Chapter 182-538D WAC
BEHAVIORAL HEALTH SERVICES

Last Update: 11/27/19

WAC

WAC 182-538D-0200 Behavioral health services—Definitions. The following definitions and those found in chapters 182-500, 182-538, and 182-538C WAC apply to this chapter. If conflict exists, this chapter takes precedence.

"Adult" means a person age eighteen or older. For purposes of the medicaid program, people age eighteen through age twenty have the early and periodic screening, diagnostic and treatment (EPSDT) benefit described in chapter 182-534 WAC. In the medicaid program, EPSDT is available until a person reaches age twenty-one.

"Assessment" means the process of obtaining all pertinent biopsychosocial information, as identified by the person, and family and collateral sources, for determining a diagnosis and to plan individualized services and supports.

"Behavioral health" means the prevention, treatment of, and recovery from substance use disorders, mental health disorders or problem and pathological gambling disorders.

"Behavioral health administrative service organization (BH-ASO)" See WAC 182-538-050.

"Behavioral health agency" means an entity licensed by the department of health to provide behavioral health services, including services for mental health disorders and substance use disorders.

"Chemical dependency professional" or **"CDP"** means a person credentialed by the department of health as a chemical dependency professional (CDP) with primary responsibility for implementing an individualized service plan for substance use disorder services.

"Child" means a person under the age of eighteen. For the purposes of the medicaid program, people age eighteen through age twenty have the early and periodic screening, diagnostic and treatment (EPSDT) benefit described in chapter 182-534 WAC. In the medicaid program, EPSDT is available until a person reaches age twenty-one.

"Clinical record" means a paper or electronic file that is maintained by the provider and contains pertinent psychological, medical, and clinical information for each person served.

"Community support services" means services authorized, planned, and coordinated through resource management services including, at a minimum, assessment, diagnosis, emergency crisis intervention availa-

ble twenty-four hours, seven days a week; prescreening determinations for people who are mentally ill being considered for placement in nursing homes as required by federal law; screening for patients being considered for admission to residential services; diagnosis and treatment for children who are mentally or severely emotionally disturbed discovered under screening through the federal Title XIX early and periodic screening, diagnosis, and treatment (EPSDT) program; investigation, legal, and other nonresidential services under chapter 71.05 RCW; case management services; psychiatric treatment including medication supervision; counseling; psychotherapy; assuring transfer of relevant patient information between service providers; recovery services; and other services determined by behavioral health administrative service organizations and managed care organizations.

"Complaint" See "grievance" in WAC 182-538-050.

"Consent" means agreement given by a person after the person is provided with a description of the nature, character, anticipated results of proposed treatments and the recognized serious possible risks, complications, and anticipated benefits, including alternatives and nontreatment. Informed consent must be provided in a terminology that the person can reasonably be expected to understand.

"Consultation" means the clinical review and development of recommendations regarding activities, or decisions of, clinical staff, contracted employees, volunteers, or students by people with appropriate knowledge and experience to make recommendations.

"Crisis" means an actual or perceived urgent or emergent situation that occurs when a person's stability or functioning is disrupted and there is an immediate need to resolve the situation to prevent a serious deterioration in the person's mental or physical health, or to prevent the need for referral to a significantly higher level of care.

"Cultural competence" or **"culturally competent"** means the ability to recognize and respond to health-related beliefs and cultural values, disease incidence and prevalence, and treatment efficacy. Examples of culturally competent care include striving to overcome cultural, language, and communications barriers, providing an environment in which people from diverse cultural backgrounds feel comfortable discussing their cultural health beliefs and practices in the context of negotiating treatment options, encouraging people to express their spiritual beliefs and cultural practices, and being familiar with and respectful of various traditional healing systems and beliefs and, where appropriate, integrating these approaches into treatment plans.

"Designated crisis responder (DCR)" means a mental health professional appointed by the county, or an entity appointed by the county, to perform the duties described in chapter 71.05 RCW.

"Disability" means a physical or mental impairment that substantially limits one or more major life activities of a person and the person:

(a) Has a record of such an impairment; or

(b) Is regarded as having such impairment.

