



DEPARTMENT LETTER: 20-001

March 18, 2020

TO: ALL COUNTY ADMINISTRATIVE OFFICERS
ALL COUNTY BEHAVIORAL HEALTH DIRECTORS
ALL COUNTY CHIEF EXECUTIVE OFFICERS
ALL COUNTY COUNSELS
ALL COUNTY DISTRICT ATTORNEYS
ALL COUNTY HEALTH CARE DIRECTORS
ALL COUNTY PROBATION OFFICERS
ALL COUNTY PUBLIC HEALTH DIRECTORS
ALL COUNTY PUBLIC DEFENDERS
ALL COUNTY SHERIFFS
ALL COUNTY SUPERIOR COURTS

SUBJECT: INFORMATION REGARDING DSH DIVERSION PROGRAM
PARTICIPANTS ELIGIBLE FOR PROGRAM FUNDING

EXPIRES: RETAIN UNTIL RESCINDED

Purpose

The purpose of this Departmental Letter is to provide counties with guidance regarding program participants that the Department of State Hospitals (DSH) will count towards a county's contracted program population and for whom a county will receive funding in accordance with Penal Code (PC) 1001.36, PC 1370 and Welfare & Institutions Code section 4361 (WIC §4361).

Background

The Legislature enacted PC 1001.36 and WIC §4361 and amended PC 1370 on June 27, 2018, to authorize courts to divert certain individuals with serious mental illness and DSH to contract with counties as a funding mechanism for the establishment of new or expansion of existing pre-trial mental health diversion programs. PC 1001.36 and PC 1370 establish the criteria by which a court can divert an individual to a county pre-trial Felony Mental Health Diversion Program and WIC §4361 outlines the criteria for clients participating in a county program funded by DSH. DSH has authority to contract with counties on proposals for diversion programs, and to provide funding as specified in WIC §4361.

For purposes of this letter, “Felony Mental Health Diversion Clients” means diversion program participants treated in a DSH funded program with a primary diagnosis of schizophrenia, schizoaffective disorder or bipolar disorder who have committed certain felony crimes and are found by a court to qualify for diversion services pursuant to Penal Code (PC) section 1001.36, PC 1370 and WIC §4361.

“Instant Offense” refers to the current offense that the defendant is charged with and that led to his/her arrest.

General Requirements

DSH-funded county diversion programs will be required to create a diversion proposal, seek approval, and execute a contract with DSH in order to receive funding. Funding will be released in installments based on counties achieving specific population benchmarks outlined within the final contract. DSH will only fund counties for Felony Mental Health Diversion Clients who meet the following requirements:

- Primary diagnosis of schizophrenia, schizoaffective disorder or bipolar disorder (WIC §4361).
- Instant offense is a felony with the exception of certain excluded crimes (PC 1001.36(b)(2)(A-H)).
- Felony Mental Health Diversion Client has not entered a guilty plea in the case for which diversion is being recommended.
- Felony Mental Health Diversion Client has not previously received restoration services for the instant offense from another DSH program, including but not limited to a State Hospital, Jail-Based Competency Treatment program, Community-Based Restoration program, or the Admission Evaluation Stabilization Center unless the defendant is arrested on a new felony charge while in a DSH program or after their return to court upon restoration. A primary intent of the legislation that authorizes this program is to reduce the number of felony ISTs referred to DSH. In alignment with this goal, the new law modified PC 1370 to read that “[i]f, at any time after the court finds the defendant is mentally incompetent and before the defendant is transported to a facility pursuant to this section, the court is provided with any information that the defendant may benefit from diversion pursuant to Chapter 2.8A (commencing with Section 1001.35) of Title 6, the court may make a finding that the defendant is an appropriated candidate for diversion” (PC 1370(a)(l)(B)(iv)).
- Felony Mental Health Diversion Client has not previously participated in the DSH-funded Diversion Program for more than thirty (30) days and the county has not previously been funded for the Felony Mental Health Diversion Client. While Felony Mental Health Diversion Clients may enter the program as often as the county is willing to admit them only unduplicated Clients entering the

program for the first time will be counted towards the county population target and next funding installment.

If you have any questions or require additional information, please contact DSH Diversion by email at DSHDiversion@dsh.ca.gov.

Original Signed By

Katherine Warburton
Medical Director, Clinical Operations
Department of State Hospitals

Christina Edens
Deputy Director, Forensic Services Division
Department of State Hospitals