

WSR 18-06-043
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Behavioral Health Administration)

[Filed March 1, 2018, 3:20 p.m., effective April 1, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is amending existing rules and creating new rules in chapter 388-877 WAC regarding behavioral health services to provide a single set of regulations for behavioral health agencies to follow in order to provide mental health, substance use disorder, cooccurring, and pathological and problem gambling services. The department is also proposing to repeal chapters 388-810, 388-877A, 388-877B, 388-877C WAC, and repeal specific sections of chapters 388-865 and 388-877 WAC. A crosswalk table of existing and new WAC sections is available upon request.

Citation of Rules Affected by this Order: New WAC 388-877-0110, 388-877-0342, 388-877-0425, 388-877-0515, 388-877-0700, 388-877-0702, 388-877-0704, 388-877-0706, 388-877-0708, 388-877-0710, 388-877-0712, 388-877-0714, 388-877-0716, 388-877-0718, 388-877-0720, 388-877-0722, 388-877-0724, 388-877-0726, 388-877-0728, 388-877-0730, 388-877-0732, 388-877-0734, 388-877-0736, 388-877-0738, 388-877-0740, 388-877-0742, 388-877-0744, 388-877-0746, 388-877-0748, 388-877-0750, 388-877-0752, 388-877-0754, 388-877-0800, 388-877-0805, 388-877-0810, 388-877-0815, 388-877-0820, 388-877-0900, 388-877-0905, 388-877-0910, 388-877-0915, 388-877-0920, 388-877-1000, 388-877-1005, 388-877-1010, 388-877-1015, 388-877-1020, 388-877-1025, 388-877-1100, 388-877-1102, 388-877-1104, 388-877-1106, 388-877-1108, 388-877-1110, 388-877-1112, 388-877-1114, 388-877-1116, 388-877-1118, 388-877-1120, 388-877-1122, 388-877-1124, 388-877-1126, 388-877-1128, 388-877-1130, 388-877-1132, 388-877-1134, 388-877-1136, 388-877-1138, 388-877-1140, 388-877-1142, 388-877-1144, 388-877-1146, 388-877-1148, 388-877-1150, 388-877-1152, 388-877-1154, 388-877-1156 and 388-877-1158; and repealing WAC 388-810-005, 388-810-010, 388-810-020, 388-810-030, 388-810-040, 388-810-050, 388-810-060, 388-810-070, 388-810-080, 388-810-090, 388-865-0500, 388-865-0511, 388-865-0520, 388-865-0531, 388-865-0536, 388-865-0541, 388-865-0545, 388-865-0546, 388-865-0547, 388-865-0551, 388-865-0561, 388-865-0566, 388-865-0570, 388-865-0575, 388-865-0576, 388-865-0578, 388-865-0580, 388-865-0585, 388-865-0700, 388-865-0705, 388-865-0710, 388-865-0715, 388-865-0720, 388-865-0725, 388-865-0750, 388-865-0755, 388-865-0760, 388-865-0765, 388-865-0770, 388-865-0775, 388-865-0780, 388-865-0785, 388-865-0800, 388-865-0810, 388-865-0820, 388-865-0830, 388-865-0840, 388-865-0850, 388-865-0860, 388-865-0870, 388-865-0880, 388-865-0900, 388-865-0910, 388-865-0920, 388-865-0930, 388-865-0940, 388-865-0950, 388-865-0960, 388-865-0970, 388-877-0530, 388-877-0630, 388-877A-0100, 388-877A-0110, 388-877A-0120, 388-877A-0130, 388-877A-0135, 388-877A-0138, 388-877A-0140, 388-877A-0150, 388-877A-0155, 388-877A-0170, 388-877A-0180, 388-877A-0190, 388-877A-0195, 388-877A-0197, 388-877A-0200, 388-877A-0210, 388-877A-0220, 388-877A-0230, 388-877A-0240, 388-877A-0260, 388-877A-0270, 388-877A-0280, 388-877A-0300, 388-

877A-0310, 388-877A-0320, 388-877A-0330, 388-877A-0335, 388-877A-0340, 388-877A-0350, 388-877A-0360, 388-877A-0370, 388-877B-0100, 388-877B-0110, 388-877B-0120, 388-877B-0130, 388-877B-0200, 388-877B-0210, 388-877B-0220, 388-877B-0230, 388-877B-0240, 388-877B-0250, 388-877B-0260, 388-877B-0270, 388-877B-0280, 388-877B-0300, 388-877B-0310, 388-877B-0320, 388-877B-0330, 388-877B-0340, 388-877B-0350, 388-877B-0360, 388-877B-0370, 388-877B-0400, 388-877B-0405, 388-877B-0410, 388-877B-0420, 388-877B-0430, 388-877B-0440, 388-877B-0450, 388-877B-0500, 388-877B-0510, 388-877B-0530, 388-877B-0540, 388-877B-0550, 388-877B-0600, 388-877B-0610, 388-877B-0630, 388-877B-0640, 388-877B-0650, 388-877B-0660, 388-877B-0700, 388-877B-0710, 388-877B-0720, 388-877B-0730, 388-877B-0740, 388-877C-0100, 388-877C-0110, 388-877C-0120 and 388-877C-0130; and amending WAC 388-877-0100, 388-877-0200, 388-877-0300, 388-877-0305, 388-877-0310, 388-877-0315, 388-877-0320, 388-877-0325, 388-877-0330, 388-877-0335, 388-877-0340, 388-877-0345, 388-877-0350, 388-877-0355, 388-877-0360, 388-877-0365, 388-877-0370, 388-877-0400, 388-877-0410, 388-877-0420, 388-877-0430, 388-877-0500, 388-877-0510, 388-877-0520, 388-877-0600, 388-877-0605, 388-877-0610, 388-877-0620, 388-877-0640, and 388-877-0650.

Statutory Authority for Adoption: RCW 71.24.870, 70.02.290, 70.02.340, 71.05.560, 71.24.035, 71.34.380.

Other Authority: RCW 71.24.870.

Adopted under notice filed as WSR 17-24-079 on December 5, 2017.

Changes Other than Editing from Proposed to Adopted Version: **WAC 388-877-0100 Behavioral health services—Purpose and scope**, the following was added:

"(3) The department requires all agencies and providers affected by this rule to fully comply with the applicable requirements in chapter 388-877 WAC, ~~chapter 388-877A WAC, chapter 388-877B WAC, and chapter 388-877C WAC~~ no later than ~~September 1, 2013~~ July 1, 2018."

WAC 388-877-0200 Behavioral health services—Definitions, the following definitions were changed: "agency," "behavioral health agency," and "community mental health agency" were consolidated into one definition under "behavioral health agency."

"Consultation" was clarified as follows: "Consultation" means the clinical review of recommendations by persons with appropriate knowledge and experience regarding activities or decisions of clinical staff, contracted employees, volunteers, or students.

"Mental health professional" was clarified as follows: "Mental health professional" or "MHP" means a designation given by the department to an agency staff member or an attestation by the licensed behavioral health agency that the person meets the following:

(c) ... recognized by the department or attested to by the licensed behavioral health agency.

The definitions for "patient placement criteria," "quality assurance and quality improvement," and "quality strategy" were removed.

WAC 388-877-0310 Agency licensure and certification—Deeming, was reworded for clarity: "(1) If an agency

is currently accredited by a national accreditation organization that is recognized by and has a current agreement with the department, the department must deem the agency to be in compliance with state standards for licensure and certification."

WAC 388-877-0510 Personnel—Agency record requirements, was amended to add the word "annual" back in:

(1)(a) Documentation of annual training,

WAC 388-877-0515 Personnel—Agency staff requirements, was amended as follows:

(1)(c) Staff access to consultation with a psychiatrist, physician, physician assistant, advanced registered nurse practitioner (ARNP), or psychologist

WAC 388-877-0605 DBHR complaint process, was amended to remove the specific contact information for the DBHR complaint manager and replaced with a link to the department's public web site.

WAC 388-877-0610 Clinical—Assessment, was amended as follows:

(2) The assessment must document that the clinician conducted an age-appropriate, strengths-based psychosocial assessment that considered current needs and the patient's relevant history according to best practices. Such information may include, if applicable:

WAC 388-877-0640 Clinical—Additional record content, was amended to add the credential of the staff member when noting who provided the session in the progress notes.

WAC 388-877-0706 Outpatient services—Group mental health therapy services, subsection (2) was amended to increase maximum group size from fifteen to sixteen individuals.

WAC 388-877-0710 Outpatient services—Rehabilitative case management mental health services, subsection (1) was reworded for clarity:

(1) Rehabilitative case management services support individual employment, education, and participation in other daily activities appropriate to the individual's age, gender, and culture, and assist individuals in resolving crises in the least restrictive setting.

WAC 388-877-0712 Outpatient services—Psychiatric medication mental health services and medication support, was amended to add subsection [(1)](e):

(e) Must ensure that all medications maintained by the agency are safely and securely stored, including assurance that:

(i) Medications are kept in locked cabinets within a well-lit, locked and properly ventilated room;

(ii) Medications kept for individuals on medication administration or self-administration programs are clearly labeled and stored separately from medication samples kept on site;

(iii) Medications marked "for external use only" are stored separately from oral or injectable medications;

(iv) Refrigerated food or beverages used in the administration of medications are kept separate from the refrigerated medications by the use of trays or other designated containers;

(v) Syringes and sharp objects are properly stored and disposed of;

(vi) Refrigerated medications are maintained at the required temperature; and

(vii) Outdated medications are disposed of in accordance with the regulations of the state board of pharmacy and no outdated medications are retained.

WAC 388-877-0738 Outpatient services—Level one outpatient substance use disorder services, was amended to add subsection (3):

(3) An agency certified to provide level one outpatient substance use disorder services must ensure both of the following:

(a) Group therapy services are provided with a staff ratio of one staff member for every sixteen individuals; and

(b) A group counseling session with twelve to sixteen youths includes a second staff member.

WAC 388-877-0740 Outpatient services—Level two intensive outpatient substance use disorder services, was amended to add subsection (3):

(3) An agency certified to provide level two intensive outpatient substance use disorder services must ensure both of the following:

(a) Group therapy services are provided with a staff ratio of one staff member for every sixteen individuals; and

(b) A group counseling session with twelve to sixteen youths includes a second staff member.

WAC 388-877-0754 Outpatient services—Problem and pathological gambling treatment services, subsection (3) was amended to change the maximum size of group counseling from twelve to sixteen individuals.

WAC 388-877-1000 Opioid treatment programs (OTP)—General, subsection (7)(b) was amended to change the group counseling session from "nine to twelve" to "twelve to sixteen."

WAC 388-877-1104 Secure withdrawal management and stabilization services—Adults, subsection (2) was amended to add subsection (f):

(f) Procedures to assure at least daily contact between each involuntary individual and a chemical dependency professional or a trained professional person for the purpose of:

(i) Observation;

(ii) Evaluation;

(iii) Release from involuntary commitment to accept treatment on a voluntary basis; and

(iv) Discharge from the facility to accept voluntary treatment upon referral;

And (i) was amended to add physician assistant and advanced registered nurse practitioner (ARNP) to the list of professionals that are available for consultation.

(2)(k) was amended to add "one hundred and eighty days."

(3) was amended as follows:

(3)(a) A telephone screened [screening] reviewed by a nurse, as defined in chapter 18.79 RCW, or a medical practitioner prior to admission

WAC 388-877-1108 Residential substance use disorder treatment services—General, subsection (2)(j) maximum group size was changed to sixteen.

WAC 388-877-1116 Residential substance use disorder treatment services—Youth residential services, sub-

section (2) was amended to change "nine to twelve" youths to "twelve to sixteen" youths.

WAC 388-877-1126 Mental health inpatient services—Policies and procedures—Adult, subsection (4)(e) was amended to include physician assistant and psychiatric advanced registered nurse practitioner (ARNP).

Subsection (4)(g) was amended to add "one hundred and eighty days."

WAC 388-877-1140 Mental health inpatient services—Crisis stabilization unit—Agency facility and administrative standards, subsection (4)(f) was amended to include physician assistant and psychiatric advanced registered nurse practitioner (ARNP).

A final cost-benefit analysis is available by contacting Stephanie Vaughn, Division of Behavioral Health and Recovery, P.O. Box 45330, Olympia, WA 98504-5330, phone 360-725-1342, fax 360-586-0341, TTY 1-800-833-6384, email stephanie.vaughn@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 78, Amended 30, Repealed 140.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 78, Amended 30, Repealed 140.

Date Adopted: March 1, 2018.

Cheryl Strange
Secretary

AMENDATORY SECTION (Amending WSR 16-13-087, filed 6/15/16, effective 7/16/16)

WAC 388-877-0100 Behavioral health services—Purpose and scope. (1) The rules in chapter 388-877 WAC provide a single set of rules for agencies to follow that provide any one or more of the following behavioral health services:

- ((1)) (a) Mental health services;
- (b) Substance use disorder services;
- (c) Co-occurring services (services to individuals with co-existing mental health and substance use disorders); and
- (d) Problem and pathological gambling;

(2) These rules establish the following for agencies that provide behavioral health services:

- (a) Licensure and certification requirements;
- (b) Agency administrative requirements;
- (c) Agency personnel requirements;
- (d) Agency clinical policies and procedures; and
- (e) A grievance system that includes a grievance process, an appeal process, and access to administrative hearings for

agencies that serve individuals whose services are covered by the federal medicaid program.

~~((2) Support the specific program rules in chapter 388-877A WAC for mental health, chapter 388-877B WAC for substance use disorders, and chapter 388-877C WAC for problem and pathological gambling.~~

(3) The department requires all agencies and providers affected by this rule to fully comply with the applicable requirements in chapter 388-877 WAC ~~(chapter 388-877A WAC, chapter 388-877B WAC, and chapter 388-877C WAC)~~ no later than ~~((September 1, 2013))~~ July 1, 2018.

NEW SECTION

WAC 388-877-0110 Behavioral health services—Available certifications. A behavioral health agency licensed by the department may become certified to provide one or more of the mental health, substance use disorder, and problem and pathological gambling services listed below:

- (1) Outpatient:
 - (a) Individual mental health treatment services;
 - (b) Brief mental health intervention treatment services;
 - (c) Group mental health therapy services;
 - (d) Family therapy mental health services;
 - (e) Rehabilitative case management mental health services;
 - (f) Psychiatric medication mental health services and medication support services;
 - (g) Day support mental health services;
 - (h) Mental health outpatient services provided in a residential treatment facility (RTF);
 - (i) Recovery support: Supported employment mental health services;
 - (j) Recovery support: Supported employment substance use disorder services;
 - (k) Recovery support: Supportive housing mental health services;
 - (l) Recovery support: Supportive housing substance use disorder services;
 - (m) Recovery support: Peer support mental health services;
 - (n) Recovery support: Wraparound facilitation mental health services;
 - (o) Recovery support: Applied behavior analysis (ABA) mental health services;
 - (p) Consumer-run recovery support: Clubhouse mental health services;
 - (q) Substance use disorder level one outpatient services;
 - (r) Substance use disorder level two intensive outpatient services;
 - (s) Substance use disorder assessment only services;
 - (t) Substance use disorder alcohol and drug information school services;
 - (u) Substance use disorder information and crisis services;
 - (v) Substance use disorder emergency service patrol services;
 - (w) Substance use disorder screening and brief intervention services; and
 - (x) Problem and pathological gambling services.

- (2) Involuntary and court-ordered outpatient services:
- (a) Less restrictive alternative (LRA) or conditional release support mental health services;
 - (b) Emergency involuntary detention designated crisis responder (DCR) mental health and substance use disorder services;
 - (c) Substance use disorder counseling services subject to RCW 46.61.5056; and
 - (d) Driving under the influence (DUI) substance use disorder assessment services.
- (3) Crisis mental health services:
- (a) Crisis mental health telephone support services;
 - (b) Crisis mental health outreach services;
 - (c) Crisis mental health stabilization services; and
 - (d) Crisis mental health peer support services.
- (4) Opioid treatment program (OTP) services.
- (5) Withdrawal management, residential substance use disorder treatment, and mental health inpatient services:
- (a) Withdrawal management facility services:
 - (i) Withdrawal management services-adult;
 - (ii) Withdrawal management services-youth;
 - (iii) Secure withdrawal management and stabilization services—adult; and
 - (iv) Secure withdrawal management and stabilization services—youth.
 - (b) Residential substance use disorder treatment services:
 - (i) Intensive substance use disorder inpatient services;
 - (ii) Recovery house services;
 - (iii) Long-term treatment services; and
 - (iv) Youth residential services.
 - (c) Mental health inpatient services:
 - (i) Evaluation and treatment services—adult;
 - (ii) Evaluation and treatment services-youth;
 - (iii) Child long-term inpatient program services;
 - (iv) Crisis stabilization unit services;
 - (v) Triage—involuntary services;
 - (vi) Triage—voluntary services; and
 - (vii) Competency evaluation and restoration treatment services.

AMENDATORY SECTION (Amending WSR 16-13-087, filed 6/15/16, effective 7/16/16)

WAC 388-877-0200 Behavioral health services—Definitions. The definitions in this section contain words and phrases used (~~in chapter 388-865 WAC~~) for behavioral health organizations (BHOs) (~~and~~), the BHO managed care plan, and (~~chapter 388-877 WAC for~~) behavioral health services (~~programs~~). (~~These definitions also apply to the program specific rules for mental health services in chapter 388-877A WAC, substance use disorder rules in chapter 388-877B WAC, and problem and pathological gambling rules in chapter 388-877C WAC~~) For terms and definitions that apply to the behavioral health organization (BHO) grievance and appeal system and administrative hearings, see WAC 388-877-0655.

"Absentee coverage" means the temporary replacement a clubhouse provides for the clubhouse member who is cur-

rently employed in a time-limited, part-time community job managed by the clubhouse.

"Administrative hearing" means a proceeding before an administrative law judge that gives a party an opportunity to be heard in disputes about DSHS programs and services.

"Administrator" means the designated person responsible for the operation of either the licensed treatment agency (~~and/or~~), or certified treatment service, or both.

"Adult" means an individual eighteen years of age or older. For purposes of the medicaid program, adult means an individual twenty-one years of age or older.

~~("Agency" means an entity licensed by the department to provide behavioral health services.)~~

"ASAM criteria" means admission, continued service, and discharge criteria for the treatment of substance use disorders as published by the American Society of Addiction Medicine (ASAM).

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

"Background check" means a search for any record of an individual's conviction or civil adjudication related to crimes against children or other persons, including developmentally disabled and vulnerable adults. A background check includes a search and review of current and past background check applicant self-disclosures, Washington state patrol criminal history data, Washington courts criminal history data, civil adjudication proceedings, department of health disciplinary board final decisions, out-of-state court or law enforcement records, and department of corrections information. A background check may include a national fingerprint-based background check, including a Federal Bureau of Investigation criminal history search.

"Behavioral health" means the prevention, treatment of, and recovery from any or all of the following disorders: substance use disorders, mental health disorders (~~and/or~~), or problem and pathological gambling disorders.

"Behavioral health agency" or "agency" means an entity licensed by the department to provide behavioral health services.

"Behavioral health organization" or "BHO" means any county authority or group of county authorities or other entity recognized by the secretary in contract in a defined region.

"Behavioral health organization (BHO) managed care plan" is the entity that operates the prepaid inpatient health plan (PIHP) for medicaid behavioral health services.

"Branch site" means a physically separate licensed site, governed by a parent organization, where qualified staff provides certified treatment services.

"Care coordination" means a process-oriented activity to facilitate ongoing communication and collaboration to meet multiple needs of an individual. Care coordination includes facilitating communication between the family, natural supports, community resources, and involved providers and agencies, organizing, facilitating and participating in team meetings, and providing for continuity of care by creating linkages to and managing transitions between levels of care.

"Certified" or "certification" means the status given by the department to substance use disorder, mental health, and problem and pathological gambling program-specific services.

"Certified problem gambling counselor" is an individual certified gambling counselor (WSCGC) or a nationally certified gambling counselor (NCGC), certified by the Washington State Gambling Counselor Certification Committee or the International Gambling Counselor Certification Board to provide problem and pathological gambling treatment services.

"Change in ownership" means one of the following:

~~((1))~~ (a) The ownership of a licensed behavioral health agency changes from one distinct legal owner to another distinct legal owner;

~~((2))~~ (b) The type of business changes from one type to another, such as, from a sole proprietorship to a corporation; or

~~((3))~~ (c) The current ownership takes on a new owner of five per cent or more of the organizational assets.

"Chemical dependency professional" or "CDP" means a person credentialed by the department of health as a chemical dependency professional (CDP) under chapter 246-811 WAC.

"Child," "minor," and "youth" mean:

(a) An individual under the age of eighteen years; or

(b) An individual age eighteen to twenty-one years who is eligible to receive and who elects to receive an early and periodic screening, diagnostic, and treatment (EPSDT) medicaid service. An individual age eighteen to twenty-one years who receives EPSDT services is not considered a "child" for any other purpose.

"Child mental health specialist" means a mental health professional with the following education and experience:

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

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

"Clinical record" means either a paper ~~((and/or))~~, or electronic file, or both that is maintained by the behavioral health agency and contains pertinent psychological, medical, and clinical information for each individual served.

"Clinical supervision" means regular and periodic activities performed by an appropriate level of professional for clinical staff. Clinical supervision includes review of assessment, diagnostic formulation, treatment planning, progress toward completion of care, identification of barriers to care, continuation of services, authorization of care, and the direct observation of the delivery of clinical care.

"Clubhouse" means a community-based, recovery-focused program designed to support individuals living with the effects of mental illness, through employment, shared contributions, and relationship building. A clubhouse operates under the fundamental principle that everyone has the potential to make productive contributions by focusing on the

strengths, talents, and abilities of all members and fostering a sense of community and partnership.

"Community mental health agency (~~((CMHA))~~)" means ~~((a))~~ the same as "behavioral health agency (~~((licensed by the department to provide a mental health service))~~)."

"Community relations plan" means a plan to minimize the impact of an ~~((opioid substitution))~~ opioid treatment program as defined by the Center for Substance Abuse Guidelines for the Accreditation of Opioid Treatment Programs, section 2.C.(4).

"Community support services" means services authorized, planned, and coordinated through resource management services including, at a minimum:

(a) Assessment, diagnosis, emergency crisis intervention available twenty-four hours, seven days a week;

(b) Prescreening determinations for persons who are mentally ill being considered for placement in nursing homes as required by federal law;

(c) Screening for patients being considered for admission to residential services;

(d) 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;

(e) Investigation, legal, and other nonresidential services under chapter 71.05 RCW;

(f) Case management services;

(g) Psychiatric treatment including medication supervision;

(h) Counseling;

(i) Psychotherapy;

(j) Assuring transfer of relevant patient information between service providers;

(k) Recovery services; and

(l) Other services determined by behavioral health organizations.

"Complaint" means the expression of a dissatisfaction with a service or program which may be investigated by the department.

"Consent" means agreement given by an individual 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))~~, that must be provided in a terminology that the person can reasonably be expected to understand.

~~((("Criminal background check" means a search for any record of an individual's conviction or civil adjudication related to crimes against children or other persons, including developmentally disabled and vulnerable adults. A background check includes a search and review of current and past background check applicant self-disclosures, Washington state patrol criminal history data, Washington courts criminal history data, civil adjudication proceedings, department of health disciplinary board final decisions, out-of-state court or law enforcement records, and department of corrections information. A background check may include a national fingerprint-based background check, including a federal bureau of investigation criminal history search.))~~

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

"Co-occurring disorder" means the co-existence of both a mental health and a substance use disorder. Co-occurring treatment is a unified treatment approach intended to treat both disorders within the context of a primary treatment relationship or treatment setting.

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

"Critical incident" means any one of the following events:

((1)) (a) Any death, serious injury, or sexual assault that occurs at an agency that is licensed by the department;

((2)) (b) Alleged abuse or neglect of an individual receiving services, that is of a serious or emergency nature, by an employee, volunteer, licensee, contractor, or another individual receiving services;

((3)) (c) A natural disaster, such as an earthquake, volcanic eruption, tsunami, urban fire, flood, or outbreak of communicable disease that presents substantial threat to facility operation or client safety;

((4)) (d) A bomb threat;

((5)) (e) Theft or loss of data in any form regarding an individual receiving services, such as a missing or stolen computer, or a missing or stolen computer disc or flash drive;

((6)) (f) Suicide attempt at the facility;

((7)) (g) An error in program-administered medication at an outpatient facility that results in adverse effects for the individual and requires urgent medical intervention; and

((8)) (h) Any media event regarding an individual receiving services, or regarding a staff member or owner(s) of the agency.

"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 individuals from diverse cultural backgrounds feel comfortable discussing their cultural health beliefs and practices in the context of negotiating treatment options, encouraging individuals 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.

"Deemed" means a status that may be given to a licensed behavioral health agency as a result of the agency receiving accreditation by a recognized behavioral health accrediting body which has a current agreement with DBHR.

"Department" means the Washington state department of social and health services.

"Designated chemical dependency specialist" means a person designated ((by the behavioral health organization

(BHO) or by the county alcoholism and other drug addiction program coordinator designated by the BHO)) to perform ((the)) involuntary substance use disorder commitment duties ((described in RCW 70.96A.140 and qualified to do so by meeting standards adopted by the department)). The duties of a designated chemical dependency specialist and designated mental health professional are combined as of April 1, 2018, into the role of designated crisis responder.

"Designated crisis responder" or **"DCR"** means a mental health professional appointed by the county or the BHO who is authorized to conduct investigations, detain persons up to seventy-two hours at the proper facility, and carry out the other functions identified in chapters 71.05 and 71.34 RCW. To qualify as a designated crisis responder, a person must complete substance use disorder training specific to the duties of a designated crisis responder.

"Designated mental health professional ((DMHP))" or **"DMHP"** means a mental health professional designated ((by the behavioral health organization (BHO), county, or other authority authorized in rule)) to perform involuntary mental health commitment duties ((under the involuntary treatment act as described in RCW 10.77.010, 71.05.020, 71.24.025 and 71.34.020)). The duties of a designated chemical dependency specialist and designated mental health professional are combined April 1, 2018, into the role of designated crisis responder.

"Detoxification" has been replaced by the term "withdrawal management."

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

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

((2)) (b) Is regarded as having such impairment.

"Division of behavioral health and recovery ((DBHR))" or **"DBHR"** means the division within the department of social and health services (formerly the mental health division and the division of alcohol and substance abuse) that administers mental health, problem gambling and substance ((abuse)) use disorder programs authorized by chapters 43.20A, 71.05, 71.24, and 71.34((, and 70.96A)) RCW.

"Early and periodic screening, diagnosis and treatment" or **"EPSDT"** means a comprehensive child health medicaid program that entitles individuals age twenty and younger to preventive care and treatment services. These services are outlined in chapter 182-534 WAC.

"Governing body" means the entity with legal authority and responsibility for the operation of the behavioral health agency, to include its officers, board of directors or the trustees of a corporation or limited liability company.

"HIV/AIDS brief risk intervention" means a face-to-face interview with an individual to help the individual assess personal risk for HIV/AIDS infection and discuss methods to reduce infection transmission.

"Individual" means a person who applies for, is eligible for, or receives behavioral health organization (BHO) authorized behavioral health services from an agency licensed by the department as from a behavioral health agency.

"Less restrictive alternative (LRA)" means court ordered outpatient treatment in a setting less restrictive than total confinement.

"Licensed" or "licensure" means the status given to behavioral health agencies by the department under its authority to license and certify mental health and substance use disorder programs chapters 71.05, 71.34, and 71.24 RCW and its authority to certify ~~((substance use disorder))~~ problem and pathological gambling treatment programs ~~((chapter 70.96A RCW))~~ under RCW 43.20A.890.

"Medical necessity" or "medically necessary" is a term for describing a required service that is reasonably calculated to prevent, diagnose, correct, cure, alleviate or prevent the worsening of conditions in the recipient that endanger life, or cause suffering or pain, or result in illness or infirmity, or threaten to cause or aggravate a handicap, or cause physical deformity or malfunction, and there is no other equally effective, more conservative or substantially less costly course of treatment available or suitable for the person requesting service. Course of treatment may include mere observation or, where appropriate, no treatment at all.

"Medical practitioner" means a physician, advance registered nurse practitioner (ARNP), or certified physician assistant. An ARNP and a midwife with prescriptive authority may perform practitioner functions related only to specific specialty services.

"Medication administration" means the direct application of a medication or device by ingestion, inhalation, injection or any other means, whether self-administered by a resident, or administered by a guardian (for a minor), or an authorized healthcare provider.

"Mental health disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on a person's cognitive or volitional functions.

"Mental health professional ~~((MHP))~~" or "MHP" means a designation given by the department to an agency staff member ~~((who is))~~ or an attestation by the licensed behavioral health agency that the person meets the following:

~~((1))~~ (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;

~~((2))~~ (b) A person who is licensed by the department of health as a mental health counselor or mental health counselor associate, marriage and family therapist, or marriage and family therapist associate;

~~((3))~~ (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 persons with mental illness or emotional disturbance, experience that was gained under the supervision of a mental health professional ~~((and is))~~ recognized by the department or attested to by the licensed behavioral health agency;

~~((4))~~ (d) A person who meets the waiver criteria of RCW 71.24.260, ~~((which))~~ and the waiver was granted prior to 1986; or

~~((5))~~ (e) A person who had an approved waiver to perform the duties of a mental health professional (MHP), that

was requested by the behavioral health organization (BHO) and granted by the mental health division prior to July 1, 2001~~((or~~

~~(6) A person who has been granted a time limited exception of the minimum requirements of a mental health professional by the division of behavioral health and recovery (DBHR)).~~

"Minor" means ~~((an individual who is not yet eighteen years of age.))~~ the same as "child."

"Off-site" means the provision of services by a provider from a licensed behavioral health agency at a location where the assessment ~~((and/or))~~ or treatment is not the primary purpose of the site, such as in schools, hospitals, long term care facilities, correctional facilities, an individual's residence, the community, or housing provided by or under an agreement with the agency.

"Outpatient services" means behavioral health treatment services provided to an individual in a nonresidential setting. A residential treatment facility (RTF) may become certified to provide outpatient services.

~~((**"Patient placement criteria (PPC)"** means admission, continued service, and discharge criteria found in the patient placement criteria (PPC) for the treatment of substance related disorders as published by the American Society of Addiction Medicine (ASAM).))~~

"Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment.

"Peer counselor" means a person recognized by the division of behavioral health and recovery (DBHR) as a person who meets all of the following:

~~((1))~~ (a) Is a self-identified ~~((consumer))~~ recipient of mental health services~~((:))~~;

~~((2))~~ (b) Is a counselor registered under chapter 18.19 RCW~~((:))~~;

~~((3))~~ (c) Has completed specialized training provided by or contracted through DBHR. If the person was trained by trainers approved by the mental health division (now DBHR) before October 1, 2004, and has met the requirements in ~~((1))~~ (a), ~~((2))~~ (b), and ~~((4))~~ (d) of this subsection by January 31, 2005, the person is exempt from completing this specialized training~~((:))~~~~((:))~~;

~~((4))~~ (d) Has successfully passed an examination administered by DBHR or an authorized contractor~~((:))~~; and

~~((5))~~ (e) Has received a notification letter from DBHR stating that DBHR recognizes the person as a "peer counselor."

"Probation" means a licensing or certification status resulting from a finding of deficiencies that requires immediate corrective action to maintain licensure or certification.

"Problem and pathological gambling" means one or more of the following disorders:

(a) **"Pathological gambling"** means a mental disorder characterized by loss of control over gambling, progression in preoccupation with gambling and in obtaining money to gamble, and continuation of gambling despite adverse consequences;

(b) "Problem gambling" is an earlier stage of pathological gambling that compromises, disrupts, or damages family or personal relationships or vocational pursuits.

"Progress notes" means permanent written or electronic record of services and supports provided to an individual documenting the individual's participation in, and response to, treatment, progress in recovery, and progress toward intended outcomes.

"Recovery" means ((~~the~~) ~~process~~ ((~~of change through~~)) ~~in which~~ ((~~an individual improves their health and wellness, lives a self directed life, and strives to reach their full potential~~)) ~~people are able to live, work, learn, and participate fully in their communities.~~

"Relocation" means a physical change in location from one address to another.

"Remodeling" means expanding existing office space to additional office space at the same address, or remodeling interior walls and space within existing office space to a degree that accessibility to or within the facility is impacted.

"Service area" means the geographic area covered by each behavioral health organization (BHO) for which it is responsible.

"Short-term facility" means a facility licensed by the department of health and certified by the department of social and health services under RCW 71.24.035 which has been designed to assess, diagnose, and treat individuals experiencing an acute crisis without the use of long-term hospitalization. Length of stay in a short-term facility is less than fourteen days from the day of admission.

"State minimum standards" means minimum requirements established by rules adopted by the secretary of the department and necessary to implement this chapter for delivery of behavioral health services.

"Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms indicating that an individual 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.

"Summary suspension" means the immediate suspension of either a facility's license ((~~and/or~~)) or program-specific certification or both by the department pending administrative proceedings for suspension, revocation, or other actions deemed necessary by the department.

"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.