"Ethnic minority" or **"racial/ethnic groups"** means, for the purposes of this chapter, any of the following general population groups:

(a) African American;

(b) An American Indian or Alaskan native, which includes:

(i) A person who is a member or considered to be a member in a federally recognized tribe;

(ii) A person determined eligible to be found Indian by the secretary of interior;

(iii) An Eskimo, Aleut, or other Alaskan native; and

(iv) An unenrolled Indian meaning a person considered Indian by a federally or nonfederally recognized Indian tribe or off-reservation Indian/Alaskan native community organization.

(c) Asian/Pacific Islander; or

(d) Hispanic.

"Housing services" means the active search and promotion of individual access to, and choice in, safe and affordable housing that is appropriate to the person's age, culture, and needs.

"Integrated managed care (IMC)" See WAC 182-538-050.

"Less restrictive alternative (LRA)" See WAC 182-538C-050.

"Mental health professional" means a person who meets the following:

(a) A psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner (ARNP), psychiatric nurse, or social worker as defined in chapters 71.05 and 71.34 RCW;

(b) A person who is licensed by the department of health as a mental health counselor, mental health counselor associate, marriage and family therapist, or marriage and family therapist associate; or

(c) A person with a master's degree or further advanced degree in counseling or one of the social sciences from an accredited college or university who has at least two years of experience in direct treatment of people with mental illness or emotional disturbance, experience that was gained under the supervision of a mental health professional recognized by the department of health or attested to by the licensed behavioral health agency.

"Mental health specialist" means:

(a) A **"child mental health specialist"** is defined as a mental health professional with the following education and experience:

(i) A minimum of one hundred actual hours (not quarter or semester hours) of special training in child development and the treatment of children and youth with serious emotional disturbance and their families; and

(ii) The equivalent of one year of full-time experience in the treatment of seriously emotionally disturbed children and youth and their families under the supervision of a child mental health specialist.

(b) A **"geriatric mental health specialist"** is defined as a mental health professional who has the following education and experience:

(i) A minimum of one hundred actual hours (not quarter or semester hours) of specialized training devoted to the mental health problems and treatment of people age sixty and older; and

(ii) The equivalent of one year of full-time experience in the treatment of people age sixty and older, under the supervision of a geriatric mental health specialist.

(c) An **"ethnic minority mental health specialist"** is defined as a mental health professional who has demonstrated cultural competence attained through major commitment, ongoing training, experience and/or specialization in serving ethnic minorities, including evidence of one year of service specializing in serving the ethnic minority group under the supervision of an ethnic minority mental health specialist; and

(i) Evidence of support from the ethnic minority community attesting to the person's commitment to that community; or

(ii) A minimum of one hundred actual hours (not quarter or semester hours) of specialized training devoted to ethnic minority issues and treatment of ethnic minorities.

(d) A **"disability mental health specialist"** is defined as a mental health professional with special expertise in working with an identified disability group. For purposes of this chapter only, "disabled" means a person with a disability other than a mental illness, including a developmental disability, serious physical handicap, or sensory impairment.

(i) If the consumer is deaf, the specialist must be a mental health professional with:

(A) Knowledge about the deaf culture and psychosocial problems faced by people who are deaf; and

(B) Ability to communicate fluently in the preferred language system of the consumer.

(ii) The specialist for people with developmental disabilities must be a mental health professional who:

(A) Has at least one year experience working with people with developmental disabilities; or

(B) Is a developmental disabilities professional as defined in RCW 71.05.020.

"Peer counselor" means a person recognized by medicaid agency as a person who:

(a) Is a self-identified consumer of behavioral health services who:

(i) Has applied for, is eligible for, or has received behavioral health services; or

(ii) Is the parent or legal guardian of a person who has applied for, is eligible for, or has received behavioral health services;

(b) Is a counselor credentialed under chapter 18.19 RCW;

(c) Has completed specialized training provided by or contracted through the medicaid agency. If the person was trained by trainers approved by the department of social and health services before October 1, 2004, and has met the requirements in (a), (b) and (d) of this subsection by January 31, 2005, the person is exempt from completing this specialized training;

(d) Has successfully passed an examination administered by the medicaid agency or an authorized contractor; and

(e) Has received a written notification letter from the medicaid agency stating that the medicaid agency recognizes the person as a "peer counselor."

