ADA Overview – Offenders with Disabilities at MDO Hearings

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Objectives

- Clinicians will better understand how to assess Mentally Disordered Offenders (MDO) for MDO proceedings by learning the following:
  - The California Department of Corrections and Rehabilitation's (CDCR) Mental Health Services Delivery System
  - CDCR programs for providing services and accommodations to patients with disabilities
  - The Department of State Hospital's (DSH) programs for providing services and accommodations to patients with disabilities

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Overview of Session

- Introductions
- Key Concepts Regarding ADA
- Mental Illness & CDCR/DSH Programs
- Additional Disabilities
- Effective Communication
- Staff Assistants for Developmentally Disabled
- Disability and Effective Communication System (DECS)

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Handouts

- Documents for your reference.
  - Copy of this PowerPoint
  - *Armstrong II* Remedial Plan – BPH's plan for all ADA inmates/parolee-patients
  - BPH Forms
    - BPH 1073, Notice and Request for Assistance at Parole Proceedings
    - BPH 1074, Request for Reasonable Accommodation – Grievance Process
  - DECs External – Attorney Access reference document
  - **AVAZA** Language Service Corp. Instruction Sheet
  - DSH Form G.A. #20.8 HIMD Overlay MH 5671 (Rev 05/13)

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KEY CONCEPTS IN THE ADA

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Americans with Disabilities Act

- Americans with Disabilities Act of 1990, as amended by the ADA Amendments Act of 2008
  - Comprehensive civil rights law that prohibits discrimination and guarantees that people with disabilities have equal opportunities. Title II (42 U.S.C. section 12131 et seq.) applies to "public entities".
  - "No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." (42 U.S.C. section 12132)

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ADA Definitions

- Disability – A physical or mental impairment that substantially limits one or more of the major life activities.
- Major Life Activity – A basic activity or function performed by the average person without difficulty such as caring for one's self, or performing manual tasks, such as seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Also includes limitations with major bodily functions.

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ADA Continued

- The ADA favors broad coverage
  - Disabled persons include those with a record of impairment; or those regarded as having an impairment.
  - Determinations regarding whether an impairment substantially limits one or more major life activities is made without regard to any ameliorative effects of mitigation measures (e.g. medical equipment, hearing aids, mobility devices).
    - A person still falls within the ADA if they have a disability regardless of whether the medical equipment makes it so the person does not appear to have a disability.

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Reasonable Accommodation

- Reasonable Accommodation – Modification or adjustments to programs or services that provide a qualified person with *equal access to and/or effective communication in* the programs, activities, and services.

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ADA and MDO Evaluations

- How does information about an offender's disabilities affect MDO Evaluations?
  - Offender's ability to review and understand relevant documents during your evaluations
  - Access to the interview/evaluation room

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Effective Communication

- An offender's ability to effectively participate in the clinical assessment to determine mentally disordered offender status is of great importance.
- To the extent possible, the offender should be able to:
  - Understand the questions being asked and the issues at stake (MDO condition of parole)
  - Have the opportunity to challenge any incorrect information being considered

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The Disability and Effective Communication System (DECS)

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DECS Best Practices

MDO Best Practices for Evaluating Offenders

- Review DECS prior to meeting with the offender.
- Plan needed accommodations for interview
- Conduct interview with any needed accommodations
- Document any accommodations provided in DECS
- Failure to follow the MDO Independent Evaluator Appointment Program can result in removal as a panel clinician.

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Mental Health Disabilities and the CDCR and DSH Mental Health Programs

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What is a Mental Health Impairment?

- The ADA defines "mental impairment" as any mental or psychological disorder.
- This may include both diagnosed mental disorders and undiagnosed emotional or mental issues.

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TREATMENT PROGRAM IN CDCR

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Mental Health Services Delivery System

- CDCR provides mental health treatment in accordance with its Mental Health Services Delivery System (MHSDS), which is currently based on the 5-Axis diagnosis system under the DSM-IV, but CDCR is transitioning to the DSM-V.
- Under the MHSDS, treatment and monitoring is required for offenders demonstrating current symptoms of specified Axis I diagnoses *OR* if the person requires treatment as a medical necessity.
- "Medical Necessity" for this purpose is defined as:
  - "Mental health intervention is necessary to protect life and/or treat significant disability/dysfunction in an individual diagnosed with or suspected of having a mental disorder."