"Suspend" means termination of a behavioral health agency's license or program specific certification to provide behavioral health treatment program service for a specified period or until specific conditions have been met and the department notifies the agency of the program's reinstatement of license or certification.

"Triage facility" means a short-term facility or a portion of a facility licensed by the department of health and certified by the department of social and health services under RCW 71.24.035 that is designed as a facility to assess and stabilize an individual or determine the need for involuntary

commitment of an individual. A triage facility must meet department of health residential treatment facility standards and may be structured as either a voluntary or involuntary placement facility or both.

"Triage involuntary placement facility" means a triage facility that has elected to operate as an involuntary facility and may, at the direction of a peace officer, hold an individual for up to twelve hours. A peace officer or designated crisis responder may take or cause the person to be taken into custody and immediately delivered to the triage facility. The facility may ask for an involuntarily admitted individual to be assessed by a mental health professional for potential for voluntary admission. The individual has to agree in writing to the conditions of the voluntary admission.

"Triage voluntary placement facility" means a triage facility where the individual may elect to leave the facility of their own accord, at anytime. A triage voluntary placement facility may only accept voluntary admissions.

"Tribal authority" means, for the purposes of behavioral health organizations and RCW 71.24.300 only, the federally recognized Indian tribes and the major Indian organizations recognized by the secretary of the department as long as these organizations do not have a financial relationship with any behavioral health organization that would present a conflict of interest.

"Vulnerable adult" means an individual who receives services from the department and has at least one of the following characteristics:

((~~1~~)) (a) A vulnerable adult as defined in chapter 74.34 RCW; ((~~and~~

(~~2~~)) (b) An individual admitted for ((~~detoxification~~)) withdrawal management or detained or committed to an involuntary treatment facility that is certified by the division of behavioral health and recovery.

"Withdrawal management" means services provided during the initial period of care and treatment to an individual intoxicated or incapacitated by substance use.

"Work-ordered day" means a model used to organize clubhouse activities during the clubhouse's normal working hours. Members and staff are organized into one or more work units which provide meaningful and engaging work essential to running the clubhouse. Activities include unit meetings, planning, organizing the work of the day, and performing the work that needs to be accomplished to keep the clubhouse functioning. Members and staff work side-by-side as colleagues. Members participate as they feel ready and according to their individual interests. While intended to provide members with working experience, work in the clubhouse is not intended to be job-specific training, and members are neither paid for clubhouse work nor provided artificial rewards. Work-ordered day does not include medication clinics, day treatment, or other therapy programs.

"Youth" means ((~~an individual who is seventeen years of age or younger.~~)) the same as "child."

AMENDATORY SECTION (Amending WSR 16-13-087, filed 6/15/16, effective 7/16/16)

WAC 388-877-0300 Agency licensure and certification—General information. The department licenses agen-

cies to provide behavioral health treatment services. To gain and maintain licensure, an ~~((agency))~~ applicant must meet the requirements of chapter 388-877 WAC, applicable local and state rules, and state and federal statutes. In addition, the ~~((agency))~~ applicant must meet the applicable specific program requirements ~~((of chapter 388-877A WAC for mental health, chapter 388-877B WAC for substance use disorders, and/or chapter 388-877C WAC for problem and pathological gambling))~~ for all behavioral health services certified by the department's division of behavioral health and recovery.

(1) An ~~((agency))~~ applicant currently accredited by a national accreditation agency recognized by and having a current agreement with the department may be eligible for licensing through deeming. See WAC 388-877-0310.

(2) Initial applications and renewal forms for behavioral health agency licensure or certification may be downloaded at ~~((https://www.dshs.wa.gov/bhsia/division-behavioral-health-and-recovery/licensing-and-certification-behavioral-health-agencies))~~ https://www.dshs.wa.gov/bha/division-behavioral-health-and-recovery/licensing-and-certification-behavioral-health-agencies. Completed application packets, forms, and requests for deeming or other services should be mailed to ~~((the aging and disability services finance office))~~ "provider requests," DBHR, at the address listed on the applicable application packet or form.

(3) An agency must report to the department any changes that occur following the initial licensing or certification process. The department may request a copy of additional disclosure statements or background inquiries if there is reason to believe that offenses specified under RCW 43.43.830 have occurred since the original application was submitted.

(4) The department may grant an exemption or waiver from compliance with specific licensing or program certification requirements if the exemption does not violate an existing state, federal, or tribal law.

(a) To request an exemption to a rule in this chapter, the ~~((agency))~~ applicant must:

- (i) Submit the request in writing to the department;
- (ii) Assure the exemption request does not jeopardize the safety, health, or treatment of an individual; and
- (iii) Assure the exemption request does not impede fair competition of another service agency.

(b) The department approves or denies an exemption request in writing and requires the agency to keep a copy of the decision.

(c) Appeal rights under WAC 388-877-0370 do not apply to exemption to rule decisions.

(5) In the event of an agency closure or the cancellation of a program-specific certification, the agency must provide each individual currently being served:

- (a) Notice of the agency closure or program cancellation at least thirty days before the date of closure or program cancellation;
- (b) Assistance with relocation; and
- (c) Information on how to access records to which the individual is entitled.

(6) If an agency certified to provide any behavioral health service closes, the agency must ensure all individual clinical records are kept and managed for at least six years

after the closure before destroying the records in a manner that preserves confidentiality. In addition:

(a) The closing agency must notify the division of behavioral health and recovery (DBHR) that the agency will do one of the following:

- (i) Continue to retain and manage all individual clinical records; or
- (ii) Arrange for the continued storage and management of all individual clinical records.

(b) The closing agency must notify DBHR in writing and include the name of the licensed agency or entity storing and managing the records, provide the method of contact, such as a telephone number, ~~((and/or))~~ electronic address, or both, and provide the mailing and street address where the records will be stored.

(c) When a closing agency that has provided substance use disorder services arranges for the continued storage and management of clinical records by another entity, the closing agency must enter into a specific qualified services organization agreement with a DBHR licensed agency or other entity. See 42 C.F.R. Part 2, Subpart B.

(d) When any agency or entity storing and maintaining individual clinical records receives an authorized request for a record, the record must be provided to the requester within a reasonable period of time.

AMENDATORY SECTION (Amending WSR 16-13-087, filed 6/15/16, effective 7/16/16)

WAC 388-877-0305 Agency licensure and certification—Application. To apply for licensure to provide any behavioral health service, an ~~((agency))~~ applicant must submit an initial application to the department that is signed by the agency's administrator. The applicant must also apply for and have the department certify any specific behavioral health program services the agency wishes to provide.

(1) The application must include the following:

(a) A copy of the ~~((agency's))~~ applicant's master business license that authorizes the organization to do business in Washington state;

(b) A list of the specific program services for which the ~~((agency))~~ applicant is seeking certification;

(c) A copy of the report of findings from a ~~((criminal))~~ background check of the administrator and any owner of five percent or more of the organizational assets;

(d) The physical address of any agency operated facility where behavioral health services will be provided;

(e) A statement assuring the ~~((agency))~~ applicant meets Americans with Disabilities Act (ADA) standards and that the facility is:

- (i) Suitable for the purposes intended;
- (ii) Not a personal residence; and
- (iii) Approved as meeting all building and safety requirements.

(f) A copy of the policies and procedures specific to the agency;

~~((A staff roster, including each staff member's license under department of health (DOH) rules for professional standards and licensing if credentials are required for the position;~~

~~(h))~~) A copy of a current DOH residential treatment facility certificate if the ~~((agency))~~ applicant is providing substance use disorder residential treatment or mental health residential treatment; and

~~((+))~~ (h) Payment of associated fees.

(2) The department conducts an on-site review as part of the initial licensing or certification process (see WAC 388-877-0320).

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

WAC 388-877-0310 Agency licensure and certification—Deeming. (1) ~~((The department may deem an agency to be in compliance with state minimum standards for licensure and program-specific certification based on the agency being currently accredited by a national accreditation agency recognized by and having a current agreement with the department. To apply to the department for deemed status with a recognized accreditation body, go to <http://www.dshs.wa.gov/dbhr/dadeeming.shtml>))~~ If an agency is currently accredited by a national accreditation organization that is recognized by and has a current agreement with the department, the department must deem the agency to be in compliance with state standards for licensure and certification.

(2) To be considered for deeming, an agency must submit a request to the department signed by the agency's administrator.

(3) Deeming will be in accordance with the established written agreement between the accrediting agency and the department.

(4) Specific licensing and certification requirements of any:

(a) State rule may only be waived through a deeming process consistent with the established written agreement between the accrediting agency and the department.

(b) State or federal law will not be waived through a deeming process.

(5) An agency operating under a department-issued provisional license or provisional program-specific certification is not eligible for deeming.

(6) An agency:

(a) Must provide to the department's division of behavioral health and recovery a copy of any reports regarding accreditation from the accrediting agency.

(b) Must meet the requirements in WAC 388-877-0325 and 388-877-0345 before adding any additional service(s); and

(c) Is not eligible for deeming until the service(s) has been reviewed by the accrediting agency.

(7) Any branch site added to an existing agency:

(a) Must meet the requirements in WAC 388-877-0340; and

(b) Is not eligible for deeming until the site has been reviewed by the accrediting agency.

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

WAC 388-877-0315 Agency licensure and certification—Renewals. A department~~((-~~)issued license~~((-includ-~~

~~ing program-specific))~~ and certification~~((-~~) of behavioral health services expires ~~((up to))~~ twelve months from the effective date. To renew a license or certification, an agency must submit a renewal request signed by the agency's designated official.

(1) The original renewal request must:

(a) Be received by the department before the expiration date of the agency's current license; and

(b) Include payment of the specific renewal fee (see WAC 388-877-0365).

(2) The department may conduct an on-site review as part of the renewal process (see WAC 388-877-0320).

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

WAC 388-877-0320 Agency licensure and certification—On-site reviews and plans of correction. To obtain and maintain ~~((licensure))~~ a department-issued license and to continue to provide department-certified behavioral health services, ~~((including program-specific certification,))~~ each agency is subject to an on-site review to determine if the agency is in compliance with the minimum licensure and certification standards.

(1) A department review team representative(s) conducts an entrance conference with the agency and an on-site review that may include:

(a) A review of:

(i) Agency policies and procedures;

(ii) Personnel records;

(iii) Clinical records;

(iv) Facility accessibility;

(v) The agency's internal quality management ~~((plan/process))~~ plan, process, or both, that demonstrates how the agency evaluates program effectiveness and individual participant satisfaction; and

(vi) Any other information, including the criteria in WAC 388-877-0335 (1)(b), that the department determines to be necessary to confirm compliance with the minimum standards of this chapter~~((-~~); and

(b) Interviews with:

(i) Individuals served by the agency; and

(ii) Agency staff members.

(2) The department review team representative(s) concludes an on-site review with an exit conference that includes, if applicable:

(a) A discussion of findings;

(b) A statement of deficiencies requiring a plan of correction; and

(c) A plan of correction signed by the agency's designated official and the department review team representative.

(3) The department requires the agency to correct the deficiencies listed on the plan of correction:

(a) By the negotiated time frame agreed upon by the agency and the department review team representative; or

(b) Immediately if the department determines ~~((consumer))~~ health and safety concerns require immediate corrective action.

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

WAC 388-877-0325 Agency licensure and (~~pro-~~~~gram-specific~~) certification—Approvals and provisional approvals. (1) The department grants an initial or provisional license or program-specific certification to an agency when:

(a) The application and agency policy and procedures submitted meet the requirements of WAC 388-877-0305(1);

(b) An on-site review is conducted under WAC 388-877-0320 and the agency corrects any noted deficiencies within the agreed upon time frame; and

(c) The department determines the agency is in compliance with the licensure and program-specific certification standards.

(2) The agency must post the department-issued license and certification(s) in a conspicuous place on the facility's premises, and, if applicable, on the agency's branch site premises.

(3) See WAC 388-877-0330 for license and program-specific certification effective dates.

(4) See WAC 388-877-0315 for agency requirements for renewing licensure.

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

WAC 388-877-0330 Agency licensure and certification—Effective dates. An agency's license and any behavioral health services certification is effective for up to twelve months from the effective date, subject to the agency maintaining compliance with the minimum license and program-specific certification standards in this chapter(~~, and chapters 388-877A, 388-877B, and 388-877C WAC~~).

AMENDATORY SECTION (Amending WSR 16-13-087, filed 6/15/16, effective 7/16/16)

WAC 388-877-0335 Agency licensure and (~~pro-~~~~gram-specific~~) certification—Denials, suspensions, revocations, and penalties. (1) The department will deny issuing or renewing an agency's license or specific program certification(s), place an agency on probation, or suspend, or revoke an agency's license or specific program certification for any of the following reasons:

(a) The agency fails to meet requirements in this chapter.

(b) The agency fails to cooperate or disrupts department representatives during an on-site survey or complaint investigation.

(c) The agency fails to assist the department in conducting individual interviews with either staff members or individuals receiving services, or both.

(d) The agency owner or agency administrator:

(i) Had a license or specific program certification issued by the department subsequently denied, suspended, or revoked;

(ii) Was convicted of child abuse or adjudicated as a perpetrator of (~~substantiated~~) a founded child (~~abuse~~) protective services report;

(iii) Was convicted of abuse of a vulnerable adult or adjudicated as a perpetrator of substantiated abuse of a vulnerable adult;

(iv) Obtained or attempted to obtain a health provider license, certification, or registration by fraudulent means or misrepresentation;

(v) Committed, permitted, aided or abetted the commission of an illegal act or unprofessional conduct as defined under RCW 18.130.180;

(vi) Demonstrated cruelty, abuse, negligence, misconduct, or indifference to the welfare of a patient or displayed acts of discrimination;

(vii) Misappropriated patient (individual) property or resources;

(viii) Failed to meet financial obligations or contracted service commitments that affect patient care;

(ix) Has a history of noncompliance with state or federal rules in an agency with which the applicant has been affiliated;

(x) Knowingly, or with reason to know, made a false statement of fact or failed to submit necessary information in:

(A) The submitted application or materials attached; or
(B) Any matter under department investigation.

(xi) Refused to allow the department access to view records, files, books, or portions of the premises relating to operation of the program;

(xii) Willfully interfered with the preservation of material information or attempted to impede the work of an authorized department representative;

(xiii) Is currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in transactions involving certain federal funds (this also applies to any person or business entity named in the agency's application for licensure or certification);

(xiv) Does not meet (~~criminal~~) background check requirements;

(xv) Fails to provide satisfactory application materials; or

(xvi) Advertises the agency as certified when licensing or certification has not been granted, or has been revoked or canceled.

(e) The department determines there is imminent risk to (~~consumer~~) health and safety.

(f) The agency's licensure or specific program certification is in probationary status and the agency fails to correct the noted health and safety deficiencies within the agreed-upon time frames.

(2) The department may deny issuing or renewing an agency's license or specific program certification, place an agency on probation, or suspend or revoke an agency's license or specific program certification for any of the following reasons:

(a) The agency voluntarily cancels licensure or certification.

(b) The agency fails to pay the required license or certification fees.

(c) The agency stops providing the services for which the agency is certified.

(d) The agency fails to notify the department before changing ownership.

(e) The agency fails to notify the department before relocating its licensed location.

(3) The department sends a written notice to deny, suspend, revoke, or modify the licensure or certification status (see RCW 43.20A.205) that includes the reason(s) for the decision and the agency's right to appeal a department decision (refer to WAC 388-877-0370).

(4) If an agency fails to comply with the requirements of this chapter, the department may:

(a) Assess fees to cover costs of added licensing and program-specific certification activities, including when the department determines a corrective action is required due to a complaint or incident investigation;

(b) Stop referral(s) of an individual who is a program recipient of either a state ~~((and/or))~~ or federally-funded program or both; and

(c) Notify the county alcohol and drug coordinator, behavioral health organization (BHO) and/or local media of stopped referrals, suspensions, revocations, or nonrenewal of the agency's license or program-specific certification(s).

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

WAC 388-877-0340 Agency licensure and certification—Adding a branch site. To add a branch site, an existing licensed behavioral health agency must notify the department and submit an application that lists the behavioral health services to be provided and that is signed by the agency's designated official.

(1) The agency must also submit the following:

(a) A statement assuring the branch site meets ~~((American Disability))~~ Americans with Disabilities Act (ADA) standards and that the facility is appropriate for providing the proposed services;

(b) A written declaration that a current copy of agency policies and procedures is accessible to the branch site and that the policies and procedures have been revised to accommodate the differences in business and clinical practices at that site; and

(c) Payment of fees (see WAC 388-877-0365).

(2) Each nonresident branch facility is subject to review by the department to determine if the facility is:

(a) Suitable for the purposes intended;

(b) Not a personal residence; and

(c) Approved as meeting all building and safety requirements.

NEW SECTION

WAC 388-877-0342 Agency licensure and certification—Off-site locations. (1) A behavioral health agency that provides outpatient services at an established off-site location(s) must:

(a) Maintain a list of each established off-site location where services are provided; and

(b) Include, for each established off-site location:

(i) The name and address of the location the services are provided;

(ii) The primary purpose of the off-site location;

(iii) The service(s) provided; and

(iv) The date off-site services began at that location.

(2) An agency providing in-home services or services in a public setting must:

(a) Implement and maintain a written protocol of how services will be offered in a manner that promotes individual, staff member, and community safety; and

(b) For the purpose of emergency communication and as required by RCW 71.05.710, provide a wireless telephone or comparable device to any mental health professional who makes home visits to individuals.

(3) An agency must:

(a) Maintain an individual's confidentiality at the off-site location;

(b) Securely transport confidential information and individual records between the licensed agency and the off-site location, if applicable;

(c) Ensure the type of behavioral health service offered at each off-site location is certified by the division of behavioral health and recovery (DBHR); and

(d) Ensure the behavioral health services provided at off-site locations meet the requirements of all applicable local, state, and federal rules and laws.

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

WAC 388-877-0345 Agency licensure and ~~((program specific))~~ certification—Adding a new service. To add a new behavioral health service, a licensed behavioral health agency must request and submit an abbreviated application that lists the additional behavioral health service(s) it seeks to provide and is signed by the agency's designated official.

(1) The application must include the following:

(a) The name of the administrator providing management or supervision of services;

(b) The physical address or addresses of the agency-operated facility or facilities where the new service(s) will be provided;

(c) A description of the agency's policies and procedures relating to the new service(s);

(d) The name and credentials of each staff member providing the new service(s); and

(e) Payment of fees (see WAC 388-877-0365).

(2) The agency is subject to an on-site review under WAC 388-877-0320 before the department:

(a) ~~((Approves))~~ Certifies the new behavioral health service(s); and

(b) Issues a new license that lists the added service(s).

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

WAC 388-877-0350 Agency licensure and certification—Change in ownership. (1) When a licensed behavioral health agency changes ownership, the department requires:

(a) A new license application (see WAC 388-877-0305);

(b) Payment of fees (see WAC 388-877-0365); and

(c) A statement regarding the disposition and management of clinical records in accordance with applicable state and federal laws.

(2) The agency must receive a new license under the new ownership before providing any behavioral health service.

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

WAC 388-877-0355 Agency licensure and certification—Change in location. (1) When a licensed behavioral health agency relocates to another address, the department requires:

- (a) The agency to notify the department in writing of the new address;
 - (b) A new license application (see WAC 388-877-0305); and
 - (c) Payment of fees (see WAC 388-877-0365).
- (2) The agency:
- (a) Is subject to an on-site review under WAC 388-877-0320 when changing locations.
 - (b) Must receive a new license under the new location's address before providing any behavioral health service at that address.

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

WAC 388-877-0360 Agency licensure and ((~~program-specific~~)) certification—Facility remodel. When a licensed behavioral health agency changes the accessibility of the facility by remodeling, the department requires the agency to:

- (1) Notify the department in writing of the facility remodel at least thirty days before the day the remodeling begins; and
- (2) Submit a floor plan documenting accessibility and maintenance of confidentiality during and after the remodel.

AMENDATORY SECTION (Amending WSR 16-13-087, filed 6/15/16, effective 7/16/16)

WAC 388-877-0365 Agency licensure and ((~~program-specific~~)) certification—Fee requirements. (1) Payment of licensing and specific program certification fees required under this chapter must be included with the initial application, renewal application, or with requests for other services.

(2) Payment of fees must be made by check, bank draft, electronic transfer, or money order made payable to the department.

(3) The department may refund one-half of the application fee if an application is withdrawn before certification or denial.

(4) Fees will not be refunded when licensure or certification is denied, revoked, or suspended.

(5) The department charges the following fees for approved substance use disorder treatment programs:

Application fees for agency certification for approved substance use disorder treatment programs	
New agency application	\$1,000
Branch agency application	\$500
Application to add one or more services	\$200
Application to change ownership	\$500
Initial and annual certification fees for ((Detoxification)) <u>withdrawal management</u> , residential, and nonresidential services	
((Detoxification)) <u>Withdrawal management</u> and residential services	\$100 per licensed bed, per year, for agencies not renewing certification through deeming
	\$50 per licensed bed, per year, for agencies renewing certification through deeming per WAC 388-877-0310
Nonresidential services	\$750 per year for agencies not renewing certification through deeming
	\$200 per year for agencies certified through deeming per WAC 388-877-0310
Complaint/critical incident investigation fees	
All agencies	\$1,000 per substantiated complaint investigation and \$1,000 per substantiated critical incident investigation that results in a requirement for corrective action

(6) Agency providers must annually complete a declaration form provided by the department to indicate information necessary for establishing fees and updating certification information. Required information includes, but is not limited to:

- (a) The number of licensed ((~~detoxification~~)) withdrawal management and residential beds; and
 - (b) The agency provider's national accreditation status.
- (7) The department charges the following fees for approved mental health treatment programs:

Initial licensing application fee for mental health treatment programs	
Licensing application fee	\$1,000 initial licensing fee
Initial and annual licensing fees for agencies not deemed	
Annual service hours provided:	Initial and annual licensing fees:
0-3,999	\$728
4,000-14,999	\$1,055

15,000-29,999	\$1,405
30,000-49,999	\$2,105
50,000 or more	\$2,575
<u>Annual licensing fees for deemed agencies</u>	
Deemed agencies licensed by DBHR	\$500 annual licensing fee
<u>Complaint/critical incident investigation fee</u>	
All residential and nonresidential agencies	\$1,000 per substantiated complaint investigation and \$1,000 per substantiated critical incident investigation that results in a requirement for corrective action

(8) Agencies providing nonresidential mental health services must report the number of annual service hours provided based on the division of behavioral health and recovery's (DBHR's) current published "Service Encounter Reporting Instructions for BHOs" and the "Consumer Information System (CIS) Data Dictionary for BHOs." These publications are available at: (~~https://www.dshs.wa.gov/bhsia/division-behavioral-health-and-recovery/contractors-and-providers~~) <https://www.dshs.wa.gov/bha/division-behavioral-health-and-recovery/contractors-and-providers>.

(a) Existing licensed agencies must compute the annual services hours based on the most recent state fiscal year.

(b) Newly licensed agencies must compute the annual service hours by projecting the service hours for the first twelve months of operation.

(9) (~~For~~) Agencies providing inpatient evaluation and treatment ((facility initial and annual certification bed fees charged by the department, see WAC 388-865-0511) services and competency evaluation and restoration treatment services must pay the following certification fees:

- (a) Ninety dollars initial certification fee, per bed; and
- (b) Ninety dollars annual certification fee, per bed.

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

WAC 388-877-0370 Agency licensure and ((~~program specific~~)) certification—Appealing a department decision. (1) To appeal a decision made by the department regarding agency licensure or certification of a behavioral health service, an agency must ((~~file~~)) submit a written ((~~request~~)) application asking for ((a)) an administrative hearing:

- (a) Signed by the agency's administrator.
- (b) ((~~Within twenty-eight days of the date of the department's written decision.~~))
- (~~e~~) Sent to the ((~~Board of Appeals, P.O. Box 2465, Olympia, WA 98504~~)) office of administrative hearings (OAH), P.O. Box 42489, Olympia, WA 98504-2489, with a method that shows proof of receipt.
- (c) Received by OAH within twenty-eight days of the date of the department's written decision.

- (d) That includes all of the following:
 - (i) A copy of the department's decision that is being contested((-);
 - (ii) The agency's reason for contesting the decision((-); and
 - (iii) The specific rules, laws, and policy the agency believes are being violated.

(2) A decision will be made following the requirements of the Administrative Procedure Act, chapter 34.05 RCW, and chapter 388-02 WAC.

(3) The department may order a summary suspension of the agency's license or certification of a behavioral health service pending completion of the appeal process when the preservation of public health, safety, or welfare requires emergency action.

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

WAC 388-877-0400 Agency administration—Governing body requirements. An agency's governing body is responsible for the conduct and quality of the behavioral health services provided. The agency's governing body must:

- (1) Assure there is an administrator responsible for the day-to-day operation of services((-);
- (2) Maintain a current job description for the administrator, including the administrator's authority and duties((-); and
- (3) ((~~Approve the mission statement and quality management plan/process for the services provided.~~))
- (4)) Notify the department within thirty days of changes of the administrator.

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

WAC 388-877-0410 Agency administration—Administrator key responsibilities. (1) The agency administrator is responsible for the day-to-day operation of the agency's ((~~licensed or~~)) provision of certified behavioral health treatment services, including:

- (a) All administrative matters;
- (b) Individual care services; and
- (c) Meeting all applicable rules, policies, and ethical standards.
- (2) The administrator must:
 - (a) Delegate to a staff person the duty and responsibility to act in the administrator's behalf when the administrator is not on duty or on call((-);
 - (b) Ensure administrative, personnel, and clinical policies and procedures are adhered to and kept current to be in compliance with the rules in this chapter, as applicable((-);
 - (c) Employ sufficient qualified personnel to provide adequate treatment services and facility security((-);
 - (d) Ensure all persons providing clinical services are credentialed for their scope of practice as required by the department of health((-);
 - (e) Identify at least one person to be responsible for clinical supervision duties((-);
 - (f) Ensure that there is an up-to-date personnel file for each employee, trainee, student, volunteer, and for each con-

tracted staff person who provides or supervises an individual's care((-); and

(g) Ensure that personnel records document that Washington state patrol background checks consistent with (~~RCW 43.43.830 through 43.43.834~~) chapter 43.43 RCW have been completed for each employee in contact with individuals receiving services.

(3) The administrator must ensure the agency develops and maintains a written internal quality management plan/process that:

(a) Addresses the clinical supervision and training of clinical staff;

(b) Monitors compliance with the rules in this chapter, and other state and federal rules and laws that govern agency licensing and certification requirements; and

(c) Continuously improves the quality of care in all of the following:

(i) Cultural competency;

(ii) Use of evidence based and promising practices; and

(iii) In response to:

(A) Critical incidents;

(B) Complaints; and

(C) Grievances and appeals.

AMENDATORY SECTION (Amending WSR 16-13-087, filed 6/15/16, effective 7/16/16)

WAC 388-877-0420 Agency administration—Policies and procedures. Each agency licensed by the department to provide any behavioral health service must develop, implement, and maintain administrative policies and procedures to meet the minimum requirements of this chapter. The policies and procedures must demonstrate the following, as applicable:

(1) **Ownership.** Documentation of the agency's governing body, including a description of membership and authorities, and documentation of the agency's:

(a) Articles and certificate of incorporation and bylaws if the owner is a corporation;

(b) Partnership agreement if the owner is a partnership; or

(c) Sole proprietorship if one person is the owner.

(2) **Licensure.** A copy of the agency's master business license that authorizes the organization to do business in Washington state that((-

~~(a) Includes the entity's name, firm name, or registered trade name; and~~

~~(b))~~ lists all addresses where the entity performs services.

(3) **Organizational description.** An organizational description detailing all positions and associated licensure or certification, updated as needed.

(4) **Agency staffing and supervision.** Documentation that shows the agency has staff members((-

~~(a) Adequate in number to provide program-specific certified services to serve the agency's caseload of individuals; and~~

~~(b))~~ who provide treatment in accordance to regulations relevant to their specialty or specialties and registration, certification, licensing, and trainee or volunteer status.

(5) **Interpreter services for individuals with limited english proficiency (LEP) and individuals who have sensory disabilities.** Documentation that demonstrates the agency's ability to provide or coordinate services for individuals with LEP and individuals who have sensory disabilities. This means:

(a) Certified interpreters or other interpreter services must be available for individuals with limited English speaking proficiency and individuals who have sensory disabilities; or

(b) The agency must have the ability to effectively provide, coordinate or refer individuals in these populations for appropriate assessment or treatment.

(6) **Reasonable access for individuals with disabilities.** A description of how reasonable accommodations will be provided to individuals with disabilities.

(7) **Nondiscrimination.** A description of how the agency complies with all state and federal nondiscrimination laws, rules, and plans.

(8) **Fee schedules.** A copy of the agency's current fee schedules for all services must be available on request.

(9) **Funding options for treatment costs.** A description of how the agency works with individuals to address the funding of an individual's treatment costs, including a mechanism to address changes in the individual's ability to pay.

(10) **State and federal rules on confidentiality.** A description of how the agency implements state and federal rules on individuals' confidentiality consistent with the service or services being provided.

(11) **Reporting and documentation of suspected abuse, neglect, or exploitation.** A description how the agency directs staff to report and document suspected abuse, neglect, or exploitation of a child or vulnerable adult consistent with chapters 26.44 and 74.34 RCW.

(12) **Protection of youth.** Documentation of how the agency addresses compliance with program-specific rules and the protection of youth participating in group or residential treatment with adults.

(13) **Completing and submitting reports.** A description of how the agency directs staff to:

(a) Complete and submit in a timely manner, all reports required by entities such as the courts, department of corrections, department of licensing, and the department of social and health services; and

(b) Include a copy of the report(s) in the clinical record and document the date submitted.

(14) **Reporting the death of an individual seeking or receiving services.** A description of how the agency directs staff to report to the department or behavioral health organization (BHO), as applicable, within one business day the death of any individual which occurs on the premises of a licensed agency.

(15) **Reporting critical incidents.** A description of how the agency directs staff to report to the department or BHO, as applicable, within one business day any critical incident that occurs involving an individual, and actions taken as a result of the incident.

(16) **A smoking policy.** Documentation that a smoking policy consistent with chapter 70.160 RCW (smoking in public places), is in effect.

(17) **Outpatient evacuation plan.** For a nonresidential agency, an evacuation plan for use in the event of a disaster or emergency that addresses:

- (a) Different types of disasters or emergencies;
- (b) Placement of posters showing routes of exit;
- (c) The need to mention evacuation routes at public meetings;
- (d) Communication methods for individuals, staff, and visitors, including persons with a visual or hearing impairment or limitation;
- (e) Evacuation of mobility impaired individuals; and
- (f) Evacuation of children if child care is offered.

(18) **Individual rights.** A description of how the agency has individual participation rights and policies consistent with WAC 388-877-0600 and if applicable, WAC 388-877-0680.

(19) **Individual complaints and grievances.** A description of how the agency addresses an individual's:

- (a) Complaint, consistent with WAC 388-877-0605(~~;~~ and/or the grievance system); and
- (b) Grievance or appeal consistent with WAC (~~388-877-0650~~) 388-877-0654 through 388-877-0675.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 388-877-0425 Agency administration—Individual clinical record system. Each agency licensed by the department to provide any behavioral health service must:

- (1) Maintain a comprehensive clinical record system that includes policies and procedures that protect an individual's personal health information;
- (2) Ensure that the individual's personal health information is shared or released only in compliance with applicable state and federal law;
- (3) If maintaining electronic individual clinical records:
 - (a) Provide secure, limited access through means that prevent modification or deletion after initial preparation;
 - (b) Provide for a backup of records in the event of equipment, media, or human error; and
 - (c) Provide for protection from unauthorized access, including network and internet access;
- (4) Retain an individual's clinical record, including an electronic record, for a minimum of six years after the discharge or transfer of any individual;
- (5) Retain a youth's or child's individual clinical record, including an electronic record, for at least six years after the most recent discharge, or at least three years following the youth's or child's eighteenth birthday; and
- (6) Meet the access to clinical records requirements in WAC 388-877-0650.

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

WAC 388-877-0430 Agency administration—Treatment facility requirements. Each agency licensed by the

department to provide any behavioral health service must ensure that its treatment facility:

- (1) ~~((Is suitable for the purposes intended.~~
- ~~(2)))~~ Is not a personal residence~~((-));~~
- ~~((3))~~ Is accessible to an individual with a disability.
- ~~(4))~~ Has a reception area separate from living and therapy areas.
- ~~(5)))~~ (2) Has adequate private space for personal consultation with an individual, staff charting, and therapeutic and social activities, as appropriate~~((-));~~
- ~~((6)))~~ (3) Has secure storage of active or closed confidential records~~((-));~~ and
- ~~((7)))~~ (4) Has separate secure, locked storage of poisonous external chemicals and caustic materials.

