



The State Bar of California

CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

Date: August 31, 2021

To: California Paraprofessional Program Working

From: California Paraprofessional Program Working Group Staff

Subject: Proposed Program Evaluation Metrics

EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG or Working Group) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services \(ATILS\)](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include proposed metrics for program evaluation.

BACKGROUND

The CPPWG charter, adopted by the Board of Trustees at its March 12, 2020, meeting, directs the Working Group to develop specific recommendations that include metrics and data collection methods to enable assessment of the program's effectiveness and to facilitate possible auditing and other proactive risk-based regulation. Proactive risk-based regulation is separately addressed in recommendations from the Regulation Subcommittee. This memo provides recommendations for metrics and data collection methods to enable assessment of the program's effectiveness.

DISCUSSION

The Working Group has engaged in discussions regarding program evaluation with a number of subject matter experts. At its December 17, 2020, meeting, Mr. Zachariah DeMeola from the University of Denver's Institute for the Advancement of the American Legal System led the

CPPWG in exercises intended to identify the goals and potential risks of the paraprofessional program, and how to measure whether the program meets those goals and protects against risks. Goals and objectives of the program were identified as follows:

- Reducing the justice gap
 - Giving consumers a viable choice/alternative
 - Affordability
 - Public education on available services
 - Promoting trust in the program
- Consumer protection
 - Competency of services - ensuring only qualified persons provide services
 - Creating protections and regulation over unregulated services, including the unauthorized practice of law

In addition to identifying program goals and risks, the Working Group discussed the data that would be required to assess whether the goals were being met. A summary of the December 17 workshop discussion is provided as Attachment A.

At its July 26, 2021, meeting, the CPPWG was joined by Professor Anna Carpenter from the University of Utah College of Law, Assistant Professor Alxy Mark from Wesleyan University, who provided information about their approach to evaluating recently implemented paraprofessional program in Utah. They emphasized the distinction between research and program evaluation: research is intended to create new knowledge that can be generalized and applied in other areas; program evaluation is intended to determine whether a specific program is meeting its goals and objectives.

The Working Group was also joined by Ms. Paula Hannaford-Agor, Principal Court Researcher from the National Center for State Courts (NCSC), who provided an overview of the framework developed by NCSC, as discussed in *An Evaluation Framework for Allied Legal Professional Programs: Assessing Improvements in Access to Justice*.¹ She explained that NCSC's metrics for program evaluation were designated as either fundamental or supplemental. Fundamental measures rely on courts' collection of data, and allow for cross-state comparisons. Fundamental measures distinguish between a program that is succeeding and one that is failing to meet its goals. Supplemental measures may require more challenging data collection, including surveys of court personnel, clients, and allied legal professionals.

All three presenters agreed that program evaluation is costly, in terms of both financial and human resources. The cost of evaluation and available resources are factors for consideration in developing a program evaluation design. They also emphasized the value of using an outside organization to conduct program evaluation, to ensure independence and instill confidence in the results.

¹ National Center for State Courts, *An Evaluation Framework for Allied Legal Professional Programs: Assessing Improvements in Access to Justice* (May 2021). https://www.ncsc.org/_data/assets/pdf_file/0028/64468/ALP-Evaluation-Framework.pdf

In developing proposed evaluation metrics staff considered program goals and objectives identified by the Working Group, metrics that had been identified by the Working Group as part of its discussion of overall program goals, subject matter expert input, and the value of interstate comparisons of paraprofessional program impact. With this latter concern in mind, staff attempted to overlay Working Group identified metrics with the NCSC's fundamental measures.

Attachment B reflects the results of this effort. As noted in the attachment, in some instances, collection of a fundamental metric would not be feasible. However, for the most part, staff's recommendations for program evaluation metrics, summarized in table 1 below, should enable interstate comparisons across key measurement domains.

