Guideposts to Revisions of the Problem-Solving Courts Standards (eff. Jan. 1, 2020)

Background

The Illinois Supreme Court first adopted the Problem-Solving Courts Standards (Standards) in November 2015, which created central oversight into the certification and application process of all problem-solving courts (PSC) in Illinois, as well as some uniformity and consistency in their operations. Over the next several years, the Special Supreme Court Advisory Committee for Mental Health and Justice Planning (Advisory Committee) and the Administrative Office of the Illinois Courts (AOIC) gained valuable knowledge and insight into the certification process and implementation of the Standards. Additionally, evidence-based practices continued to evolve, which necessarily affected the operations of problem-solving courts. Under that backdrop, the Advisory Committee and the AOIC began reviewing the Standards in July 2018. Over the ensuing 15 months, every section of the Standards was thoroughly scrutinized, which culminated in the adoption of the Revised Standards by the Supreme Court in November 2019 (eff. Jan. 1, 2020). The following is a summary of many of the salient changes found in the Revised Standards.

Section 2 – Applicability, Time for Compliance, Certification and Recertification

Section 2.2: The rigid six-month extension for existing PSCs to come into compliance with the Standards and become certified or recertified is replaced with "additional time at the discretion of the AOIC." This recognizes that the AOIC and the PSC work collaboratively to help bring the PSC into compliance and removes the arbitrary time constraint that may impede that goal.

Section 2.3: PSCs must now complete an application provided by the AOIC and be certified by the Supreme Court *prior* to beginning operations.

Section 2.5: PSCs are now required to report to the AOIC on a standardized form all changes made to PSC forms as well as personnel changes.

Section 2.6: The Chief Judge of each Circuit must apply for recertification no later than 90 days prior to the expiration of the current certification. The section outlines the requirements for recertification, including ongoing compliance with the Standards and any amendments thereto, as well as applicable statutes. It gives the AOIC the discretion of conducting site visits to ascertain whether the PSC is in compliance prior to making its recommendation to the subcommittee of the Advisory Committee. Finally, it codifies cooperation between the AOIC and the PSC in order to bring it into compliance, and provides that PSCs may continue to operate if the certification process continues beyond the expiration date of the current certification, unless otherwise ordered by the Supreme Court.

Section 3 – Definitions

Section 3 streamlines definitions of "Case Management Plan" (3.3) and "Clinical Treatment Plan" (3.6), and includes a new definition for the "Illinois Adult Risk Assessment System" (3.11).

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Section 6 – PSC Team

Section 6.2: PSC team members are now *required* to attend court hearings and participate where appropriate. The commentary notes that PSC team members' presence can facilitate information-sharing, stress the importance of follow-through suggested by the court, and reinforce to participants that their efforts to complete the program are supported by an entire team.

Section 7 – Referral, Entry and Participant Rights

Section 7.1: All potential participants must now sign a "Consent for Release/Disclosure of Confidential Information" form, an example of which is provided in Appendix N.

Section 7.3: The PSC Judge may, at the request of the participant or his or her counsel, issue a protective order pertaining to all of the confidential information.

Section 7.4: The explanation of what is "confidential" now includes treatment reports, assessment results, treatment and supervision needs, attainment of treatment plan goals, adherence to treatments and other "confidential" information disseminated to the PSC team. PSC team members are required to maintain a confidential file for such materials. Moreover, 7.4(e) expressly states that such information shall not be used without permission in any other civil or criminal proceeding involving the PSC participant or with regard to another person. Section 7.4(f) requires that PSC prosecutors delete or destroy the confidential information once a participant is found ineligible or otherwise discharged. The commentary notes that confidentiality and privacy rights belong to the participant and may be waived.

Section 8 – Treatment, Case Management, and Supervision

Section 8.0: All treatment is now required to be evidence-based, quality treatment arrived at through proper screenings and assessments, which must be updated based on professional, legal, and PSC requirements. In no cases shall modifications to treatment plans be used as an incentive or sanction. All participants and team members are to be supplied with copies of the treatment plan and qualified professionals shall fully explain treatment plans to the participants. In applying these evidence-based practices, treatment providers should, at a minimum: (1) use a cognitive-behavioral model; (2) monitor abstinence; (3) implement treatment services that are responsive to participants' individual characteristics; and (4) systematically and promptly report progress, achievements, compliance, and other relevant information to the PSC team. Additionally, a PSC shall support and encourage use of FDA-approved Medication Assisted Treatment (MAT) resources and adopt policies that adhere to medical, legal, and ethical requirements for such resources. Once the decision is made by the provider and participant to engage in MAT, the PSC Judge shall then supervise compliance and sanction non-compliance when appropriate.

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Section 8.1: The existing requirement for a "Case Management Plan" is expanded to require that there also be a "Clinical Treatment Plan." The case management plan (1) identifies participants' strengths and needs, (2) defines goals and objectives, and (3) identifies required services. Both the case management and treatment plans should be amended upon periodic reassessments. The PSC shall ensure that participants have access to and receive appropriate treatment and targeted interventions to address their individualized needs. Case planning is an ongoing process that is collaborative with participants, and within their control.

Section 8.3: Sanctions, incentives, and therapeutic adjustments are now specifically addressed, including incarceration for a participant's failure to comply with the terms of the program. This section provides that jail sentences should be used sparingly as sanctions after less severe consequences have been attempted. Moreover, jail sentences shall be of a definite term and typically last no more than three to five days, but there is no limitation on the PSC Judge's authority to impose the sanction, other than that it be imposed "judiciously and sparingly" after a hearing. This provision parallels the National Association of Drug Court Professionals' Adult Drug Court Best Practice Standards on Jail Sanctions.

Section 8.4: This section applies to participants already in custody at the time of entry to the PSC, and whose entry is conditioned upon entry and successful completion of a residential treatment program. Such participants shall be fully informed of the requirements, and shall have the right to counsel and a hearing while they await placement. The PSC Judge shall make all reasonable efforts to ensure placement occurs as quickly as reasonably possible and shall monitor these cases closely. The participants' counsel shall have responsibility to explore non-custodial pre-placement options should he or she believe that the delay in placement has become untenable.

Appendices

There are various changes to standardized forms and lists in the Appendices. An additional sentence and/or paragraph regarding drug testing has been added to each of the Consent forms (App. A, B and C). A participant now must be advised that he or she may be sanctioned for providing diluted, adulterated or substituted test specimens in the consent form. A number of updated hyperlinks to evidence-based practice resources have been added to the list found in Appendix D.