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

WAC 388-877-0500 Personnel—Agency policies and procedures. Each agency licensed by the department to provide any behavioral health service must develop, implement, and maintain personnel policies and procedures. The policies and procedures must meet the minimum requirements of this chapter and include the following, as applicable:

- (1) ~~((Hiring practices.~~ Identification of how the agency:
 - ~~(a) Ensures all persons providing or supervising clinical services have an active registration, certification, or license granted by the department of health consistent with the services provided; and~~
 - ~~(b) Ensures the requirements of WAC 388-06-0170 are met if the agency provides services to youths.~~
- ~~(2)))~~ **Background checks.** Identification of how the agency conducts Washington state background checks on each agency employee in contact with individuals receiving services, consistent with RCW 43.43.830 through 43.43.842.
- ~~((3)))~~ (2) **Excluded provider list.** A description of how the agency conducts a review of the list of excluded individuals/entities (LEIE) searchable database (found on the Office of Inspector General, U.S. Department of Health and Human Services website at <http://oig.hhs.gov>) for each employee in contact with individuals receiving services, to include a procedure on how the agency:
 - (a) Reviewed the LEIE database at the time of the employee's hire and annually thereafter; and
 - (b) Assured the employee is not currently debarred, suspended, proposed for debarment, declared ineligible, or voluntary excluded from participating in transactions involving certain federal funds.
- ~~((4)))~~ (3) **Drug free workplace.** Identification of how the agency provides for a drug free work place that includes:
 - (a) Agency program standards of prohibited conduct; and
 - (b) Actions to be taken in the event a staff member misuses alcohol or other drugs.
- ~~((5)))~~ (4) **Supervision.** Identification of how supervision is provided to assist program staff and volunteers to increase their skills, and improve quality of services to individuals and families.

~~((6))~~ (5) Staff training. A description of how the agency provides training within thirty days of an employee's hire date and annually thereafter(~~(:~~

~~(a) Consistent with the agency's certified services.~~

~~(b) On cultural competency that assists staff in recognizing when cultural barriers interfere with clinical care that includes a review of:~~

~~(i) Populations specific to the agency's geographic service area; and~~

~~(ii) Applicable available community resources.~~

~~(c) On procedures for how to respond to individuals in crisis that includes a review of:~~

~~(i) Emergency procedures;~~

~~(ii) Program policies and procedures; and~~

~~(iii) Rights for individuals receiving services and supports.~~

~~(d) That addresses the requirements of this chapter).~~

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

WAC 388-877-0510 Personnel—Agency record requirements. Each agency licensed by the department to provide any behavioral health service must maintain a personnel record for each person employed by the agency.

(1) The personnel record must contain all of the following:

(a) Documentation of annual training, including documentation that the employee successfully completed training on cultural competency (~~((see WAC 388-877-0500 (6)(b))).~~

(b) A signed and dated commitment to maintain patient (individual) confidentiality in accordance with state and federal confidentiality requirements.

(c) A record of an orientation to the agency that includes all of the following:

(i) An overview of the (~~(administrative, personnel and clinical))~~ agency's policies and procedures.

(ii) The duty to warn or to take reasonable precautions to provide protection from violent behavior when an individual has communicated an actual imminent threat of physical violence against a reasonably identifiable victim or victims. Taking reasonable precautions includes notifying law enforcement as required and allowed by law.

(iii) Staff ethical standards and conduct, including reporting of unprofessional conduct to appropriate authorities.

(iv) The process for resolving client complaints (~~(and/or))~~ and grievances.

~~((v) The facility evacuation plan.)~~

(d) A copy of the staff member's valid current credential issued by the department of health for their scope of practice.

~~((e) For noncontract staff, a copy of a current job description, signed and dated by the employee and supervisor which includes:~~

~~(i) A job title;~~

~~(ii) Minimum qualifications for the position; and~~

~~(iii) A summary of duties and responsibilities.~~

~~(f) For contract staff, formal agreements or contracts that describe the nature and extent of patient care services may be substituted for job descriptions.~~

~~(g) Performance evaluations conducted by the immediate supervisor or designee.)~~

(2) Staff members who have received services from the agency must have personnel records that:

(a) Are separate from clinical records; and

(b) Have no indication of current or previous service recipient status.

NEW SECTION

WAC 388-877-0515 Personnel—Agency staff requirements. Each agency licensed by the department to provide one or more behavioral health service must ensure that all of the following staff requirements are met:

(1) An agency providing mental health services must ensure all of the following:

(a) Each mental health service is provided by qualified staff members who meet the following for their scope of practice and services provided:

(i) Professional standards, including documented coursework, continuing education, and training;

(ii) Clinical supervision requirements; and

(iii) Licensure and credentialing requirements.

(b) Each staff member working directly with an individual receiving mental health services receives:

(i) Clinical supervision from a mental health professional who has received documented training and competency in clinical supervision approved by department of health; and

(ii) Annual violence prevention training on the safety and violence prevention topics described in RCW 49.19.030.

(c) Staff access to consultation with a psychiatrist, physician, physician assistant, advanced registered nurse practitioner (ARNP), or psychologist who has at least one year's experience in the direct treatment of individuals who have a mental or emotional disorder.

(2) An agency providing substance use disorder treatment services must ensure all of the following:

(a) All substance use disorder assessment and counseling services are provided by a chemical dependency professional (CDP), or a department of health-credential chemical dependency professional trainee (CDPT) under the supervision of an approved supervisor.

(b) There is a designated clinical supervisor who:

(i) Is a CDP;

(ii) Is an approved supervisor who meets the requirements of chapter 246-811 WAC; and

(iii) Has not committed, permitted, aided, or abetted the commission of an illegal act or unprofessional conduct as defined under RCW 18.130.180.

(c) Each chemical dependency professional trainee has at least one approved supervisor who meets the qualifications in WAC 246-811-049. An approved supervisor must decrease the hours of individual contact by twenty percent for each full-time CDPT supervised.

(d) Each staff member that provides individual care has a copy of an initial tuberculosis (TB) screen or test and any subsequent screenings or testing in their personnel file.

(e) All staff members are provided annual training on the prevention and control of communicable disease, bloodborne

pathogens, and TB, and document the training in the personnel file.

(3) An agency providing problem and pathological gambling services must ensure all of the following:

(a) All problem and pathological gambling treatment services are provided by:

(i) A certified Washington state, national, or international gambling counselor who is credentialed by the department of health (DOH) under chapter 18.19, 18.83, or 18.225 RCW; or

(ii) An individual credentialed by DOH under chapter 18.19, 18.83, or 18.225 RCW, under the supervision of a certified problem gambling counselor, in training to become a certified problem gambling counselor.

(b) Before providing problem and pathological treatment services, an individual in training to become a certified problem gambling counselor must have a minimum of:

(i) At least one thousand five hundred hours of professionally supervised post-certification or post-registration experience providing mental health or substance use disorder treatment services; and

(ii) Thirty hours of unduplicated gambling specific training, including the basic training; one of the following state, national, or international organizations must approve the training:

(A) Washington state gambling counselor certification committee;

(B) National or international gambling counselor certification board; or

(C) The department's division of behavioral health and recovery.

(c) An individual who meets subsection (3)(b)(ii) of this section must complete training to become a certified problem and pathological gambling counselor within two years of beginning problem and pathological gambling clinical practice.

(d) All staff members in training to become a certified problem gambling counselor must receive clinical supervision. The clinical supervisor must:

(i) Hold a valid international gambling counselor certification board-approved clinical consultant credential, a valid Washington state certified gambling counselor II certification credential, or a valid national certified gambling counselor II certification credential; and

(ii) Complete training on gambling specific clinical supervision approved by a state, national, or international organization including, but not limited to, the:

(A) Washington state gambling counselor certification committee;

(B) National or international gambling counselor certification board; or

(C) The department's division of behavioral health and recovery.

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

WAC 388-877-0520 Personnel—Agency requirements for supervision of trainees (~~and~~), interns, volunteers, and students. Each agency licensed by the department to provide any behavioral health service must ensure the following supervision requirements are met for trainees (~~and~~), interns, volunteers, and students:

(1) Each trainee, intern, volunteer, and student passes a background check;

(2) Each trainee (~~and~~), intern, volunteer, and student who receives training at an agency must be assigned a supervisor who has been approved by the agency administrator or designee.

((~~2~~)) The assigned supervisor:

(a) Must be credentialed by the department of health for their scope of practice;

(b) Is responsible for all individuals assigned to the trainee or intern they supervise; and

(c) Must review clinical documentation with the trainee or intern as part of the supervision process; and

(3) The agency must obtain and retain a confidentiality statement signed by the trainee, intern, volunteer, and student and the person's academic supervisor, if applicable.

AMENDATORY SECTION (Amending WSR 16-13-087, filed 6/15/16, effective 7/16/16)

WAC 388-877-0600 Clinical—Individual rights. (1) Each agency licensed by the department to provide any behavioral health service must develop a statement of individual participant rights applicable to the service categories the agency is licensed for, to ensure an individual's rights are protected in compliance with chapters ((~~70-96A-~~)) 71.05, 71.12, and 71.34 RCW. In addition, the agency must develop a general statement of individual participant rights that incorporates at a minimum the following statements. "You have the right to:"

(a) Receive services without regard to race, creed, national origin, religion, gender, sexual orientation, age or disability;

(b) Practice the religion of choice as long as the practice does not infringe on the rights and treatment of others or the treatment service. Individual participants have the right to refuse participation in any religious practice;

(c) Be reasonably accommodated in case of sensory or physical disability, limited ability to communicate, limited English proficiency, and cultural differences;

(d) Be treated with respect, dignity and privacy, except that staff may conduct reasonable searches to detect and prevent possession or use of contraband on the premises;

(e) Be free of any sexual harassment;

(f) Be free of exploitation, including physical and financial exploitation;

(g) Have all clinical and personal information treated in accord with state and federal confidentiality regulations;

(h) Review your clinical record in the presence of the administrator or designee and be given an opportunity to request amendments or corrections;

(i) Receive a copy of agency grievance system procedures upon request and to file a grievance with the agency, or behavioral health organization (BHO), if applicable, if you believe your rights have been violated; and

(j) Lodge a complaint with the department when you feel the agency has violated a WAC requirement regulating ~~((behavior))~~ "behavioral health agencies."

(2) Each agency must ensure the applicable individual participant rights described in subsection (1) of this section are:

(a) Provided in writing to each individual on or before admission;

(b) Available in alternative formats for individuals who are ~~((blind))~~ visually impaired;

(c) Translated to the most commonly used languages in the agency's service area;

(d) Posted in public areas; and

(e) Available to any participant upon request.

(3) Each agency must ensure all research concerning an individual whose cost of care is publicly funded is done in accordance with chapter 388-04 WAC, protection of human research subjects, and other applicable state and federal rules and laws.

(4) In addition to the requirements in this section, each agency providing services to medicaid recipients must ensure an individual seeking or participating in behavioral health treatment services, or the person legally responsible for the individual is informed of their medicaid rights at time of admission and in a manner that is understandable to the individual or legally responsible person.

(5) The grievance system rules in WAC 388-877-0654 through ~~((WAC))~~ 388-877-0675 apply to an individual who receives behavioral health services funded through a federal medicaid program or sources other than a federal medicaid program.

AMENDATORY SECTION (Amending WSR 16-13-087, filed 6/15/16, effective 7/16/16)

WAC 388-877-0605 DBHR complaint process. Any individual or the individual's representative may use the division of behavioral health and recovery's (DBHR's) complaint process to express concern or dissatisfaction with some aspect of a behavioral health service. See WAC 388-877-0200 for terms and definitions used in this section that apply to the complaint process.

(1) Information on contacting the DBHR complaint manager can be ~~((contacted))~~ found at ~~((360-725-3752 or DBHRcomplaintmgr@dshs.wa.gov))~~ <https://www.dshs.wa.gov/bha/division-behavioral-health-and-recovery/complaint-and-incident-management>.

(2) ~~((Examples of complaints include, but are not limited to:~~

~~(a) An issue with a behavioral health service or case management;~~

~~(b) A possible violation of a DSHS rule; and~~

~~(c) The individual believes their rights have been or are being violated.~~

(3) DBHR requires the following information for each complaint:

~~(a) The name of the agency or agency provider involved;~~
~~(b) The name of the person making the complaint and the person's contact information;~~

~~(c) The name of the individual receiving the service and the individual's contact information;~~

~~(d) A description of the complaint issue and the date or timeframe it occurred; and~~

~~(e) The final finding and/or resolution and the date of the decision if the individual previously discussed the concern with the behavioral health organization (BHO), the agency, or agency provider.~~

~~(4))~~ If DBHR conducts a complaint investigation in order to resolve a complaint, agency representatives must cooperate to allow DBHR representatives to:

(a) Examine any part of the facility at reasonable times and as needed.

(b) Review and evaluate agency records, including but not limited to:

(i) An individual's clinical record ~~((and/or))~~ and personnel file; and

(ii) The agency's policies, procedures, fiscal records, and any other documents required by DBHR to determine compliance and to resolve the complaint~~((:))~~; and

(c) Conduct individual interviews with staff members ~~((and/or))~~ and individuals receiving services.

~~((5))~~ ~~The agency must immediately correct compliance deficiencies found as a result of an investigation, or as agreed to by a plan of correction approved by DBHR.~~

~~(6))~~ (3) An agency or agency provider must not retaliate against any:

(a) Individual for making a complaint with DBHR or being interviewed by DBHR about a complaint. Examples of retaliation include, but are not limited to:

(i) Restricting access to a treatment program;

(ii) Restricting access to the individual involved with the complaint issue;

(iii) Increasing or threatening to increase charges for services;

(iv) Decreasing or threatening to decrease services, rights, or privileges;

(v) Taking any action that coerces or compels the individual to leave the facility or to stop receiving services; and

(vi) Abusing or harassing, or threatening to abuse or harass the individual.

(b) Person representing the individual.

(c) A witness involved in the complaint issue.

(d) An employee of the agency.

~~((7))~~ (4) Under WAC 388-877-0365, DBHR may assess an agency a one thousand dollar fee for the cost of a complaint investigation. Reasons for assessing the fee include, but are not limited to:

(a) Any allegation within the complaint being substantiated; or

(b) DBHR's finding that the individual, an individual's representative, a witness, ~~((and/or))~~ or employee of the agency experienced an act of retaliation by the agency as described in subsection ~~((6))~~ (3) of this section during or after a complaint investigation.

~~((8))~~ ~~DBHR reviews all complaints and behavioral health agency actions to assure compliance with this section.~~

(9) ~~At any time during the complaint process, an individual applying for, eligible for, or receiving mental health services, or the individual's representative, may access any of the following through the behavioral health organization's (BHO) grievance system, subject to the applicable rules:~~

~~(a) The grievance process, subject to the rules in WAC 388-877-0660.~~

~~(b) The appeal process, subject to the rules in WAC 388-877-0670.~~

~~(c) An administrative hearing, subject to the rules in WAC 388-877-0675.~~

~~(d) Ombuds services, as described in WAC 388-877-0655(3) and 388-865-0262.)~~

AMENDATORY SECTION (Amending WSR 16-13-087, filed 6/15/16, effective 7/16/16)

WAC 388-877-0610 Clinical—~~(Initial)~~ Assessment.

Each agency licensed by the department to provide any behavioral health service is responsible for an individual's ~~(initial)~~ assessment.

(1) The ~~(initial)~~ assessment must be:

(a) Conducted in person; and

(b) Completed by a professional appropriately credentialed or qualified to provide one or more of the following services as determined by state and federal law: Substance use disorder, mental health, ~~(and/or)~~ and problem and pathological gambling ~~(services as determined by state law)~~.

(2) The ~~(initial)~~ assessment must ~~(include and)~~ document ~~(the individual's)~~ that the clinician conducted an age-appropriate, strengths-based psychosocial assessment that considered current needs and the patient's relevant history according to best practices. Such information may include, if applicable:

(a) Identifying information;

(b) Presenting issues;

(c) Medical provider's name or medical providers' names;

(d) Medical concerns;

(e) Medications currently taken;

(f) ~~(Brief)~~ Mental health history;

(g) ~~(Brief)~~ Substance use history, including tobacco;

(h) ~~(Brief)~~ Problem and pathological gambling history;

(i) ~~(The identification)~~ An assessment of any risk of harm to self and others, including suicide ~~(and/or)~~, homicide, and a history of self-harm;

(j) A referral for provision of emergency/crisis services must be made if indicated in the risk assessment;

(k) Legal history, including information that a person is or is not court-ordered to treatment or under the supervision of the department of corrections; ~~(and)~~

(l) Employment and housing status;

(m) Treatment recommendations or recommendations for additional program-specific assessment; and

(n) A diagnostic assessment statement, including sufficient data to determine a diagnosis supported by the current and applicable Diagnostic and Statistical Manual of Mental Disorders (DSM-5).

(3) Agencies providing substance use disorder services must ensure the assessment includes:

(a) A statement regarding the provision of an HIV/AIDS brief risk intervention, and any referral made; and

(b) A placement decision, using ASAM criteria dimensions when the assessment indicates the individual is in need of substance use disorder services.

(4) Behavioral health agencies can apply for an exemption from the assessment requirements in this section if the agency is following similar documentation requirements of an evidence-based, research-based, or state-mandated program that provides adequate protection for patient safety. See WAC 388-877-0300 for information about the exemption process.

AMENDATORY SECTION (Amending WSR 16-13-087, filed 6/15/16, effective 7/16/16)

WAC 388-877-0620 Clinical—Individual service plan. Each agency licensed by the department to provide any behavioral health service is responsible for an individual's service plan as follows:

(1) The individual service plan must:

(a) Be completed or approved by a professional appropriately credentialed or qualified to provide one or more of the following services:

(i) Mental health~~(-);~~

(ii) Substance use disorder~~(-and/or);~~ and

(iii) Problem and pathological gambling services~~(-);~~

(b) Address ~~(age, gender, cultural, strengths and/or disability)~~ issues identified by the individual or, if applicable, the individual's parent(s) or legal representative~~(-);~~

(c) Be in a terminology that is understandable to the individual and the individual's family~~(-);~~

(d) Document that the plan was mutually agreed upon and a copy was ~~(provided)~~ made available to the individual~~(-);~~

~~(e) ~~(Demonstrate the individual's participation in the development of the plan.~~~~

~~(f) Document participation of family or significant others, if participation is requested by the individual and is clinically appropriate.~~

~~(g) Be strength-based.~~

~~(h)) Contain measurable goals or objectives, or both~~(-), and interventions; and~~~~

~~((+)) (f) Be updated to address applicable changes in identified needs and achievement of goals ~~(and objectives)~~.~~

(2) An agency that provides any behavioral health service must ensure the individual service plan:

(a) Is initiated during the first individual session following the assessment with at least one goal identified by the individual or if applicable, the individual's parent or legal representative; and

(b) Documents that the plan was reviewed and updated to reflect any changes in the individual's treatment needs, or as requested by the individual or, if applicable, the individual's parent or legal representative.

(3) If the individual service plan includes assignment of work to an individual, the assignment must have therapeutic

value and meet all the requirements in subsection (1) of this section.

~~((3) When required by law, the agency must notify the required authority of a violation of a court order or nonparticipation in treatment, or both)~~

(4) Behavioral health agencies may apply for an exemption from the individual service plan requirements in this section if the agency is following similar documentation requirements of an evidence-based, research-based, or state-mandated program that provides adequate protection for patient safety. See WAC 388-877-0300 for information about the exemption process.

(5) Behavioral health agencies providing substance use disorder services must review the individual service plan to determine the need for continued services using ASAM criteria.

AMENDATORY SECTION (Amending WSR 16-13-087, filed 6/15/16, effective 7/16/16)

WAC 388-877-0640 Clinical—Additional record content. Each agency licensed by the department to provide any behavioral health service is responsible for an individual's clinical record content. The clinical record must include:

(1) Documentation the individual received a copy of counselor disclosure requirements as required for the counselor's credential(-);

(2) Demographic information(-);

(3) An ~~((initial))~~ assessment(-);

(4) Documentation of the individual's response when asked if:

(a) The individual is under department of corrections (DOC) supervision(-);

(b) The individual is under civil or criminal court ordered mental health or substance use disorder treatment(-); and

(c) There is a court order exempting the individual participant from reporting requirements. A copy of the court order must be included in the record if the participant claims exemption from reporting requirements(-);

(5) Documentation that the agency ~~((met all the following requirements when an individual informs the agency that the individual is under supervision by DOC due to a less restrictive alternative or DOC order for treatment:~~

~~(a) The agency notified DOC orally or in writing. The agency must confirm an oral notification with a written notice by electronic mail or fax.~~

~~(b) The agency obtained a copy of the court order from the individual and placed it in the record when the individual has been given relief from disclosure by the committing court.~~

~~(c) When appropriate, the agency requested an evaluation by a designated mental health professional when the provider becomes aware of a violation of the court-ordered treatment and the violation concerns public safety-)) is in compliance with RCW 71.05.445 regarding mental health services for individuals under department of corrections supervision;~~

(6) ~~((The initial and any subsequent individual service plan that include:~~

~~(a) All revisions to the plan, consistent with the service(s) the individual receives; and~~

~~(b) Documentation of objective progress towards established goals as outlined in the plan;~~

~~(7)) Documentation the individual was informed of applicable federal and state confidentiality requirements(-);~~

~~((8)) (7) Documentation of confidential information that has been released without the consent of the individual under:~~

~~(a) RCW 70.02.050;~~

~~(b) The Health Insurance Portability and Accountability Act (HIPAA); and~~

~~(c) RCW 70.02.230 and 70.02.240 if the individual received mental health treatment services(-);~~

~~((9)) (8) Documentation that any mandatory reporting of abuse, neglect, or exploitation consistent with chapters 26.44 and 74.34 RCW has occurred(-);~~

~~((10)) (9) If treatment is not court-ordered, documentation of informed consent to treatment by the individual or individual's parent, or other legal representative(-);~~

~~((11)) (10) If treatment is court-ordered, a copy of the order(-);~~

~~((12) Documentation of coordination of care, as needed;~~

~~(13) Documentation of all service encounters;~~

~~(14)) (11) Medication records, if applicable(-);~~

~~((15)) (12) Laboratory reports, if applicable(-);~~

~~((16)) (13) Properly completed authorizations for release of information, if applicable(-);~~

~~((17)) (14) Copies of applicable correspondence(-);~~

~~((18)) (15) Discharge information(-) as follows:~~

~~(a) A discharge statement if the individual left without notice;~~

~~(b) Discharge information for an individual who did not leave without notice, completed within seven working days of the individual's discharge, including:~~

~~(i) The date of discharge;~~

~~(ii) Continuing care plan;~~

~~(iii) Legal status, and if applicable; and~~

~~(iv) Current prescribed medication.~~

~~(c) When an individual is transferring to another service provider, documentation that copies of documents pertinent to the individual's course of treatment were forwarded to the new service provider with the individual's permission;~~

~~((19)) (16) A copy of any report required by entities such as the courts, department of corrections, department of licensing, and the department of social and health services, and the date the report was submitted;~~

~~(17) Progress notes must include the date, time, duration, participant's name, response to interventions, and a brief summary of the session and the name and credential of the staff member who provided it;~~

~~(18) Documentation of coordination with any systems or organizations the individual identifies as being relevant to treatment, with the individual's consent or if applicable, the consent of the individual's parent or legal representation; and~~

~~(19) A crisis plan, if one has been developed.~~

AMENDATORY SECTION (Amending WSR 14-18-014, filed 8/22/14, effective 9/22/14)

WAC 388-877-0650 Clinical—Access to clinical records. Each agency licensed by the department to provide any behavioral health service must:

(1) Provide access to an individual's clinical record at the request of the individual or, if applicable, the individual's designated representative, ~~((and/or))~~ or legal representative, or both. The agency must:

(a) ~~((Review the clinical record before making the record available in order to identify and remove:~~

~~(i))~~ Ensure that any material confidential to another person, agency, or provider~~(; and~~

~~(ii) Reports not originated by the agency))~~ is not redisclosed.

(b) Make the clinical record available to the requester within fifteen days of the request.

(c) Allow appropriate time and privacy for the review.

(d) Have a clinical staff member available to answer questions.

(e) Assure the charge for duplicating or searching the record is at a rate not higher than the "reasonable fee" as defined in RCW 70.02.010.

~~((f) Meet the individual clinical record system criteria in WAC 388-877-0630.))~~

(2) Make an individual's clinical record available to department staff as required for department program review.

(3) If the agency maintains electronic individual clinical records, the agency must:

(a) Make the clinical record available, in paper form if requested; and

(b) Meet the criteria in subsections (1) and (2) of this section.

(4) When an individual receiving mental health services is under the supervision of the department of corrections (DOC), make information available to DOC, in accordance with RCW 71.05.445. The information released does not require the consent of the individual.

SECTION SEVEN—OUTPATIENT SERVICES

NEW SECTION

WAC 388-877-0700 Outpatient services—General.

Outpatient behavioral health services are intended to improve or reduce symptoms and help facilitate resolution of situational disturbances for individuals in the areas of relationships, employment, and community integration.

(1) Outpatient services include the following:

(a) Individual mental health treatment services;

(b) Brief mental health intervention treatment services;

(c) Group mental health therapy services;

(d) Family therapy mental health services;

(e) Rehabilitative case management mental health services;

(f) Psychiatric medication mental health services and medication support;

(g) Day support mental health services;

(h) Mental health outpatient services provided in a residential treatment facility (RTF);

(i) Recovery support services including:

(i) Supported employment mental health and substance use disorder services;

(ii) Supportive housing mental health and substance use disorder services;

(iii) Peer support mental health services;

(iv) Wraparound facilitation mental health services;

(v) Applied behavior analysis (ABA) mental health services; and

(vi) Consumer-run clubhouse mental health services.

(j) Level one outpatient substance use disorder services;

(k) Level two intensive outpatient substance use disorder services;

(l) Substance use disorder assessment only services;

(m) Alcohol and drug information school;

(n) Substance use disorder information and crisis services;

(o) Substance use disorder emergency service patrol services;

(p) Substance use disorder screening and brief intervention services; and

(q) Problem and pathological gambling services.

(2) A behavioral health agency that provides outpatient services must:

(a) Be licensed by the department as a behavioral health agency; and

(b) Meet the applicable program-specific requirements for each outpatient behavioral health services provided.

NEW SECTION

WAC 388-877-0702 Outpatient services—Individual mental health treatment services.

(1) Individual mental health treatment services are services designed to assist an individual in attaining the goals identified in the individual service plan. The treatment services are conducted with the individual and any natural supports as identified by the individual.

(2) An agency certified to provide individual treatment services must meet the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680.

NEW SECTION

WAC 388-877-0704 Outpatient services—Brief mental health intervention treatment services.

(1) Brief mental health intervention treatment services are solution-focused and outcome-oriented cognitive and behavioral interventions, intended to resolve situational disturbances. These services do not require long term treatment, are generally completed in six months or less, and do not include ongoing care, maintenance, or monitoring of the individual's current level of function or assistance with self-care or life skills training.

(2) An agency certified to provide brief mental health intervention treatment services must meet the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680.

NEW SECTION

WAC 388-877-0706 Outpatient services—Group mental health therapy services. Group mental health therapy services are provided to an individual in a group setting to assist the individual in attaining the goals described in the individual service plan. In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680, an agency certified to provide group mental health services must:

- (1) Have a written description of each group's purpose;
- (2) Ensure group therapy services are provided with a staff ratio of one staff member for every sixteen individuals;
- (3) Ensure any group containing more than twelve individuals has at least one facilitator or co-facilitator that is an appropriately credentialed professional; and
- (4) Ensure group notes are recorded in each individual's clinical record and include the requirements of WAC 388-877-0640(15) for discharge information.

NEW SECTION

WAC 388-877-0708 Outpatient services—Family therapy mental health services. (1) Family therapy mental health services are services provided for the direct benefit of an individual, with either family members, or other relevant persons, or both, in attendance, with the consent of the individual.

(2) Interventions must identify and build competencies to strengthen family functioning in relationship to the individual's identified goals. The individual may or may not be present.

(3) An agency certified to provide family therapy mental health services must meet the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680.

NEW SECTION

WAC 388-877-0710 Outpatient services—Rehabilitative case management mental health services. Rehabilitative case management mental health services are services that meet the ongoing assessment, facilitation, care coordination and advocacy for options and services to meet an individual's needs through communication and available resources, to promote quality and effective outcomes during and following a hospitalization.

(1) Rehabilitative case management services support individual employment, education, and participation in other daily activities appropriate to the individual's age, gender, and culture, and assist individuals in resolving crises in the least restrictive setting.

(2) Rehabilitative case management services include specific rehabilitative services provided to:

- (a) Assist in an individual's discharge from an inpatient facility; and
- (b) Minimize the risk of readmission to an inpatient setting.

(3) An agency certified to provide rehabilitative case management services must meet the behavioral health agency

licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680.

NEW SECTION

WAC 388-877-0712 Outpatient services—Psychiatric medication mental health services and medication support. Psychiatric medication mental health services are a variety of activities related to prescribing and administering medication, including monitoring an individual for side effects and changes as needed. These services may only be provided with one of the outpatient mental health services in WAC 388-877-0700 (1)(a) through (e). An agency providing psychiatric medication services may also provide medication support services, described in subsections (2) and (3) of this section.

(1) An agency providing psychiatric medication services must:

(a) Ensure that medical direction and responsibility are assigned to a:

(i) Physician who is licensed to practice under chapter 18.57 or 18.71 RCW, and is board-certified or board-eligible in psychiatry;

(ii) Psychiatric advanced registered nurse practitioner (ARNP); or

(iii) Physician assistant working with a supervising psychiatrist;

(b) Ensure that the services are provided by a prescriber licensed by department of health who is practicing within the scope of that practice;

(c) Ensure that all medications are administered by staff practicing within the scope of their practice;

(d) Have a process by which the medication prescriber informs either the individual, the legally responsible party, or both, and, as appropriate, family members, of the potential benefits and side effects of the prescribed medication(s);

(e) Must ensure that all medications maintained by the agency are safely and securely stored, including assurance that:

(i) Medications are kept in locked cabinets within a well-lit, locked and properly ventilated room;

(ii) Medications kept for individuals on medication administration or self-administration programs are clearly labeled and stored separately from medication samples kept on site;

(iii) Medications marked "for external use only" are stored separately from oral or injectable medications;

(iv) Refrigerated food or beverages used in the administration of medications are kept separate from the refrigerated medications by the use of trays or other designated containers;

(v) Syringes and sharp objects are properly stored and disposed of;

(vi) Refrigerated medications are maintained at the required temperature; and

(vii) Outdated medications are disposed of in accordance with the regulations of the state board of pharmacy and no outdated medications are retained.

(2) An agency providing psychiatric medication services may utilize a physician or ARNP without board eligibility in psychiatry if unable to employ or contract with a psychiatrist. In this case, the agency must ensure that:

(a) Psychiatrist consultation is provided to the physician or ARNP at least monthly; and

(b) A psychiatrist is accessible to the physician or ARNP for emergency consultation.

(3) Medication support services occur face-to-face and:

(a) Include one-on-one cueing, observing, and encouraging an individual to take medication as prescribed;

(b) Include reporting any pertinent information related to the individual's adherence to the medication back to the agency that is providing psychiatric medication services; and

(c) May take place at any location and for as long as it is clinically necessary.

(4) An agency providing medication support services must:

(a) Ensure that the staff positions responsible for providing either medication monitoring, or delivery services, or both, are clearly identified in the agency's medication support services policy;

(b) Have appropriate policies and procedures in place when the agency providing medication support services maintains or delivers medication to the individual that address:

(i) The maintenance of a medication log documenting medications that are received, prescribed, and dispensed;

(ii) Reasonable precautions that need to be taken when transporting medications to the intended individual and to assure staff safety during the transportation; and

(iii) The prevention of contamination of medication during delivery, if delivery is provided; and

(c) Ensure that the individual's clinical record contains the individual service plan, including documentation of medication support services.

NEW SECTION

WAC 388-877-0714 Outpatient services—Day support mental health services. (1) Day support mental health services provide a range of integrated and varied life skills training. Day support services are designed to assist an individual in the acquisition of skills, retention of current functioning, or improvement in the current level of functioning, appropriate socialization, and adaptive coping skills.

(2) Services include training in basic living and social skills, and educational, vocational, pre-vocational, and day activities. Day support services may include therapeutic treatment.

(3) An agency certified to provide day support services must meet the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680.

NEW SECTION

WAC 388-877-0716 Outpatient services—Mental health outpatient services provided in a residential treatment facility (RTF). A residential treatment facility (RTF) may provide outpatient mental health treatment services to an

individual with a mental disorder. An agency that operates an RTF that provides mental health treatment services must:

(1) Ensure that the facility is licensed by the department of health under chapter 246-337 WAC; and

(2) Be certified for and provide the following:

(a) Rehabilitative case management services (see WAC 388-877-0710);

(b) Less restrictive alternative (LRA) support services (see WAC 388-877-0805) if serving individuals on an LRA court order or conditional release; and

(c) Psychiatric medication services and medication support services (see WAC 388-877-0712).

NEW SECTION

WAC 388-877-0718 Outpatient services—Recovery support—General. Recovery support services are intended to promote an individual's socialization, recovery, self-advocacy, development of natural support, and maintenance of community living skills.

(1) Recovery support services include:

(a) Supported employment services;

(b) Supportive housing services;

(c) Peer support services;

(d) Wraparound facilitation services;

(e) Applied behavior analysis (ABA) services; and

(f) Consumer-run clubhouse services.