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What Disorders does CDCR Treat?

- Chronic and serious mental disorders
  - Schizophrenia
  - Bipolar Disorder
  - Psychotic Disorders
  - Major Depressive Disorders
  - Schizophreniform Disorder
  - Schizoaffective Disorder
  - Delusional Disorder
  - Brief Psychotic Disorders
  - Others
- Other disorders treated by medical necessity
  - Anxiety disorders
  - Post-traumatic stress disorders
  - Adjustment disorders

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CDCR Mental Health Levels of Care

- Outpatient
  - Correctional Clinical Case Management System (CCCMS)
  - Enhanced Outpatient Program (EOP)
- Inpatient
  - Mental Health Crisis Bed (MHCB)
  - DSH Treatment
    - Intermediate Care Facility (ICF)
    - Acute
- *Most ICF and Acute care is provided by DSH, however CDCR provides this care for female offenders

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Correctional Clinical Case Management System (CCCMS)

- CCCMS is the lowest level of mental health care
- Criteria for CCCMS placement includes:
  - Qualifying Axis I diagnosis or medical necessity
  - Stable functioning in general population or segregated housing
  - Criteria is not met for higher levels of care
  - Exhibits symptom control or is in partial remission as a result of treatment
  - Generally has GAF score of 50 or higher.

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Enhanced Outpatient Program (EOP)

- EOP is the highest level of outpatient mental health care.
- Criteria for EOP placement includes:
  - Qualifying Axis I diagnosis or medical necessity
  - Acute onset of or significant decompensation of serious mental disorder characterized by symptoms such as increased delusional thinking, hallucinations, etc. AND/OR inability to function in GP
  - Generally has GAF score of less than 50
- Offenders in EOP receive a significantly higher level of treatment and intervention than offenders in the CCCMS level of care.

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Mental Health Crisis Bed (MHCB)

- MHCB provides short-term inpatient care in a Correctional Treatment Center (CTC) for offenders in mental health crisis.
- Length of stay up to 10 days, unless clinical exception.
- Offenders may have no known mental health history but suffer acute symptoms or may have known mental illness in remission with recurring symptoms.
- Criteria for MHCB placement includes:
  - Qualifying Axis I diagnosis or medical necessity
  - Marked impairment and dysfunction in most areas (daily living activities, communication and social interaction) requiring 24-hour nursing care; AND/OR Dangerousness to Others/Self as a result of a serious mental disorder
  - Generally has GAF score of less than 30

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Intermediate Care Facility (ICF)

- DSH facility or licensed bed in a CDCR facility
- ICF programs provide long-term intermediate and non-acute inpatient mental health treatment for inmates (can be 6+ months)
- Criteria for ICF placement includes:
  - Qualifying Axis I or other diagnosis with active symptoms AND generally one of the following:
    - Inability to function at EOP level of care
    - Requiring high structured inpatient psych care
    - Behavior considerably influenced by psychotic symptoms OR serious impairment in communication or judgment

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ACUTE

- DSH facility or licensed bed in a CDCR facility
- Acute programs provide short-term, intensive inpatient treatment to offenders with acute symptoms (generally 30-45 days)
- Criteria for ACUTE placement includes:
  - Offender suffers impairment of functioning with signs and symptoms of either:
    - acute major mental disorder or
    - acute exacerbation of a chronic major mental illness

    (Symptoms can include: inability to perform normal routines of institution or provide for own basic needs, or significant risk of harming self or others)
  - Offenders assessed as severe suicidal risk.
  - Offender engages in self-injurious behavior and is likely to develop serious medical complications.
  - Offender has symptoms or secondary conditions that require inpatient treatment.

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TREATMENT PROGRAM IN DSH

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DSH Hospital Program

- DSH–Atascadero (ASH) and Patton (PSH) are maximum security, psychiatric facilities for forensically–committed patients, including mentally disordered offenders
- Patients admitted have a major mental illness (Axis I), such as a thought disorder, affective disorder, or organic disorder. Patients may additionally exhibit personality disorders (Axis II).

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DSH Treatment & Rehabilitation

- DSH uses a recovery–oriented psychosocial rehabilitation philosophy, directing patients toward common goals of recovery and health, adaptive behavior and coping skills, self–esteem and independence, and progressive elimination of maladaptive behaviors.
- Activities (individual, small, and large group programs or therapy) are prescribed by the treatment team according to a patient's identified needs.

