Competency Restoration Frequently-Asked Questions

What is Competency Restoration?

Competency Restoration consists of two key components: mental health treatment and competency education. The goal of treatment is stabilizing a patient’s mental health condition. The goal of competency education is to help patients understand the charges and penalties they face, work with attorneys to aid in their own defense and behave appropriately in court. Mental health treatment is provided by psychiatrists, psychologists and other highly trained clinicians. Competency education requires no specific expertise and can be provided in most any setting by any adult who can read and follow a teaching guide and curriculum. Incompetency is not a mental illness and competency education is not mental health treatment.

Who is required by law to provide Competency Restoration services?

No state law requires DHS or any other state agency or local unit of government to provide competency restoration services. No state statute requires individuals to undergo competency restoration.

Has DHS stopped providing competency restoration services in its mental health facilities?

No. DHS continues to provide mental health treatment and competency education to patients who are being treated in DHS mental health facilities. DHS continues to admit patients who have been civilly committed as mentally ill and deemed incompetent to stand trial. Patients receive treatment appropriate for their mental illnesses for as long as it takes to stabilize them. During that time, patients also receive competency education.

What has changed then?

Competency to stand trial is no longer a factor in discharging patients at DHS-operated mental health facilities. Once patients are psychiatrically stable and no longer require inpatient treatment, DHS is provisionally discharging them, even if they are not considered competent to stand trial. Once patients are provisionally discharged, DHS stops providing competency education services.

How does DHS determine when a patient is “psychiatrically stable” and ready for discharge?

A physician assesses whether a patient’s symptoms and behaviors are adequately managed. Then the treatment team conducts a formalized, multi-level review to determine whether the patient continues to need inpatient treatment or can be safely managed elsewhere. Teams work closely with county partners in discharge planning for those who are ready to be provisionally discharged.
Who decides if a patient will be discharged back to jail?

The law says the head of the treatment facility makes the provisional discharge decision. The DHS treatment team first assesses if community placement is possible. If it is not, the team then carefully assesses whether a patient's psychiatric stability can be maintained in jail. This includes consideration of medication adherence, support, safety, etc. If the DHS treatment team does not believe an individual’s psychiatric stability can be maintained in jail, the team would not pursue discharge. In most cases, patients discharged to jail are deemed competent. In limited circumstances, an incompetent person may be discharged back to jail.

Who determines if a person is competent?

The determination of competency to stand trial is made by the court, based on an individual evaluation conducted by an evaluator, generally a psychologist or psychiatrist trained in competency evaluation. DHS and other agencies continue to provide forensic evaluations.

Who is responsible for arranging appropriate care after discharge from a DHS facility?

When patients no longer need inpatient treatment, counties are responsible for identifying and arranging appropriate placement outside of DHS facilities. Discharge planning begins upon admission to a DHS facility and is done in collaboration with the treatment team and county case managers.

Are counties responsible for restoring incompetent patients discharged from DHS facilities?

No state law requires counties or any other authority to provide competency restoration education. How to address incompetent patients discharged from DHS facilities is a decision individual counties should make based on individual circumstances. Some counties may choose to provide competency restoration education using a curriculum and teaching guide developed by DHS. The vast majority of Minnesota’s 87 counties will notice little to no impact from changing discharge standards. In 2018, 38 counties had no competency-related admissions to DHS facilities. Another 40 counties had five or fewer admissions.

Why has DHS removed competency as a factor in the discharge decisions?

Counties, law enforcement, courts and communities have been asking DHS to treat more and more patients each year using the same limited number of treatment beds. The only way to admit more patients is to discharge patients who no longer need inpatient treatment. Patients who are psychiatrically stable no longer need inpatient treatment and can receive competency education in another setting.