(2) An agency that provides any recovery support service may operate through an agreement with a licensed behavioral health agency that provides certified outpatient behavioral health services listed in WAC 388-877-0700. The agreement must specify the responsibility for initial assessments, the determination of appropriate services, individual service planning, and the documentation of these requirements. Subsections (3) through (5) of this section list the abbreviated requirements for assessments, staff, and clinical records.

(3) When providing any recovery support service, a behavioral health agency must:

(a) Have an assessment process to determine the appropriateness of the agency's services, based on the individual's needs and goals;

(b) Refer an individual to a more intensive level of care when appropriate; and

(c) With the consent of the individual, include the individual's family members, significant others, and other relevant treatment providers as necessary to provide support to the individual.

(4) An agency providing recovery support services must ensure:

(a) Each staff member working directly with an individual receiving any recovery support service has annual violence prevention training on the safety and violence prevention topics described in RCW 49.19.030; and

(b) The staff member's personnel record documents the training.

(5) An agency providing any recovery support service must maintain an individual's clinical record that contains:

(a) Documentation of the following:

(i) The name of the agency or other sources through which the individual was referred;

(ii) A brief summary of each service encounter, including the date, time, and duration of the encounter; and

(iii) Names of participant(s), including the name of the individual who provided the service; and

(b) Any information or copies of documents shared by, or with, a behavioral health agency certified for outpatient mental health services.

NEW SECTION

WAC 388-877-0720 Outpatient services—Recovery support—Supported employment mental health and substance use disorder services. Supported employment mental health and substance use disorder services assist in job search, placement services, and training to help individuals find competitive jobs in their local communities.

(1) An agency that provides certified supported employment services must meet the general requirements for recovery support services in WAC 388-877-0718.

(2) A behavioral health agency that provides supported employment services must have knowledge of and provide individuals access to employment and education opportunities by coordinating efforts with one or more entities that provide other rehabilitation and employment services, such as:

(a) The department's division of vocational rehabilitation (DVR), which provides supported employment under WAC 388-891-0840 by community rehabilitation program contract as described in WAC 388-892-0100;

(b) The department's community services offices;

(c) Community, trade, and technical colleges;

(d) The business community;

(e) WorkSource, Washington state's official site for online employment services;

(f) Washington state department of employment security; and

(g) Organizations that provide job placement within the community.

(3) A behavioral health agency that provides supported employment services must:

(a) Ensure all staff members who provide direct services for employment are knowledgeable and familiar with services provided by the department's division of vocational rehabilitation;

(b) Conduct and document a vocational assessment in partnership with the individual that includes work history, skills, training, education, and personal career goals;

(c) Assist the individual to create an individualized job and career development plan that focuses on the individual's strengths and skills;

(d) Assist the individual to locate employment opportunities that are consistent with the individual's skills, goals, and interests;

(e) Provide and document any outreach, job coaching, and support at the individual's worksite when requested by the individual or the individual's employer; and

(f) If the employer makes a request, provide information regarding the requirements of reasonable accommodations, consistent with the Americans with Disabilities Act (ADA) of 1990 and Washington state antidiscrimination law.

NEW SECTION

WAC 388-877-0722 Outpatient services—Recovery support—Supportive housing mental health and substance use disorder services. Supportive housing mental health and substance use disorder services support an individual's transition to community integrated housing and support the individual to be a successful tenant in a housing arrangement.

(1) An agency that provides certified supportive housing services must meet the general requirements for recovery support services in WAC 388-877-0718.

(2) A behavioral health agency that provides supportive housing services must have knowledge of and provide housing related collaborative activities to assist individuals in identifying, coordinating, and securing housing or housing resources with entities such as:

(a) Local homeless continuum of care groups or local homeless planning groups;

(b) Housing authorities that operate in a county or city in the behavioral health organization's (BHO) regional service area;

(c) Community action councils that operate in a county or region in the BHO's regional service area;

(d) Landlords of privately owned residential homes; and

(e) State agencies that provide housing resources.

(3) A behavioral health agency that provides supportive housing services must:

(a) Ensure all staff members who provide direct services for supportive housing are knowledgeable and familiar with fair housing laws;

(b) Conduct and document a housing assessment in partnership with the individual that includes housing preferences, affordability, and barriers to housing;

(c) Conduct and document a functional needs assessment in partnership with the individual that includes independent living skills and personal community integration goals;

(d) Assist the individual to create an individualized housing acquisition and maintenance plan that focuses on the individual's choice in housing;

(e) Assist the individual to locate housing opportunities that are consistent with the individual's preferences, goals, and interests;

(f) Provide any outreach, tenancy support, and independent living skill building supports at a location convenient to the individual;

(g) Provide the individual with information regarding the requirements of the Fair Housing Act, Americans with Disabilities Act (ADA) of 1990, and Washington state antidiscrimination law, and post this information in a public place in the agency; and

(h) Ensure the services are specific to each individual and meant to assist in obtaining and maintaining housing in scattered-site, clustered, integrated, or single-site housing as long as the individual holds a lease or sub-lease.

NEW SECTION

WAC 388-877-0724 Outpatient services—Recovery support—Peer support mental health services. (1) Peer support mental health services provide a wide range of activ-

ities to assist an individual in exercising control over their own life and recovery process through:

- (a) Developing self-advocacy and natural supports;
 - (b) Maintenance of community living skills;
 - (c) Promoting socialization; and
 - (d) The practice of peer counselors sharing their own life experiences related to mental illness to build alliances that enhance the individual's ability to function.
- (2) An agency that provides certified peer support services must meet the general requirements for recovery support services in WAC 388-877-0718.
- (3) An agency providing peer support services must ensure peer support counselors:
- (a) Are recognized by the division of behavioral health and recovery (DBHR) as a "peer counselor" as defined in WAC 388-877-0200; and
 - (b) Provide peer support services:
 - (i) Under the supervision of a mental health professional; and
 - (ii) Within the scope of the peer counselor's training and department of health credential.
- (4) An agency providing peer support services must document the frequency, duration, and expected outcome of all peer support services in the individual service plan.

NEW SECTION

WAC 388-877-0726 Outpatient services—Recovery support—Wraparound facilitation mental health services. Wraparound facilitation mental health services address the complex emotional, behavior, and social issues of an identified individual twenty years of age or younger, and the individual's family.

- (1) Wraparound facilitation services are:
- (a) Provided to an individual who requires the services of a mental health provider and one or more child serving systems;
 - (b) Focused and driven by the needs of the identified family and the family's support community; and
 - (c) Provided in partnership with the individual, the individual's family, and the individual's mental health provider.
- (2) In addition to meeting the general requirements for recovery support services in WAC 388-877-0718, an agency providing certified wraparound facilitation services must employ or contract with:
- (a) A mental health professional (MHP) who is responsible for oversight of the wraparound facilitation services;
 - (b) A facilitator who has completed department-approved wraparound facilitation training and:
 - (i) Has a master's degree with at least one year of experience working in social services;
 - (ii) Has a bachelor's degree with at least two years of experience working in social services; or
 - (iii) Is an individual with lived experience that is documented in the personnel file; and
 - (c) A staff member certified to provide a child and adolescent needs and strengths (CANS) assessment.
- (3) In addition to the staff requirements in subsection (2) of this subsection, an agency must ensure the following indi-

viduals are available to assist in the planning and provision of wraparound facilitation services, as needed:

- (a) An employee or volunteer youth partner, actively involved in defining the agency's services; and
 - (b) An employee or volunteer family partner, actively involved in defining the agency's services.
- (4) All wraparound facilitation services:
- (a) Must include the identified individual, the individual's family, and the individual's mental health provider; and
 - (b) May include additional support partners as team members, including but not limited to all of the following:
 - (i) Natural supports. Natural supports include community members, friends, and extended family members identified by either the individual, the individual's family, or both, to be active participants in the individual's support network.
 - (ii) System supports. System supports are representatives from systems that currently offer support to the identified individual or that offer support services to the individual's adult care giver, which directly affects the individual.
 - (iii) Peer supports. Peer supports are individuals who have personally and actively participated in wraparound facilitation services and who offer support to families currently working with the wraparound teams.
- (5) An agency must document the following:
- (a) The development of a wraparound plan that:
 - (i) Includes:
 - (A) A complete list of participants and their contact information;
 - (B) A list of next steps or follow-up information from the initial meeting; and
 - (C) The schedule of child and family team (CFT) meetings.
 - (ii) Describes the individual's and the individual's family's vision for the future stated in their own language;
 - (iii) Reflects the family's prioritization of needs and goals and addresses the needs as identified in the CANS screen;
 - (iv) Is integrated with the person's individual service plan (see WAC 388-877-0620);
 - (v) Identifies the functional strengths of the individual and the individual's family that can be used to help meet the identified needs;
 - (vi) Assigns responsibility to CFT members for each strategy/intervention or task, and establishes timelines for implementation;
 - (vii) Identifies immediate safety needs and a safety/crisis plan; and
 - (viii) Assists the individual and the individual's family in using their support network.
 - (ix) Is signed by all CFT members, including the individual and the individual's parent or if applicable, legal guardian.
 - (b) Coordination with any other involved systems and services or supports, including sharing the wraparound plan and any revisions with all members of the team;
 - (c) The result of the initial and subsequent CANS screenings and assessments; and
 - (d) The review of the wraparound plan during each CFT meeting and any revisions made to the plan to address the changing needs and progress of the identified individual and the individual's family.

NEW SECTION

WAC 388-877-0728 Outpatient services—Recovery support—Applied behavior analysis mental health services. Applied behavior analysis (ABA) mental health services assist children and their families to improve the core symptoms associated with autism spectrum disorders or other developmental disabilities for which ABA services have been determined to be medically necessary.

(1) ABA services support learning, skill development, and assistance in any one or more of the following areas or domains:

- (a) Social;
- (b) Behavior;
- (c) Adaptive;
- (d) Motor;
- (e) Vocational; or
- (f) Cognitive.

(2) An agency providing ABA services must meet the:

(a) General requirements in WAC 388-877-0718 for recovery support services;

(b) Specific agency staff requirements in WAC 388-877-0718(4); and

(c) Specific clinical record content and documentation requirements in WAC 388-877-0640 and 388-877-0718(5).

(3) The health care authority (HCA) administers chapter 182-531A WAC for ABA services requirements. The rules in chapter 182-531A WAC include:

- (a) Definitions that apply to ABA services;
- (b) Program and clinical eligibility requirements;
- (c) Prior authorization and recertification requirements;
- (d) Specific ABA provider requirements;
- (e) Covered and noncovered services;
- (f) Billing requirements; and
- (g) Requirements for:
 - (i) Referrals to and assessments by centers of excellence (COE) for evaluations and orders; and
 - (ii) ABA assessments and individualized ABA therapy treatment plans.

(4) The ABA therapy treatment plan must:

(a) Be developed and maintained by a lead behavior analysis therapist (LBAT) (see subsection (5) of this section);

(b) Identify the services to be delivered by the LBAT and the therapy assistant, if the agency employs a therapy assistant (see subsections (6) and (7) of this section);

(c) Be comprehensive and document treatment being provided by other health care professionals; and

(d) Document how all treatment will be coordinated, as applicable, with other members of the health care team.

(5) An agency certified to provide ABA services must employ a lead behavior analysis therapist (LBAT).

(a) To qualify as an LBAT, an individual must meet the professional requirements in chapter 182-531 WAC.

(b) The agency must ensure the LBAT meets other applicable requirements in chapter 182-531A WAC.

(6) An agency may choose to employ a therapy assistant.

(a) To qualify as a therapy assistant, an individual must meet the professional requirements in chapter 182-531A WAC.

(b) The agency must ensure the therapy assistant meets other applicable requirements in chapter 182-531A WAC.

(7) If the agency employs a therapy assistant(s), the agency must ensure the LBAT:

(a) Supervises the therapy assistant:

(i) For a minimum of five percent of the total direct care provided by the therapy assistant per week (for example, one hour of direct supervision per twenty hours of direct care); and

(ii) In accordance with agency policies and procedures;

(b) Meets the requirements in this section;

(c) Completes a review of an individual's ABA therapy treatment plan with the therapy assistant before services are provided;

(d) Assures the therapy assistant delivers services according to the individual's ABA therapy treatment plan; and

(e) Meets at least every two weeks with the therapy assistant and documents review of the individual's progress or response to the treatment, or both, and makes changes to the ABA therapy treatment plan as indicated by the individual's progress or response.

(8) To maintain department program-specific certification to provide ABA services, an agency must continue to ensure the requirements in this section are met.

NEW SECTION

WAC 388-877-0730 Outpatient services—Consumer-run recovery support—Clubhouses—Required clubhouse components. The division of behavioral health and recovery certifies consumer-run clubhouses under the provision of RCW 71.24.035. International center for clubhouse development certification is not a substitute for certification by the state of Washington.

(1) Required clubhouse components include all of the following:

(a) Voluntary member participation. Clubhouse members choose the way they use the clubhouse and the staff with whom they work. There are no agreements, contracts, schedules, or rules intended to enforce participation of members. All member participation is voluntary. Clubhouse policy and procedures must describe how members will have the opportunity to participate, based on their preferences, in the clubhouse.

(b) The work-ordered day.

(c) Activities, including:

(i) Personal advocacy;

(ii) Help with securing entitlements;

(iii) Information on safe, appropriate, and affordable housing;

(iv) Information related to accessing medical, psychological, pharmacological and substance use disorder services in the community;

(v) Outreach to members during periods of absence from the clubhouse and maintaining contact during periods of inpatient treatment;

(vi) In-house educational programs that use the teaching and tutoring skills of members;

(vii) Connecting members with adult education opportunities in the community;

(viii) An active employment program that assists members to gain and maintain employment in full- or part-time competitive jobs in integrated settings developed in partnership with the member, the clubhouse, and the employer and time-limited, part-time community jobs managed by the clubhouse with absentee coverage provided; and

(ix) An array of social and recreational opportunities.

(d) Operating at least thirty hours per week on a schedule that accommodates the needs of the members.

NEW SECTION

WAC 388-877-0732 Outpatient services—Consumer-run recovery support—Clubhouses—Management and operational requirements. The requirements for managing and operating a clubhouse include all of the following:

(1) Members, staff, and ultimately the clubhouse director, are responsible for the operation of the clubhouse. The director must ensure opportunities for members and staff to be included in all aspects of clubhouse operation, including setting the direction of the clubhouse.

(2) Location in an area, when possible, where there is access to local transportation and, when access to public transportation is limited, facilitate alternatives.

(3) A distinct identity, including its own name, mailing address, and phone number.

(4) A separate entrance and appropriate signage that make the clubhouse clearly distinct, when co-located with another community agency.

(5) An independent board of directors capable of fulfilling the responsibilities of a not-for-profit board of directors, when free-standing.

(6) An administrative structure with sufficient authority to protect the autonomy and integrity of the clubhouse, when under the auspice of another agency.

(7) Services are timely, appropriate, accessible, and sensitive to all members.

(8) Members are not discriminated against on the basis of any status or individual characteristic that is protected by federal, state, or local law.

(9) Written proof of a current fire/safety inspection:

(a) Conducted of all premises owned, leased or rented by the clubhouse; and

(b) Performed by all required external authorities (such as a state fire marshal and liability insurance carrier).

(10) All applicable state, county, and city business licenses.

(11) All required and current general liability, board and officers liability, and vehicle insurance.

(12) An identifiable clubhouse budget that includes:

(a) Tracking all income and expenditures for the clubhouse by revenue source;

(b) Quarterly reconciliation of accounts; and

(c) Compliance with all generally accepted accounting principles.

(13) Track member participation and daily attendance.

(14) Assist member in developing, documenting, and maintaining the member's recovery goals and providing monthly documentation of progress toward reaching them.

Both member and staff must sign all such plans and documentation, or, if a member does not sign, staff must document the reason.

(15) A mechanism to identify and implement needed changes to the clubhouse operations, performance, and administration, and to document the involvement of members in all aspects of the operation of the clubhouse.

(16) Evaluate staff performance by:

(a) Ensuring that paid employees:

(i) Are qualified for the position they hold, including any licenses or certifications; and

(ii) Have the education, experience and skills to perform the job requirements;

(b) Maintaining documentation that paid clubhouse staff:

(i) Have a completed Washington state patrol background check on file; and

(ii) Receive regular supervision and an annual performance evaluation.

NEW SECTION

WAC 388-877-0734 Outpatient services—Consumer-run recovery support—Clubhouses—Certification process. The division of behavioral health and recovery (DBHR) grants certification based on compliance with the minimum standards in WAC 388-877-0738 through 388-877-0744.

(1) To be certified to provide clubhouse services, an organization must comply with all of the following:

(a) Meet all requirements for applicable city, county and state licenses and inspections.

(b) Complete and submit an application for certification to DBHR.

(c) Successfully complete an on-site certification review by DBHR to determine compliance with the minimum clubhouse standards, as set forth in this chapter.

(d) Initial applicants that can show that they have all organizational structures and written policies in place, but lack the performance history to demonstrate that they meet minimum standards, may be granted initial certification for up to one year. Successful completion of an on-site certification review is required prior to the expiration of initial certification.

(2) Upon certification, clubhouses will undergo periodic on-site certification reviews.

(a) The frequency of certification reviews is determined by the on-site review score as follows:

(i) A compliance score of ninety percent or above results in the next certification review occurring in three years;

(ii) A compliance score of eighty percent to eighty-nine percent results in the next certification review occurring in two years;

(iii) A compliance score of seventy percent to seventy-nine percent results in the next certification review occurring in one year; or

(iv) A compliance score below seventy percent results in a probationary certification.

(b) Any facet of an on-site review resulting in a compliance score below ninety percent requires a corrective action plan approved by DBHR.

(3) Probationary certification may be issued by DBHR if:

- (a) A clubhouse fails to conform to applicable law, rules, regulations, or state minimum standards; or
- (b) There is imminent risk to the individual's health and safety.

(4) DBHR may suspend or revoke a clubhouse's certification, or refuse to grant or renew a clubhouse's certification if a clubhouse fails to correct deficiencies as mutually agreed to in the corrective action plan with DBHR.

(5) A clubhouse may appeal a certification decision by DBHR.

(a) To appeal a decision, the clubhouse must follow the procedure outlined in WAC 388-877-0370 (1)(b) through (d) and include the name, signature, and address of the clubhouse director.

(b) The hearing decision will be made according to the provisions of chapter 34.05 RCW and chapter 388-02 WAC.

NEW SECTION

WAC 388-877-0736 Outpatient services—Consumer-run recovery support—Clubhouses—Employment-related services. The following employment support activities must be offered to clubhouse members:

- (1) Collaboration on creating, revising, and meeting individualized job and career goals;
- (2) Information about how employment will affect income and benefits;
- (3) Information on other rehabilitation and employment services, including but not limited to:
 - (a) The division of vocational rehabilitation;
 - (b) The state employment services;
 - (c) The business community;
 - (d) Job placement services within the community; and
 - (e) Community mental health agency-sponsored supported employment services;
- (4) Assistance in locating employment opportunities that are consistent with the member's skills, goals, and interests;
- (5) Assistance in developing a resume, conducting a job search, and interviewing;
- (6) Assistance in:
 - (a) Applying for school and financial aid; and
 - (b) Tutoring and completing course work; and
- (7) Information regarding protections against employment discrimination provided by federal, state, and local laws and regulations, and assistance with asserting these rights, including securing professional advocacy.

NEW SECTION

WAC 388-877-0738 Outpatient services—Level one outpatient substance use disorder services. (1) ASAM level one outpatient substance use disorder services provide a program of individual and group counseling, education, and activities, in accordance with ASAM criteria.

(2) An agency certified to provide level one outpatient substance use disorder services must meet the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680.

(3) An agency certified to provide level one outpatient substance use disorder services must ensure both of the following:

- (a) Group therapy services are provided with a staff ratio of one staff member for every sixteen individuals; and
- (b) A group counseling session with twelve to sixteen youths includes a second staff member.

NEW SECTION

WAC 388-877-0740 Outpatient services—Level two intensive outpatient substance use disorder services. ASAM level two intensive outpatient substance use disorder services provide a concentrated program of individual and group counseling, education, and activities, in accordance with ASAM criteria.

(1) An agency certified to provide level two intensive outpatient treatment services must meet the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680.

(2) An agency providing level two intensive outpatient treatment services for deferred prosecution must:

(a) Ensure that individuals admitted under a deferred prosecution order receive services that meet the requirements of RCW 10.05.150, including, that the individual receives a minimum of seventy-two hours of treatment services within a maximum of twelve weeks, which consist of the following during the first four weeks of treatment:

- (i) At least three sessions each week, with each session occurring on separate days of the week;
 - (ii) Group sessions that must last at least one hour; and
 - (iii) Attendance at self-help groups in addition to the seventy-two hours of treatment services;
- (b) There must be approval, in writing, by the court having jurisdiction in the case, when there is any exception to the requirements in this subsection; and

(c) The agency must refer for ongoing treatment or support upon completion of intensive outpatient treatment, as necessary.

(3) An agency certified to provide level two intensive outpatient substance use disorder services must ensure both of the following:

- (a) Group therapy services are provided with a staff ratio of one staff member for every sixteen individuals; and
- (b) A group counseling session with twelve to sixteen youths includes a second staff member.

NEW SECTION

WAC 388-877-0742 Outpatient services—Substance use disorder assessment only services. Substance use disorder assessment only services are provided to an individual to determine the individual's involvement with alcohol and other drugs and determine the appropriate course of care or referral.

(1) A behavioral health agency certified for assessment only services may choose to become certified to also provide driving under the influence (DUI) assessment services described in WAC 388-877-0820.

(2) An agency certified to provide assessment only services must meet the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680 except where specifically indicated.

(3) An agency providing assessment only services:

(a) Must review, evaluate, and document information provided by the individual;

(b) May include information from external sources such as family, support individuals, legal entities, courts, and employers; and

(c) Is not required to meet the individual service plan requirements in WAC 388-877-0620.

(4) An agency must maintain and provide a list of resources, including self-help groups, and referral options that can be used by staff members to refer an individual to appropriate services.

(5) An agency that offers off-site assessment services must meet the requirements in WAC 388-877-0342.

(6) An agency providing assessment only services must ensure all assessment only services are provided by a chemical dependency professional (CDP).

NEW SECTION

WAC 388-877-0744 Outpatient services—Information and assistance services—Substance use disorder services—General. Information and assistance services are considered nontreatment substance use disorder services provided to support an individual who has a need for interventions related to substance use.

(1) Information and assistance services require additional program-specific certification by the department's division of behavioral health and recovery and include:

(a) Alcohol and drug information school;

(b) Information and crisis services;

(c) Emergency service patrol; and

(d) Screening and brief intervention.

(2) Substance use disorder information and assistance services are available without an initial assessment or individual service plan and are not required to meet the requirements under WAC 388-877-0640.

(3) An agency providing information and assistance services must maintain and provide a list of resources, including self-help groups and referral options, that can be used by staff members to refer an individual to appropriate services.

NEW SECTION

WAC 388-877-0746 Outpatient services—Substance use disorder information and assistance services—Alcohol and drug information school. Alcohol and drug information school services provide an educational program about substance use. These services are for an individual referred by a court or other jurisdiction(s) who may have been assessed and determined not to require treatment. In addition to meeting requirements for substance use disorder information and assistance services in WAC 388-877-0744, an agency providing alcohol and drug information school services must:

(1) Ensure courses are taught by a certified information school instructor or a chemical dependency professional (CDP) who:

(a) Advises each student there is no assumption the student has a substance use disorder and that the course is not a therapy session;

(b) Follows a department-approved curriculum;

(c) Ensures each course has no fewer than eight hours of classroom instruction; and

(d) Administers each enrolled student the post-test for each course after the course is completed;

(2) Ensure a school instructor who is not a CDP has a certificate of completion of an alcohol and other drug information school instructor's training course approved by the department, and the personnel file contains documentation of the training; and

(3) Ensure each individual student record contains:

(a) An intake form, including demographics;

(b) The hours of attendance, including dates; and

(c) A copy of the scored post-test.

NEW SECTION

WAC 388-877-0748 Outpatient services—Substance use disorder information and assistance—Information and crisis services. Substance use disorder information and crisis services provide an individual assistance or guidance related to substance use disorders, twenty-four hours a day by telephone or in-person. In addition to meeting requirements for substance use disorder information and assistance services in WAC 388-877-0744, an agency providing information and crisis services must:

(1) Have services available to any individual twenty-four hours a day, seven days a week;

(2) Ensure each staff member completes forty hours of training that covers substance use disorders before assigning the staff member unsupervised duties;

(3) Ensure a chemical dependency professional (CDP), or a chemical dependency professional trainee (CDPT) under supervision of a CDP, is available or on staff twenty-four hours a day;

(4) Maintain a current directory of all certified substance use disorder service providers in the state; and

(5) Maintain a current list of local resources for legal, employment, education, interpreter, and social and health services.

NEW SECTION

WAC 388-877-0750 Outpatient services—Substance use disorder information and assistance—Emergency service patrol. Emergency service patrol services provide transport assistance to an intoxicated individual in a public place when a request has been received from police, merchants, or other persons. In addition to meeting requirements for substance use disorder information and assistance services in WAC 388-877-0744, an agency providing emergency service patrol services must:

(1) Ensure the staff member providing the service:

(a) Has proof of a valid Washington state driver's license;

(b) Possesses annually updated verification of first-aid and cardiopulmonary resuscitation training; and

(c) Has completed forty hours of training in substance use disorder crisis intervention techniques and alcoholism and drug abuse, to improve skills in handling crisis situations;

(2) Respond to calls from police, merchants, and other persons for assistance with an intoxicated individual in a public place;

(3) Patrol assigned areas and give assistance to an individual intoxicated in a public place;

(4) Conduct a preliminary screening of an individual's condition related to the state of their impairment and presence of a physical condition needing medical attention;

(5) Transport the individual to their home or shelter, to a certified treatment provider, or a health care facility if the individual is intoxicated, but subdued and willing to be transported;

(6) Make reasonable efforts to take the individual into protective custody and transport the individual to an appropriate treatment or health care facility, when the individual is incapacitated, unconscious, or has threatened or inflicted harm on another person;

(7) Call law enforcement for assistance if the individual is unwilling to be taken into protective custody; and

(8) Maintain a log, including:

(a) The date, time and origin of each call received for assistance;

(b) The time of arrival at the scene;

(c) The location of the individual at the time of the assist;

(d) The name and sex of the individual transported;

(e) The results of the preliminary screening;

(f) The destination and address of the transport and time of arrival; and

(g) In case of nonpickup of a person, documentation of why the pickup did not occur.

NEW SECTION

WAC 388-877-0752 Outpatient services—Substance use disorder information and assistance—Screening and brief intervention. Screening and brief intervention services are a combination of information and assistance services designed to screen an individual for risk factors that appear to be related to substance use disorders, provide interventions, and make appropriate referral as needed. These services may be provided in a wide variety of settings. In addition to meeting requirements for substance use disorder information and assistance services in WAC 388-877-0744, an agency providing screening and brief intervention services must:

(1) Ensure services are provided by a chemical dependency professional (CDP), a chemical dependency professional trainee (CDPT) under the supervision of a CDP, or another appropriately credentialed staff member;

(2) Ensure each staff member completes forty hours of training that covers the following areas before assigning the staff member unsupervised duties:

(a) Substance use disorder screening and brief intervention techniques;

(b) Motivational interviewing; and

(c) Referral;

(3) Maintain a current list of local resources for legal, employment, education, interpreter, and social and health services; and

(4) Ensure each individual's record contains:

(a) A copy of a referral;

(b) Demographic information;

(c) Documentation the individual was informed and received a copy of the requirements under 42 C.F.R. Part 2;

(d) Documentation the individual received a copy of the counselor disclosure information;

(e) Documentation the individual received a copy of the individual rights;

(f) Authorization for the release of information; and

(g) A copy of screening documents, including outcome and referrals.

NEW SECTION

WAC 388-877-0754 Outpatient services—Problem and pathological gambling treatment services. Problem and pathological gambling treatment services provide treatment to an individual that includes diagnostic screening and assessment, and individual, group, couples, and family counseling and case management. In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680 an agency that provides problem and pathological gambling treatment services must:

(1) Have an outline of each education session included in the service that is sufficient in detail for another trained staff person to deliver the session in the absence of the regular instructor;

(2) Maintain a list or source of resources, including self-help groups, and referral options that can be used by staff to refer an individual to appropriate services;

(3) Limit the size of group counseling sessions to no more than sixteen individuals; and

(4) Maintain a written procedure for the response to medical and psychiatric emergencies.

SECTION EIGHT—INVOLUNTARY AND COURT-ORDERED OUTPATIENT TREATMENT

NEW SECTION

WAC 388-877-0800 Involuntary and court-ordered—Noncompliance reporting for court-ordered substance use disorder treatment. An agency providing substance use disorder services must report noncompliance, in all levels of care, for an individual ordered into substance use disorder treatment by a court of law or other appropriate jurisdictions. An agency that fails to report noncompliance for an individual under chapter 46.61 RCW is subject to penalties as stated in RCW 46.61.5056(4). An agency providing treatment to a court-mandated individual, including deferred prosecution, must develop procedures addressing individual noncompliance and reporting requirements, including:

(1) Completing an authorization to release confidential information form that meets the requirements of 42 C.F.R. Part 2 and 45 C.F.R. Parts 160 and 164 or through a court

order authorizing the disclosure pursuant to 42 C.F.R. Part 2, Sections 2.63 through 2.67;

(2) Notifying the designated crisis responder within three working days from obtaining information of any violation of the terms of the court order for purposes of revocation of the individual's conditional release, or department of corrections (DOC) if the individual is under DOC supervision;

(3) Reporting and recommending action for emergency noncompliance to the court or other appropriate jurisdiction(s) within three working days from obtaining information on:

(a) An individual's failure to maintain abstinence from alcohol and other nonprescribed drugs as verified by individual's self-report, identified third party report confirmed by the agency, or blood alcohol content or other laboratory test;

(b) An individual's report of subsequent alcohol or drug related arrests; or

(c) An individual leaving the program against program advice or an individual discharged for rule violation;

(4) Reporting and recommending action for nonemergency, noncompliance to the court or other appropriate jurisdiction(s) within ten working days from the end of each reporting period, upon obtaining information on:

(a) An individual's unexcused absences or failure to report, including failure to attend mandatory self-help groups; or

(b) An individual's failure to make acceptable progress in any part of the treatment plan;

(5) Transmitting noncompliance or other significant changes as soon as possible, but no longer than ten working days from the date of the noncompliance, when the court does not wish to receive monthly reports;

(6) Reporting compliance status of persons convicted under chapter 46.61 RCW to the department of licensing.

NEW SECTION

WAC 388-877-0805 Involuntary and court-ordered —Less restrictive alternative (LRA) or conditional release support mental health services. Less restrictive alternative (LRA) support and conditional release mental health services are provided to individuals on a less restrictive alternative court order or conditional release. An agency agrees to provide or monitor the provision of court-ordered services, including psychiatric and medical components of community support services. In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680, an agency providing court-ordered LRA support and conditional release services must do all of the following:

(1) Have a written policy and procedure that allows for the referral of an individual to an involuntary treatment facility twenty-four hours a day, seven days a week.

(2) Have a written policy and procedure for an individual who requires involuntary detention that includes procedures for:

(a) Contacting the designated crisis responder (DCR) regarding revocations or extension of an LRA or conditional release; and

(b) The transportation of an individual, in a safe and timely manner, for the purpose of:

(i) Evaluation; or

(ii) Evaluation and detention.

(3) Ensure a committed individual is advised of their rights under chapter 71.05 or 71.34 RCW, as applicable, and that the individual has the right:

(a) To receive adequate care and individualized treatment;

(b) To make an informed decision regarding the use of antipsychotic medication and to refuse medication beginning twenty-four hours before any court proceeding that the individual has the right to attend;

(c) To maintain the right to be presumed competent and not lose any civil rights as a consequence of receiving evaluation and treatment for a mental disorder;

(d) Of access to attorneys, courts, and other legal redress;

(e) To be told statements the individual makes may be used in the involuntary proceedings; and

(f) To have all information and records compiled, obtained, or maintained in the course of treatment kept confidential as described in chapters 70.02, 71.05, and 71.34 RCW.

(4) Include in the clinical record a copy of the less restrictive alternative court order or conditional release and a copy of any subsequent modification.

(5) Ensure the development and implementation of an individual service plan which addresses the conditions of the less restrictive alternative court order or conditional release and a plan for transition to voluntary treatment.

(6) Ensure that the individual receives psychiatric medication services for the assessment and prescription of psychotropic medications appropriate to the needs of the individual as follows:

(a) At least one time in the initial fourteen days following release from inpatient treatment for an individual on a ninety-day or one hundred eighty-day less restrictive alternative court order or conditional release, unless the individual's attending physician, physician assistant, or psychiatric advanced registered nurse practitioner (ARNP) determines another schedule is more appropriate and documents the new schedule and the reason(s) in the individual's clinical record; and

(b) At least one time every thirty days for the duration of the less restrictive alternative court order or conditional release, unless the individual's attending physician or psychiatric ARNP determines another schedule is more appropriate and documents the new schedule and the reason(s) in the individual's clinical record.

