BEHAVIORAL HEALTH DOCKETS STANDARDS
SUPREME COURT OF VIRGINIA

PURPOSE

These standards are offered as best practices intended to provide a general framework of common principles, policies, and practices for the approval and ongoing operation of behavioral health dockets in the Commonwealth of Virginia.[1] They outline a shared orientation from which the judicial branch, including judges and court personnel, may collaborate with prosecutors, the defense bar, corrections officials, local government, law enforcement, and public and private treatment providers to address the mental health and substance use issues that permeate the criminal caseload. Each standard outlines recommended steps courts can take to respond effectively to people with behavioral health challenges and substance use. These practices are designed to support individuals while also protecting public safety.

These standards are intentionally stated in broad terms to allow each behavioral health docket the flexibility to adapt them to local needs and circumstances.

This structure of recommended standards and practices is designed to:

- Support coordination and reduce duplication of efforts among all court-supervised behavioral health dockets throughout the Commonwealth;
- Promote the sharing and efficient use of treatment resources;
- Strengthen efforts to obtain federal and other funding; and
- Promote the development of coordinated long-term plans for financing behavioral health docket operations.
- Ensure no harm is done to the participants.

While these standards serve as guidance, localities seeking to establish a behavioral health docket must still meet all requirements set forth in Va. Code §18.2 254.3. Significant statutory obligations include:

1. Forming local behavioral health docket advisory committees composed of the individuals specified in §18.2-254.3.G, and outlining how these committees will ensure quality, efficiency, and fairness in planning, implementing, and operating the program; and
2. Establishing eligibility and participation criteria for participants, and
3. Determining whether and how participants may be required to contribute towards the cost of treatment services in §18.2-254.3.K.

[1]The Defining Drug Courts: The Ten Key Components-All Rise were used when aligning these standards with the accepted Virginia Adult Recovery Court Standards. These key components are slight modifications of the U.S. Department of Justice publication, "Defining Drug Courts: The Key Components" to provide the foundation for the successful operation of a treatment court. https://allrise.org/wp-content/uploads/2022/07/Defining-Drug-Courts-The-Key-Components.pdf

4. Requiring local committees to establish policies and procedures for the operation of the docket to attain the goals of §18.2-254.3.I.

An application for new behavioral health dockets is available from the Specialty Dockets Services Division and includes all recommended standards and statutory requirements. Technical assistance is available from the Specialty Dockets Services Division to assist localities in understanding and implementing these criteria.

STANDARD 1

Behavioral health dockets depend upon a comprehensive and inclusive planning process.

PRACTICE

1.1 The behavioral health docket has demonstrated participation in a planning process to ensure a coordinated, systemic and multidisciplinary approach.

1.2 The planning group includes the judge, docket administrator, clerk, prosecutor, public defender or defense attorney, and representatives from the local government, the local community services board or other clinical services provider, law enforcement, jails, probation services, and any other organization which has an interest in the success of the program.

1.2 The planning group has a written work plan addressing the program's needs for budget and resources, operations, information management, staffing, community-relations, and ongoing evaluation. The work plan has specific descriptions of roles and responsibilities of each program component. For example, eligibility criteria, screening, and assessment procedures are established.

1.3 Management information systems are developed for docket information and treatment information.

1.4 Graduated responses to the participant's compliance and noncompliance are defined.

1.5 The planning group is aware of the array of local treatment services available to participants and ensures they are sufficient to meet the needs of docket participants.

STANDARD 2

Behavioral health dockets integrate mental health and substance use treatment services with adjudication of the case(s) before the court.

PRACTICE

2.1 The behavioral health docket has a program description defining the docket's mission, goals, eligibility criteria, operating procedures, and performance measures, that have been collaboratively developed, reviewed, and agreed upon by the planning team.

2.2 Self-management of recovery and law-abiding behavior are goals, with specific and measurable criteria that mark progress. Criteria may include compliance with local program requirements, participation in treatment, employment, educational achievement, family reunification, restitution to the victim or to the community, and declining incidence of alcohol and/or other drug use, with eventual long-term recovery.