Table 1. Recommended Program Evaluation Metrics

| Metric | Data Points | Data Source |
|--|--|---------------|
| Program Viability | Number of licensees/market coverage | Internal data |
| | Volume of use | Survey |
| | Stable and sufficient regulatory funding source | Internal data |
| | Sufficient income potential for licensees to stay in business | Survey |
| Equity and Access | Demographics of paraprofessionals and their clients | Survey |
| | Number of self-represented litigants (reduced?) | CMS/JBSIS |
| | Justice Gap (reduced?) | Survey |
| Case Outcomes/ Client Satisfaction | Overall satisfaction | Survey |
| | Procedural satisfaction | Survey |
| Legitimacy/ Political Sustainability | Lawyer, judicial officer, and general public sentiment about the program | Survey |
| Affordability | Fee structure transparency: consumer understanding of service offerings and price points | Survey |
| | Hourly rates | |
| | Per case/event rates | |
| | Number of hours to complete services | |
| Efficiency in Paraprofessional Training | Cost of education | Survey |

Staff recommends that evaluation of the paraprofessional program be conducted between three and five years after program implementation, depending on the status of program

rollout. The evaluation should be conducted by an independent organization with experience in evaluating similar programs. Staff recommends that the metrics identified by the Working Group should be adopted as the minimum data to be collected during evaluation of the program; additional metrics and data may be included, as determined by the Oversight Committee, the Board of Trustees, program staff, and the organization engaged to conduct the evaluation.

PROPOSED RESOLUTIONS

RESOLVED, that the California Paraprofessional Program Working Group recommends adoption the metrics identified in table 1 of this memo as minimum data and metrics to be included in an evaluation of the effectiveness of the program.

FURTHER RESOLVED, that the California Paraprofessional Program Working Group recommends that program evaluation be conducted between three and five years after program implementation.

FURTHER RESOLVED, that the California Paraprofessional Program Working Group recommends that program evaluation be conducted by an independent organization with experience in evaluating similar programs.

Proactive Regulation and Program Evaluation: Risk Assessment Workshop
December 17, 2020

What should be the objective of regulating legal services?

- Promoting trust in the program
- Giving consumer a viable choice/alternative
- Consumer protection
- Creating protection/regulation over unregulated services
- Competency of services - ensuring only qualified persons may provide services
- Reducing the justice gap (making services available)
- Affordability of cost of program
- Public education on available services: how to seek paraprofessional
- Impact on courts/administration of justice

How is the current regulatory system meeting those objectives, and how is it falling short of meeting those objectives?

| Meeting Objectives | Falling Short |
|---|---|
| <ul style="list-style-type: none"> ➤ Protection from poor services (harm to consumers) <ul style="list-style-type: none"> ✓ CLE ➤ Impact on the courts taken into consideration | <ul style="list-style-type: none"> ➤ Disciplinary system lacks ability and/or resources to be proactive/preventative (reliance on malpractice claims) ➤ Lack of resources to make harmed consumers whole (no malpractice insurance requirement; premiums are costly under today's framework) ➤ Lack of protection when it comes to access to services needed ➤ Not enough resources to provide services for people in need (funding, legal aid, etc.) ➤ Knowledge gap - lack of information to recognize whether a problem is legal in nature ➤ Regulations that pertain to closing the justice gap: lack of alternatives for services ➤ Unregulated services that open consumers to harm ➤ Self-represented litigant trends are increasing despite unbundled and limited scope services ➤ Public trust and confidence at risk |

Key Risk #1: Worse legal result for consumer than they would have, had they used the next best alternative

| Key Factors for Identifying Risk Level | Individual or Entity Data Needed |
|--|---|
| <ul style="list-style-type: none"> ➤ Outcomes for people who went through the court system ➤ Amount of need for legal services | <ul style="list-style-type: none"> ➤ Survey: <ul style="list-style-type: none"> ✓ Consumers for client satisfaction: compare relative satisfaction among lawyer, SRL, paralegal based services ✓ Capture data relevant to the knowledge gap/legal understanding that may not be collected by looking only at court outcomes ✓ Judges to understand impact of services on court ✓ Request/information to litigants to get them to participate ✓ Reviews on Yelp, Google, etc. for consumer feedback ➤ Court records: <ul style="list-style-type: none"> ✓ Good or bad results from specific court outcomes ✓ How long it takes people to get through the system based on court records <ul style="list-style-type: none"> ▪ Need to compare similar cases even if different originating points ▪ Lacks ability to measure interactions that don't go through court system ➤ Work Product <ul style="list-style-type: none"> ✓ Sampling of work product from lawyers and paraprofessionals, and have people in the field compare their work ➤ Malpractice cases <ul style="list-style-type: none"> ✓ Data with regard to quality of service |

