North Carolina Department of Health and Human Services
Division of Mental Health, Developmental Disabilities and Substance Abuse Services

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To:
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MH/DD/SAS Stakeholder Organizations and Groups
NC Association of County DSS Directors

From: Dave Richard

Communication Bulletin # 140: Forensic Evaluator Guidelines

Session Law 2013-18, Senate Bill 45, *An Act to Amend the Laws Governing Incapacity to Proceed,* required the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services ("Commission") to adopt rules which require that forensic evaluators appointed pursuant to N.C.G.S. § 15A-1002(b) meet the following requirements:

1. Complete all training requirements necessary to be credentialed as a certified forensic evaluator; and
2. Attend annual continuing education seminars that provide continuing education and training in conducting forensic evaluations and screening examinations of defendants to determine capacity to proceed at trial and in preparing written reports required by law. [S.L. 2013-18, S.B. 45, Section 9]

The Commission has proposed to amend existing Rule 10A NCAC 27G .6702, *Operations (Forensic Screening and Evaluation Services for Individuals of All Disability Groups*, as well as Rule 10A NCAC 27H, Section .0200, *Training and Registration of Forensic Evaluators* and adopt these amendments as temporary rules. These amendments, as proposed for adoption by the Commission, are available on the Office of Administrative Hearings ("OAH") website (http://www.ncoah.com/rules/). Once the adoption process is complete, the rules will have an effective date of December 1, 2013 and will be accessible on the OAH website at this location: http://reports.oah.state.nc.us/ncac.asp.

S.L.2013-18, S.B. also required the Commission to adopt guidelines for the treatment of individuals who are involuntarily committed following a determination of incapacity to proceed and a referral pursuant to N.C.G.S. § 15A-1003. [S.L. 2013-18, S.B. 45, Section 10] The legislation mandated that the guidelines require a treatment plan that uses best practices in an effort to restore the individual's capacity to proceed in the criminal matter at issue. [S.L. 2013-18, S.B. 45, Section 10] Pursuant to legislation, the guidelines were required to be adopted by December 1, 2013.

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The guidelines for the treatment of individuals involuntarily committed subsequent to a determination of incapacity to proceed, as adopted by the Commission are provided below.

Guidelines for Treatment of Individuals Involuntarily Committed Subsequent to a Determination of Incapacity to Proceed as Adopted by the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services [Required by S.L. 2013-18, S.B. 25, *An Act to Amend the Laws Governing Incapacity to Proceed*]

Individuals may be involuntarily committed to a secure facility following a determination of incapacity to proceed ("ITP"). Their treatment plans shall address restoration of the capacity to proceed in their criminal proceedings. The treatment team, in conjunction with the individual, will develop plans that specify interventions which utilize best practices. Interventions shall address mental health difficulties as well as educational and/or cognitive deficits that are barriers to attaining capacity to proceed. The initial master treatment plan or subsequent revisions shall address the ITP patient's three major areas of deficit as follows:

1. Understanding the nature of the charges and proceedings (e.g., ability to comprehend the roles of courtroom personnel, and understand courtroom proceedings);
2. Comprehension of his/her situation in reference to the proceedings (e.g., ability to name specific charges, indentify potential pleas and legal consequences); and
3. Assisting with his/her defense in a rational and reasonable manner (e.g., tolerate stress of proceedings, convey information about his/her case to his/her attorney in a rational manner).

Current best practice methods include multi-modal interventions that are tailored to the treatment needs of the ITP patient which may be related to psychiatric disorder and/or cognitive disabilities. Interventions may include the following:

1. Prescription of psychotropic medications.
2. Psycho-education that focuses on charges, courtroom proceedings, sentencing, plea bargaining, role of court personnel and assisting with one's defense.
3. Group treatment that includes discussion, readings, videos, role playing and mock trials. This may include additional educational supports for defendants with learning disorders, communication disorders, Traumatic Brain Injuries ("TBI") or Intellectual/Developmental Disabilities ("I/DD").
4. Individual treatment which includes addressing specific deficits and discussion of the ITP patient's understanding of his/her specific criminal case.
5. Peer Support from individuals who have had similar experiences.

At the discretion of the treatment team, consultation will be utilized for the development of an individualized restoration program when an individual's needs are identified as needing specialized programming.

Each treatment plan revision shall reflect the individual's current status related to capacity. Except with individuals where a formal re-evaluation of capacity has resulted in the opinion that the defendant is non-restorable, treatment plan revisions shall identify specific deficits and interventions for overcoming those deficits in the treatment plan.

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