

## Chapter 388-875 WAC

# CRIMINALLY INSANE PERSON COMMITTED TO THE CARE OF THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—EVALUATION, PLACEMENT, CARE AND DISCHARGE

(Formerly chapter 275-59 WAC)

### WAC

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**WAC 388-875-0010 Purpose.** These regulations are adopted pursuant to and in accordance with chapter 117, Laws of 1973 1st ex. sess. They are adopted to provide procedures for the evaluation, placement, care and discharge of persons committed to the care of the department of social and health services, under the aforementioned act, relating to the criminally insane.

[Statutory Authority: Chapter 10.77 RCW. WSR 01-01-008, recodified as § 388-875-0010, filed 12/6/00, effective 1/6/01; Order 846, § 275-59-010, filed 8/9/73.]

**WAC 388-875-0020 Definitions. "Department"** means the state department of social and health services.

**"Division"** means the mental health division, department of social and health services.

**"Evaluation"** means the initial procedure when a court requests the department to provide an opinion if a person charged with a crime is competent to stand trial or, if indicated and appropriate, if the person was suffering under a mental disease or defect excluding responsibility at the time of the commission of the crime.

**"Indigent"** means any person who is financially unable to obtain counsel or other necessary expert or professional services without causing substantial hardship to himself or his family.

**"Professional person"** means:

(1) A psychiatrist. This is defined as a person having a license as a physician and surgeon in this state, who has in addition, completed three years of graduate training in psychiatry in a program approved by the American Medical Association or the American Osteopathic Association and who is certified or is eligible to be certified by the American Board of Psychiatry and Neurology or the American Osteopathic Board of Neurology and Psychiatry.

(2) A psychologist. This is defined as a person who has been licensed as a psychologist pursuant to chapter 18.83 RCW.

(3) A social worker. This is defined as a person with a master's or further advanced degree from an accredited school of social work or a degree deemed equivalent under rules adopted by the secretary.

**"Secretary"** means the secretary of the department of social and health services or his designee.

**"Superintendent"** means the person responsible for the functioning of a treatment facility.

**"Treatment facility"** means any facility operated or approved by the department of social and health services for the treatment of the criminally insane. Such definition shall not include any state correctional institution or facility.

[Statutory Authority: Chapter 10.77 RCW. WSR 01-01-008, amended and recodified as § 388-875-0020, filed 12/6/00, effective 1/6/01. Statutory Authority: RCW 72.01.090. WSR 79-03-038 (Order 1373), § 275-59-020, filed 3/1/79; Order 846, § 275-59-020, filed 8/9/73.]

**WAC 388-875-0030 Mental health division.** The secretary designates to the division the responsibility for:

(1) Evaluation and treatment of any person committed to the secretary for evaluation or treatment, under chapter 10.77 RCW;

(2) Assisting the court in obtaining nondepartmental experts or professional persons to participate in the evaluation or a hearing on behalf of the defendant and supervising the procedure whereby such professionals will be compensated, according to fee schedule if the person being evaluated or treated is an indigent;

(3) Assuring that any nondepartmental expert or professional person requesting compensation has maintained adequate evaluation and treatment records which justify compensation;

(4) Assisting the court by designation of experts or professional persons to examine the defendant and report to the court when the defendant is not committed to the secretary;

(5) Determination of what treatment facility shall have custody of persons committed to the secretary under chapter 10.77 RCW.

(6) If the court is advised by any party that the defendant may be developmentally disabled, at least one of the experts or professional persons appointed shall be a developmental disabilities professional.

[Statutory Authority: Chapter 10.77 RCW. WSR 01-01-008, amended and recodified as § 388-875-0030, filed 12/6/00, effective 1/6/01. Statutory

Authority: RCW 72.01.090. WSR 79-03-038 (Order 1373), § 275-59-030, filed 3/1/79; Order 846, § 275-59-030, filed 8/9/73.]

**WAC 388-875-0040 Schedule of maximum payment for defendant expert or professional person.** Department payments to an expert or professional person for department services an indigent person receives shall not exceed:

- (1) One hundred dollars an hour for services; or
- (2) Eight hundred dollars total payment for services.

The department shall only approve an exception to this section ruling when the exception is approved, in writing, by the division director. The department shall only approve payment for one mental health examination per indigent person in each six month period.

[Statutory Authority: Chapter 10.77 RCW. WSR 01-01-008, recodified as § 388-875-0040, filed 12/6/00, effective 1/6/01. Statutory Authority: RCW 72.01.090. WSR 91-24-045 (Order 3298), § 275-59-041, filed 11/27/91, effective 1/1/92; WSR 79-03-038 (Order 1373), § 275-59-041, filed 3/1/79.]