Key Risk #2: Consumer overpays for legal service

| Key Factors for Identifying Risk Level | Individual or Entity Data Needed |
|---|--|
| <ul style="list-style-type: none">➤ Whether consumer is paying for service that is otherwise free➤ Whether consumers are being overcharged for value of services➤ Foundational question: who are the consumers the program is intended to serve?➤ What are the needed services?<ul style="list-style-type: none">▪ Related to how best to close the justice gap & what services a paraprofessional may be allowed to provide | <ul style="list-style-type: none">➤ Price lists for specific services<ul style="list-style-type: none">✓ Court fee schedules (starting place)✓ Statutory fees, as in probate✓ Factor in market rates for different counties✓ Hourly rates for attorneys (perhaps not as helpful because measuring full service attorneys in major firms)<ul style="list-style-type: none">▪ Laffer Index - major international firms➤ Number of hours to complete the service (to understand the value of the service)➤ Survey to assess whether consumer is informed of different services and price points➤ Market data for people who cannot afford lawyers who go to people who aren't attorneys<ul style="list-style-type: none">✓ Criminal cases✓ Immigration consultants |

Risk #3: Consumer Receives Incompetent Legal Services

| Key Factors for Identifying Risk Level | Individual or Entity Data Needed |
|---|----------------------------------|
| <ul style="list-style-type: none">▪ | |

Risk #4: Consumer Receives Unregulated Legal Services

| Key Factors for Identifying Risk Level | Individual or Entity Data Needed |
|---|----------------------------------|
| <ul style="list-style-type: none">▪ | |

Risk Analysis Matrix

| Risk | Consumer | Likelihood | Impact | Key Factors/Data | Intervention or Mitigation |
|---|-----------------------------|------------|--------|------------------|----------------------------|
| Consumer achieves a worse legal result than they would have had they used the next best alternative | Individual (low resourced) | | | | |
| | Individual (high resourced) | | | | |
| | Businesses (low resourced) | | | | |
| | Businesses (high resourced) | | | | |
| Consumer overpays for legal services | Individual (low resourced) | | | | |
| | Individual (high resourced) | | | | |
| | Businesses (low resourced) | | | | |
| | Businesses (high resourced) | | | | |

| Metric | Program Objective/ Potential Risk | Data Points | Data Source | Recommendation |
|---|--|---|--------------------|---------------------------------------|
| Program Viability | Increased access/ Justice Gap reduced | Sufficient income potential for licensees to stay in business | Survey | Include |
| Equity and Access | Increased access/ Justice Gap reduced | Demographics of paraprofessionals and their clients | Survey | Include |
| | | Number of self-represented litigants (reduced?)* | CMS/JBSIS | |
| | | Justice Gap (reduced?) | Survey | |
| Case Outcomes/ Client Satisfaction | Consumer receives incompetent legal services | Overall satisfaction | Survey | Include |
| | | Procedural satisfaction | Survey | |
| | | Time to process cases | CMS/JBSIS | Do not collect: burdensome |
| Legitimacy/Political Sustainability | Increased access/ Justice Gap reduced | Lawyer, judicial officer, and general public sentiment about the program | Survey | Include |
| Manner of Disposition | Consumer receives incompetent legal services | Disposed on merits of case/mediation/settlement vs. administratively dismissed for failure to prosecute/default judgment: comparison of paraprofessional clients vs. SRLs | Court CMS/JBSIS | Do not collect: burdensome |
| Public Trust in the Legal System | Increased access/ Justice Gap reduced | Compliance with Court Orders: comparison of non-compliance events among paraprofessional clients vs. SRLs | Court CMS/JBSIS | Do not collect: infeasible |
| Efficiency in Case Processing | Consumer receives incompetent legal services | Time to disposition | Court CMS/JBSIS | Do not collect: burdensome/infeasible |
| Efficiency in Paraprofessional Training | Consumer receives incompetent legal services | Consistency between training and practice | Survey | Do not collect: infeasible |
| Access, Equity and Market Effects | Increased access/ Justice Gap reduced | Percentage of litigants who would have otherwise gone unrepresented | Survey | Do not collect: burdensome/infeasible |
| | | Percentage of low-income or rural litigants after program implementation, compared to the percentages before program implementation* | CMS/JBSIS | |

* Requires collection of baseline data prior to program implementation.

Key: Metric identified by CPPWG Metric identified by NCSC