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DSH Levels of Care

- Unlike CDCR, DSH has a five-level Hospital Access System (HAS), which allows patients to progress through the system by demonstrating progressively increasing abilities to adhere to rules, self-regulate behavior, and maintain therapeutic relationships.
- All patients are initially admitted to the hospital at Level I, which is the most restrictive.
- Patients' Access levels are reassessed at every treatment planning conference.
- The HAS Manual clearly defines the behavior patients must be able to demonstrate to receive a particular access level.

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DSH Levels of Care

- Level I: requires staff escort/direct staff supervision
- Level II: Ability to navigate to and from single destination, but require supervision for other functions
- Level III: Generally adheres to hospital expectations, but has not demonstrated this for sustained period
- Level IV: Demonstrated hospital expectations continuously for 90 days
- Level V: consistently displayed good citizenship across a variety of hospital settings & recommended by Wellness Recovery Placement Team (WRPT) for placement in community

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Additional Issues for Offenders with Mental Illnesses

- Suicide Prevention
- *In re Qawi* Orders

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Suicide Prevention

- Patients are screened for suicide risk at regular intervals
- When a patient is determined to be a danger to self (DTS) or danger to others (DTO), the plan of care must include appropriate measures. These measures can only be discontinued by a psychiatrist and may include:
  - 1:1 or 2:1 continuous observation (DTS only)
  - Line of Sight (LOS) observation (DTO or DTS step-down intervention)
- DTS patient may also be placed in restraint or seclusion if needed to protect the patient from injury and less intrusive measures pose a greater risk to the patient.
- Observation, restraint, or seclusion may affect your access to your client.

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Penal Code section 2602

- Penal Code § 2602 (formerly "Keyhea") outlines the process for CDCR to petition for an administrative order to involuntarily administer psychotropic medications to offenders who, as a result of a serious mental disorder, have become (as defined by statute):
  - Dangerous to others
  - Dangerous to themselves
  - Gravely disabled and incompetent to refuse medications
- Penal Code § 2602 orders require annual hearings for renewals.

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In Re Qawi Process

- *In re Qawi* outlines the process for DSH to provide emergency psychotropic medications and/or petition for an administrative order to involuntarily administer psychotropic medications to patients under certain circumstances.
  - Emergency is defined by Welfare and Institutions Code (WIC) section 5008(m) as "a situation in which action to impose treatment over the person's objection is immediately necessary for the preservation of life or the prevention of serious bodily harm to the patient or others, and it is impracticable to first gain consent."
  - The criteria for obtaining an involuntary medication authorization is that the patient must be found to be incompetent to refuse medical treatment with psychotropic medication and/or the person must pose a danger to others within the meaning of WIC section 5300.

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Additional Disabilities You May Encounter and Their Impact on Your Evaluations

- Medical Impairments
- Vision Impairments
- Hearing Impairments
- Mobility Impairments
- Developmental Disabilities
- Learning Disabilities
- Speech or Language Impairments

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MEDICAL IMPAIRMENTS

- Medical impairments include any physiological disorder or condition affecting one or more systems of the human body.
- Patients with medical impairments can range from requiring 24-hour nursing care to requiring frequent or routine medical appointments.

REMEMBER: A medical impairment could affect a patient's ability to effectively participate in an evaluation.

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Overview of DSH Services for Patients with Medical Impairments

General health care:

- Central Medical Services provides medical care and evaluation to all patients served in the hospital. These services include:
  - radiology,
  - onsite laboratory,
  - public health,
  - dentistry,
  - pharmacy,
  - medical clinics,
  - unit sick call,
  - contractual services inside and outside the hospital, and
  - review of community-based consultations
- Services are available 24 hours per day.

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Overview of DSH Services for Patients with Medical Impairments

- More intensive medical care can be provided in the Infirmary
- Limited emergency care (Level IV care) is provided in the Urgent Care Room
- Emergency and medical/surgical/dental services that are beyond the scope of services provided at DSH are furnished by community services through contractual arrangements.