2.3 The court, supervision, and treatment providers maintain ongoing communication, including frequent exchanges of timely and accurate information about the individual participant's overall performance and progress towards behavioral health treatment goals.

2.4 The judge plays an active role in the team process, frequently reviewing the participant’s behavior and incidence of compliance with treatment options.

2.5 Interdisciplinary education is provided for every person involved in behavioral health docket operations, in order to develop a shared understanding of the values, goals, and operating procedures of both the treatment and justice system components.

2.6 Mechanisms for sharing decision making and resolving conflicts among behavioral health docket team members, such as multidisciplinary committees, are established at the judge’s discretion, emphasizing professional integrity.

STANDARD 3

Behavioral health dockets have published objective eligibility criteria that have been collaboratively developed, reviewed, and agreed upon by members of the behavioral health docket team.

PRACTICE

3.1 Participation in a behavioral health docket is voluntary and requires a written agreement among the defendant, the Commonwealth and the judge.

3.2 An adult referred to the docket fully understands the behavioral health docket requirements before agreeing to participate. They are provided with legal counsel to inform this decision and subsequent decisions about program involvement, if needed. Procedures exist in the behavioral health docket to address, in a timely fashion, concerns about a participant's competency whenever they arise.

3.3 The docket team shall ensure the use of a comprehensive, valid, and reliable screening instrument to assess whether the individual is a candidate for a behavioral health docket. Once an individual is identified as a candidate appropriate for a behavioral health court docket, a full diagnosis and treatment plan shall be prepared by qualified professionals and individuals receiving services.

3.4 Risk and need assessment factors that are crucial in determining a defendant's eligibility for the behavioral health docket, such as family and community ties, mental health status, employment status, educational status and prior criminal history are weighed by the behavioral health docket team on a case-by-case basis. The judge uses individual factors from the risk assessment to determine suitability.

STANDARD 4

Behavioral health dockets incorporate a non-adversarial approach in which the judge, the Commonwealth's Attorney and the defense attorney promote public safety while protecting the rights of participants. The defense attorney retains their role as advocate and represents a participant's stated interests.

PRACTICE

4.1 Commonwealth's Attorneys and public defenders or defense counsel participate in the design of the behavioral health dockets, including criteria for screening, eligibility, and policies and procedures, to safeguard due process rights and make sure public safety needs are served.

4.2 For consistency and stability in the early stages of behavioral health docket operations, the judge, prosecutor, and defense counsel are assigned to the behavioral health docket for a sufficient period of time to build a sense of teamwork and to reinforce a non-adversarial atmosphere.

4.3 Each behavioral health docket has a written agreement setting forth the terms of collaboration among the Commonwealth's Attorney, the public defender or defense counsel, the clinical treatment provider, the probation officer, the judge, and any other public agency.

STANDARD 5

Behavioral health dockets emphasize early identification and placement of eligible participants.

PRACTICE

5.1 Eligibility screening is based on established written criteria pursuant to Va. Code §18.2-254.3. Criminal justice officials or others (e.g., pretrial services, probation) are designated to screen cases and identify potential behavioral health docket participants. Certified or licensed mental health/substance use disorder professionals provide additional screening for mental illness and substance use disorders and suitability for treatment.

5.2 Once accepted onto the docket, the defendant is enrolled immediately in mental health treatment and, if applicable, substance use treatment services and placed under supervision to monitor compliance.

5.3 An approved consent form is completed, to provide communication regarding participation and progress in treatment and compliance with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, supplemented by 42 CFR Part 2 for substance-use disorder records and various state laws that may impose stricter standards. Information gathered as part of the participants' court-ordered treatment program or services should be safeguarded in the event that participants are returned to traditional court processing.

STANDARD 6

Behavioral health dockets provide access to a comprehensive continuum of evidence-based mental health and substance use treatment and rehabilitation services.