"Quality plan" means an overarching system and/or process whereby quality assurance and quality improvement activities are incorporated and infused into all aspects of a behavioral health administrative service organization's (BH-ASO's) or managed care organization's (MCO's) operations.

"Residential services" means a complete range of residences and supports authorized by resource management services and which may involve a facility, a distinct part thereof, or services which support community living, for people who are acutely mentally ill, adults who are chronically mentally ill, children who are severely emotionally disturbed, or adults who are seriously disturbed and determined by the behavioral health organization to be at risk of becoming acutely or chronically mentally ill.

"Resource management services" means the planning, coordination, and authorization of residential services and community support services for people who are:

(a) Adults and children who are acutely mentally ill;

(b) Adults who are chronically mentally ill;

(c) Children who are severely emotionally disturbed; or

(d) Adults who are seriously disturbed and determined solely by a behavioral health organization to be at risk of becoming acutely or chronically mentally ill.

"Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms indicating that a person continues using the substance despite significant substance-related problems. The diagnosis of a substance use disorder is based on a pathological pattern of behaviors related to the use of the substances.

"Supervision" means the regular monitoring of the administrative, clinical, or clerical work performance of a staff member, trainee, student, volunteer, or employee on contract by a person with the authority to give direction and require change.

"Youth" means a person who is age seventeen or younger.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2019 c 325, 2014 c 225, and 2018 c 201. WSR 19-24-063, § 182-538D-0200, filed 11/27/19, effective 1/1/20.]

WAC 182-538D-0234 Behavioral health administrative service organizations—When the medicaid agency administers regional behavioral health services. (1) If a currently operating behavioral health administrative service organization (BH-ASO) chooses to stop functioning as a BH-ASO, fails to perform contract requirements and fails to correct the issue to the medicaid agency's satisfaction when corrective action is issued, or does not meet the requirements under RCW 71.24.045, the following is implemented:

(a) Under RCW 71.24.035(16), the director of the medicaid agency:

(i) Is designated as the BH-ASO until a new BH-ASO is designated; and

(ii) Assumes the duties assigned to the region without a participating BH-ASO.

(b) The medicaid agency:

(i) Administers behavioral health services within the region without a participating BH-ASO; and

(ii) Continues to apply the BH-ASO requirements in chapter 182-538C WAC.

(2) A person who resides within the service area of a region without a participating BH-ASO may receive services, within available resources as defined in RCW 71.24.025(2), from any provider of behavioral health services that is contracted with the medicaid agency and licensed by the department of health.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2019 c 325, 2014 c 225, and 2018 c 201. WSR 19-24-063, § 182-538D-0234, filed 11/27/19, effective 1/1/20.]

WAC 182-538D-0246 Behavioral health administrative service organizations and managed care organizations—Public awareness of behavioral health services. A behavioral health administrative service organization (BH-ASO), or a managed care organization (MCO), or a BH-ASO's or MCO's designee must provide public information on the availability of mental health and substance use disorder services. The BH-ASO or MCO must:

(1) Maintain information on available services, including crisis services and the recovery help line in telephone directories, public web sites, and other public places in easily accessible formats; and

(2) Publish and disseminate brochures and other materials or methods for describing services and hours of operation that are appropriate for all people, including those who may be visually impaired, limited-English proficient, or unable to read.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2019 c 325, 2014 c 225, and 2018 c 201. WSR 19-24-063, § 182-538D-0246, filed 11/27/19, effective 1/1/20.]

WAC 182-538D-0254 Behavioral health administrative service organizations and managed care organizations—Voluntary and involuntary inpatient evaluation and treatment services. (1) A behavioral health administrative service organization (BH-ASO) and managed care organization (MCO) must develop and implement age and culturally competent behavioral health services that are consistent with chapters 71.24, 71.05, and 71.34 RCW.

(2) For involuntary evaluation and treatment services, the BH-ASO or MCO:

(a) Must ensure that people in their regional service area have access to involuntary inpatient care; and

(b) Is responsible for coordinating discharge planning with the treating inpatient facility.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2019 c 325, 2014 c 225, and 2018 c 201. WSR 19-24-063, § 182-538D-0254, filed 11/27/19, effective 1/1/20.]