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CDCR Specialized Medical Housing

- General Acute Care Hospital (GACH) can provide medical treatment at all levels of care including acute (same as a community hospital). Only a few institutions have GACHs.
- Correctional Treatment Centers (CTC) provide skilled nursing level of care for inmates in non-acute chronic medical conditions. (Mental Health Crisis Beds and Suicide Watch/Precaution are also typically in CTCs.) Not all institutions have CTCs.
- Outpatient Housing Units (OHU) provide skilled nursing or assisted living for inmates with longer term medical issues. (Some OHUs may be used for assessment of possible mental health issues.)
- Community Hospitals may be used to provide emergency or specialized treatment for institutions without GACHs.
- Hospice provides palliative "comfort" care to inmates with terminal illness and six months or less to live.
- Treatment and Triage Area (TTA) acts as the ER to triage patients. TTAs determine whether the institution's medical facilities can address the problem or, if not, they send the inmate to an outside hospital.

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VISION IMPAIRMENTS

- Vision impairment can range from needing glasses to blindness.
- For hearing purposes, vision impairment means the patient is unable to read or see.
- BPH provides vision-related assistive devices in the hearing rooms.

REMEMBER: patient will likely need assistance with reading and writing any necessary documents during the evaluation.

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Overview of DSH Services for Patients with Vision Impairments

- All DSH patients are screened for visual impairment and will be evaluated for language, reading, and comprehension.
- Patients identified as visually impaired will be transferred to a unit equipped with appropriate accommodations including appropriate signage in Braille and large print.
- The **ASH and PSH Parole Sub-unit** provides patients with assistance in reviewing files and legal documents

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HEARING IMPAIRMENTS

- Hearing impairment can range from hard of hearing to deaf.
- Patients are considered deaf if their hearing loss is such that they are unable to understand speech and must rely on vision for communication.

REMEMBER:
1. Hearing aids may not be working properly
2. Patient may have an awkward writing style, as if writing in a foreign language.
3. Patient may not know American Sign Language, or may only know a modified "slang" version of sign language.

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Overview of DSH Services for Patients with Hearing Impairments

- All DSH patients are screened for hearing impairment.
- Hearing impaired patients will be enrolled in the hearing loss group for treatment to assist recovery.

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Sign Language is the Preferred Method of Communication

- **Sign Language Interpretation (SLI) is the preferred method of communication for an interview with a deaf offender.**
- However, you may encounter a situation where the offender became deaf later in life and didn't learn American Sign Language.
- Written notes are the least preferred method of communication, and shall only be used as the sole source of communication in a hearing as a last resort, or at the patient's request.
  - When written notes are used, it is essential to ensure a patient's reading/writing level is sufficient to allow for written notes.

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MOBILITY IMPAIRMENTS

- **Mobility impairment** includes any limitations in transporting oneself, and may include use of an assistive device.
- **Health Care Appliances** may include Wheelchairs, Canes, Walkers, Special Shoes, and identifying vests
- **Path of Travel**: CDCR and DSH may need to make modifications to the path of travel for the patient to travel to the chow hall, or to a program or assignment.

REMEMBER: If the patient needs any special assistance to attend the evaluation, notify the **ASH or PSH Sub-unit**.

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DEVELOPMENTAL DISABILITY

- A person with a developmental disability has low cognitive functioning and/or a substantial limitation in **adaptive functioning**: communication, academic, self-care, socialization, self-advocacy/ use of resources, work, health and safety, self-direction, leisure
- CDCR screens all inmates at intake for the Developmental Disability Program (DDP)

REMEMBER:
1. The level and type of adaptive support services needed will vary by individual regardless of DDP classification.
2. CDCR's "prescription" for adaptive services is provided by a clinician on the CDC Form 128C-2 (located in the c-file). This may provide you with valuable information about the patient's needs.

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DD1 Designation

- **DD1 – Mild adaptive functioning deficits.**
- Does not usually require prompts to initiate/complete self-care and activities of daily living.
- May need additional time and coaching to be oriented/trained in new situations and jobs.
- May need adaptive supports or additional supervision when under unusual stress or in new situations.
- May require help with reading, writing, preparing documentation.
- May demonstrate poor understanding of relevant issues during due process events.
- May need to be spoken to in slow, simple English with repetition to ensure understanding.
- Does not have victimization concerns. (Note – All inmates in DDP with victimization concerns are placed at DD2 or DD3.)

