STATE OF WASHINGTON
HEALTH CARE AUTHORITY
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RFI NO. 3981
Amendment #2

PROJECT TITLE: Outpatient Competency Restoration Program (OCRP)

SUBJECT: HCA's Responses to Participant Questions

DATE ISSUED: October 17, 2019

HCA's responses to participant questions per RFI 3981 WebEx Presentations held on September 20, 23, and 27, 2019.

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1. **Participant Question:**
   These people are represented by defense attorneys and need to have their information kept confidential, what is going to be set in place to keep their confidentiality?

1. **HCA Answer:**
   Under RCW 10.77.074(7), any information discussed with the Navigator cannot be used in the prosecution's case in chief. Further, under RCW 10.77.074(6), information that is protected by state or federal law, including health information will not be entered into the court record without the consent of the individual or their defense attorney. This does not say that information cannot be shared with the court. In current practice during restoration treatment, restoration providers redirect defendants by notifying them that their legal situation and charges are not a topic of discussion in the OCR Program, and that the information can be used against them in their criminal hearing.

2. **Participant Question:**
   Are Forensic Navigators assigned at evaluation or restoration? What is the Forensic Navigator's active role in finding what resources are needed for the individual and what is going to be the relationship between the FN's and the courts and other entities as far as collaboration? Are the time frame for forensic evaluations going to stay the same regarding inpatient vs outpatient? Will the court continue to monitor progress, issues, and barriers that are being handled by the FN's?

2. **HCA Answer:**
   Forensic Navigators are assigned at the time an order for Competency Evaluation is issued. The Forensic Navigator's role is to identify the needs of the person and refer the individual to appropriate supports. The Forensic Navigator will serve as an officer of the court, in which they will have direct relationships with the court. Additionally, Forensic Navigators will establish and maintain relationships with community providers in order to ensure accurate information is obtained and reported to the courts. Timelines for forensic evaluations will stay the same as currently mandated.

3. **Participant Question:**
Are drug screens that are ordered by the substance use treatment provider to be done by the OCRP provider? Or are these available per more of a request basis?

3. **HCA Answer:**
OCRP provider will be responsible for ensuring that regular drug screening occurs for defendants with a current substance use disorder diagnosis. Drug screens will be done by the substance use disorder treatment provider and any noncompliance will be communicated to OCRP provider who then must report said noncompliance to the Forensic Navigator.

4. **Participant Question:**
What is the role of the Psychiatrist?

4. **HCA Answer:**
The Psychiatrist or Psychiatric Nurse Practitioner will conduct an intake/admission assessment. As part of that assessment, there will be an assessment of the client's barriers to competency as documented on the client's competency evaluation report. If the barriers include psychiatric symptoms, the Psychiatrist or Psychiatric Nurse Practitioner will assess the client for appropriateness for psychotropic medication(s) to treat the symptoms. The Psychiatrist or Psychiatric Nurse Practitioner will ensure that the client's treatment plan contains the client's barriers to competency and interventions that are appropriate to those barriers. Once treatment is initiated, the Psychiatrist or Psychiatric Nurse Practitioner will then monitor the identified barriers to competency on an ongoing basis by completing a "Barriers Monitoring Form" periodically throughout the restoration process. This monitoring will inform re-evaluation based on the two referral pathways (barriers so low that the individual is likely competent or the individual is showing clinical signs of factors associated with non-restorability). If applicable prior to the term of the competency restoration court order, the Psychiatrist or Psychiatric Nurse Practitioner will submit the referral for forensic re-evaluation.

5. **Participant Question:**
Will the Psychiatrist be sharing information to the court?

5. **HCA Answer:**
No, not directly. The Psychiatrist will conduct the barrier monitoring and submit the form to the OCRP provider who will share with the Forensic Navigator who, in turn, reports to the court. The court can and may subpoena the Psychiatrist or other program staff as needed, which may include issues related to medication.