WAC 182-538D-0258 Behavioral health administrative service organizations—Administration of the Mental Health Involuntary Treatment Act and Substance Use Disorders Involuntary Treatment Act. Behavioral health administrative service organizations (BH-ASOs) are responsible for administration of the Mental Health Involuntary Treatment Act and Substance Use Disorders Involuntary Treatment Act, including investigation, detention, transportation for people not eligible for medicaid, due process and other court-related services, and other services required by chapters 71.05, 71.24, and 71.34 RCW. This includes:

(1) BH-ASOs ensuring that designated crisis responders (DCRs) perform the duties of involuntary investigation and detention in accordance with the requirements of chapters 71.05, 71.24, and 71.34 RCW.

(2) BH-ASOs and managed care organizations documenting the person's compliance with the conditions of mental health less restrictive alternative court orders by:

(a) Ensuring periodic evaluation of each committed person for release from or continuation of an involuntary treatment order. Evaluations must be recorded in the clinical record, and must occur at least monthly for ninety-day commitments and one hundred eighty-day commitments.

(b) Notifying the DCR if noncompliance with the less restrictive alternative order impairs the person sufficiently to warrant detention

or evaluation for detention and petitioning for revocation of the less restrictive alternative court order.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2019 c 325, 2014 c 225, and 2018 c 201. WSR 19-24-063, § 182-538D-0258, filed 11/27/19, effective 1/1/20.]

WAC 182-538D-0262 Behavioral health administrative service organizations and managed care organizations—Behavioral health ombuds office. (1) A behavioral health administrative service organization (BH-ASO) must provide unencumbered access to and maintain the independence of the behavioral health ombuds. Managed care organizations (MCOs) must ensure the BH-ASO provides access to omsbuds for medicaid managed care enrollees.

(2) Behavioral health ombuds must be current consumers of the mental health or substance use disorder system, or past consumers or family members of past consumers.

(3) The BH-ASO must maintain a behavioral health ombuds office that:

(a) Is reflective of the age and demographic character of the region and assists and advocates for people with resolving issues at the lowest possible level;

(b) Is independent of the BH-ASO, MCO, medicaid agency, and the provider network, unless by written exception from the medicaid agency;

(c) Supports people, family members, and other interested parties regarding issues, grievances, and appeals;

(d) Is accessible to people, including having a toll-free, independent phone line for access;

(e) Is able to access provider sites and records relating to people with appropriate releases so that it can reach out to people and help to resolve issues, grievances, and appeals;

(f) Receives training and adheres to confidentiality consistent with this chapter and chapters 71.05, 71.24, and 71.34 RCW;

(g) Involves other people, at the person's request;

(h) Supports people in the pursuit of a formal resolution;

(i) If necessary, continues to assist the person through the administrative hearing process;

(j) Coordinates and collaborates with allied services to improve the effectiveness of advocacy and to reduce duplication when serving the same person;

(k) Provides information on grievances to the BH-ASO;

(l) Provides reports and formalized recommendations at least biennially to the BH-ASO and local consumer and family advocacy groups; and

(m) Posts and makes information available to people regarding the behavioral health ombuds office consistent with WAC 182-538D-0262, and local advocacy organizations that may assist people in understanding their rights.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2019 c 325, 2014 c 225, and 2018 c 201. WSR 19-24-063, § 182-538D-0262, filed 11/27/19, effective 1/1/20.]

WAC 182-538D-0264 Behavioral health administrative service organizations and managed care organizations—Quality plan. A behavioral health administrative service organization (BH-ASO) and managed care organization (MCO) must have a quality plan for continuous quality improvement in the delivery of culturally competent behavioral health services. See WAC 182-538-140 for MCOs and WAC 182-538C-040 for BH-ASOs.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2019 c 325, 2014 c 225, and 2018 c 201. WSR 19-24-063, § 182-538D-0264, filed 11/27/19, effective 1/1/20.]

WAC 182-538D-0380 Managed care organization—Choice of primary behavioral health provider. The managed care organization (MCO) must:

(1) Ensure that each person receiving nonemergency behavioral health rehabilitation services has a primary behavioral health provider who is responsible to carry out the individual service plan; and

(2) Allow people, parents of people age twelve and younger, and guardians of people of all ages to select a primary behavioral health provider from the available primary behavioral health provider staff within the MCO.