PRACTICE

6.1 Participants are initially screened and thereafter periodically assessed by both court and treatment personnel to ensure that treatment services and individuals are suitably matched.

6.2 All mental health and substance use treatment services are provided by programs licensed by the Virginia Department of Behavioral Health and Developmental Services pursuant to Va. Code § 37.2-404, or personslicensed by the Virginia Department of Health Professions.

6.3 Peer recovery support services provided by Certified Peer Recovery Specialists (CPRS) are delivered by individuals who meet applicable Virginia Department of Health and Developmental Services requirements and operate within their defined scope of practice while collaborating with licensed treatment providers and behavioral health dockets.

6.4 Each participant may contribute to the cost of the mental health and substance use treatment he/she receives while participating in the behavioral health docket. Behavioral health docket guidelines developed on this point pursuant to § 18.2-254.3.K. should include consideration of ability to pay in order to ensure fairness. Failure to pay costs will not prevent graduation from the program.

STANDARD 7

Drug and alcohol testing provides an accurate, timely, and comprehensive assessment of unauthorized[2] substance use throughout participants' enrollment in the specialty docket.

PRACTICE

7.1 Behavioral health dockets have written policies and procedures for the frequency of drug screening, sample collection, chain of custody, sample analysis, and result reporting. At a minimum, dockets should be urine testing participants with a co-occurring substance use disorder at least twice per week until participants are in the last phase of the program and preparing for graduation. All drug and alcohol tests should be administered by a trained professional staff member assigned to or authorized by the specialty docket. Urine specimens are delivered no more than eight hours after being notified that a urine test has been scheduled. Testing should be random[3] and unpredictable, including weekends and holidays.

7.2 The testing policies and procedures include a coordinated strategy for responding to noncompliance, including prompt responses to positive tests, missed tests, and fraudulent tests.

7.3 The testing policies and procedures address elements that contribute to the reliability and validity of a urinalysis testing process. The scope of testing is sufficiently broad to detect the participant's primary drug of choice as well as other potential drugs of abuse, including alcohol. Test specimens are examined routinely for evidence of dilution and adulteration. Each specialty docket has breathalyzer capability, dockets without a breathalyzer may pursue grant funds for this resource.

7.4 Upon entering the specialty docket, participants receive a clear and comprehensive explanation of their rights and responsibilities related to drug and alcohol testing. This information is described in a participant contract or handbook and reviewed periodically with participants to ensure they remain cognizant of their obligations.

7.5 Test results are communicated to the court and the participant within forty-eight hours of sample collection, recognizing that the specialty docket functions best when it can respond immediately.

[2] Unauthorized substances include alcohol, illicit drugs, and addictive or intoxicating prescription medications that are taken without prior approval from a clinician and not during a medical emergency.
[3] Lacking a definite plan, purpose, or pattern. Removal of human element, unknown beforehand, random system-purchased through a provider.

STANDARD 8

A coordinated strategy governs responses from the behavioral health docket to each participant's performance and progress.

PRACTICE

8.1 A participant's progress through the behavioral health docket experience is measured by his or her compliance with the treatment and supervision regimen, improvement of mental health symptoms, and gaining greater independence and self-management of recovery.

8.2 Treatment providers, the judge, supervision staff and other program staff maintain frequent, regular communication to provide timely reporting of progress and noncompliance and to enable the court to respond immediately. Procedures for reporting noncompliance are clearly defined in the behavioral health docket's operating documents.

8.3 Responses to compliance and noncompliance (including criteria for expulsion) are explained orally and provided in writing to behavioral health docket participants during their orientation. Periodic reminders are given throughout the treatment process.

8.4 The court imposes appropriate incentives and sanctions to match the participant's treatment progress. Incarceration is imposed only as a last resort and should be flash incarceration not to exceed 6 days.

8.5 Coordinated responses for compliance or noncompliance are graduated and consistent with the infraction or accomplishment.

