reimburse you for the cost of competency evaluations.
- Each county must first pay the psychologist or psychiatrist who performed the evaluation, and we will then reimburse the county.

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- To receive reimbursement from DSHS, please send us the following:
 - Documentation showing that the county has already paid the psychologist or psychiatrist and the date and amount paid; and
 - An invoice showing the cause or case number(s), name(s) of defendant(s), amount paid (\$800.00 maximum per evaluation), and date.
- No specific format is required for this documentation, as long as the above elements are included. Please forward these documents to:

Barbara Manning
Department of Social and Health Services
Behavioral Health and Service Integration Administration
P.O. Box 45050
Olympia, WA 98504-5050

- If you have any questions regarding payment, please contact DSHS's Accounting Department care of Cary Chojnacki at: Cary.Chojnacki@dshs.wa.gov

Finally, please note the following: DSHS is actively recruiting forensic evaluators, and will be stationing some of those evaluators in counties with relatively high average numbers of evaluations. As noted earlier, under the *Trueblood* decision, DSHS must provide in-jail competency evaluations within seven days of the signing of a court order calling for an evaluation, and must reduce wait times as soon as practicable, but no later than January 2, 2016. DSHS fully intends to meet its seven-day deadlines as mandated in *Trueblood*. Accordingly, before hiring or contracting with forensic evaluators, counties should notify evaluators that once DSHS begins meeting its seven-day performance targets under RCW 10.77.073, there is a risk that the counties may not be eligible for funding for the next succeeding quarter. Counties may therefore wish to engage evaluators on a quarterly or on-call basis.

Sincerely,



Victoria Roberts
Deputy Assistant Secretary