(7) Keep a record of the periodic evaluation by a mental health professional of each committed individual for release from, or continuation of, an involuntary treatment order. Evaluations must occur at least every thirty days for the duration of the commitments and include documentation of assessment and rationale:

(a) For requesting a petition for an additional period of less restrictive or conditional release treatment under an involuntary treatment order; or

(b) Allowing the less restrictive court order or conditional release expire without an extension request.

NEW SECTION

WAC 388-877-0810 Involuntary and court-ordered —Emergency individual detention mental health and substance use disorder services. Emergency involuntary detention services are services provided by a designated crisis responder (DCR) to evaluate an individual in crisis and determine if involuntary services are required. In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680, an agency certified to provide emergency involuntary detention services must do all of the following:

- (1) Ensure that services are provided by a DCR.
- (2) Ensure staff members are available twenty-four hours a day, seven days a week.
- (3) Ensure staff members utilize the protocols for DCRs required by RCW 71.05.214.
- (4) Have a written agreement with a certified inpatient evaluation and treatment or secure withdrawal management and stabilization facility to allow admission of an individual twenty-four hours a day, seven days a week.
- (5) Have a plan for training, staff back-up, information sharing, and communication for a staff member who responds to a crisis in a private home or a nonpublic setting.
- (6) Ensure that a DCR is able to be accompanied by a second trained individual when responding to a crisis in a private home or a nonpublic setting.
- (7) Ensure that a DCR who engages in a home visit to a private home or a nonpublic setting is provided by their employer with a wireless telephone, or comparable device, for the purpose of emergency communication as described in RCW 71.05.710.
- (8) Provide staff members, who are sent to a private home or other private location to evaluate an individual in crisis, prompt access to information about any history of dangerousness or potential dangerousness on the individual they are being sent to evaluate that is documented in a crisis plan(s) or commitment record(s). This information must be made available without unduly delaying the crisis response.
- (9) Have a written protocol for the transportation of an individual, in a safe and timely manner, for the purpose of medical evaluation or detention.
- (10) Document services provided to the individual, and other applicable information. At a minimum this must include:
 - (a) That the individual was advised of their rights in accordance with RCW 71.05.360;
 - (b) That if the evaluation was conducted in a hospital emergency department or inpatient unit, it occurred in accordance with the timelines required by RCW 71.05.050, 71.05.-153, and 71.34.710;
 - (c) That the DCR conducting the evaluation considered both of the following when evaluating the individual:
 - (i) The imminent likelihood of serious harm or imminent danger because of being gravely disabled (see RCW 71.05.-153); and
 - (ii) The likelihood of serious harm or grave disability that does not meet the imminent standard for the emergency detention (see RCW 71.05.150);

(d) That the DCR documented consultation with any examining emergency room physician as required by RCW 71.05.154;

(e) If the individual was not detained:

(i) A description of the disposition and follow-up plan; and

(ii) Documentation that the minor's parent was informed of their right to request a court review of the DCR's decision not to detain the minor under RCW 71.34.710, if the individual is a minor thirteen years of age or older;

(f) If the individual was detained, a petition for initial detention must include the following:

(i) The circumstances under which the person's condition was made known;

(ii) Evidence, as a result of the DCR's personal observation or investigation, that the actions of the person for which application is made constitute a likelihood of serious harm, or that the individual is gravely disabled;

(iii) Evidence that the individual will not voluntarily seek appropriate treatment;

(iv) Consideration of all reasonably available information from credible witnesses, to include family members, landlords, neighbors, or others with significant contact and history of involvement with the individual, and records, as required by RCW 71.05.212; and

(v) Consideration of the individual's history of judicially required, or administratively ordered, anti-psychotic medications while in confinement when conducting an evaluation of an offender under RCW 72.09.370; and

(g) Documentation that the individual, or the individual's guardian or conservator, received a copy of the following:

(i) Notice of detention;

(ii) Notice of rights; and

(iii) Initial petition.

NEW SECTION

WAC 388-877-0815 Involuntary and court-ordered —Substance use disorder counseling for RCW 46.61.-5056. In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680, an agency providing certified substance use disorder counseling services to an individual convicted of driving under the influence or physical control under RCW 46.61.-5056 must ensure treatment is completed as follows:

(1) Treatment during the first sixty days must include:

(a) Weekly group or individual substance use disorder counseling sessions according to the individual service plan;

(b) One individual substance use disorder counseling session of not less than thirty minutes duration, excluding the time taken for a substance use disorder assessment, for each individual, according to the individual service plan;

(c) Alcohol and drug basic education for each individual;

(d) Participation in self-help groups for an individual with a diagnosis of substance dependence. Participation must be documented in the individual's clinical record; and

(e) The balance of the sixty-day time period for individuals who complete intensive inpatient substance use disorder treatment services must include, at a minimum, weekly out-

patient counseling sessions according to the individual service plan.

(2) The next one hundred twenty days of treatment includes:

(a) Group or individual substance use disorder counseling sessions every two weeks according to the individual service plan;

(b) One individual substance use disorder counseling session of not less than thirty minutes duration, every sixty days according to the individual service plan; and

(c) Referral of each individual for ongoing treatment or support, as necessary, using ASAM criteria, upon completion of one hundred eighty days of treatment.

(3) For an individual who is assessed with insufficient evidence of a substance use disorder, a substance use disorder professional (CDP) must refer the individual to alcohol/drug information school.

NEW SECTION

WAC 388-877-0820 Involuntary and court-ordered—Driving under the influence (DUI) substance use disorder assessment services. Driving under the influence (DUI) assessment services, as defined in chapter 46.61 RCW, are provided to an individual to determine the individual's involvement with alcohol and other drugs and determine the appropriate course of care or referral.

(1) In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680, an agency certified to provide DUI assessment services:

(a) Must review, evaluate, and document information provided by the individual;

(b) May include information from external sources such as family, support individuals, legal entities, courts, and employers;

(c) Is not required to meet the individual service plan requirements in WAC 388-877-0620; and

(d) Must maintain and provide a list of resources, including self-help groups, and referral options that can be used by staff members to refer an individual to appropriate services.

(2) An agency certified to provide DUI assessment services must also ensure:

(a) The assessment is conducted in person; and

(b) The individual has a summary included in the assessment that evaluates the individual's:

(i) Blood or breath alcohol level and other drug levels, or documentation of the individual's refusal at the time of the arrest, if available; and

(ii) Self-reported driving record and the abstract of the individual's legal driving record.

(3) When the assessment findings do not result in a substance use disorder diagnosis, the assessment must also include:

(a) A copy of the police report;

(b) A copy of the court originated criminal case history;

(c) The results of a urinalysis or drug testing obtained at the time of the assessment; and

(d) A referral to alcohol and drug information school.

(4) If the information in subsections (3)(a) through (d) of this section is required and not readily available, the record must contain documentation of attempts to obtain the information.

(5) Upon completion of the DUI assessment, the individual must be:

(a) Informed of the results of the assessment; and

(b) Referred to the appropriate level of care according to ASAM criteria.

SECTION NINE—CRISIS OUTPATIENT MENTAL HEALTH SERVICES

NEW SECTION

WAC 388-877-0900 Crisis mental health services—General. Crisis mental health services are intended to stabilize an individual in crisis to prevent further deterioration, provide immediate treatment and intervention in a location best suited to meet the needs of the individual, and provide treatment services in the least restrictive environment available. An agency certified to provide crisis mental health services must meet the general requirements in WAC 388-877-0300 through 388-877-0680 except the initial assessment, individual service plan, and clinical record requirements in WAC 388-877-0610, 388-877-0620, and 388-877-0640.

(1) Crisis services include:

(a) Crisis telephone support;

(b) Crisis outreach services;

(c) Crisis stabilization services;

(d) Crisis peer support services; and

(e) Emergency involuntary detention services.

(2) An agency providing any crisis mental health service must ensure:

(a) All crisis services are provided by, or under the supervision of, a mental health professional;

(b) Each staff member working directly with an individual receiving any crisis mental health service receives:

(i) Clinical supervision from a mental health professional; and

(ii) Annual violence prevention training on the safety and violence prevention topics described in RCW 49.19.030. The staff member's personnel record must document the training; and

(c) Staff access to consultation with one of the following professionals who has at least one year's experience in the direct treatment of individuals who have a mental or emotional disorder:

(i) A psychiatrist;

(ii) A physician;

(iii) A physician assistant; or

(iv) An advanced registered nurse practitioner (ARNP) who has prescriptive authority.

(3) Subsection (2)(c) of this section does not apply to agencies that only provide crisis telephone services.

(4) Documentation of a crisis service must include the following, as applicable to the crisis service provided:

(a) A brief summary of each crisis service encounter, including the date, time, and duration of the encounter;

(b) The names of the participants; and

(c) A follow-up plan, including any referrals for services, including emergency medical services.

(5) An agency must ensure crisis services:

(a) Are, with the exception of stabilization services, available twenty-four hours a day, seven days a week;

(b) Include family members, significant others, and other relevant treatment providers, as necessary, to provide support to the individual in crisis;

(c) Are provided in a setting that provides for the safety of the individual and agency staff members; and

(d) Require that trained staff remain with the individual in crisis in order to provide stabilization and support until the crisis is resolved or referral to another service is accomplished.

NEW SECTION

WAC 388-877-0905 Crisis mental health services—Telephone support services. Mental health telephone support services are services provided as a means of first contact to an individual in crisis. These services may include de-escalation and referral.

(1) In addition to meeting the general requirements for crisis services in WAC 388-877-0900, an agency certified to provide telephone support services must:

(a) Respond to crisis calls twenty-four-hours-a-day, seven-days-a week;

(b) Have a written protocol for the referral of an individual to a voluntary or involuntary treatment facility for admission on a seven-day-a-week, twenty-four-hour-a-day basis, including arrangements for contacting the designated crisis responder;

(c) Assure communication and coordination with the individual's mental health care provider, if indicated and appropriate; and

(d) Post a copy of the statement of individual rights in a location visible to staff and agency volunteers.

(2) An agency must document each telephone crisis response contact made, including:

(a) The date, time, and duration of the telephone call;

(b) The relationship of the caller to the person in crisis, for example self, family member, or friend;

(c) Whether the individual in crisis has a crisis plan; and

(d) The outcome of the call, including:

(i) Any follow-up contacts made;

(ii) Any referrals made, including referrals to emergency or other medical services; and

(iii) The name of the staff person who took the crisis call.

NEW SECTION

WAC 388-877-0910 Crisis mental health services—Outreach services. Crisis mental health outreach services are face-to-face intervention services provided to assist individuals in a community setting. A community setting can be an individual's home, an emergency room, a nursing facility, or other private or public location. In addition to meeting the general requirements for crisis services in WAC 388-877-0900, an agency certified to provide crisis outreach services must do all of the following:

(1) Provide crisis telephone screening.

(2) Ensure face-to-face outreach services are provided by a mental health professional, or a mental health care provider under the supervision of a mental health professional with documented training in crisis response.

(3) Ensure services are provided in a setting that provides for the safety of the individual and agency staff members.

(4) Have a protocol for requesting a copy of an individual's crisis plan twenty-four hours a day, seven days a week.

(5) Require that staff member(s) remain with the individual in crisis in order to provide stabilization and support until the crisis is resolved or a referral to another service is accomplished.

(6) Resolve the crisis in the least restrictive manner possible.

(7) Have a written plan for training, staff back-up, information sharing, and communication for staff members who respond to a crisis in an individual's private home or in a non-public setting.

(8) Ensure that a staff member responding to a crisis is able to be accompanied by a second trained individual when services are provided in the individual's home or other non-public location.

(9) Ensure that any staff member who engages in home visits is provided by their employer with a wireless telephone, or comparable device for the purpose of emergency communication as described in RCW 71.05.710.

(10) Provide staff members who are sent to a private home or other private location to evaluate an individual in crisis, prompt access to information about any history of dangerousness or potential dangerousness on the individual they are being sent to evaluate that is documented in a crisis plan(s) or commitment record(s). This information must be made available without unduly delaying the crisis response.

(11) Have a written protocol that allows for the referral of an individual to a voluntary or involuntary treatment facility twenty-four hours a day, seven days a week.

(12) Have a written protocol for the transportation of an individual in a safe and timely manner, when necessary.

(13) Document all crisis response contacts, including:

(a) The date, time, and location of the initial contact;

(b) The source of referral or identity of caller;

(c) The nature of the crisis;

(d) Whether the individual has a crisis plan and any attempts to obtain a copy;

(e) The time elapsed from the initial contact to the face-to-face response;

(f) The outcome, including:

(i) The basis for a decision not to respond in person;

(ii) Any follow-up contacts made; and

(iii) Any referrals made, including referrals to emergency medical services; and

(g) The name of the staff person(s) who responded to the crisis.

NEW SECTION

WAC 388-877-0915 Crisis mental health services—Stabilization services. Crisis mental health stabilization services include short-term (less than two weeks per episode)

face-to-face assistance with life skills training and understanding of medication effects on an individual. Stabilization services may be provided to an individual as a follow-up to crisis services provided or to any individual determined by a mental health professional to need additional stabilization services. In addition to meeting the general requirements for crisis services in WAC 388-877-0900, an agency certified to provide crisis stabilization services must:

- (1) Ensure the services are provided by a mental health professional, or under the supervision of a mental health professional;
- (2) Ensure the services are provided in a setting that provides for the safety of the individual and agency staff;
- (3) Have a written plan for training, staff back-up, information sharing, and communication for staff members who are providing stabilization services in an individual's private home or in a nonpublic setting;
- (4) Have a protocol for requesting a copy of an individual's crisis plan;
- (5) Ensure that a staff member responding to a crisis is able to be accompanied by a second trained individual when services are provided in the individual's home or other non-public location;
- (6) Ensure that any staff member who engages in home visits is provided by their employer with a wireless telephone, or comparable device, for the purpose of emergency communication as described in RCW 71.05.710;
- (7) Have a written protocol that allows for the referral of an individual to a voluntary or involuntary treatment facility;
- (8) Have a written protocol for the transportation of an individual in a safe and timely manner, when necessary; and
- (9) Document all crisis stabilization response contacts, including identification of the staff person(s) who responded.

NEW SECTION

WAC 388-877-0920 Crisis mental health services—Peer support services. Crisis mental health peer support services assist an individual in exercising control over their own life and recovery process through the practice of peer counselors sharing their own life experiences related to mental illness to build alliances that enhance the individual's ability to function.

- (1) Peer support services are intended to augment and not supplant other necessary mental health services.
- (2) In addition to meeting the general requirements for crisis services in WAC 388-877-0900, an agency certified to provide crisis peer support services must:
 - (a) Ensure services are provided by a person recognized by the division of behavioral health and recovery (DBHR) as a peer counselor, as defined in WAC 388-877-0200, under the supervision of a mental health professional;
 - (b) Ensure services provided by a peer counselor are within the scope of the peer counselor's training and credential;
 - (c) Ensure that a peer counselor responding to a crisis is accompanied by a mental health professional;
 - (d) Ensure that any staff member who engages in home visits is provided by their employer with a wireless tele-

phone, or comparable device, for the purpose of emergency communication; and

- (e) Ensure peer counselors receive annual training that is relevant to their unique working environment.

SECTION TEN—OPIOID TREATMENT PROGRAMS (OTP)

NEW SECTION

WAC 388-877-1000 Opioid treatment programs (OTP)—General.

(1) Opioid treatment program services include the dispensing of an opioid treatment medication, along with a comprehensive range of medical and rehabilitative services, when clinically necessary, to an individual to alleviate the adverse medical, psychological, or physical effects incident to opioid use disorder. These services include withdrawal management treatment and maintenance treatment.

(2) An agency must meet all the certification requirements in WAC 388-877-1005 in order to provide opioid treatment program services and:

(a) Be licensed by the department as a behavioral health agency;

(b) Meet the applicable behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680; and

(c) Have policies and procedures to support and implement the:

- (i) General requirements in WAC 388-877-0420; and
- (ii) Program-specific requirements in WAC 388-877-1000 through 388-877-1025.

(3) An agency providing opioid treatment program services must ensure that the agency's individual record system complies with all federal and state reporting requirements relevant to opioid drugs approved for use in treatment of opioid use disorder.

(4) An agency must:

(a) Use ASAM criteria for admission, continued services, and discharge planning and decisions;

(b) Provide education to each individual admitted, totaling no more than fifty percent of treatment services, on:

- (i) Alcohol, other drugs, and substance use disorder;
- (ii) Relapse prevention;
- (iii) Blood borne pathogens; and
- (iv) Tuberculosis (TB);

(c) Provide education or information to each individual on:

- (i) Emotional, physical, and sexual abuse;
- (ii) Nicotine use disorder;
- (iii) The impact of substance use during pregnancy, risks to the fetus, and the importance of informing medical practitioners of substance use during pregnancy; and
- (iv) Family planning; and
- (d) Have written procedures for:

(i) Diversion control that contains specific measures to reduce the possibility of the diversion of controlled substances from legitimate treatment use, and assign specific responsibility to the medical and administrative staff mem-

bers for carrying out the described diversion control measures and functions;

(ii) Urinalysis and drug testing, to include obtaining:

(A) Specimen samples from each individual, at least eight times within twelve consecutive months;

(B) Random samples, without notice to the individual;

(C) Samples in a therapeutic manner that minimizes falsification;

(D) Observed samples, when clinically appropriate; and

(E) Samples handled through proper chain of custody techniques.

(iii) Laboratory testing;

(iv) The response to medical and psychiatric emergencies; and

(v) Verifying the identity of an individual receiving treatment services, including maintaining a file in the dispensary with a photograph of the individual and updating the photographs when the individual's physical appearance changes significantly.

(5) An agency must ensure that an individual is not admitted to opioid treatment withdrawal management services more than two times in a twelve-month period following admission to services.

(6) An agency providing services to a pregnant woman must have a written procedure to address specific issues regarding their pregnancy and prenatal care needs, and to provide referral information to applicable resources.

(7) An agency providing youth opioid treatment program services must:

(a) Have a written procedure to assess and refer the youth to the department's child welfare services, when applicable;

(b) Ensure that a group counseling session with twelve to sixteen youths include a second staff member;

(c) Ensure that before admission the youth has had two documented attempts at short-term withdrawal management or drug-free treatment within a twelve-month period, with a waiting period of no less than seven days between the first and second short-term withdrawal management treatment; and

(d) Ensure that when a youth is admitted for maintenance treatment, written consent by a parent or if applicable, legal guardian or responsible adult designated by the relevant state authority, is obtained.

(8) An agency providing opioid treatment program services must ensure:

(a) That notification to the federal Substance Abuse and Mental Health Services Administration (SAMHSA) and the department is made within three weeks of any replacement or other change in the status of the program, program sponsor (as defined in 42 C.F.R. Part 8), or medical director;

(b) Treatment is provided to an individual in compliance with 42 C.F.R. Part 8;

(c) The individual record system complies with all federal and state reporting requirements relevant to opioid drugs approved for use in treatment of opioid use disorder; and

(d) The death of an individual enrolled in an opioid treatment program is reported to the department within one business day.

NEW SECTION

WAC 388-877-1005 Opioid treatment programs (OTP)—Agency certification requirements. An agency applying to provide opioid treatment program services must do all of the following:

(1) Submit to the department documentation that the agency has communicated with the county legislative authority and if applicable, the city legislative authority or tribal authority, in order to secure a location for the new opioid treatment program that meets county, tribal or city land use ordinances.

(2) Ensure that a community relations plan developed and completed in consultation with the county, city, or tribal authority or their designee, in order to minimize the impact of the opioid treatment programs upon the business and residential neighborhoods in which the program is located. The plan must include:

(a) Documentation of the strategies used to:

(i) Obtain stakeholder input regarding the proposed location;

(ii) Address any concerns identified by stakeholders; and

(iii) Develop an ongoing community relations plan to address new concerns expressed by stakeholders; and

(b) For new applicants who operate opioid treatment programs in another state, copies of all survey reports written by their national accreditation body and state certification, if applicable, within the past six years.

(3) Have concurrent approval to provide an opioid treatment program by:

(a) The Washington state department of health board of pharmacy;

(b) The federal Center for Substance Abuse Treatment (CSAT), Substance Abuse and Mental Health Administration (SAMHSA), as required by 42 C.F.R. Part 8 for certification as an opioid treatment program; and

(c) The federal Drug Enforcement Administration (DEA).

(4) An agency must ensure that the opioid treatment program is provided to an individual in compliance with the applicable requirements in 42 C.F.R. Part 8 and 21 C.F.R. Part 1301.

(5) The department may deny an application for certification when the applicant has not demonstrated in the past, the capability to provide the appropriate services to assist individuals using the program to meet goals established by the legislature.

NEW SECTION

WAC 388-877-1010 Opioid treatment programs (OTP)—Agency staff requirements. In addition to meeting the agency administrative and personnel requirements in WAC 388-877-0400 through 388-877-0530, an agency providing substance use disorder opioid treatment program services must:

(1) Appoint a program sponsor, as defined in 42 C.F.R. Part 8, who is responsible for notifying the federal Center for Substance Abuse Treatment (CSAT), Substance Abuse and Mental Health Services Administration (SAMHSA), the federal Drug Enforcement Administration (DEA), the depart-

ment, and the Washington state board of pharmacy of any theft or significant loss of a controlled substance.

(2) Ensure there is an appointed medical director who:

(a) Is licensed by department of health (DOH) to practice medicine and practices within their scope of practice;

(b) Is responsible for all medical services performed; and

(c) Ensures all medical services provided are in compliance with applicable federal, state, and local rules and laws.

(3) Ensure all medical services provided are provided by an appropriate DOH-credentialed medical provider practicing within their scope of practice.

(4) Ensure at least one staff member has documented training in:

(a) Family planning;

(b) Prenatal health care; and

(c) Parenting skills.

(5) Ensure that at least one staff member is on duty at all times who has documented training in:

(a) Cardiopulmonary resuscitation (CPR); and

(b) Management of opioid overdose.

NEW SECTION

WAC 388-877-1015 Opioid treatment programs (OTP)—Clinical record content and documentation requirements. In addition to the general clinical record content requirements in WAC 388-877-0640, an agency providing substance use disorder opioid treatment program services must maintain an individual's clinical record. The clinical record must contain:

(1) Documentation that the agency made a good faith effort to review if the individual is enrolled in any other opioid treatment program and take appropriate action;

(2) Documentation that the individual received a copy of the rules and responsibilities for treatment participants, including the potential use of interventions or sanction;

(3) Documentation that the individual service plan was reviewed quarterly and semi-annually after two years of continuous treatment;

(4) Documentation when an individual refuses to provide a drug testing specimen sample. The refusal is considered a positive drug screen specimen;

(5) Documentation of the results and the discussion held with the individual regarding any positive drug screen specimens in the counseling session immediately following the notification of positive results; and

(6) Documentation of all medical services (see WAC 388-877-1020 and 388-877-1025 regarding program physician responsibility and medication management).

NEW SECTION

WAC 388-877-1020 Opioid treatment programs (OTP)—Program physician responsibility. An agency providing substance use disorder opioid treatment program services must ensure the program physician, or the medical practitioner under supervision of the program physician, performs and meets the following:

(1) The program physician or medical practitioner under supervision of the program physician:

(a) Is responsible to verify an individual is currently addicted to an opioid drug and that the person became addicted at least twelve months before admission to treatment; or

(b) May waive the twelve month requirement in (a) of this subsection upon receiving documentation that the individual:

(i) Was released from a penal institution, if the release was within the previous six months;

(ii) Is pregnant; or

(iii) Was previously treated within the previous twenty-four months;

(2) A physical evaluation must be completed on the individual before admission that includes the determination of opioid use disorder consistent with the current and applicable Diagnostic and Statistical Manual of Mental Disorders (DSM-5) criteria, and an assessment for appropriateness for Sunday and holiday take-home medication;

(3) A review must be completed by the department of health prescription drug monitoring program data on the individual:

(a) At admission;

(b) Annually after the date of admission; and

(c) Subsequent to any incidents of concern;

(4) All relevant facts concerning the use of the opioid drug must be clearly and adequately explained to each individual;

(5) Current written and verbal information must be provided to pregnant individuals, before the initial prescribed dosage regarding:

(a) The concerns of possible substance use disorder, health risks, and benefits the opioid treatment medication may have on the individual and the fetus;

(b) The risk of not initiating opioid treatment medication on the individual and the fetus; and

(c) Referral options to address neonatal abstinence syndrome for the baby.

(6) Each individual voluntarily choosing to receive maintenance treatment must sign an informed consent to treatment;

(7) Within fourteen days of admission, a medical examination must be completed that includes:

(a) Documentation of the results of serology and other tests; and

(b) An assessment for the appropriateness of take-home medications as required by 42 C.F.R. Part 8.12(i);

(8) When exceptional circumstances exist for an individual to be enrolled with more than one opioid treatment program agency, justification granting permission must be documented in the individual's clinical record at each agency;

(9) Each individual admitted to withdrawal management services must have an approved withdrawal management schedule that is medically appropriate;

(10) Each individual administratively discharged from services must have an approved withdrawal management schedule that is medically appropriate;

(11) An assessment for other forms of treatment must be completed for each individual who has two or more unsuccessful withdrawal management episodes within twelve consecutive months; and

(12) An annual medical examination must be completed on each individual that includes the individual's overall physical condition and response to medication.

NEW SECTION

WAC 388-877-1025 Opioid treatment programs (OTP)—Medication management. An agency providing substance use disorder opioid treatment program services must ensure the medication management requirements in this section are met.

(1) An agency must use only those opioid treatment medications that are approved by the Food and Drug Administration under section 505 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) for use in the treatment of opioid use disorder.

(2) An agency providing an opioid treatment program that is fully compliant with the procedures of an investigational use of a drug and other conditions set forth in the application may administer a drug that has been authorized by the Food and Drug Administration under an investigational new drug application under section 505(i) of the federal Food, Drug, and Cosmetic Act for investigational use in the treatment of opioid addiction. The following opioid treatment medications are approved by the Food and Drug Administration for use in the treatment of opioid use disorder:

- (a) Methadone; and
- (b) Buprenorphine.

(3) An agency providing opioid treatment program services must ensure that initial dosing requirements are met as follows:

(a) Methadone must be administered or dispensed only in oral form and is formulated in such a way as to reduce its potential for parenteral abuse;

(b) The initial dose of methadone must not exceed thirty milligrams and the total dose for the first day must not exceed forty milligrams, unless the program physician documents in the individual's record that forty milligrams did not suppress opioid abstinence symptoms; and

- (c) The establishment of the initial dose must consider:
 - (i) Signs and symptoms of withdrawal;
 - (ii) Individual comfort; and
 - (iii) Side effects from over medication.

(4) An agency providing an opioid treatment program services must ensure that:

(a) Each opioid treatment medication used by the program is administered and dispensed in accordance with its approved product labeling;

(b) All dosing and administration decisions are made by a:

- (i) Program physician; or
- (ii) Medical practitioner under supervision of a program physician familiar with the most up-to-date product labeling; and

(c) Any significant deviations from the approved labeling, including deviations with regard to dose, frequency, or the conditions of use described in the approved labeling, are specifically documented in the individual's record.

(5) An agency providing opioid treatment program services must ensure that all take-home medications are:

(a) Consistent with 42 C.F.R. Part 8.12 (i)(1) through (5) and are authorized only to stable individuals who:

(i) Have received opioid treatment medication for a minimum of ninety days; and

(ii) Have not had any positive drug screens in the last sixty days;

(b) Assessed and authorized, as appropriate, for a Sunday or legal holiday as identified in RCW 1.16.050;

(c) Assessed and authorized, as appropriate, when travel to the facility presents a safety risk for an individual or staff member due to inclement weather; and

(d) Not allowed in short-term withdrawal management or interim maintenance treatment.

(6) All exceptions to take-home requirements must be submitted and approved by the state opioid treatment authority and Substance Abuse and Mental Health Services Administration (SAMHSA).

SECTION ELEVEN—WITHDRAWAL MANAGEMENT, RESIDENTIAL SUBSTANCE USE DISORDER, AND MENTAL HEALTH INPATIENT SERVICES

NEW SECTION

WAC 388-877-1100 Withdrawal management services—Adults. Substance use disorder withdrawal management services are provided to an individual to assist in the process of withdrawal from psychoactive substances in a safe and effective manner, in accordance with ASAM criteria. For secure withdrawal management and stabilization services for individuals who have been involuntarily committed, see WAC 388-877-1104.

(1) A behavioral health agency certified for adult withdrawal management services may choose to also become certified to provide youth withdrawal management services (see WAC 388-877-1102).

(2) An agency providing withdrawal management services to an individual must:

(a) Be a facility licensed by department of health under one of the following department of health chapters:

(i) Hospital licensing regulations (chapter 246-320 WAC);

(ii) Private psychiatric and alcoholism hospitals (chapter 246-322 WAC);

(iii) Private alcohol and substance use disorder hospitals (chapter 246-324 WAC); or

(iv) Residential treatment facility (chapter 246-337 WAC);

(b) Be licensed by the department as a behavioral health agency;

(c) Meet the applicable behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680; and

(d) Have policies and procedures to support and implement the specific requirements in this section.

(3) An agency must:

(a) Use ASAM criteria for admission, continued services, and discharge planning and decisions;

(b) Provide counseling to each individual that addresses the individual's:

- (i) Substance use disorder and motivation; and
- (ii) Continuing care needs and need for referral to other services;

(c) Maintain a list of resources and referral options that can be used by staff members to refer an individual to appropriate services;

(d) Post any rules and responsibilities for individuals receiving treatment, including information on potential use of increased motivation interventions or sanctions, in a public place in the facility;

(e) Provide tuberculosis screenings to individuals for the prevention and control of tuberculosis; and

(f) Provide HIV/AIDS information and include a brief risk intervention and referral as indicated.

(4) Ensure that each staff member providing withdrawal management services to an individual, with the exception of licensed staff members and chemical dependency professionals, completes a minimum of forty hours of documented training before being assigned individual care duties. This personnel training must include the following topics:

- (a) Substance use disorders;
- (b) Infectious diseases, to include hepatitis and tuberculosis (TB); and
- (c) Withdrawal screening, admission, and signs of trauma.

(5) In addition to the general clinical record content requirements in WAC 388-877-0640, an agency providing substance use disorder withdrawal management services must maintain an individual's clinical record that contains:

(a) Documentation of a substance use disorder screening before admission;

(b) A voluntary consent to treatment form, or any release forms, signed and dated by the individual, or the individual's parent or legal guardian, except as authorized by law for protective custody and involuntary treatment;

(c) Documentation that the individual received HIV/AIDS information and a brief risk intervention and referral as indicated; and

(d) Documentation that a discharge summary, including a continuing care recommendation and a description of the individual's physical condition, was completed within seven working days of discharge.

NEW SECTION

WAC 388-877-1102 Withdrawal management services—Youth. Youth withdrawal management services are substance use disorder services provided to an individual seventeen years of age or younger. In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680 and the adult withdrawal management requirements in WAC 388-877-1100, an agency providing youth withdrawal management services must do all of the following:

(1) Admit youth only with the written permission of the youth's parent or, if applicable, the youth's legal guardian. If

a youth meets the requirements of a child in need of services (CHINS), the youth may sign themselves into treatment.

(2) Assess the individual's need for referral to the department's child welfare services.

(3) Ensure the following for individuals who share a room:

(a) An individual fifteen years of age or younger must not room with an individual eighteen years of age or older; and

(b) An individual sixteen or seventeen years of age must be evaluated for clinical appropriateness before being placed in a room with an individual eighteen years of age or older.

(4) Allow communication between the youth and the youth's parent or if applicable, a legal guardian, and facilitate the communication when clinically appropriate.

(5) Notify the parent or legal guardian within two hours of any change in the status of the youth and document all notification and attempts of notification in the clinical record.

(6) Discharge the youth to the care of the parent or legal guardian. For emergency discharge and when the parent or legal guardian is not available, the agency must contact the appropriate authority.

(7) Ensure at least one adult staff member of each gender is present or available by phone at all times if co-educational treatment services are provided.

(8) Ensure a staff member who demonstrates knowledge of adolescent development and substance use disorders is available at the facility or available by phone.

NEW SECTION

WAC 388-877-1104 Secure withdrawal management and stabilization services—Adults. Secure withdrawal management and stabilization services are provided to an individual to assist in the process of withdrawal from psychoactive substances in a safe and effective manner, or medically stabilize an individual after acute intoxication, in accordance with ASAM criteria and chapters 71.05 and 71.34 RCW.

(1) In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680, an agency must:

(a) Meet the requirements for withdrawal management services in WAC 388-877-1100; and

(b) Designate a physician or chemical dependency professional as the professional person as defined in RCW 71.05.020 in charge of clinical services at that facility.