8.6 Service adjustments are neither a sanction nor an incentive, but are applied based on participants' assessed needs.

8.7 Payment of fees, fines and/or restitution may be part of the participant's treatment. The court supervises such payments and takes into account the participant's financial ability to fulfill these obligations.

STANDARD 9

Ongoing judicial interaction with each participant in the behavioral health docket is essential.

PRACTICE

9.1 Regular status hearings are used to monitor participant performance:

a. Frequent status hearings during the initial phases of each participant's program establish and reinforce the behavioral health docket's policies and ensure effective supervision of each behavioral health docket participant. Frequent hearings also give the participant a sense of how he or she is doing in relation to others.

b. Having all behavioral health docket participants appear at a single session gives the judge the opportunity to educate both the offender at the bench and those waiting as to the benefits of program compliance and consequences for noncompliance.

STANDARD 10

The behavioral health docket has results that are measured, evaluated, and communicated to the public.

PRACTICE

10.1 The goals of the behavioral health docket are described concretely and in measurable terms. Minimum goals are:

a. Reducing recidivism;

b. Increasing personal, familial, and societal accountability among offenders through ongoing judicial intervention;

c. Addressing mental illness and substance use that contribute to criminal behavior and recidivism;

d. Promoting effective planning and use of resources within the criminal justice system and community agencies. Behavioral health dockets promote outcomes that will benefit not only the offender but society as well;

e. Effective integration of appropriate treatment services with criminal justice system case processing;

f. Enhanced public safety through intensive offender supervision and treatment;

g. Prompt identification and placement of eligible participants;

h. Efficient access to a continuum of related treatment and rehabilitation services;

i. Verified participant abstinence through frequent alcohol or other drug testing and mental health status assessments where applicable;

j. Prompt response to participants' noncompliance with program requirements through a coordinated strategy;

k. Ongoing judicial interaction with each behavioral health docket participant;

l. Ongoing monitoring and evaluation of program effectiveness and efficiency;

m. Ongoing interdisciplinary education and training in support of program effectiveness and efficiency; and

n. Ongoing collaboration among behavioral health dockets, public agencies, and community-based organizations to enhance program effectiveness and efficiency.

10.2 The behavioral health docket has an evaluation and monitoring protocol describing measurement of progress in meeting operational and administrative goals, effectiveness of treatment, and outcomes.

10.3 Information systems adhere to written policies consistent with state and federal standards that protect against unauthorized disclosure.

10.4 The behavioral health docket must use and maintain current data in an information technology system as prescribed by the Office of the Executive Secretary.

10.5 The behavioral health docket shall comply with all public information requirements as prescribed by law.

STANDARD 11

Behavioral health dockets require continuing interdisciplinary education, training and program assessment.

PRACTICE

11.1 Key personnel have attained a specific level of basic education appropriate to their role on the docket, as defined in staff training requirements and in the written operating procedures. The operating procedures define requirements for the continuing education of each behavioral health docket staff member. All behavioral health docket personnel attend continuing education programs. Regional and national behavioral health docket training programs provide critical information on innovative developments across the nation. Sessions are most productive when behavioral health docket personnel attend as a group.

11.2 Continuing education institutionalizes the behavioral health docket and moves it beyond its initial identification with the key staff that may have founded the program and nurtured its development.

STANDARD 12

The local advisory committee interacts in a vital and meaningful way with the behavioral health docket team.

PRACTICE

12.1 Each local advisory committee membership shall include the people identified in § 18.2-254.3.G.

12.2 The local advisory committee conducts regular meetings attended by behavioral health docket staff.

12.3 Representatives of the court, community organizations, employers, law enforcement, corrections, prosecution, defense counsel, supervisory agencies, treatment and rehabilitation providers, educators, health and social service agencies, and the faith community have opportunity to contribute to the ongoing improvement of the behavioral health docket.

12.4 The behavioral health docket advisory committee should engage in community outreach activities to build partnerships that will improve outcomes.