6. **Participant Question:**
The OCRP practitioner will be going through the curriculum?

6. **HCA Answer:**
Yes, along with peer.

7. **Participant Question:**
Will the Psychiatrist/Psychiatric Nurse Practitioner (PMNHP) Full Time Employment (FTE) service the rural?

7. **HCA Answer:**
This depends. An OCRP provider may develop cooperative agreements with other behavioral health providers to conduct the barriers monitoring.

8. **Participant Question:**
Is it an option that there could be one FTE for Spokane then .5 for rural?

8. **HCA Answer:**
Yes, it can be.

9. **Participant Question:**
Is a master's degree required for the practitioner?

9. **HCA Answer:**
See answer #26.

10. **Participant Question:**
If the number of participants fluctuates, will there be the ability to request more staff?

10. **HCA Answer:**
The number of defendants identified is an estimation. If numbers far exceed what has been identified, we can look at budget adjustments to accommodate more staff if needed.

11. **Participant Question:**
Is the form that the Psychiatrist or nurse practitioner fills out what will guide the breaking barriers will treatment for each individual?

11. **HCA Answer:**
Yes, in conjunction with the competency evaluation. The competency evaluation will identify barriers to competency for each individual. The OCR Program will target treatment for those barriers. The Psychiatrist or Nurse Practitioner will monitor progress in those barrier areas. If a barrier is decreased, more focus will be on barriers that are still active.

12. **Participant Question:**
You put out a RFI, we then respond to the RFI and then you will determine if an RFP is needed?

12. **HCA Answer:**
Yes, if there is only one provider interested in each region we may do a direct contract. Once that decision is made, we will either reach out to the provider directly or conduct an RFP.

13. **Participant Question:**
How will success be measured? Number of people participated in the program? Number of people restored to competency? Rates of competency?

13. **HCA Answer:**
Success measurements are still in development, but will most likely include: Restoration rate to competency; Time to restoration competency; Number of referrals to complete competency earlier that time ordered; Time spent in jail prior to competency restoration treatment, number of revocations and

reason for revocation, and how patients are transitioned to other services at the end of restoration treatment.

14. **Participant Question:**
How do we get access to Breaking Barriers program?

14. **HCA Answer:**
If you would like a copy of the Breaking Barriers Competency Restoration Program, please email the contracts@hca.wa.gov. The program can be provided, but it is requested that the program not be distributed to anyone else other than the requesting recipient.

15. **Participant Question:**
You mentioned housing requirements and housing support; can you please speak to that a bit more? What is the responsibility of the provider?

15. **HCA Answer:**
Housing needs are evaluated at the onset of the program. If needed, these individuals will be linked to Forensic HARPS program. HARPS support will be in place for up tosix months. Intersection with community release will be up to the courts discretion. HARPS will support up to 1200 per month to fund housing supports.

16. **Participant Question:**
Has the Braking Barriers curriculum been tested in an outpatient setting?

16. **HCA Answer:**
Breaking Barriers has not been tested in an outpatient setting, although it has been studied in the state psychiatric hospitals and Residential Treatment Facilities (RTFs). The Breaking Barriers Program demonstrated a significant decrease in a client's length of stay and increased rate of restoration to competency. It also showed a dramatic reduction in inappropriate referrals to Forensic Evaluators who conduct the court-ordered follow up competency evaluation after a client has been in competency restoration services for some time.

17. **Participant Question:**
Folks with intellectual inability, if the individual needs to go through the program multiple times or needs additional time will that be counted against the program?

17. **HCA Answer:**
If restoration is needed for longer periods of time it will be up to the court to determine next steps. Statute dictates that OCRP can be a maximum of 90 days for a misdemeanor defendant, while can be up to one year for a felony defendant.

18. **Participant Question:**
Are you able to list how outpatient competency restoration will be different than inpatient competency restoration in terms of the Breaking Barriers requirements?