(2) An agency certified to provide secure withdrawal management and stabilization services must have the following policies and procedures:

(a) Policies to ensure that services are provided in a secure environment. "Secure" means having:

(i) All doors and windows leading to the outside locked at all times;

(ii) Visual monitoring, either by line of sight or camera as appropriate to the individual;

(iii) Adequate space to segregate violent or potentially violent persons from others;

(iv) The means to contact law enforcement immediately in the event of an elopement from the facility; and

(v) Adequate numbers of staff present at all times that are trained in facility security measures;

(b) Policies to ensure compliance with WAC 246-337-110 regarding seclusion and restraint;

(c) Procedures for admitting individuals needing secure withdrawal management and stabilization services seven days a week, twenty-four hours a day;

(d) Procedures to ensure that once an individual has been admitted, if a medical condition develops that is beyond the facility's ability to safely manage, the individual will be transported to the nearest hospital for emergency medical treatment;

(e) Procedures to assure access to necessary medical treatment, including emergency life-sustaining treatment and medication;

(f) Procedures to assure at least daily contact between each in-voluntary individual and a chemical dependency professional or a trained professional person for the purpose of:

(i) Observation;

(ii) Evaluation;

(iii) Release from involuntary commitment to accept treatment on a voluntary basis; and

(iv) Discharge from the facility to accept voluntary treatment upon referral;

(g) Procedures to assure the protection of individual and family rights as described in WAC 388-877-1122, rights related to antipsychotic medication in WAC 388-877-1124, and rights as described in chapters 71.05 and 71.34 RCW;

(h) Procedures to inventory and safeguard the personal property of the individual being detained, including a process to limit inspection of the inventory list by responsible relatives or other persons designated by the detained individual;

(i) Procedures to assure that a chemical dependency professional and licensed physician, physician assistant, or advanced registered nurse practitioner (ARNP) are available for consultation and communication with the direct patient care staff twenty-four hours a day, seven days a week;

(j) Procedures to warn an identified person and law enforcement when an adult has made a threat against an identified victim as explained in RCW 70.02.050 and in compliance with 42 C.F.R. Part 2;

(k) Procedures to ensure that individuals detained for up to fourteen, ninety, or one hundred and eighty additional days of treatment are evaluated by the professional staff of the facility in order to be prepared to testify that the individual's condition is caused by a substance use disorder and either results in likelihood of serious harm or the individual being gravely disabled.

(3) An agency providing secure withdrawal management and stabilization services must document that each individual has received evaluations to determine the nature of the disorder and the treatment necessary, including:

(a) A telephone screening reviewed by a nurse, as defined in chapter 18.79 RCW, or medical practitioner prior to admission that includes current level of intoxication, available medical history, and known medical risks;

(b) An evaluation by a chemical dependency professional within seventy-two hours of admission to the facility; and

(c) An assessment for substance use disorder and additional mental health disorders or conditions, using the global appraisal of individual needs - short screener (GAIN-SS) or its successor.

(4) For individuals admitted to the secure withdrawal management and stabilization facility, the clinical record must contain:

(a) A statement of the circumstances under which the person was brought to the unit;

(b) The admission date and time;

(c) The date and time when the involuntary detention period ends;

(d) A determination of whether to refer to a designated crisis responder to initiate civil commitment proceedings;

(e) If an individual is admitted voluntarily and appears to meet the criteria for initial detention, documentation that an evaluation was performed by a designated crisis responder within the time period required in RCW 71.05.050, the results of the evaluation, and the disposition;

(f) Review of the client's current crisis plan, if applicable and available; and

(g) Review of the admission diagnosis and what information the determination was based upon.

(5) An agency certified to provide secure withdrawal management and stabilization services must ensure the treatment plan includes all of the following:

(a) A protocol for safe and effective withdrawal management, including medications as appropriate;

(b) Discharge assistance provided by chemical dependency professionals, including facilitating transitions to appropriate voluntary or involuntary inpatient services or to less restrictive alternatives as appropriate for the individual.

(6) An agency certified to provide secure withdrawal management and stabilization services must ensure that each staff member providing withdrawal management services to an individual, with the exception of licensed staff members and CDPs, completes a minimum of forty hours of documented training before being assigned individual care duties. This personnel training must include the following topics:

(a) Substance use disorders;

(b) Infectious diseases, to include hepatitis and tuberculosis (TB); and

(c) Withdrawal screening, admission, and signs of trauma.

NEW SECTION

WAC 388-877-1106 Secure withdrawal management and stabilization services—Youth. In addition to the requirements for secure withdrawal and stabilization services in WAC 388-877-1100, an agency certified to provide secure withdrawal management and stabilization services to youth must meet the following requirements:

(1) Requirements for withdrawal management services for youth in WAC 388-877-1102;

(2) Requirements for the posting of individual rights for minors in WAC 388-877-1120; and

(3) Requirements for inpatient services for minors found in WAC 388-877-1128, 388-877-1130, and 388-877-1132.

NEW SECTION

WAC 388-877-1108 Residential substance use disorder treatment services—General. Residential treatment services provide substance use disorder treatment for an individual in a facility with twenty-four hours a day supervision.

- (1) Residential treatment services include:
 - (a) Intensive inpatient services, ASAM level 3.5;
 - (b) Recovery house treatment services, ASAM level 3.1;
 - (c) Long-term residential treatment services, ASAM level 3.1; and
 - (d) Youth residential services, ASAM levels 3.1, 3.5, and 3.7.
- (2) An agency certified to provide residential treatment services must:
 - (a) Be a facility licensed by department of health (DOH) and meet the criteria under one of the following DOH chapters:
 - (i) Hospital licensing regulations (chapter 246-320 WAC);
 - (ii) Private psychiatric and alcoholism hospitals (chapter 246-322 WAC);
 - (iii) Private alcohol and substance use disorder hospitals (chapter 246-324 WAC); or
 - (iv) Residential treatment facility (chapter 246-337 WAC);
 - (b) Be licensed by the department as a behavioral health agency;
 - (c) Meet the applicable behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680;
 - (d) Have policies and procedures to support and implement the:
 - (i) General requirements in WAC 388-877-0420; and
 - (ii) Specific applicable requirements in WAC 388-877-1110 through 388-877-1116;
 - (e) Use ASAM criteria for admission, continued services, and discharge planning and decisions;
 - (f) Provide education to each individual admitted to the treatment facility on:
 - (i) Substance use disorders;
 - (ii) Relapse prevention;
 - (iii) Blood borne pathogens; and
 - (iv) Tuberculosis (TB);
 - (g) Provide education or information to each individual admitted on:
 - (i) Emotional, physical, and sexual abuse;
 - (ii) Nicotine use disorder; and
 - (iii) The impact of substance use during pregnancy, risks to the fetus, and the importance of informing medical practitioners of chemical use during pregnancy;
 - (h) Maintain a list or source of resources, including self-help groups, and referral options that can be used by staff to refer an individual to appropriate services;
 - (i) Screen for the prevention and control of tuberculosis;
 - (j) Limit the size of group counseling sessions to no more than sixteen individuals;
 - (k) Have written procedures for:
 - (i) Urinalysis and drug testing, including laboratory testing; and

- (ii) How agency staff members respond to medical and psychiatric emergencies; and

- (l) The individual service plan is initiated with at least one goal identified by the individual during the initial assessment or at the first service session following the assessment.

- (3) An agency that provides services to a pregnant woman must:

- (a) Have a written procedure to address specific issues regarding the woman's pregnancy and prenatal care needs; and

- (b) Provide referral information to applicable resources.

- (4) An agency that provides an assessment to an individual under RCW 46.61.5056 must also meet the requirements for driving under the influence (DUI) assessment providers in WAC 388-877-0820.

NEW SECTION

WAC 388-877-1110 Residential substance use disorder treatment services—Intensive inpatient services. (1) Intensive inpatient services are substance use disorder residential treatment services that provide a concentrated program of individual and group counseling, education, and activities for an individual who has completed withdrawal management and the individual's family to address overall functioning and to demonstrate aspects of recovery lifestyle.

- (2) In addition to meeting the applicable behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680 and the residential treatment services requirements in WAC 388-877-1108, an agency certified to provide intensive inpatient services must:

- (a) Complete the individual service plan within five days of admission;

- (b) Conduct and document at least weekly, one face-to-face individual substance use disorder counseling session with the individual;

- (c) Progress notes must include the date, time, duration, participant names, and a brief summary of the session and the name of the staff member who provided it;

- (d) Document at least weekly, an individual service plan review which determines continued stay needs and progress towards goals; and

- (e) Provide treatment services in line with ASAM 3.5 components appropriate to youth or adults.

NEW SECTION

WAC 388-877-1112 Residential substance use disorder treatment services—Recovery house. (1) Recovery house services are substance use disorder residential treatment services that provide a program of care and treatment with social, vocational, and recreational activities to aid in individual adjustment to abstinence, relapse prevention, recovery skills development, and to aid in job training, employment, or participating in other types of community services.

- (2) In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680 and the residential treatment services requirements in

WAC 388-877-1108, an agency certified to provide recovery house services must:

- (a) Provide no less than five hours per week of treatment services in line with ASAM level 3.1;
- (b) Progress notes should include the date, time, duration, participant names, and a brief summary of the session and the name of the staff member who provided it; and
- (c) Conduct and document an individual service plan review at least monthly.

NEW SECTION

WAC 388-877-1114 Residential substance use disorder treatment services—Long-term treatment services.

(1) Long-term treatment services are substance use disorder residential treatment services that provide a program for an individual needing consistent structure over a longer period of time to develop and maintain abstinence, develop recovery skills, and to improve overall health.

(2) In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680 and the residential treatment services requirements in WAC 388-877-1108 an agency certified to provide long-term treatment services must:

- (a) Provide an individual a minimum of two hours each week of individual or group counseling;
- (b) Provide no less than five hours per week of treatment services in line with ASAM 3.1 components;
- (c) Progress notes should include the date, time, duration, participant names, and a brief summary of the session and the names of the staff member who provided it;
- (d) Provide an individual, during the course of services, with:
 - (i) Education on social and coping skills, relapse prevention, and recovery skills development;
 - (ii) Social and recreational activities;
 - (iii) Assistance in seeking employment, when appropriate; and
 - (iv) Assistance with re-entry living skills to include seeking and obtaining safe housing; and
- (e) Conduct and document an individual service plan review at least monthly.

NEW SECTION

WAC 388-877-1116 Residential substance use disorder treatment services—Youth residential services.

Youth residential services are substance use disorder residential treatment services provided to an individual seventeen years of age or younger in accordance with ASAM criteria. In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680 and the residential treatment services requirements in WAC 388-877-1108 an agency certified to provide youth residential services must do all of the following:

(1) Ensure at least one adult staff member of each gender is present or on call at all times if co-educational treatment services are provided.

(2) Ensure group counseling sessions with twelve to sixteen youths include a second adult staff member.

(3) Ensure staff members are trained in safe and therapeutic techniques for dealing with a youth's behavior and emotional crisis, including:

- (a) Verbal de-escalation;
 - (b) Crisis intervention;
 - (c) Anger management;
 - (d) Suicide assessment and intervention;
 - (e) Conflict management and problem solving skills;
 - (f) Management of assaultive behavior;
 - (g) Proper use of therapeutic physical intervention techniques; and
 - (h) Emergency procedures.
- (4) Provide group meetings to promote personal growth.
- (5) Provide leisure, and other therapy or related activities.

(6) Provide seven or more hours of structured recreation each week, that is led or supervised by staff members.

(7) Provide each youth one or more hours per day, five days each week, of supervised academic tutoring or instruction by a certified teacher when the youth is unable to attend school for an estimated period of four weeks or more. The agency must:

- (a) Document the individual's most recent academic placement and achievement level; and
 - (b) Obtain school work from the individual's school, or when applicable, provide school work and assignments consistent with the individual's academic level and functioning.
- (8) Conduct random and regular room checks when an individual is in their room, and more often when clinically indicated.

(9) Only admit youth with the written permission of the youth's parent or if applicable, legal guardian. In cases where the youth meets the requirements of a child in need of services (CHINS), the youth may sign themselves into treatment.

(10) Assess the individual's need for referral to the department's child welfare services.

(11) Ensure the following for individuals who share a room:

- (a) An individual fifteen years of age or younger must not room with an individual eighteen years of age or older; and
- (b) An individual sixteen or seventeen years of age must be evaluated for clinical appropriateness before being placed in a room with an individual eighteen years of age or older.

(12) Allow communication between the youth and the youth's parent or if applicable, a legal guardian, and facilitate the communication when clinically appropriate.

(13) Notify the parent or legal guardian within two hours of any change in the status of the youth and document all notifications and attempts of notifications in the clinical record.

(14) Discharge the youth to the care of the youth's parent or if applicable, legal guardian. For emergency discharge and when the parent or legal guardian is not available, the agency must contact the appropriate authority.

(15) Ensure each individual's clinical record:

- (a) Contains any consent or release forms signed by the youth and their parent or legal guardian;
- (b) Contains the parent's or other referring person's agreement to participate in the treatment process, as appropriate and if possible; and
- (c) Documents any problems identified in specific youth assessment, including any referrals to school and community support services, on the individual service plan.

NEW SECTION

WAC 388-877-1118 Mental health inpatient services—General. (1) Inpatient services include the following types of behavioral health services certified by the division of behavioral health and recovery:

- (a) Evaluation and treatment services;
 - (b) Child long term inpatient program (CLIP);
 - (c) Crisis stabilization units;
 - (d) Triage services; and
 - (e) Competency evaluation and treatment services;
- (2) An agency providing inpatient services to an individual must:
- (a) Be a facility licensed by department of health under one of the following department of health chapters:
 - (i) Hospital licensing regulations (chapter 246-320 WAC);
 - (ii) Private psychiatric and alcoholism hospitals (chapter 246-322 WAC);
 - (iii) Private alcohol and substance use disorder hospitals (chapter 246-324 WAC); or
 - (iv) Residential treatment facility (chapter 246-337 WAC);
 - (b) Be licensed by the department as a behavioral health agency;
 - (c) Meet the applicable behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0100 through 388-877-0680;
 - (d) Meet the applicable inpatient services requirements in WAC 388-877-1118 through 388-877-1132;
 - (e) Have policies and procedures to support and implement the specific applicable program-specific requirements; and
 - (f) If applicable, have policies to ensure compliance with WAC 246-337-110 regarding seclusion and restraint.
- (3) The behavioral health agency providing inpatient services must document the development of an individualized annual training plan, to include at least:
- (a) Least restrictive alternative options available in the community and how to access them;
 - (b) Methods of individual care;
 - (c) De-escalation training and management of assaultive and self-destructive behaviors, including proper and safe use of seclusion and restraint procedures; and
 - (d) The requirements of chapter 71.05 and 71.34 RCW, this chapter, and protocols developed by the division of behavioral health and recovery.
- (4) If contract staff are providing direct services, the facility must ensure compliance with the training requirements outlined in subsection (4) of this section.

NEW SECTION

WAC 388-877-1120 Mental health inpatient services—Posting of individual rights for minors. A behavioral health agency providing inpatient services to minors must ensure that the rights listed in RCW 71.34.355 are prominently posted in the facility and provided in writing to the individual in a language or format that the individual can understand.

NEW SECTION

WAC 388-877-1122 Mental health inpatient services—Rights of individuals receiving inpatient services. The behavioral health agency providing inpatient services must ensure that the rights listed in RCW 71.05.360 and 71.05.217 are prominently posted in the facility and provided in writing to the individual in a language or format that the individual can understand.

NEW SECTION

WAC 388-877-1124 Mental health inpatient services—Rights related to antipsychotic medication. All individuals have a right to make an informed decision regarding the use of antipsychotic medication consistent with the provisions of RCW 71.05.215 and 71.05.217. The provider must develop and maintain a written protocol for the involuntary administration of antipsychotic medications, including all of the following requirements:

- (1) The clinical record must document all of the following:
 - (a) An attempt to obtain informed consent.
 - (b) The individual was asked if they wish to decline treatment during the twenty-four hour period prior to any court proceeding wherein the individual has the right to attend and is related to their continued treatment. The answer must be in writing and signed when possible. In the case of a child under the age of eighteen, the psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority must be able to explain to the court the probable effects of the medication.
 - (c) The reasons why any antipsychotic medication is administered over the individual's objection or lack of consent.
- (2) The psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority may administer antipsychotic medications over an individual's objections or lack of consent only when:
 - (a) An emergency exists, provided there is a review of this decision by a second psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority within twenty-four hours. An emergency exists if all of the following are true:

(i) The individual presents an imminent likelihood of serious harm to self or others;

(ii) Medically acceptable alternatives to administration of antipsychotic medications are not available or are unlikely to be successful; and

(iii) In the opinion of the psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority, the individual's condition constitutes an emergency requiring that treatment be instituted before obtaining an additional concurring opinion by a second psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority.

(b) There is an additional concurring opinion by a second psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority, for treatment up to thirty days.

(c) For continued treatment beyond thirty days through the hearing on any one hundred eighty-day petition filed under RCW 71.05.217, provided the facility medical director or director's medical designee reviews the decision to medicate an individual. Thereafter, antipsychotic medication may be administered involuntarily only upon order of the court. The review must occur at least every sixty days.

(3) The examining psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority must sign all one hundred eighty-day petitions for antipsychotic medications filed under the authority of RCW 71.05.217.

(4) Individuals committed for one hundred eighty days who refuse or lack the capacity to consent to antipsychotic medications have the right to a court hearing under RCW 71.05.217 prior to the involuntary administration of antipsychotic medications.

(5) In an emergency, antipsychotic medications may be administered prior to the court hearing provided that an examining psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority files a petition for an antipsychotic medication order the next judicial day.

(6) All involuntary medication orders must be consistent with the provisions of RCW 71.05.217, whether ordered by a psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority or the court.

NEW SECTION

WAC 388-877-1126 Mental health inpatient services—Policies and procedures—Adult. In addition to meeting the agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0100 through 388-877-0680, and the applicable inpatient service requirements in WAC 388-877-1118 through 388-877-1132, an inpatient facility must implement all of the following administrative requirements:

(1) Policies to ensure that services are provided in a secure environment. "Secure" means having:

(a) All doors and windows leading to the outside locked at all times;

(b) Visual monitoring, either by line of sight or camera as appropriate to the individual;

(c) Adequate space to segregate violent or potentially violent persons from others;

(d) The means to contact law enforcement immediately in the event of an elopement from the facility; and

(e) Adequate numbers of staff present at all times that are trained in facility security measures.

(2) Designation of a professional person as defined in RCW 71.05.020 in charge of clinical services at that facility, as appropriate to the type of inpatient services.

(3) Policies to ensure compliance with WAC 246-337-110 regarding seclusion and restraint.

(4) A policy management structure that establishes:

(a) Procedures for admitting individuals needing treatment seven days a week, twenty-four hours a day, except that child long-term inpatient treatment facilities are exempted from this requirement;

(b) Procedures to assure access to necessary medical treatment, including emergency life-sustaining treatment and medication;

(c) Procedures to assure the protection of individual and family rights as described in this chapter and chapters 71.05 and 71.34 RCW;

(d) Procedures to inventory and safeguard the personal property of the individual being detained according to RCW 71.05.220;

(e) Procedures to assure that a mental health professional, chemical dependency professional, if appropriate, and physician, physician assistant, or psychiatric advanced registered nurse practitioner (ARNP) are available for consultation and communication with the direct patient care staff twenty-four hours a day, seven days a week;

(f) Procedures to warn an identified person and law enforcement when an adult has made a threat against an identified victim as explained in RCW 70.02.050 and in compliance with 42 C.F.R. Part 2; and

(g) Procedures to ensure that individuals detained for up to fourteen, ninety, or one hundred and eighty additional days of treatment are evaluated by the professional staff of the facility in order to be prepared to testify that the individual's condition is caused by a mental disorder or substance use disorder and either results in likelihood of serious harm or the individual being gravely disabled.

(5) For individuals who have been involuntarily detained, the facility must obtain a copy of the petition for

initial detention stating the evidence under which the individual was detained.

(6) The facility must document that each individual has received evaluations to determine the nature of the disorder and the treatment necessary, including:

(a) A health assessment of the individual's physical condition to determine if the individual needs to be transferred to an appropriate hospital for treatment;

(b) Examination and medical evaluation within twenty-four hours of admission by a licensed physician, advanced registered nurse practitioner, or physician assistant;

(c) Development of an initial treatment plan while in the facility;

(d) Consideration of less restrictive alternative treatment at the time of admission; and

(e) The admission diagnosis and what information the determination was based upon.

(7) An individual who has been delivered to the facility by a peace officer for evaluation must be evaluated by a mental health professional within the following time frames:

(a) Three hours of an adult individual's arrival;

(b) Twelve hours of arrival for a child in an inpatient evaluation and treatment facility; or

(c) At any time for a child who has eloped from a child long-term inpatient treatment facility and is being returned to the facility.

(8) If the mental health professional or chemical dependency professional and physician, physician assistant, or psychiatric advanced registered nurse practitioner determine that the needs of an adult individual would be better served by placement in a another type of service facility then the individual must be referred to a more appropriate placement in accordance with RCW 71.05.210.

(9) The treatment plan must contain documentation of:

(a) Diagnostic and therapeutic services prescribed by the attending clinical staff;

(b) An individual service plan that meets the requirements of WAC 388-877-0620;

(c) Copies of advance directives, powers of attorney or letters of guardianship provided by the individual;

(d) A plan for discharge including a plan for follow-up where appropriate;

(e) Documentation of the course of treatment; and

(f) That a mental health professional or chemical dependency professional, as appropriate, has contact with each involuntary individual at least daily for the purpose of determining the need for continued involuntary treatment.

NEW SECTION

WAC 388-877-1128 Mental health inpatient services—Policies and procedures—Minors. In addition to meeting the agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0100 through 388-877-0680 and the applicable inpatient services requirements in WAC 388-877-1118 through 388-877-1132, inpatient facilities serving minor children seventeen years of age and younger must develop and implement policies and procedures to address special considerations for serving chil-

dren. These special considerations must include all of the following:

(1) Procedures to ensure that adults are separated from minors who are not yet thirteen years of age.

(2) Procedures to ensure that a minor who is at least age thirteen but not yet age eighteen is served with adults only if the minor's clinical record contains:

(a) Documentation that justifies such placement; and

(b) A professional judgment that placement in an inpatient facility that serves adults will not harm the minor.

(3) Procedures to ensure examination and evaluation of a minor by a children's mental health specialist occurs within twenty-four hours of admission.

(4) Procedures to ensure a facility that provides inpatient services for minors and is licensed by the department of health under chapter 71.12 RCW, meets the following notification requirements if a minor's parent(s) brings the child to the facility for the purpose of behavioral health treatment or evaluation:

(a) Provide a written and oral notice to the minor's parent(s) or legal representative(s) of:

(i) All current statutorily available treatment options available to the minor including, but not limited to, those provided in chapter 71.34 RCW; and

(ii) A description of the procedures the facility will follow to utilize the treatment options; and

(b) Obtain and place in the clinical file, a signed acknowledgment from the minor's parent(s) that the notice required under (a) of this subsection was received.

(5) Procedures that address provisions for evaluating a minor brought to the facility for evaluation by a parent(s).

(6) Procedures to notify child protective services any time the facility has reasonable cause to believe that abuse, neglect, financial exploitation or abandonment of a minor has occurred.

(7) Procedures to ensure a minor thirteen years or older who is brought to an inpatient facility or hospital for immediate behavioral health services is evaluated by the professional person in charge of the facility. The professional person must evaluate the minor's condition and determine the need for behavioral health inpatient treatment, and the minor's willingness to obtain voluntary treatment. The facility may detain or arrange for the detention of the minor up to twelve hours for evaluation by a designated crisis responder to commence detention proceedings.

(8) Procedures to ensure that the admission of a minor thirteen years of age or older admitted without parental consent has the concurrence of the professional person in charge of the facility and written review and documentation no less than every one hundred eighty days.

(9) Procedures to ensure that notice is provided to the parent(s) when a minor child is voluntarily admitted to inpatient treatment without parental consent within twenty-four hours of admission in accordance with the requirements of RCW 71.34.510 and within the confidentiality requirements of 42 C.F.R. Sec. 2.14.

(10) Procedures to ensure a minor who has been admitted on the basis of a designated crisis responder petition for detention is evaluated by the facility providing seventy-two hour inpatient services to determine the minor's condition and

either admit or release the minor. If the minor is not approved for admission, the facility must make recommendations and referral for further care and treatment as necessary.

(11) Procedures for the examination and evaluation of a minor approved for inpatient admission to include:

(a) The needs to be served by placement in a secure withdrawal management or evaluation and treatment facility;

(b) Restricting the right to associate or communicate with a parent(s); and

(c) Advising the minor of rights in accordance with chapter 71.34 RCW.

(12) Procedures to petition for fourteen-day commitment that are in accordance with RCW 71.34.730.

(13) Procedures for commitment hearing requirements and release from further inpatient treatment that may be subject to reasonable conditions, if appropriate, and are in accordance with RCW 71.34.740.

(14) Procedures for discharge and conditional release of a minor in accordance with RCW 71.34.770, provided that the professional person in charge gives the court written notice of the release within three days of the release. If the minor is on a one hundred eighty-day commitment, the children's long-term inpatient program (CLIP) administrator must also be notified.

(15) Procedures to ensure rights of a minor undergoing treatment and posting of such rights are in accordance with RCW 71.34.355, 71.34.620, and 71.34.370.

(16) Procedures for the release of a minor who is not accepted for admission or who is released by an inpatient facility that are in accordance with RCW 71.34.365.

(17) Procedures to ensure treatment of a minor and all information obtained through treatment under this chapter are disclosed only in accordance with applicable state and federal law.

(18) Procedures to make court records and files available that are in accordance with RCW 71.34.335.

(19) Procedures to release behavioral health services information only in accordance with applicable state and federal statutes.

NEW SECTION

WAC 388-877-1130 Mental health inpatient services—Treatment of a minor without consent of parent.

An inpatient evaluation and treatment facility, approved inpatient substance use disorder facility, or secure withdrawal management and stabilization facility may admit a minor child who is at least thirteen years of age and not older than seventeen years of age without the consent of the minor's parent(s) if the requirements of RCW 71.34.500 through 71.34.530 are met.

NEW SECTION

WAC 388-877-1132 Mental health inpatient services—Treatment of a minor without consent of minor.

An inpatient evaluation and treatment facility, approved inpatient substance use disorder facility, or secure withdrawal management and stabilization facility may admit, evaluate, and treat a minor child seventeen years of age or younger without the consent of the minor if the minor's par-

ent(s) brings the minor to the facility, if the requirements of RCW 71.34.600 through 71.34.660 are met.

NEW SECTION

WAC 388-877-1134 Mental health inpatient services—Evaluation and treatment services.

In addition to meeting the agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0100 through 388-877-0680, and the applicable inpatient services requirements in WAC 388-877-1118 through 388-877-1132 an agency providing evaluation and treatment services must ensure:

(1) Designation of a physician or other mental health professional as the professional person as defined in RCW 71.05.020 in charge of clinical services at that facility; and

(2) A policy management structure that establishes:

(a) Procedures to assure appropriate and safe transportation for persons who are not approved for admission to his or her residence or other appropriate place;

(b) Procedures to detain arrested persons who are not approved for admission for up to eight hours so that reasonable attempts can be made to notify law enforcement to return to the facility and take the person back into custody;

(c) Procedures to assure the rights of individuals to make mental health advance directives, and facility protocols for responding to individual and agent requests consistent with RCW 71.32.150;

(d) Procedures to ensure that if the facility releases the individual to the community, the facility informs the peace officer of the release within a reasonable period of time after the release if the peace officer has specifically requested notification and has provided contact information to the facility;

(e) Procedures to document that each individual has received evaluations to determine the nature of the disorder and the treatment necessary, including a psychosocial evaluation by a mental health professional; and

(f) For individuals who are being evaluated as dangerous mentally ill offenders under RCW 72.09.370(7), the professional person in charge of the evaluation and treatment facility must consider filing a petition for a ninety day less restrictive alternative in lieu of a petition for a fourteen-day commitment.

NEW SECTION

WAC 388-877-1136 Mental health inpatient services—Exception—Long-term certification.

(1) For adults: At the discretion of the division of behavioral health and recovery (DBHR), a facility may be granted an exception in order to allow the facility to be certified to provide treatment to adults on a ninety or one hundred eighty-day inpatient involuntary commitment orders.

(2) For children: At the discretion of DBHR, a facility that is certified as a 'mental health inpatient evaluation and treatment facility' may be granted an exception to provide treatment to a child on a one hundred and eighty-day inpatient involuntary treatment order only until the child is discharged from his/her order to the community, or until a bed is available for that child in a child long-term inpatient treatment facility (CLIP). The child cannot be assigned by the

CLIP placement team in accordance with RCW 71.34.100 to any facility other than a CLIP facility.

(3) The exception certification may be requested by the facility, the director of DBHR or their designee, or the behavioral health organization for the facility's geographic area.

(4) The facility receiving the long-term exception certification for ninety or one hundred eighty-day patients must meet all requirements found in WAC 388-877-1134.

(5) The exception certification must be signed by the director of DBHR. The exception certification may impose additional requirements, such as types of consumers allowed and not allowed at the facility, reporting requirements, requirements that the facility immediately report suspected or alleged incidents of abuse, or any other requirements that the director of DBHR determines are necessary for the best interests of residents.

(6) DBHR may make unannounced site visits at any time to verify that the terms of the exception certification are being met. Failure to comply with any term of the exception certification may result in corrective action. If DBHR determines that the violation places residents in imminent jeopardy, immediate revocation of the certification can occur.

(7) Neither individuals nor facilities have fair hearing rights as defined under chapter 388-02 WAC regarding the decision to grant or not to grant exception certification.

NEW SECTION

WAC 388-877-1138 Mental health inpatient services—Child long-term inpatient program (CLIP). In addition to meeting the agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0100 through 388-877-0680, the applicable inpatient services requirements in WAC 388-877-1118 through 388-877-1132, and the evaluation and treatment service requirements of 388-877-1134, child long-term inpatient treatment facilities must develop a written plan for assuring that services provided are appropriate to the developmental needs of children, including all of the following:

(1) If there is not a child psychiatrist on the staff, there must be a child psychiatrist available for consultation.

(2) There must be a psychologist with documented evidence of skill and experience in working with children available either on the clinical staff or by consultation, responsible for planning and reviewing psychological services and for developing a written set of guidelines for psychological services.

(3) There must be a registered nurse, with training and experience in working with psychiatrically impaired children, on staff as a full-time or part-time employee who must be responsible for all nursing functions.

(4) There must be a social worker with experience in working with children on staff as a full-time or part-time employee who must be responsible for social work functions and the integration of these functions into the individual treatment plan.

(5) There must be an educational/vocational assessment of each resident with appropriate educational/vocational programs developed and implemented or assured on the basis of that assessment.

(6) There must be an occupational therapist available who has experience in working with psychiatrically impaired children responsible for occupational therapy functions and the integration of these functions into treatment.

(7) There must be a recreational therapist available who has had experience in working with psychiatrically impaired children responsible for the recreational therapy functions and the integration of these functions into treatment.

(8) Disciplinary policies and practices must be stated in writing and all of the following must be true:

(a) Discipline must be fair, reasonable, consistent and related to the behavior of the resident. Discipline, when needed, must be consistent with the individual treatment plan.

(b) Abusive, cruel, hazardous, frightening or humiliating disciplinary practices must not be used. Seclusion and restraints must not be used as punitive measures. Corporal punishment must not be used.

(c) Disciplinary measures must be documented in the medical record.

(9) Residents must be protected from assault, abuse and neglect. Suspected or alleged incidents of nonaccidental injury, sexual abuse, assault, cruelty or neglect to a child must be reported to a law enforcement agency or to the department of social and health services and comply with chapter 26.44 RCW.

(10) Orientation material must be made available to any facility personnel, clinical staff or consultants informing practitioners of their reporting responsibilities and requirements. Appropriate local police and department phone numbers must be available to personnel and staff.

(11) When suspected or alleged abuse is reported, the medical record must reflect the fact that an oral or written report has been made to the child protective services of DSHS or to a law enforcement agency. This note must include the date and time that the report was made, the agency to which it was made and the signature of the person making the report. Contents of the report need not be included in the medical record.

NEW SECTION

WAC 388-877-1140 Mental health inpatient services—Crisis stabilization unit—Agency facility and administrative standards. In addition to meeting the agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0100 through 388-877-0680 and the applicable inpatient services requirements in WAC 388-877-1118 through 388-877-1132, an agency certified to provide crisis stabilization unit services must meet all of the following criteria:

(1) Be licensed by the department of health.

(2) If a crisis stabilization unit is part of a jail, the unit must be located in an area of the building that is physically separate from the general population. "Physically separate" means:

(a) Out of sight and sound of the general population at all times;

(b) Located in an area with no foot traffic between other areas of the building, except in the case of emergency evacuation; and

(c) Has a secured entrance and exit between the unit and the rest of the facility.

(3) The professional person in charge of administration of the unit must be a mental health professional.