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DD2 Designation

- **DD2 – Moderate adaptive functioning deficits.**
- Requires prompts to initiate and complete self-care and assist with activities of daily living.
- Needs additional time and coaching to orient/train in new situations and jobs.
- May need help interacting with others, following rules, and avoiding social isolation.
- May demonstrate poor understanding of relevant issues during due process events.
- May need to be spoken to in slow, simple English with repetition to ensure understanding.
- Likely requires help in reading, writing, and preparing documentation.
- May have victimization concerns.

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DD3 Designation

- **DD3 – Severe adaptive functioning deficits.**
- Regularly requires prompts to initiate and/or complete self-care and assistance with activities of daily living.
- Likely to need additional time with orientation/training in new situations and jobs (may never grasp concepts).
- Likely to need help with appropriately interacting with others, following rules, and avoiding social isolation.
- Unlikely to demonstrate understanding of due process events.
- Likely needs to be spoken to in slow, simple English with repetition to ensure understanding.
- Likely requires help in reading, writing, and preparing documentation.
- May have victimization concerns.

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Developmentally Disabled Patients Have Individualized Needs

- It is important to remember that all developmentally disabled patients are functionally impaired and require adaptive supports.
- **The level and type of adaptive support services needed will vary by individual,** and typically includes:
  - Coaching – giving the patient more detailed instructions
  - Assisting – reading/writing letters and documents, translating to simple English
  - Monitoring – observing the patient during tasks such as Canteen, Pill Call, Chow Release, and during interactions with other inmates
  - Prompting – giving reminders to the patient on a one-on-one basis

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CDCR DDP Housing

- At CDCR offenders in the DDP are primarily housed within DDP-designated institutions, on designated yards or facilities, according to classification level and programming needs.
- However, when inmates in the DDP have other treatment needs, the inmate may be housed in a non-DDP prison.
- Housing in a DDP unit does not mean the inmate is getting additional programming and treatment. Instead, housing inmates in a DDP unit enables increased staff support with activities of daily living and helps minimize victimization concerns.

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LEARNING DISORDERS

- A learning disorder is a cognitive disorder that affects the ability of persons with normal intellect to learn academic and social information.
- Common types of learning disabilities are **dyslexia** and **dyscalculia**.

REMEMBER: CDCR does not test inmates for learning disabilities. Instead, all inmates are potentially learning disabled if they:

(1) Have a Test of Adult Basic Education (TABE) score of 4.0 or below; or

(2) The inmate self-identified at CDCR as having a learning disorder.

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SPEECH AND LANGUAGE DISORDERS

- Speech Disorders include:
  - Stuttering
  - Articulation – Difficulty forming sounds & stringing sounds together, substituting one sound for another, omitting a sound, etc.
  - Voice Disorders – inappropriate pitch, loudness, or quality
- Language Disorders include:
  - Delayed Language – delayed development of vocabulary and grammar
  - Aphasia – The loss of speech and language abilities resulting from stroke or head injury

REMEMBER:
1. Patient may need help with reading and writing (Typewriters, Computers, Staff Assistance).
2. Patient may need assistance with communicating during the evaluation.

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FOREIGN LANGUAGE SPEAKER

- Many patients either do not speak English at all or only as a second language.
- NOTE: Patients who speak English as a second language may forget some of their English skills when faced with the stress of a clinical evaluation.

REMEMBER: Effective communication is critical to the mentally disordered offender (MDO) process. The goals of effective communication are to **understand** and to **be understood**.

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DSH Programs/Services for Patients who Speak Foreign Language

- All patients are screened for preferred language and bilingual patients will receive cultural and language assessments, which are documented on Form GA 560 and in the DSH 30-Day Psychosocial Assessment (MH-C 9023.)
- Patients will also be evaluated for language, reading, and comprehension

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Foreign Language – What do you need to know?

- All translation is done through the AVAZA telephonic service for clinical interviews. (See handout)
- If you determine during the course of an evaluation that a patient not flagged for an interpreter does actually need one for effective communication, you can use the above telephonic interpreter services to achieve effective communication.

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Assignment of Evaluation Gaining Additional Information

How do you obtain more information about a patient's disabilities?

- Review the patient's central file from CDCR
- Review the offenders eUHR at CDCR and DSH
- Review Disability and Effective Communication System (DECS)

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