**WAC 388-875-0050 Time limitations and requirements.** If a person is committed to the secretary as criminally insane, commitment and treatment cannot exceed the maximum possible sentence for any offense charged. Therefore:

(1) The superintendent, if no superintendent then the division, with the assistance of the office of the attorney general where necessary shall determine at the time of commitment the maximum possible sentence for any offense charged, and thereby compute a maximum release date for every individual so committed.

(2) If the committed person has not been released by court order six months prior to the expiration of the maximum possible release date, the superintendent, if no superintendent, the division, shall notify the committing court and prosecuting attorney of its computation of maximum release date and the requirement that the person must be released on that date unless civil proceedings are instituted or the court determines that the computation of maximum release date is incorrect.

[Statutory Authority: Chapter 10.77 RCW. WSR 01-01-008, recodified as § 388-875-0050, filed 12/6/00, effective 1/6/01. Statutory Authority: RCW 72.01.090. WSR 79-03-038 (Order 1373), § 275-59-050, filed 3/1/79; Order 846, § 275-59-050, filed 8/9/73.]

**WAC 388-875-0060 Individualized treatment.** (1) Whenever a person is committed to the secretary as criminally insane, the treatment facility to which the person is assigned shall, within fifteen days of admission to the facility, evaluate and diagnose the committed person for the purpose of devising an individualized treatment program.

(2) Every person, committed to the secretary as criminally insane, shall have an individualized treatment plan formulated by the treatment facility. This plan shall be developed by appropriate treatment team members and implemented as soon as possible but no later than fifteen days after the person's admission to the treatment facility as criminally insane. Each individualized treatment plan shall include, but not be limited to:

- (a) A statement of the nature of the specific problems and specific needs of the patient;
- (b) A statement of the physical setting necessary to achieve the purposes of commitment;

(c) A description of intermediate and long-range treatment goals, with a projected timetable for their attainment;

(d) A statement and rationale for the plan of treatment for achieving these intermediate and long-range goals;

(e) A specification of staff responsibility and a description of proposed staff involvement with a patient in order to attain these treatment goals;

(f) Criteria for recommendation to the court for release.

(3) This individualized treatment plan shall be reviewed by the treatment facility periodically, at least every six months, and a copy of the plan shall be sent to the committing court.

[Statutory Authority: Chapter 10.77 RCW. WSR 01-01-008, amended and recodified as § 388-875-0060, filed 12/6/00, effective 1/6/01. Statutory Authority: RCW 72.01.090. WSR 79-03-038 (Order 1373), § 275-59-060, filed 3/1/79; Order 846, § 275-59-060, filed 8/9/73.]

**WAC 388-875-0070 Transfer of a patient between state-operated facilities for persons with mental illness.** In some instances, it is appropriate for the department to transfer a patient currently residing in a state facility to another state facility for ongoing treatment. The department shall accomplish the transfer with the utmost care given to the therapeutic needs of the patient. This section describes the procedures for handling a patient transfer between state facilities in a manner consistent with the best interest of the patient.

(1) The department may use the following criteria when determining the appropriateness of a patient transfer:

(a) The patient's family resides within the receiving facility's catchment area; or

(b) The patient's primary home of residence is in the receiving facility's catchment area; or

(c) A particular service or need of the patient is better met at the receiving facility; or

(d) Transfer to the receiving facility may facilitate community discharge due to the availability of community service in the receiving facility's catchment area; or

(e) The county, regional support network, or patient requests a transfer.

(2) Prior to any proposed transfer of a patient, the state facility shall comply with the following:

(a) The sending facility, at the request of the superintendent, shall in writing forward information necessary to make a decision on whether transfer is appropriate to the receiving facility's liaison and the regional support network liaison;

(b) The receiving facility's liaison and the regional support network liaison shall recommend appropriate action to the superintendent of the sending facility in writing within five calendar days of receipt of the request;

(c) If the receiving facility accepts the proposed patient transfer, the sending facility shall notify the patient, guardian, regional support network liaison, and attorney, if known, at least five days before the proposed patient transfer;

(d) The sending facility is responsible for all patient transfer arrangements, e.g., transportation, staff escort, etc., and shall coordinate the day and time of arrival with the receiving facility's liaison; and

(e) The sending facility shall arrange for the transfer of patient's medical record to the receiving facility.

(3) The sending state facility shall document the following in the patient's record:

- (a) Physician documentation of the medical suitability of the patient for transfer; and
- (b) Social worker documentation regarding:
  - (i) Justification as to why the transfer is considered in the patient's best interests; and
  - (ii) The patient's wishes regarding transfer.
- (4) The sending facility shall contact the prosecuting attorney's office of the committing county prior to the transfer.