(4) Have a policy management structure that establishes:

(a) Procedures to ensure that for persons who have been brought to the unit involuntarily by police, the stay is limited to twelve hours unless the individual has signed voluntarily into treatment;

(b) Procedures to ensure that within twelve hours of the time of arrival to the crisis stabilization unit, individuals who have been detained by a designated crisis responder under chapter 71.05 or 70.96B RCW are transferred to a certified evaluation and treatment facility;

(c) Procedures to assure appropriate and safe transportation of persons who are not approved for admission or detained for transfer to an evaluation and treatment facility, and if not in police custody, to their respective residence or other appropriate place;

(d) Procedures to detain arrested persons who are not approved for admission for up to eight hours so that reasonable attempts can be made to notify law enforcement to return to the facility and take the person back into custody;

(e) Procedures to ensure that a mental health professional is on-site twenty-four hours a day, seven days a week;

(f) Procedures to ensure that a licensed physician, physician assistant, or psychiatric advanced registered nurse practitioner (ARNP) is available for consultation to direct care staff twenty-four hours a day, seven days a week;

(g) Procedures to ensure that the following requirements are met when an individual is brought to the facility by a peace officer under RCW 71.05.153:

(i) Within twelve hours of arrival, a designated crisis responder (DCR) must determine if the individual meets detention criteria under chapter 71.05 RCW; and

(ii) If the facility releases the individual to the community, the facility must inform the peace officer of the release within a reasonable period of time after the release if the peace officer has specifically requested notification and has provided contact information to the facility;

(h) Procedures to ensure the rights of persons to make mental health advance directives;

(i) Procedures to establish unit protocols for responding to the provisions of the advanced directives consistent with RCW 71.32.150; and

(j) Procedures to assure that restraint and seclusion are utilized only to the extent necessary to ensure the safety of patients and others, and in accordance with WAC 246-337-110, 246-322-180, and 246-320-745(6).

(5) Prominently post within the crisis stabilization unit the rights stated in WAC 388-877-1122, Mental health inpatient services—Rights of individuals receiving inpatient services, and provide them in writing to the individual in a language or format that the individual can understand.

NEW SECTION

WAC 388-877-1142 Mental health inpatient services—Crisis stabilization unit—Admission, assessment, and records. (1) For persons who have been brought to the unit involuntarily by police:

(a) The clinical record must contain:

(i) A statement of the circumstances under which the person was brought to the unit;

(ii) The admission date and time; and

(iii) The date and time when the twelve hour involuntary detention period ends; and

(b) The evaluation required in subsection (2)(b) of this section must be performed within three hours of arrival at the facility.

(2) For all persons, the clinical record must contain:

(a) An assessment for substance use disorder and co-occurring mental health and substance abuse disorder, utilizing the global appraisal of individual needs - short screener (GAIN-SS) or its successor;

(b) An evaluation by a mental health professional to include at a minimum:

(i) Mental status examination;

(ii) Assessment of risk of harm to self, others, or property; and

(iii) Determination of whether to refer to a designated crisis responder (DCR) to initiate civil commitment proceedings;

(c) Documentation that an evaluation by a DCR was performed within the required time period, the results of the evaluation, and the disposition of the person;

(d) Review of the person's current crisis plan, if applicable and available;

(e) The admission diagnosis and what information the determination was based upon;

(f) Assessment and stabilization services provided by the appropriate staff;

(g) Coordination with the person's current treatment provider, if applicable; and

(h) A plan for discharge, including a plan for follow up that includes:

(i) The name, address, and telephone number of the provider of follow-up services; and

(ii) The follow up appointment date and time, if known.

(3) For persons admitted to the crisis stabilization unit on a voluntary basis, the clinical record must contain a crisis stabilization plan developed collaboratively with the person within twenty-four hours of admission that includes:

(a) Strategies and interventions to resolve the crisis in the least restrictive manner possible;

(b) Language that is understandable to the person and members of the person's support system; and

(c) Measurable goals for progress toward resolving the crisis and returning to an optimal level of functioning.

(4) If antipsychotic medications are administered, the clinical record must document:

(a) The physician's attempt to obtain informed consent for antipsychotic medication; and

(b) The reasons why any antipsychotic medication is administered over the person's objection or lack of consent.

NEW SECTION

WAC 388-877-1144 Mental health inpatient services—Triage—Agency facility and administrative requirements. Under chapter 71.05 RCW, the department certifies facilities to provide triage services that assess and stabilize an individual, or determine the need for involuntary commitment. The department does not require a facility licensed by the department of health (DOH) that was providing assessment and stabilization services under chapter 71.05 RCW as of April, 22, 2011, to relicense or recertify under these rules. A request for an exemption must be made to DOH and the department.

(1) In addition to meeting the agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0100 through 388-877-0680 and the applicable inpatient services requirements in WAC 388-877-1118 through 388-877-1132, an agency certified to provide triage services must:

(a) Be licensed by the department of health (DOH) as a residential treatment facility;

(b) Meet the requirements for voluntary admissions under this chapter;

(c) Meet the requirements for involuntary admissions under this chapter if it elects to operate and be certified as a triage involuntary placement facility;

(d) Ensure that the facility and its services are accessible to individuals with disabilities, as required by applicable federal, state, and local laws; and

(e) Admit only individuals who are eighteen years of age and older.

(2) If a triage facility is collocated in another facility, there must be a physical separation. Physically separate means the triage facility is located in an area with no resident foot traffic between the triage facility and other areas of the building, except in case of emergencies.

(3) A triage facility must have, at a minimum, all of the following:

(a) A designated person in charge of administration of the triage unit.

(b) A mental health professional (MHP) on-site twenty-four hours a day, seven days a week.

(c) A written program description that includes:

(i) Program goals;

(ii) Identification of service categories to be provided;

(iii) Length of stay criteria;

(iv) Identification of the ages or range of ages of individual populations to be served;

(v) A statement that only an individual eighteen years of age or older may be admitted to the triage facility; and

(vi) Any limitation or inability to serve or provide program services to an individual who:

(A) Requires acute medical services;

(B) Has limited mobility;

(C) Has limited physical capacity for self-care; or

(D) Exhibits physical violence.

(d) Written procedures to ensure a secure and safe environment. Examples of these procedures are:

(i) Visual monitoring of the population environment by line of sight, mirrors or electronic means;

(ii) Having sufficient staff available twenty-four hours a day, seven days a week to meet the behavioral management needs of the current facility population; and

(iii) Having staff trained in facility security and behavioral management techniques.

(e) Written procedures to ensure that an individual is examined by an MHP within three hours of the individual's arrival at the facility.

(f) Written procedures to ensure that a designated crisis responder (DCR) evaluates a voluntarily admitted individual for involuntary commitment when the individual's behavior warrants an evaluation.

(g) A written declaration of intent and written procedures that are in accordance with WAC 246-337-110 if the triage facility declares intent to provide either seclusion or restraint or both.

(i) The seclusion or restraint may only be used to the extent necessary for the safety of the individual or others and only used when all less restrictive measures have failed; and

(ii) The facility must clearly document in the clinical record:

(A) The threat of imminent danger;

(B) All less restrictive measures that were tried and found to be ineffective; and

(C) A summary of each seclusion and restraint event, including a debriefing with staff members and the individual regarding how to prevent the occurrence of similar incidents in the future.

(h) Written procedures to facilitate appropriate and safe transportation, if necessary, for an individual who is:

(i) Not being held for either police custody, or police pick up, or both;

(ii) Denied admission to the triage facility; or

(iii) Detained for transfer to a certified evaluation and treatment facility.

(4) The triage facility must document that each staff member has the following:

(a) Adequate training regarding the least restrictive alternative options available in the community and how to access them;

(b) Training that meets the requirements of RCW 71.05-720 on safety and violence;

(c) Training that meets the requirements of RCW 71.05-705 if the triage facility is performing outreach services;

(d) Adequate training regarding methods of health care as defined in WAC 246-337-005(19); and

(e) Adequate training regarding the proper and safe use of seclusion and restraint procedures if the triage facility employs these techniques.

(5) The triage facility must ensure:

(a) Each clinical supervisor and each clinical staff member meets the qualifications of a mental health professional;

(b) A clinical staff member who does not meet the qualifications for an MHP is supervised by an MHP if the staff member provides direct services to individuals; and

(c) A contracted staff member who provides direct services to individuals meets the requirements of this section.

NEW SECTION

WAC 388-877-1146 Mental health inpatient services—Triage—Admission, assessment, and records. An agency certified to provide triage services must ensure the requirements in this section are met for each voluntary and involuntary admission. See WAC 388-877-1152(2) for additional requirements for an individual brought to a triage involuntary placement facility by a peace officer. See WAC 388-877-1152(3) for additional requirements for an individual involuntarily admitted to a triage involuntary placement facility based on a peace officer-initiated twelve-hour hold.

(1) Each individual must be assessed for substance use disorder and co-occurring mental health and substance abuse disorder as measured by the global appraisal on individual need-short screen (GAIN-SS) as it existed on the effective date of this section, or such subsequent date consistent with the purposes of this section. The clinical record must contain the results of the assessment.

(2) Each individual must be assessed by a mental health professional (MHP) within three hours of the individual's arrival at the facility.

(a) The assessment must include, at a minimum:

(i) A brief history of mental health or substance abuse treatment; and

(ii) An assessment of risk of harm to self, others, or grave disability.

(b) The MHP must request:

(i) The names of treatment providers and the treatment provided; and

(ii) Emergency contact information.

(c) The MHP must document all of the following in the individual's clinical record:

(i) All the information obtained in (a) and (b) of this subsection.

(ii) Sufficient information to demonstrate medical necessity. Medical necessity is defined in the state plan as "A term for describing a requested service which is reasonably calculated to prevent, diagnose, correct, cure, alleviate or prevent the worsening of conditions in the recipient that endanger life, or cause suffering or pain, or result in illness or infirmity, or threaten to cause or aggravate a handicap, or cause physical deformity or malfunction, and there is no other equally effective, more conservative or substantially less costly course of treatment available or suitable for the person requesting service. For the purpose of this chapter "course of treatment" may include mere observation, or where appropriate, no treatment at all."

(iii) Sufficient clinical information to justify a provisional diagnosis using criteria in the current and applicable Diagnostic and Statistical Manual of Mental Disorders (DSM-5).

(3) Each individual must receive a health care screening to determine the individual's health care needs.

(a) The health care screening instrument must be provided by a licensed health care provider defined in WAC 246-337-005(22). A licensed health care provider must be available to staff for staff consultation twenty-four hours a day, seven days a week.

(b) The individual's clinical record must contain the results of the health care screening.

(4) A qualified staff member according to WAC 388-877-1144(4) must coordinate with the individual's current treatment provider, if applicable, to assure continuity of care during admission and upon discharge.

(5) Each individual's clinical record must:

(a) Contain a statement regarding the individual circumstances and events that led to the individual's admission to the facility;

(b) Document the admission date and time;

(c) Contain the results of the health care screening required in subsection (3) of this section;

(d) Document the date and time of a referral to a designated crisis responder (DCR), if a referral was made;

(e) Document the date and time of release, or date and time the twelve-hour hold ended; and

(f) Document any use of seclusion or restraint and include:

(i) Documentation that the use of either seclusion, or restraint, or both, occurred only due to the individual being an imminent danger to self or others; and

(ii) A description of the less restrictive measures that were tried and found to be ineffective.

(6) A triage facility that declares any intent to provide seclusion, or restraint, or both, to an individual may do so only to the extent necessary for the safety of others and in accordance with WAC 246-322-180, 246-337-110, and 246-320-271. See also WAC 388-877-1144 (3)(g).

(7) A triage facility must document the efforts and services provided to meet the individual's triage stabilization plan.

(8) A triage facility must document the date, time, and reason an individual's admission status changed from involuntary to voluntary.

NEW SECTION

WAC 388-877-1148 Mental health inpatient services—Triage—Stabilization plan. A triage stabilization plan must be developed for each individual voluntarily or involuntarily admitted to a triage facility for longer than twenty-four hours. For an individual admitted twenty-four hours or less, the facility must document the results of the assessment performed by a mental health professional (MHP) required under WAC 388-877-1146.

(1) The triage stabilization plan must:

(a) Be developed collaboratively with the individual within twenty-four hours of admission;

(b) Either improve or resolve the individual's crisis, or both in the least restrictive manner possible;

(c) Be written in a language that is understandable to the individual or the individual's support system, or both, if applicable;

(d) Be mindful of the individual's culture, life style, economic situation, and current mental and physical limitation;

(e) Have goals that are relevant to the presenting crisis and demonstrate how they impact the crisis by improving the individual's ability to function;

(f) Include any recommendation for treatment from the mental health professional (MHP) assessment provided within three hours of the individual's arrival at the facility; and

(g) Include:

(i) The date and time the designated crisis responder (DCR) evaluated the individual in accordance with the detention criteria under chapter 71.05 RCW; and

(ii) The DCR's determination of whether the individual should be detained.

(2) The individual's clinical record must:

(a) Contain a copy of the triage stabilization plan;

(b) Contain charting that demonstrates how requirements of the individual's triage stabilization were met; and

(c) Document the services provided to the individual.

NEW SECTION

WAC 388-877-1150 Mental health inpatient services—Triage—Discharge. A triage facility must:

(1) Provide discharge services for each individual:

(a) Voluntarily admitted to the facility; or

(b) Involuntarily admitted to the facility if the individual is not transferred to another facility;

(2) Coordinate with the individual's current treatment provider, if applicable, to transition the individual back to the provider; and

(3) Develop a discharge plan and follow-up services from the triage facility that includes:

(a) The name, address, and telephone number of the provider;

(b) The designated contact person; and

(c) The appointment date and time for the follow-up services, if appropriate.

NEW SECTION

WAC 388-877-1152 Mental health inpatient services—Triage—Involuntary. An agency that elects to provide triage involuntary services must meet all of the following requirements:

(1) The agency must have a memo of understanding developed in consultation with local law enforcement agencies, which details the population that the facility has capacity to serve. The memo of understanding must include, at a minimum, a description of the facility's:

(a) Capacity to serve individuals with any medication, medical, or accommodation needs;

(b) Capacity to serve individuals with behavioral management needs;

(c) Ability to provide either seclusion, or restraint, or both, to individuals;

(d) Notification procedures for discharge of individuals; and

(e) Procedures for notifying the appropriate law enforcement agency of an individual's release, transfer, or hold for up to twelve hours to allow the peace officer to reclaim the individual.

(2) Agencies must have written procedures to ensure all of the following for individuals brought to a triage involuntary placement facility by a peace officer:

(a) An individual detained by the designated crisis responder (DCR) under chapter 71.05 RCW with a confirmed admission date to an evaluation and treatment facility, may

remain at the triage facility until admitted to the evaluation and treatment facility.

(i) The individual may not be detained to the triage facility; and

(ii) An individual who agrees to a voluntary stay must provide a signature that documents the agreement.

(b) The individual is examined by a mental health professional (MHP) within three hours of the individual's arrival at the facility, and the examination includes an assessment to determine if a DCR evaluation is also required.

(c) If it is determined a DCR evaluation is required, the DCR must evaluate the individual within twelve hours of arrival. The DCR determines whether the individual:

(i) Meets detention criteria under chapter 71.05 RCW; or

(ii) Agrees to accept voluntary admission by providing their signature agreeing to voluntary treatment.

(3) Agencies must ensure the clinical record includes all of the following for individuals involuntarily admitted to a triage involuntary placement facility based on a peace officer-initiated twelve-hour hold:

(a) The date and time the individual arrived at the facility and the date and time the examination by the mental health professional (MHP) occurred. The examination must occur within three hours of the individual's arrival to the facility.

(b) The peace officer's:

(i) Determination for cause to have the individual transported to the facility;

(ii) Request to be notified if the individual leaves the facility and how the peace officer is to be contacted, or documentation of other person(s) permitted to be contacted, such as the shift supervisor of the law enforcement agency or dispatcher; and

(iii) Request that the individual be held for the duration of the twelve hours to allow the peace officer sufficient time to return and make a determination as to whether or not to take the individual into custody.

(c) A copy of the evaluation if the individual is determined by a DCR to meet detention criteria under chapter 71.05 RCW.

NEW SECTION

WAC 388-877-1154 Mental health inpatient services—Competency evaluation and restoration. A behavioral health agency may provide competency evaluation and restoration treatment services to individuals under chapter 10.77 RCW when the department's division of behavioral health and recovery (DBHR) certifies the services.

(1) In addition to meeting the agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0100 through 388-877-0680 and the inpatient services requirements in WAC 388-877-1118 through 388-877-1132, an agency providing competency evaluation and restoration services must be licensed by the department of health as:

(a) A residential treatment facility consistent with chapter 246-337 WAC;

(b) A general hospital consistent with chapter 246-320 WAC;

(c) A private psychiatric hospital consistent with chapter 246-322 WAC; or

(d) An inpatient evaluation and treatment facility as provided in WAC 388-877-1134 and consistent with chapter 246-337 WAC.

(2) The administrative policies and procedures must include:

(a) Designation of a psychiatrist as the professional person in charge of clinical services at the agency;

(b) Procedures to assure the protection of individual participant rights in WAC 388-877-1156; and

(c) Procedures to assure that seclusion and restraint are used only to the extent necessary to ensure the safety of the individual see WAC 388-877-1158.

(3) The clinical record must include all of the following:

(a) A copy of the court order and charging documents. If the order is for competency restoration treatment and the competency evaluation was provided by a qualified expert or professional person who was not designated by the secretary, a copy of all previous court orders related to competency or criminal insanity provided by the state and a copy of any evaluation reports must be included.

(b) A copy of the discovery materials, including, at a minimum, a statement of the individual's criminal history.

(c) A copy of the individual's medical clearance information.

(d) All diagnostic and therapeutic services prescribed by the attending clinical staff members.

(e) Specific targets and strategies for restoring competency to include periodic assessments of gains on these targets.

(f) Participation of a multidisciplinary team that includes at a minimum:

(i) A physician, advanced registered nurse practitioner (ARNP), or physician assistant certified (PA-C);

(ii) A nurse, if the person in (f)(i) of this subsection is not an ARNP; and

(iii) A mental health professional.

(g) Participation of other multidisciplinary team members, which may include a psychologist and chemical dependency professional.

(h) All assessments and justification for the use of seclusion or restraint.

(4) The initial assessment must include:

(a) The individual's:

(i) Identifying information;

(ii) Specific barriers to competence;

(iii) Medical provider's name or medical providers' names;

(iv) Medical concerns;

(v) Medications currently taken;

(vi) Brief mental health history; and

(vii) Brief substance use history, including tobacco use;

(b) The identification of any risk of harm to self and others, including suicide and homicide; and

(c) Treatment recommendations or recommendations for additional program-specific assessment.

(5) To determine the nature of the disorder and the treatment necessary, the agency must ensure that the individual

receives the following assessments and document in the client's record the date provided:

(a) A health assessment of the individual's physical condition to determine if the individual needs to be transferred to an appropriate hospital for treatment;

(b) An examination and medical evaluation within twenty-four hours by a physician, advanced registered nurse practitioner, or physician assistant;

(c) A psychosocial evaluation by a mental health professional; and

(d) A competency to stand trial evaluation conducted by a licensed psychologist, or a copy of a competency to stand trial evaluation using the most recent competency evaluation, if an evaluation has already been conducted.

(6) If a state hospital transfers an individual to an agency for competency restoration treatment, the agency must review the individual's completed admission assessment from the state hospital to assure it meets the requirements of subsection (3) of this section for initial assessments. The agency must update the assessment as needed. If the state hospital has not completed or has only partially completed an assessment for the individual, the agency must complete the assessment according to the requirements in subsections (2) and (3) of this section.

(7) The agency must ensure the individual service plan is completed within seven days of admission and is updated every ninety days.

NEW SECTION

WAC 388-877-1156 Mental health inpatient services—Competency evaluation and restoration—Rights.

(1) An agency providing competency evaluation and restoration treatment services must develop a statement of individual participant rights to ensure an individual's rights are protected. The statement must incorporate at a minimum all of the following. You have the right to:

(a) Receive services without regard to race, creed, national origin, religion, gender, sexual orientation, age or disability;

(b) Practice the religion of choice as long as the practice does not infringe on the rights and treatment of others or the treatment services and, as an individual participant, the right to refuse participation in any religious practice;

(c) Reasonable accommodation in case of sensory or physical disability, limited ability to communicate, limited English proficiency, or cultural differences;

(d) Respect, dignity and privacy, except that agency staff members may conduct reasonable searches to detect and prevent possession or use of contraband on the premises;

(e) Be free of sexual harassment;

(f) Be free of exploitation, including physical and financial exploitation;

(g) Have all clinical and personal information treated in accord with state and federal confidentiality rules and laws;

(h) Review your clinical record in the presence of the administrator or the administrator's designee and the opportunity to request amendments or corrections;

(i) Receive a copy of the agency complaint and grievance procedures upon request and to lodge a complaint or

grievance with the agency if you believe your rights have been violated; and

(j) File a complaint with the department when you believe the agency has violated a Washington Administrative Code (WAC) requirement that regulates facilities.

(2) Each agency must ensure the applicable individual participant rights described in subsection (1) of this section are:

(a) Provided in writing to each individual on or before admission;

(b) Posted in public areas;

(c) Available in alternative formats for an individual who is visually impaired;

(d) Translated to a primary or preferred language identified by an individual who does not speak English as the primary language, and who has a limited ability to read, speak, write, or understand English; and

(e) Available to any individual upon request.

(3) Each agency must ensure all research concerning an individual whose cost of care is publicly funded is done in accordance with chapter 388-04 WAC, the protection of human research subjects, and other applicable state and federal rules and laws.

(4) In addition to the requirements in this section, each agency enrolled as either a medicare or medicaid provider, or both, must ensure an individual seeking or participating in competency evaluation or restoration treatment services, or the person legally responsible for the individual is informed of the medicaid rights at time of admission in a manner that is understandable to the individual or legally responsible person.

NEW SECTION

WAC 388-877-1158 Mental health inpatient services—Competency evaluation and restoration—Seclusion and restraint. (1) An individual receiving either competency evaluation or restoration treatment services, or both has the right to be free from seclusion and restraint, including chemical restraint except as otherwise provided in this section or otherwise provided by law. The agency must do all of the following:

(a) Develop, implement, and maintain policies and procedures to ensure that seclusion and restraint procedures are used only to the extent necessary to ensure the safety of an individual and in accordance with WAC 246-322-180 or 246-337-110, whichever is applicable.

(b) Ensure that the use of seclusion or restraint occurs only when there is imminent danger to self or others and less restrictive measures have been determined to be ineffective to protect the individual or other from harm and the reasons for the determination are clearly documented in the individual's clinical record.

(c) Ensure staff members notify and receive authorization by a physician, physician assistant (PA) or advanced registered nurse practitioner (ARNP) within one hour of initiating an individual's seclusion or restraint.

(d) Ensure the individual is informed of the reasons for use of seclusion or restraint and the specific behaviors which

must be exhibited in order to gain release from a seclusion or restraint procedure.

(e) Ensure that an appropriate clinical staff member observes the individual at least every fifteen minutes and the observation is recorded in the individual's clinical record.

(f) If the use of seclusion or restraint exceeds twenty-four hours, ensure that a physician has assessed the individual and has written a new order if the intervention will be continued. This procedure must be repeated for each twenty-four hour period that seclusion or restraint is used.

(2) The agency must ensure all assessments and justification for the use of either seclusion or restraint, or both, are documented in the individual's clinical record.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-810-005	What is the purpose of this chapter?
WAC 388-810-010	What definitions apply to this chapter?
WAC 388-810-020	What are the qualifications to be a county chemical dependency program coordinator?
WAC 388-810-030	What are the qualifications to be a county-designated chemical dependency specialist?
WAC 388-810-040	Who determines the service priorities for the county chemical dependency prevention, treatment, and support program?
WAC 388-810-050	How are available funds allocated for the county chemical dependency program?
WAC 388-810-060	How much money can a county claim for the administration of its chemical dependency prevention, treatment, and support program?
WAC 388-810-070	How will funds be made available to the county?
WAC 388-810-080	May a county subcontract for chemical dependency prevention, treatment, and support services?
WAC 388-810-090	How does a county request an exemption?
WAC 388-865-0500	Inpatient evaluation and treatment facilities.
WAC 388-865-0511	Evaluation and treatment facility certification and fee requirements.
WAC 388-865-0520	Certification based on deemed status.

WAC 388-865-0531	Exception to rule—Long-term certification.	WAC 388-865-0765	Use of seclusion and restraint procedures within the crisis stabilization unit.
WAC 388-865-0536	Standards for administration—Inpatient evaluation and treatment facilities.	WAC 388-865-0770	Assessment and stabilization services—Documentation requirements.
WAC 388-865-0541	Admission and intake evaluation.	WAC 388-865-0775	Qualification requirements for staff.
WAC 388-865-0545	Use of seclusion and restraint procedures—Adults.	WAC 388-865-0780	Posting of rights.
WAC 388-865-0546	Use of seclusion and restraint procedures—Children.	WAC 388-865-0785	Rights related to antipsychotic medications.
WAC 388-865-0547	Plan of care/treatment.	WAC 388-865-0800	Triage facility—Definitions.
WAC 388-865-0551	Qualification requirements for staff.	WAC 388-865-0810	Triage facility—General requirements for certification.
WAC 388-865-0561	Posting of consumer rights.	WAC 388-865-0820	Triage facility—Memo of understanding and other requirements.
WAC 388-865-0566	Rights of consumers receiving involuntary services.	WAC 388-865-0830	Triage facility—Seclusion and restraint.
WAC 388-865-0570	Rights related to antipsychotic medication.	WAC 388-865-0840	Triage facility—Admission, assessment, and clinical record requirements for voluntary and involuntary admissions.
WAC 388-865-0575	Special considerations for serving minor children.	WAC 388-865-0850	Triage facility—Triage stabilization plan.
WAC 388-865-0576	Minor children ages thirteen through seventeen—Admission, treatment, and discharge without parental consent—Evaluation and treatment facility.	WAC 388-865-0860	Triage facility—Discharge services for voluntary and involuntary admissions.
WAC 388-865-0578	Minor children seventeen years of age and younger—Admission, evaluation, and treatment without the minor's consent—Evaluation and treatment facility.	WAC 388-865-0870	Triage facility—Staff requirements.
WAC 388-865-0580	Child long-term inpatient treatment facilities.	WAC 388-865-0880	Triage facility—Posting of individual rights.
WAC 388-865-0585	Petition for the right to possess a firearm.	WAC 388-865-0900	Competency evaluation and restoration treatment services—General.
WAC 388-865-0700	Clubhouse certification.	WAC 388-865-0910	Competency evaluation and restoration treatment services—Certification and fee requirements.
WAC 388-865-0705	Definitions.	WAC 388-865-0920	Competency evaluation and restoration treatment services—Administrative policies and procedures.
WAC 388-865-0710	Required clubhouse components.	WAC 388-865-0930	Competency evaluation and restoration treatment services—Agency staff requirements.
WAC 388-865-0715	Management and operational requirements.	WAC 388-865-0940	Competency evaluation and restoration treatment services—Individual participant rights.
WAC 388-865-0720	Certification process.	WAC 388-865-0950	Competency evaluation and restoration treatment services—Admission and initial assessment.
WAC 388-865-0725	Employment-related services—Requirements.		
WAC 388-865-0750	Crisis stabilization unit certification.		
WAC 388-865-0755	Standards for administration—Crisis stabilization units.		
WAC 388-865-0760	Admission and intake evaluation.		

WAC 388-865-0960	Competency evaluation and restoration treatment services—Individual service plan.	WAC 388-877A-0197	Outpatient mental health services—Residential treatment facility (RTF).
WAC 388-865-0970	Competency evaluation and restoration treatment services—Seclusion and restraint.	WAC 388-877A-0200	Crisis mental health services—General.
WAC 388-877-0530	Personnel—Agency requirements for volunteers and student practicum.	WAC 388-877A-0210	Crisis mental health services—Agency staff requirements.
WAC 388-877-0630	Clinical—Individual clinical record system.	WAC 388-877A-0220	Crisis mental health services—Record content and documentation requirements.
WAC 388-877A-0100	Outpatient mental health services—General.	WAC 388-877A-0230	Crisis mental health services—Telephone support services.
WAC 388-877A-0110	Outpatient mental health services—Agency staff requirements.	WAC 388-877A-0240	Crisis mental health services—Outreach services.
WAC 388-877A-0120	Outpatient mental health services—Clinical record content and documentation.	WAC 388-877A-0260	Crisis mental health services—Stabilization services.
WAC 388-877A-0130	Outpatient mental health services—Assessment standards.	WAC 388-877A-0270	Crisis mental health services—Peer support services.
WAC 388-877A-0135	Outpatient mental health services—Individual service plan.	WAC 388-877A-0280	Crisis mental health services—Emergency involuntary detention services.
WAC 388-877A-0138	Outpatient mental health services—Individual treatment services.	WAC 388-877A-0300	Recovery support services that require program-specific certification—General.
WAC 388-877A-0140	Outpatient mental health services—Brief intervention treatment.	WAC 388-877A-0310	Recovery support services requiring program-specific certification—Agency staff requirements.
WAC 388-877A-0150	Outpatient mental health services—Group therapy services.	WAC 388-877A-0320	Recovery support services requiring program-specific certification—Clinical record content and documentation.
WAC 388-877A-0155	Outpatient mental health services—Family therapy services.	WAC 388-877A-0330	Recovery support services that require program-specific certification—Supported employment services.
WAC 388-877A-0170	Outpatient mental health services—Case management services.	WAC 388-877A-0335	Recovery support services that require program-specific certification—Supportive housing services.
WAC 388-877A-0180	Optional outpatient mental health services requiring program-specific certification—Psychiatric medication services.	WAC 388-877A-0340	Recovery support services requiring program-specific certification—Peer support services.
WAC 388-877A-0190	Optional outpatient mental health services requiring program-specific certification—Day support services.	WAC 388-877A-0350	Recovery support services requiring program-specific certification—Wraparound facilitation services.
WAC 388-877A-0195	Optional outpatient mental health services requiring program-specific certification—Less restrictive alternative (LRA) support services.	WAC 388-877A-0360	Recovery support services requiring program-specific certification—Medication support services.

WAC 388-877A-0370	Recovery support services requiring program-specific certification—Applied behavior analysis (ABA) services.	WAC 388-877B-0310	Substance use disorder outpatient treatment services—Agency staff requirements.
WAC 388-877B-0100	Substance use disorder detoxification services—General.	WAC 388-877B-0320	Substance use disorder outpatient treatment services—Clinical record content and documentation.
WAC 388-877B-0110	Substance use disorder detoxification services—Agency staff requirements.	WAC 388-877B-0330	Substance use disorder outpatient treatment services—Additional assessment standards.
WAC 388-877B-0120	Substance use disorder detoxification services—Clinical record content and documentation requirements.	WAC 388-877B-0340	Substance use disorder outpatient treatment services—Noncompliance reporting requirements.
WAC 388-877B-0130	Substance use disorder detoxification services requiring program-specific certification—Youth detoxification services.	WAC 388-877B-0350	Substance use disorder outpatient treatment services requiring program-specific certification—Level II intensive outpatient services.
WAC 388-877B-0200	Substance use disorder residential treatment services—General.	WAC 388-877B-0360	Substance use disorder outpatient treatment services requiring program-specific certification—Level I outpatient treatment services.
WAC 388-877B-0210	Substance use disorder residential treatment services—Agency staff requirements.	WAC 388-877B-0370	Substance use disorder outpatient treatment services—Substance use disorder counseling subject to RCW 46.61.5056.
WAC 388-877B-0220	Substance use disorder residential treatment services—Clinical record content and documentation requirements.	WAC 388-877B-0400	Substance use disorder opiate substitution treatment services—General.
WAC 388-877B-0230	Substance use disorder residential treatment services—Additional assessment standards.	WAC 388-877B-0405	Substance use disorder opiate substitution treatment services—Certification.
WAC 388-877B-0240	Substance use disorder residential treatment services—Noncompliance reporting requirements.	WAC 388-877B-0410	Substance use disorder opiate substitution treatment services—Agency staff requirements.
WAC 388-877B-0250	Substance use disorder residential treatment services requiring program-specific certification—Intensive inpatient services.	WAC 388-877B-0420	Substance use disorder opiate substitution treatment services—Clinical record content and documentation requirements.
WAC 388-877B-0260	Substance use disorder residential treatment services requiring program-specific certification—Recovery house.	WAC 388-877B-0430	Substance use disorder opiate substitution treatment services—Additional assessment standards.
WAC 388-877B-0270	Substance use disorder residential treatment services requiring program-specific certification—Long-term treatment services.	WAC 388-877B-0440	Substance use disorder opiate substitution treatment services—Program physician responsibility.
WAC 388-877B-0280	Substance use disorder residential treatment services requiring program-specific certification—Youth residential services.	WAC 388-877B-0450	Substance use disorder opiate substitution treatment services—Medication management.
WAC 388-877B-0300	Substance use disorder outpatient treatment services—General.	WAC 388-877B-0500	Substance use disorder assessment services—General.