(3) Assign a primary behavioral health provider not later than fifteen working days after the person requests services if the person does not select a primary behavioral health provider.

(4) Allow a person to change primary behavioral health providers at any time for any reason. The person must notify the MCO or its designee of the request for a change, and inform the MCO or designee of the name of the new primary behavioral health provider.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2019 c 325, 2014 c 225, and 2018 c 201. WSR 19-24-063, § 182-538D-0380, filed 11/27/19, effective 1/1/20.]

DEPARTMENT OF CORRECTIONS ACCESS TO CONFIDENTIAL MENTAL HEALTH INFORMATION

WAC 182-538D-0600 Purpose. In order to enhance and facilitate the department of corrections' ability to carry out its responsibility of planning and ensuring community protection, mental health records and information, as defined in this section, that are otherwise confidential shall be released by any mental health service provider to the department of corrections personnel for whom the information is necessary to carry out the responsibilities of their office as authorized in RCW 71.05.445. Department of corrections personnel must use records only for the stated purpose and must assure that records remain confidential and subject to the limitations on disclosure outlined in chapter 71.05 RCW, except as provided in RCW 72.09.585.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2019 c 325, 2014 c 225, and 2018 c 201. WSR 19-24-063, § 182-538D-0600, filed 11/27/19, effective 1/1/20.]

WAC 182-538D-0620 Scope. Many records and reports are updated on a regular or as needed basis. The scope of the records and reports to be released to the department of corrections are dependent upon the reason for the request.

(1) For the purpose of a presentence investigation release only the most recently completed or received records of those completed or received within the twenty-four-month period before the date of the request; or

(2) For all other purposes including risk assessments release all versions of records and reports that were completed or received within the ten year period prior to the date of the request that are still available.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2019 c 325, 2014 c 225, and 2018 c 201. WSR 19-24-063, § 182-538D-0620, filed 11/27/19, effective 1/1/20.]

WAC 182-538D-0630 Time frame. The mental health service provider will provide the requested relevant records, reports and information to the authorized department of corrections person in a timely manner, according to the purpose of the request:

(1) Presentence investigation - Within seven days of the receipt of the request. If some or all of the requested relevant records, reports and information are not available within that time period the mental health service provider shall notify the authorized department of corrections person prior to the end of the seven-day-period and provide the requested relevant records, reports or information within a mutually agreed to time period; or

(2) All other purposes - Within thirty days of the receipt of the request. If some or all of the requested relevant records, reports and information are not available within that time period the mental health service provider shall notify the authorized department of corrections person prior to the end of the thirty-day period and provide the requested relevant records, reports or information within a mutually agreed to time period; or

(3) Emergent situation requests - When an offender subject has failed to report for department of corrections supervision or in an emergent situation that poses a significant risk to the public, the mental health provider shall upon request, release information related to mental health services delivered to the offender and, if known, information regarding the whereabouts of the offender. Requests if oral must be subsequently confirmed in writing the next working day, which includes email or facsimile so long as the requesting person at the department of corrections is clearly defined. The request must specify the information being requested. Disclosure of the information requested does not require the consent of consumer.

Information that can be released is limited to:

(a) A statement as to whether the offender is or is not being treated by the mental health services provider; and

(b) Address or information about the location or whereabouts of the offender.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2019 c 325, 2014 c 225, and 2018 c 201. WSR 19-24-063, § 182-538D-0630, filed 11/27/19, effective 1/1/20.]

WAC 182-538D-0640 Written requests. The written request for relevant records, reports and information must include:

(1) Verification that the person for whom records, reports and information are being requested is under the authority of the department of corrections, per chapter 9.94A RCW, and the expiration date of that authority;

(2) Sufficient information to identify the person for whom records, reports and information are being requested including name and other identifying data;

(3) Specification as to which records and reports are being requested and the purpose for the request;

(4) Specification as to what relevant information is requested and the purpose for the request;

(5) Identification of the department of corrections person to whom the records, reports and information shall be sent, including the person's name, title and address;

(6) Name, title and signature of the requestor and date of the request.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2019 c 325, 2014 c 225, and 2018 c 201. WSR 19-24-063, § 182-538D-0640, filed 11/27/19, effective 1/1/20.]