18. **HCA Answer:**
In terms of the general program, there is no difference. It will be a matter of procedurally how the program components are met by the structure of the OCR program. What staff is allocated the duty to review the competency evaluation report, assess the barriers identified in the report shortly after admission into the program, and then writing the barriers and concomitant interventions on the treatment plan? Who monitors the individual's barriers how often? Who provides one or more of the Courtroom Knowledge and Understanding, Optimal Symptom Management, Relaxation and Coping Skills, Effective Communication (CORE) interventions how often and where? Who sends the Office of Forensic Mental Health Services (OFMHS) forensic evaluation team the referral for re-evaluation based on the two referral pathways (barriers so low that the individual is likely competent or the individual is showing clinical signs of factors associated with non-restorability)?

19. **Participant Question:**
The role of the Psychiatrist/Psychiatric Nurse Practitioner is to complete the competency restoration form at the time the individual is enrolled in the OCRP. The form determines the status of the individual and the barriers he/she may have towards obtaining competency. The Psychiatrist/ARNP would meet with the individual periodically and complete a final competency restoration form based on the information provided by the OCRP staff and an interview of the individual. Individuals will receive education/training on only those lessons in the Breaking Barriers workbook that pertain to their situation. An individualized Care Plan, signed by the individual and staff would ensure there is agreement about the lessons that need to be covered for purposes of competency restoration. Will the barriers to competency form cross walk to the lessons in the Breaking Barriers workbook so OCRP staff know exactly which lessons need to be provided to the individual?

19. **HCA Answer:**
The crosswalk is the treatment plan. For example, if a barrier noted in the competency evaluation report is poor communication skills that is interfering with the individual being able to work with her/his attorney on a defense, then this deficit is assessed shortly after admission into the program and if it is still a barrier, the E part of CORE would likely be the intervention applied for this barrier. Program staff are allowed to utilize other manualized evidence-based interventions but Breaking Barriers requires that the staff request this from the Office of Forensic Mental Health Services (OFMHS). The reason why we have a request process built into Breaking Barriers is so that staff are not using interventions that are not evidence-based or have unknown effectiveness with the type of individuals served.

20. **Participant Question:**
Is it possible that the Psychiatrist/Psychiatric nurse practitioner can be allocated from the additional forensic staff Eastern State Hospital received? We have concerns about workforce issues related to prescribers.

20. **HCA Answer:**
No, this is not possible as these positions are at full capacity within Eastern State Hospital, and contracting for this service outside of the agency would be a conflict of interest.

21. **Participant Question:**
Based on the court's anticipated use of OCRP, the number of OCRP individuals may exceed the projected number of participants for Spokane. It was confirmed that if the number of referrals is higher than anticipated, a request could be made for additional funding for staff. Would HCA consider adding a percentage of an FTE for a supervisor for this program? There is no way to cover these positions if someone

is on Paid Time Off (PTO) or they vacate their position. Having a supervisor who is trained to step in as needed for coverage would help ensure there was no break in service.

21. **HCA Answer:**
Funding can be appropriated for a supervisor if it works within your budget proposal and available budget for the program.

22. **Participant Question:**
Based on the distance among the rural counties in the Spokane region, other methods of providing competency restoration can be used such as video conferencing, on-line classes or in person classes. Will HCA have an agreement with providers in the rural counties that they must work with the OCRP to ensure their client is present for video conferencing or any other method of instruction so the OCRP can be successful?

22. **HCA Answer:**
There is no contraindication to the use of telemedicine and video conferencing in implementing the program. If this is added to the contract, we would likely need to have language about security standards.

23. **Participant Question:**
Individuals involved in the OCRP will be on a conditional release which includes enrollment in an outpatient mental health or substance use disorder treatment program, medication compliance, urinalysis testing (UAs) needed, abstinence from substances, etc. If there are violations to the conditional release, the court may issue a warning or revoke the conditional release. If for some reason, taking medications was not a condition of the conditional release, will there be way to expedite a request for a hearing for involuntary medications? Would the Psychiatrist/ARNP requesting involuntary medications be able to testify by phone to minimize the time it would take to testify in court?