[Statutory Authority: Chapter 10.77 RCW. WSR 01-01-008, recodified as § 388-875-0070, filed 12/6/00, effective 1/6/01. Statutory Authority: RCW 74.05.560 [71.05.560]. WSR 91-22-044 (Order 3275), § 275-59-071, filed 10/31/91, effective 12/1/91. Statutory Authority: RCW 71.05.560. WSR 88-23-021 (Order 2724), § 275-59-071, filed 11/7/88.]

**WAC 388-875-0080 Restoration procedure for a former involuntarily committed person's right to firearm possession.** (1) The department and mental health professionals implementing chapter 10.77 RCW shall recognize and affirm that a person is entitled to the immediate restoration of the right to firearm possession, as described under RCW 9.41.040 (6)(c), when the person no longer requires treatment or medication for a condition related to the commitment.

(2) Mental health professionals implementing the provisions of chapter 71.05 RCW shall provide to the court of competent jurisdiction such relevant information concerning the commitment and release from commitment as the court may request in the course of reaching a decision on the restoration of the person's right to firearm possession. (See RCW 9.41.097.)

(3) A person who has been barred from firearm possession under RCW 9.41.040(6) and who wishes to exercise this right, may petition the court which ordered involuntary treatment or, the superior court of the county in which the person resides for restoration of the right to possess firearms. At a minimum, such petition shall include:

- (a) The fact, date, and place of involuntary treatment;
- (b) The fact, date, and release from involuntary treatment;
- (c) A certified copy of the order of final discharge entered by the committing court.
- (4) A petitioner shall show that the petitioner no longer requires treatment or medication for a condition related to the commitment.

[Statutory Authority: Chapter 10.77 RCW. WSR 01-01-008, recodified as § 388-875-0080, filed 12/6/00, effective 1/6/01. Statutory Authority: RCW 9.41.040(6). WSR 94-06-025 (Order 3709), § 275-59-072, filed 2/23/94, effective 3/26/94.]

**WAC 388-875-0090 Conditional release.** (1) Any person committed to the secretary as criminally insane may make application to the secretary for conditional release.

(2) The secretary designates the superintendent of the treatment facility, if no superintendent, then the director of the division, as the person to receive and act on such application for conditional release.

(3) The person making application for conditional release shall not, under any circumstances, be released until there is a court hearing on the application and recommendations and a court order authorizing conditional release has been issued.

(12/6/00)

(4) If conditional release is denied by the court the person making the applications may reapply after a period of six months from the date of denial.

(5) If the court grants conditional release and places the person making application under the supervision of a department employee, that supervising department employee shall make monthly reports, unless indicated otherwise by the court, concerning the conditionally released person's progress and compliance with the terms and conditions of conditional release. Such reports shall be forwarded to the committing court, the division, the prosecuting attorney, and the treatment facility in which the person was most recently housed.

(6) The following persons are designated to exercise power and authority of the secretary contained in RCW 10.77.190:

- (a) The director or designee of the division;
- (b) The probation and parole office, if any, supervising the conditionally released person; and
- (c) The treatment facility supervising the conditionally released person or from which the person was conditionally released.

[Statutory Authority: Chapter 10.77 RCW. WSR 01-01-008, recodified as § 388-875-0090, filed 12/6/00, effective 1/6/01. Statutory Authority: RCW 72.01.090. WSR 79-03-038 (Order 1373), § 275-59-080, filed 3/1/79; Order 846, § 275-59-080, filed 8/9/73.]

**WAC 388-875-0100 Retroactivity.** (1) This chapter shall apply to persons committed to the secretary or the department, under prior rules and regulations, as incompetent to stand trial or as being criminally insane and therefore requires that these individuals be provided:

- (a) An individualized treatment plan;
- (b) An evaluation to be forwarded to the committing court;
- (c) Applicability of time limitations and requirements provided herein;
- (d) A maximum release date; and
- (e) An opportunity to apply for conditional release.

[Statutory Authority: Chapter 10.77 RCW. WSR 01-01-008, recodified as § 388-875-0100, filed 12/6/00, effective 1/6/01; Order 846, § 275-59-090, filed 8/9/73.]

**WAC 388-875-0110 Access to records by criminal justice agencies.** Upon written request, criminal justice agencies shall have access to the following documents developed pursuant to the procedures set forth in chapter 10.77 RCW. the most recent forensic:

- (1) Psychiatric assessment;
- (2) Release summary; and
- (3) Pretrial report of the examination, either inpatient or outpatient.

Other relevant information may be provided by agreement between the requesting criminal justice agency and the treatment facility, subject to federal and state confidentiality provisions.

[Statutory Authority: Chapter 10.77 RCW. WSR 01-01-008, § 388-875-0110, filed 12/6/00, effective 1/6/01.]