23. **HCA Answer:**
In HCA/DBHR's experience with inpatient restoration, court schedules are usually the primary factor associated with the timeliness of court hearings. Individual courts usually determine whether they require testimony in-person or will allow telephonic testimony.

It should also be noted that the ability to involuntarily medicate a defendant, *for sole the purpose of restoring competency*, is limited by law. If a defendant is requiring a hearing for involuntary medication, the program must also consider whether it is likely that the person is also dysregulating to the point of needing to be moved to an inpatient restoration program. Programs could work with the Prosecuting Attorney or Defense Attorney to initiate revision of the court order if necessary components are not included.

24. **Participant Question:**
If conditions need to be added or removed from the conditional release, who would petition for that and would the judge who ordered the conditional release hear the case?

24. **HCA Answer:**
Requests for additions or removals from the conditional release would be initiated by the Prosecuting Attorney or Defense Attorney in the criminal case, and would be heard by the same court that issued the OCR order. While it is possible it would be the same judge, a different judge in the same court may instead hear the motion to change conditions.

25. **Participant Question:**
The requirement in the Washington State Outpatient Competency Restoration Program Overview indicates 1.5 FTE licensed practitioners are members of the team. Clarification was obtained that staff may not need to be a licensed practitioner with a master's level position in psychology, social work, or counseling but staff must possess a command of trial competency and related issues as stated in the Implementation Plan for Outpatient Competency Restoration. Since all individuals will have an assigned clinician in outpatient services it may not necessitate that OCRP staff will need the qualifications as described in the Implementation Plan for Outpatient Competency Restoration. Would HCA consider BA or MA staff on the OCRP team?

25. **HCA Answer:**
See below answer #26.

26. **Participant Question:**
Would qualifications of a juris doctorate, experience on a mental health co-deployed team, and/or experience teaching at the university level be acceptable qualifications in lieu of a master's degree in psychology, social work, or counseling? What other master's degrees in a related field would be acceptable?

26. **HCA Answer:**
Trial competence (and limited trial competence only) is only needed for the C portion of CORE; a bachelor's level staff could feasibly teach that portion. However, OCR staff would need competence with implementing ORE too. The ORE portion of CORE are clinically-based interventions focused on developing an illness management plan, anxiety reduction, and social skills training. For example, the staff implementing O would need to know the various symptoms and courses of schizophrenia, depression, anxiety disorders, etc. How to differentiate symptoms. How to identify what are early warning signs of the onset of certain symptoms of schizophrenia for that individual patient. Etc. This is why we require a master's level trained staff who is familiar with mental illness and implementing the types of interventions we would need to meet the patient needs.

27. **Participant Question:**
Is it accurate that if there is only one RFI submitted, HCA may have the option to forgo issuing an RFP resulting in a contract with the RFI applicant?

27. **HCA Answer:**
Yes, if we find that there is only one agency interested in providing the service in your service area, HCA can choose to do a direct client service contract with the agency as long as that agency can provide the service for the entire region.

28. **Participant Question:**
If someone is on a conditional release and violates the conditions while in outpatient competency restoration, it is my understanding that they can be revoked to inpatient competency restoration. If they stabilize, could the court decide to release that person back to outpatient competency restoration or does the person have to remain in inpatient competency restoration for the remainder of their commitment?

28. **HCA Answer:**
If a defendant fails to comply with the restrictions of the outpatient competency restoration program such that restoration is no longer appropriate in that setting or the defendant is no longer clinically appropriate for outpatient competency restoration, the Department of Social and Health Services will remove the defendant from the outpatient restoration program. The Department of Social and Health Services (DHSH)

will place the defendant instead in an appropriate facility of the department for inpatient competency restoration. Nothing prohibits a defendant from returning to OCRP from inpatient, but it would require an additional court order to approve that release.