WAC 388-877B-0510	Substance use disorder assessment only services—Agency staff requirements.	WAC 388-877B-0730	Substance use disorder recovery support services that require program-specific certification—Supported employment services.
WAC 388-877B-0530	Substance use disorder assessment only services—Additional assessment standards.	WAC 388-877B-0740	Substance use disorder recovery support services that require program-specific certification—Supportive housing services.
WAC 388-877B-0540	Substance use disorder assessment services—Noncompliance reporting requirements.	WAC 388-877C-0100	Problem and pathological gambling services—General.
WAC 388-877B-0550	Substance use disorder assessment only services requiring program-specific certification—DUI assessment services.	WAC 388-877C-0110	Problem and pathological gambling services—Agency staff requirements.
WAC 388-877B-0600	Substance use disorder information and assistance services—General.	WAC 388-877C-0120	Problem and pathological gambling services—Clinical record content and documentation requirements.
WAC 388-877B-0610	Substance use disorder information and assistance services—Agency staff requirements.	WAC 388-877C-0130	Problem and pathological gambling services—Additional assessment standards.
WAC 388-877B-0630	Substance use disorder information and assistance services requiring program-specific certification—Alcohol and drug information school services.		
WAC 388-877B-0640	Substance use disorder information and assistance services requiring program-specific certification—Information and crisis services.		
WAC 388-877B-0650	Substance use disorder information and assistance services requiring program-specific certification—Emergency service patrol services.		
WAC 388-877B-0660	Substance use disorder information and assistance services requiring program-specific certification—Screening and brief intervention services.		
WAC 388-877B-0700	Substance use disorder recovery support services that require program-specific certification—General.		
WAC 388-877B-0710	Substance use disorder recovery support services that require program-specific certification—Agency staff requirements.		
WAC 388-877B-0720	Substance use disorder recovery support services that require program-specific certification—Clinical record content and documentation.		

WSR 18-08-002**PERMANENT RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed March 21, 2018, 3:28 p.m., effective April 21, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is amending WAC 388-106-1720(3) Am I eligible for supportive housing funded services?, to change the word "and" to "or." This change is for housekeeping purposes only. The department filed a CR-105 on September 19, 2017, as WSR 17-19-087.

Citation of Rules Affected by this Order: Amending WAC 388-106-1720.

Statutory Authority for Adoption: RCW 74.08.090.

Adopted under notice filed as WSR 17-19-087 on September 19, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: March 21, 2018.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-11-016, filed 5/9/17, effective 6/9/17)

WAC 388-106-1720 Am I eligible for supportive housing funded services? You are eligible for supportive housing services if you meet the following criteria:

- (1) Meet functional eligibility as defined in WAC 388-106-0210, 388-106-0277, 388-106-0310, 388-106-0338, or 388-106-1410;
- (2) Meet financial eligibility as defined in chapters 182-513 and 182-515 WAC;
- (3) Have a planned discharge or diversion from Eastern or Western State Hospital; ~~((and))~~ or
- (4) You meet one or more of the following criteria:
 - (a) Chronically homeless;
 - (b) History of frequent or lengthy institutional stays;
 - (c) History of frequent or lengthy adult residential care or treatment stays;
 - (d) Experienced frequent turnover of in-home caregivers or providers;
 - (e) A PRISM risk score of at least 1.5.

WSR 18-08-003
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-46—Filed March 21, 2018, 4:13 p.m., effective April 21, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is amending its rules based on the formal recommendations of the federal National Marine Fisheries Service Eulachon Recovery Plan in order to reduce the bycatch of eulachon smelt which is listed under the Endangered Species Act as a threatened species.

Citation of Rules Affected by this Order: Amending WAC 220-340-500.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.055, and 77.12.047.

Adopted under notice filed as WSR 18-01-093 on December 18, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making:

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 17, 2018.

Joe Stohr
Director

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-340-500 Commercial ocean pink shrimp trawl fishery—Coastal waters. It is unlawful to fish for, possess or deliver ocean pink shrimp taken for commercial purposes from the waters of the Exclusive Economic Zone, except as provided for in this section:

Area

(1) It is unlawful to fish for ocean pink shrimp within the territorial boundaries of the state. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

Season

(2) It is unlawful to fish for, take, or possess on board a fishing vessel, pink shrimp, except during the following time: The open season for trawl gear is April 1 through October 31 of each year. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

Gear

(3) It is unlawful to fish with trawl gear for pink shrimp for commercial purposes unless an approved by-catch reduction device is used in each net. A by-catch reduction device, also known as a finfish excluder, uses a rigid panel or grate of narrowly spaced bars to guide fish out of an escape hole forward of the panel, generally in the top of the net. An approved by-catch reduction device must meet the following criteria:

(a) The exterior circumference of the rigid panel must fit completely within the interior circumference of the trawl net;

(b) None of the openings between the bars in the rigid panel may exceed 0.75 inches;

(c) The escape hole must, when spread open, expose a hole of at least 100 square inches; and

(d) The escape hole must be forward of the rigid panel and must begin within four meshes of the furthest aft point of attachment of the rigid panel to the net.

(4) It is unlawful to modify by-catch reduction devices in any way that interferes with their ability to allow fish to escape from the trawl, except as provided by special gear permit as described in subsection (5) of this section.

(5) Testing of by-catch reduction devices is allowed by special gear permit only, consistent with the terms and conditions of the permit.

(6) It is unlawful to remove trawl gear from the vessel prior to offloading shrimp without advance notification to WDFW enforcement. To provide advance notification, contact 360-902-2936, and then press zero when the recording begins.

(7) It is unlawful to fish with trawl gear for pink shrimp for commercial purposes unless footcandle lighting devices that

have been approved by the department are used in each net. A list of approved footrope lighting devices is available from the department. Footrope lighting devices must meet the following criteria:

(a) Lighting devices must be operational;

(b) Lighting devices must be securely attached within six inches of the forward leading edge of the bottom panel of trawl netting; and

(c) Each trawl net must have a minimum of five lighting devices, spaced four feet apart in the central sixteen feet of each net.

(8) It is unlawful to modify footrope lighting devices or device placement on the footrope in any way inconsistent with subsection (7)(c) of this section, except as provided by special gear permit as described in subsection (9) of this section.

(9) Testing of footrope lighting devices or placement on the footrope is allowed by special gear permit only, consistent with the terms and conditions of the permit.

(10) A violation of subsections (3) through (6) of this section is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(~~(8)~~) (11) It is unlawful to land or deliver pink shrimp to an original receiver that exceeds the following count per pound restriction: The count per pound must average no more than 160 shrimp per pound for a minimum of two samples, increasing at a rate of one sample per one thousand pounds landed or in possession, up to a maximum requirement of twenty samples. Such samples shall consist of at least one pound each of whole, unbroken shrimp taken at random from throughout the individual load landed or in possession. This landing restriction shall apply only to loads of 3,000 pounds of shrimp or more. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

Incidental catch

(~~(9)~~) (12) It is unlawful to take salmon incidental to any shrimp trawl fishery.

(~~(10)~~) (13) It is unlawful to retain any bottomfish species taken incidental to any shrimp trawl fishery, except as provided for in WAC 220-355-100.

(~~(11)~~) (14) It is unlawful to retain any species of shellfish, except that it is permissible to:

(a) Retain up to 50 pounds round weight of other shrimp species taken incidentally in the ocean pink shrimp fishery; and

(b) Retain octopus or squid.

(~~(12)~~) (15) A violation of subsections (~~(9)~~ through (~~11~~)) (12) through (14) of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

License

(~~(13)~~) (16) An ocean pink shrimp delivery license is required to operate the gear provided for in this section, and it allows the operator to retain shrimp taken in the waters of the Exclusive Economic Zone.

A violation of this subsection is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

Permit

(~~(14)~~) (17) It is unlawful to fish for, retain, land, or deliver shrimp taken with trawl gear without a valid shrimp trawl fishery permit.

(~~(15)~~) (18) It is unlawful to take, retain, land, or deliver any shrimp or groundfish taken with trawl gear without complying with all provisions of a shrimp trawl fishery permit.

(~~(16)~~) (19) A violation of subsection (~~(14)~~ or (~~15~~)) (17) or (18) of this section is punishable under RCW 77.15.-750.

WSR 18-08-007 PERMANENT RULES PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed March 22, 2018, 10:01 a.m., effective April 22, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amends WAC 181-77-031 and 181-77-041 to comply with "STEM" requirements in RCW 28A.410.278 and clarifying career and technical education requirements for university and business/industry routes.

Citation of Rules Affected by this Order: Amending WAC 181-77-031 and 181-77-041.

Statutory Authority for Adoption: RCW 28A.410.220.

Adopted under notice filed as WSR 18-02-106 on January 3, 2018.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street S.E., Olympia, WA 98504, phone 360-725-6238, fax 360-586-4548, email david.brenna@k12.wa.us, web site www.pesb.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

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Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 2, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 22, 2018.

David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 16-23-064, filed 11/14/16, effective 12/15/16)

WAC 181-77-031 Requirements for candidates seeking career and technical education certification who have completed approved college/university programs in a career and technical education endorsement area. Candi-

dates shall complete the following requirements in addition to those set forth in WAC 181-79A-150, 181-79A-155, 181-82-322, and chapter 181-78A WAC.

(1) Initial.

(a) Candidates for the initial certificate shall hold a baccalaureate degree from a regionally accredited college or university which includes a minimum of forty-five quarter hours of study in the specific career and technical education subject area for which certification is sought.

(b) Candidates for the initial certificate shall demonstrate competency in one or more of the ~~((specific endorsement areas of WAC 181-82-322))~~ career and technical education areas: Agriculture education, business and marketing education, family and consumer sciences education, and technology education, as listed in WAC 181-77-005.

(c) Candidates for the initial certificate shall complete a state approved career and technical education teacher training program through a regionally accredited college or university which shall include completion of student teaching in the relevant career and technical education subject area.

(d) Candidates for the initial certificate shall provide documentation of one year of paid occupational experience (two thousand hours) in the specific career and technical education field for which certification is sought. If all or part of the two thousand hours is more than six years old, candidates must complete an additional three hundred hours of recent (occurring in the last two years) occupational experience. The candidate must also apply for the residency teacher certificate or add the subject area to their basic education certificate in their subject area, take and pass the content knowledge test(s) for subject area, be issued the residency teacher certificate before the CTE initial can be issued.

(e) In addition, candidates for initial certification in career choices or coordinator of worksite learning shall demonstrate competency in knowledge and skills described in WAC 181-77A-180.

(2) Initial renewal. Candidates for renewal of the initial certificate must complete three quarter hours of credit or thirty clock hours of career and technical education educator training in the subject area certified to teach since the initial certificate was issued or renewed.

(3) Continuing.

(a) Candidates for the continuing certificate shall have in addition to the requirements for the initial certificate at least nine quarter hours or ninety clock hours of career and technical education educator training in the career and technical education subject area to be certified completed subsequent to the conferral of the baccalaureate degree.

(b) Candidates for the continuing certificate shall provide as a condition for the issuance of a continuing certificate documentation of two years of teaching/coordination in the career and technical education subject area certified to teach with an authorized employer (i.e., school district(s) or skills center(s)).

(4) Continuing certificate renewal. Candidates for renewal of the continuing certificate shall complete since the previous continuing certificate was issued one of the following:

(a) Six quarter hours or sixty clock hours of career and technical education educator training;

(b) Three quarter hours or thirty clock hours of career and technical education educator training and three quarter hours or thirty clock hours of technical education/upgrading;

(c) Three quarter hours or thirty clock hours of career and technical education educator training and three hundred hours of occupational experience;

(d) ~~((Provided, beginning September 1, 2014,))~~ Continuing education or professional growth plans for teachers at the elementary and secondary levels in STEM-related subjects must include a specific focus on the integration of science, mathematics, technology, and engineering instruction as per RCW 28A.410.2212. This renewal requirement applies to career and technical education endorsement((*) areas. ((Applications for certificate renewal dated September 1, 2019, and beyond must demonstrate completion of at least fifteen continuing education credit hours, or at least one goal from an annual professional growth plan, with an emphasis on the integration of science, technology, engineering and mathematics;)) This STEM continuing education requirement for certificate renewal is as described in WAC 181-85-075(6);

(e) Provided, as per RCW 28A.410.278(2) ((beginning September 1, 2016)), in-service training, continuing education, or professional growth plans shall incorporate professional development on the revised teacher and principal evaluation systems under RCW 28A.405.100 as a requirement for renewal of continuing or professional level certificates. ((Applications for certificate renewal dated September 1, 2019, and beyond for all teachers must document completion of at least fifteen clock hours, or at least one goal from an annual professional growth plan, related to knowledge and competency of the teacher and principal evaluation criteria or system.)) This continuing education requirement related to the teacher and principal evaluation system is as described in WAC 181-85-075(7).

AMENDATORY SECTION (Amending WSR 16-23-064, filed 11/14/16, effective 12/15/16)

WAC 181-77-041 Requirements for candidates seeking career and technical education certification on the basis of business and industry work experience. Candidates for certification who have not completed approved programs set forth in ~~((WAC 181-82-322))~~ chapter 181-78A WAC shall complete the following requirements in addition to those set forth in WAC 181-79A-150 (1) and (2) and 181-79A-155 (1) and (2).

(1) Initial.

(a) Candidates for the initial certificate shall provide documentation of paid occupational experience in the specific career and technical education subcategory for which certification is sought: Provided, That individuals seeking the initial certification for the sole purpose of instruction of American sign language who are deaf, hard of hearing per RCW 43.20A.720, or ~~((who's))~~ whose primary method of communication is American sign language, may have the requirements for interpreter experience waived by the certification office of the superintendent of public instruction.

(i) Three years (six thousand hours) is required.

(ii) One year (two thousand hours) must be within the past six years. Candidates may use up to four thousand hours of teaching experience in the specialty area they are experienced in and the remaining two thousand hours must be from industry experience (nonteaching). For STEM, candidate may use all six thousand hours of teaching experience in science, technology, engineering and/or math in lieu of industry experience. For biomedical and biotechnology, candidates may use all six thousand hours of teaching experience in biology in lieu of industry experience.

(iii) If all or part of the two thousand hours is more than six years old, an additional three hundred hours of recent (occurring in the last two years) occupational experience is required.

(iv) Individuals seeking this certification solely for teaching American sign language must also hold or earn the national interpreter certification, certified deaf interpreter certificate, the American sign language teachers association certificate, the American sign language performance interview, or meet the standard required of interpreters for the deaf per RCW 28A.410.271.

(b) Candidates for the initial certificate shall complete a professional educator standards board approved program under WAC 181-77A-029 in which they demonstrate competence in the general standards for all career and technical education teacher certificate candidates pursuant to WAC 181-77A-165, which include but are not limited to knowledge and skills in the following areas:

- (i) General and specific safety;
- (ii) Career and technical education teaching methods;
- (iii) Occupational analysis;
- (iv) Course organization and curriculum design;
- (v) Philosophy of vocational education;
- (vi) Personal student development and leadership techniques.

(c) Candidates for the initial certificate shall also demonstrate knowledge and skills in the following areas:

- (i) School law;
- (ii) Issues related to abuse as specified in WAC 181-77A-165(7).

(d) In addition, candidates for initial certification in career choices or coordinator of worksite learning shall demonstrate competency in knowledge and skills described in WAC 181-77A-180.

(2) Initial renewal. Candidates for renewal of the initial certificate must complete three quarter hours of credit or thirty clock hours of career and technical education educator training in the subject matter certified to teach since the initial certificate was issued or renewed.

(3) Continuing.

(a) Candidates for the continuing certificate shall have in addition to the requirements for the initial certificate at least nine quarter hours or ninety clock hours of career and technical education educator training in the career and technical education subject matter to be certified completed subsequent to the issuance of the initial certificate.

(b) Candidates for the continuing certificate shall provide as a condition for the issuance of a continuing certificate documentation of two years of teaching/coordination in the career and technical education subject matter certified to

teach with an authorized employer (i.e., school district(s) or skills center(s)).

(4) Continuing certificate renewal.

(a) Candidates for renewal of the continuing certificate shall complete since the previous continuing certificate was issued one of the following:

(i) Six quarter hours or sixty clock hours of career and technical education educator training;

(ii) Three quarter hours or thirty clock hours of career and technical education educator training and three quarter hours or thirty clock hours of technical education/upgrading;

(iii) Three quarter hours or thirty clock hours of career and technical education educator training and three hundred hours of occupational experience.

(b) ~~((Provided, beginning September 1, 2014,))~~ Continuing education or professional growth plans for teachers at the elementary and secondary levels in STEM-related subjects must include a specific focus on the integration of science, mathematics, technology, and engineering instruction as per RCW 28A.410.2212. This renewal requirement applies to career and technical education endorsement((*) areas. ((Applications for renewal dated September 1, 2018, and beyond must demonstrate completion of at least fifteen continuing education credit hours, or at least one goal from an annual professional growth plan, with an emphasis on the integration of science, technology, engineering and mathematics.)) This STEM continuing education requirement for certificate renewal is as described in WAC 181-85-075(6).

(c) ~~Provided, as per RCW 28A.410.278(2) ((beginning September 1, 2016,))~~ in-service training, continuing education, or professional growth plans shall incorporate professional development on the revised teacher and principal evaluation systems under RCW 28A.405.100 as a requirement for renewal of continuing or professional level certificates. ((Applications for certificate renewal dated September 1, 2018, and beyond for all teachers must document completion of at least fifteen clock hours, or at least one goal from an annual professional growth plan, related to knowledge and competency of the teacher and principal evaluation criteria or system.)) This continuing education requirement related to the teacher and principal evaluation system is as described in WAC 181-85-075(7).

(d) Beginning January 2018, renewal of continuing certificates under this section specifically for teaching American sign language will require the national interpreter certification, certified deaf interpreter certificate, the American sign language teachers association certificate, or meet the standard required of interpreters of the deaf per RCW 28A.410-271.

WSR 18-08-013

PERMANENT RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Filed March 22, 2018, 4:11 p.m., effective April 22, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of this proposal is to revise internal WAC references and incorrect department contact information in current sections of chapter 220-650 WAC.

Citation of Rules Affected by this Order: Amending WAC 220-650-010, 220-650-030, 220-650-040, 220-650-050, 220-650-060, 220-650-070, 220-650-080, 220-650-100, 220-650-110, and 220-650-120.

Statutory Authority for Adoption: RCW 77.04.020, 77.12.045, 77.12.047, 77.120.040(5).

Adopted under notice filed as WSR 18-01-092 on December 18, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 10, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 22, 2018.

Joe Stohr
Director

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-650-010 Purpose, stakeholder consultation, and cooperative management. (1) Purpose.

(a) These rules apply to vessels as recognized under RCW 77.120.020. Owners or operators of vessels to which this chapter does not apply are encouraged to voluntarily comply to the extent possible.

(b) These rules are provided to fulfill the legislative general directives under chapter 77.120 RCW and the specific directives under RCW 77.120.030(3), "to ensure that the discharge of ballast water poses minimal risk of introducing nonindigenous species."

(c) As directed by statute and in response to scientific evidence gathered since the state ballast water management program was first established in 2000, the approach to meet this directive is to encourage vessel owners or operators to reduce the volume of ballast water discharged, phase-out the ballast water open sea exchange requirement, and replace open sea exchange with an effective ballast water discharge performance standard.

(d) The legislature, in recognizing the complexity, evolving science, and technological challenges of ballast water management, gave the department broad authority under RCW 77.120.030(3) and 77.120.040(5) to develop discharge standards that pose minimum risk of introducing nonindigenous species. To assure the legislature that this authority is applied in a transparent and accountable manner, the

department met the three key conditions required by statute. First, the rules were developed in consultation with advisors from the regulated industries and potentially affected parties as required in RCW 77.120.040(5) and as identified in subsection (2) of this section. Second, the rules were developed in consideration of the extent to which the requirement for a discharge performance standard is technologically and practically feasible. Third, the rules were developed to complement, to the extent practical and appropriate, current ballast water management regulations of the United States Coast Guard (USCG), the International Maritime Organization (IMO), and the state of Oregon.

(e) In the absence of a national discharge performance standard, these rules were developed to complement, and promote consistency along the west coast in accordance with, the West Coast Governor's Agreement on Ocean Health 2008 Action Plan, Action 2.3, and the Puget Sound Partnership's 2008 Action Agenda, Priority A.5.2, Near-term Actions 1 and 2. When a national discharge standard is developed, the department will assess these rules for consistency, as practical and appropriate.

(2) **Ballast water work group consultation.** The department will establish the ballast water work group (BWWG) or a similar forum to advise the department on developing, revising, and implementing chapter 77.120 RCW and this chapter regarding ballast water management. The department, at a minimum, will invite the participation of shipping interests, ports, shellfish growers, fisheries, environmental interests, citizens who have knowledge of the issues, and appropriate governmental representatives, including the USCG and the tribes per RCW 77.120.040(5).

To assist the department in making every reasonable effort to protect state waters from introduction of nonindigenous species, the BWWG may advise the department on:

(a) Issues to bring forward to the state invasive species council;

(b) Developing and implementing the ballast water management plan;

(c) Providing science-based recommendations and technical information;

(d) Adjusting laws, rules, or policies if and when necessary or advisable;

(e) Enhancing the predictability and stability of the process so that stakeholders can anticipate and prepare for change; and

(f) Working with regional and national ballast water regulators to strive for a coordinated and integrated program.

(3) **Cooperative ballast water management.** The department communicates and cooperates with the USCG and other federal and state agencies to standardize regulations to the extent practical and appropriate, minimize duplication of efforts, and share information. The goal is to provide transparency and accountability in the regulatory process, protect state resources, and facilitate collaboration among federal and state agencies. The department also communicates and cooperates to the extent practical and appropriate with international ballast water management entities. Agencies that the department works with directly include:

(a) The Washington department of ecology. Pursuant to RCW 77.120.030(3), the department of fish and wildlife will

consult and coordinate with the department of ecology on Clean Water Act issues related to ballast water management.

(b) The Washington department of health. The department of fish and wildlife will consult with the department of health on public health issues related to ballast water management.

(c) The Puget Sound partnership. Pursuant to chapter 90.71 RCW, the department will consult and coordinate with the Puget Sound partnership on biennial budget needs related to the ballast water program, cross-border coordination, policy, and research and monitoring needs to protect and restore Puget Sound by 2020.

(d) Tribes. Pursuant to RCW 77.120.040(5), the department of fish and wildlife will consult and coordinate with federally recognized Indian tribes in the state of Washington on ballast water management issues to assist in the protection of aquatic resources. The department will inform tribes of any ballast water management regulatory changes. The department also will notify tribes of any ballast water technologies as accepted under WAC (~~(220-150-060)~~) 220-650-100 and supply the tribes with available supporting documentation.

(e) State of Oregon. Pursuant to RCW 77.120.040(5), the department will consult and coordinate with the state of Oregon on ballast water management in the Columbia River system. The department will strive to enter into cooperative management agreements with the state of Oregon to implement provisions of Washington, Oregon, and other appropriate federal ballast water laws. The agreements may include, but are not limited to, arrangements for cooperative enforcement, inspection, research, and monitoring.

(f) United States Coast Guard (USCG). Pursuant to RCW 77.120.030(3) and 77.120.040 (5)(a), the department will strive to enter into cooperative management agreements with the USCG to implement ballast water management objectives. The agreements may include, but are not limited to, arrangements for cooperative enforcement, inspection, research, and monitoring.

(g) United States Environmental Protection Agency (EPA). The department, as practical and appropriate, will consult and coordinate with the EPA on Clean Water Act issues related to ballast water management.

(h) Pacific Coast states. Pursuant to RCW 77.120.040 (5)(a), the department will consult and coordinate with the Pacific Coast states of Alaska, California, Hawaii, and Oregon on ballast water issues. In general, this will be through the Pacific ballast water group or a similar cooperative forum.

(i) Canada. As practical and appropriate, the department will strive for consistency and cooperation with the Canadian government through the province of British Columbia or other appropriate venues to manage ballast water risks.

(j) International Maritime Organization (IMO). As practical and appropriate, the department will strive for consistency and cooperation with the IMO to manage ballast water risks.

(4) **Other state and federal laws.** Nothing in this chapter shall supersede more stringent state or federal regulations, including public health and Clean Water Act criteria. Nothing in these regulations negates the need to comply with other

state and federal regulations regarding the management of ballast water or any other vessel-related discharges.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-650-030 Reporting forms, waivers, safety exemptions, and recordkeeping. (1) **Purpose.** These rules apply to all vessels subject to ballast water management provisions under chapter 77.120 RCW. The intent of the state's ballast water management program is to minimize the risk of introducing nonindigenous species from ballast water and ballast tank sediment into Washington state waters. Reporting and recordkeeping are designed to assess a vessel owner or operator's compliance with, and monitor the effectiveness of, these regulations as defined in RCW 77.120.030, 77.120.040, 77.120.070, and 77.120.100. Nothing in this section negates the need to comply with any other state or federal regulations.

(2) **Ballast water reporting form requirements.**

(a) In general. Vessel owners or operators shall file ballast water management information using a Ballast Water Reporting Form (reporting form) that is acceptable to the USCG and prior to entering waters of the state whether or not they intend to discharge ballast water. Refer to WAC (~~(220-150-040)~~) 220-650-070 for interim exchange, WAC (~~(220-150-043)~~) 220-650-080 for interim exchange alternative, and WAC (~~(220-150-050)~~) 220-650-090 for discharge performance standard requirements. Once within waters of the state, vessel owners or operators shall file reporting forms for voyages between state ports. This is necessary for timely enforcement of regulations and to allow risk analysis by port. Vessel owners or operators who do not regularly discharge ballast water may apply for a reporting form waiver as directed in subsection (3) of this section.

Reporting forms will be used by the department to identify both random and high risk vessels for inspection and to monitor overall compliance, quantities, distribution, voyage patterns and other information associated with potential vessel-related introductions of nonindigenous species.

(b) Prior to entering waters of the state. At least twenty-four hours prior to entering waters of the state, vessel owners or operators must file a reporting form with the department. If filing twenty-four hours prior is not possible due to voyage distance or change in destination, vessel owners or operators must file at the time of first known or predictable Washington port visit. A vessel owner or operator filing a reporting form for a Columbia River visit and stating its destination as a state of Oregon port must file a new reporting form if its itinerary changes to a Washington port or for a subsequent voyage from an Oregon port to a Washington port. The reporting form should be completed according to the following instructions:

(i) The reporting form should only have information related to discharges expected into Washington state waters.

(ii) If submitting a USCG reporting form, it must be completed per USCG regulation under Title 33 C.F.R., Part 151.2041, for each port visit.

(iii) If submitting an IMO reporting form, it must be completed per USCG regulation under Title 33 C.F.R., Part

151.2045(11), and additional information must be included, showing the total number of tanks being discharged.

(c) Within waters of the state. After meeting the requirements of (b) of this subsection, a new reporting form must be filed by the vessel owner or operator for each subsequent port, if any, in waters of the state. Vessel owners or operators must file a new reporting form at least twenty-four hours prior to arrival at the next Washington port or at the time of first known or predictable port visit if filing twenty-four hours prior is not possible due to voyage distance or change in destination. A new reporting form does not need to be filed where:

(i) A vessel moves multiple times between an anchorage and the same port for which the discharge is accurately attributed on the reporting form; or

(ii) The ballast water or sediment to be discharged was taken up at the same port from where it originated within a single port visit and did not mix with ballast water or sediment from areas other than open sea waters.

(d) Amended reporting forms. Vessel owners or operators shall file an amended reporting form where there are information errors or where the results of actual operations are different from the information contained in their last filed reporting form under (b) or (c) of this subsection. An amended reporting form shall be filed at the time of first known or predictable change of destination, and immediately upon the completion of discharge operations resulting in changes to actual volume of ballast water discharged.

(e) Submission. Reporting forms must be submitted in a standard electronic format to the department by email at ballastwater@dfw.wa.gov or, if email is not possible, by fax to ((360-902-2845)) 360-902-2943. Reporting forms that cannot be opened electronically or are illegible may not be considered as received in a timely manner and requires filing a new reporting form. Vessel owners or operators who rely on a third party to collect and forward ballast water reporting forms are responsible for ensuring that the department receives the ballast water management information as required in this subsection.

(3) Ballast Water Reporting Form waiver.

(a) In general. Vessel owners or operators who do not, under normal operating conditions, discharge ballast water may request a reporting form waiver from the department. A waiver request form letter, as provided by the department, may be requested for multiple vessels under the authority of a single vessel owner or operator. The waiver request must be received by the department at least thirty days prior to a vessel entering Washington waters and does not release the vessel owners or operators from meeting other federal or state ballast water reporting laws.

(b) Contents. The waiver becomes effective upon department approval. The department will approve or deny approval of the request within thirty days of receipt. The letter must include the following information:

(i) Vessel name(s), identification number(s) (International Maritime Organization, Lloyds of London, or USCG registry number), owner, agent, and vessel type(s);

(ii) A statement that the vessel owner or operator will not discharge ballast water into Washington state waters;

(iii) A statement that the vessel owner or operator will comply with the requirements in subsection (2) of this section if discharge becomes necessary;

(iv) A statement that the vessel owner or operator of the vessel(s) will file for a new waiver if there are any changes in the information required in this subsection; and

(v) The signature of the vessel owner or operator.

(c) Submission. Send the completed form to the department by email to ballastwater@dfw.wa.gov or, if email is not possible, by fax to ((360-902-2845)) 360-902-2943, or by U.S. mail to: WDFW, AIS Unit, ((600 Capitol Way N.)) P.O. Box 43200, Olympia, Washington ((98501-1090)) 98504-3200, USA. Incomplete forms will be returned and waiver approval denied until a completed form has been received.

(d) Availability. Vessel owners or operators shall maintain a copy of the waiver in the vessel's ballast water management plan.

(4) Vessels claiming safety exemptions.

(a) In general. Vessel owners or operators claiming a safety exemption under RCW 77.120.030(4) must file a reporting form and provide sufficient additional information for the department to evaluate the claim, determine whether an alternative exchange or emergency ballast water treatment strategy is warranted, and determine whether a temporary compliance plan is necessary to prevent or reduce the likelihood of future claims. The intent of these rules is to prevent or minimize the discharge of unexchanged or untreated ballast water.

(b) Reporting requirements. Vessel owners or operators claiming a safety exemption must notify the department of their intent to do so on the ballast water reporting form as required in subsection (2) of this section. Notification requires writing the words "SAFETY EXEMPTION" on the form where it asks "If no ballast treatment conducted, state reason why not:" and stating the cause as either "ADVERSE WEATHER," "VESSEL DESIGN LIMITATION," "EQUIPMENT FAILURE," or "EXTRAORDINARY CONDITION." In addition:

(i) Vessel owners or operators are not required to request a safety exemption if the vessel does not intend to discharge unexchanged or untreated ballast water and the vessel owner or operator follows the reporting requirements under subsection (2) of this section.

(ii) Vessel owners or operators may rescind a safety exemption claim by filing an amended ballast water reporting form and notifying the department as required in subsection (2)(d) of this section.

(iii) Vessel owners or operators required to meet discharge performance standards under WAC ((220-150-050)) 220-650-090 and claiming a safety exemption due to equipment failure must conduct an open sea exchange or provide evidence to establish why that was not possible.

(iv) The department will waive the twenty-four hour advance notification as required in subsection (2) of this section for circumstances where the vessel, crew or passengers are in imminent danger. In these situations, the vessel owner or operator must file the ballast water reporting form at the earliest opportunity.

(c) Department review. The department will review safety exemption claims and determine whether a compliance plan and/or alternative strategy per WAC ((220-150-037))

220-650-060 is required to minimize potential discharge of future unexchanged ballast water until compliance with this section can be met. Reviews will be completed within sixty days of safety exemption notification on their ballast water reporting form.

(d) Discharge authorization requirement. Except where discharging is necessary to prevent jeopardy to the vessel, crew or passengers, the vessel owner or operator shall not discharge unexchanged or untreated ballast water without department authorization. The department will determine and require the vessel owner or operator to conduct one or more of the following actions:

- (i) Hold its ballast water;
- (ii) Conduct an emergency ballast water treatment response;
- (iii) Discharge into a reception facility;
- (iv) Discharge into specified alternative waters; or
- (v) Discharge only the minimum amount necessary to complete a safe operation.

(e) Safety exemption filing fee. The department will assess a safety exemption filing fee of five hundred dollars for administrative costs to assess compliance, unless covered under WAC ((220-150-037)) 220-650-060, or within the sixty-day notice period under WAC ((220-150-037)) 220-650-060. Furthermore:

- (i) Payment of the fee is due within thirty days after the date of the written notice by the department.
- (ii) The fee is not a formal enforcement action and is a public record.
- (iii) The fee may be withdrawn if the vessel owner or operator files an amended report by the payment deadline stating that no ballast water or sediment was discharged into state waters.

(5) Ballast water management plan.

(a) In general. Vessel owners or operators shall develop, and maintain on board, a ballast water management plan that has been developed specifically for the vessel and that will allow those responsible for the plan's implementation to understand and follow the vessel's ballast water management strategy. The plans of unmanned barges may be kept on board the towing vessel or incorporated into the towing vessel's own plan.

The plan should detail safe and effective shipboard procedures for ballast water management, and the central elements of the plan should be the processes, equipment, and vessel safety measures used for implementing the vessel's ballast water management strategy and following the required ballast water management practices. Vessel owners and operators should seek assistance from their class societies, marine surveyors, or other appropriate marine services during the development of the plan.

(b) Contents. At a minimum, the plan should include:

- (i) Detailed ballast water management safety procedures;
- (ii) Actions for implementing the mandatory ballast water management requirements and practices;
- (iii) Detailed fouling maintenance and sediment removal procedures for areas on the vessel where ballast water can be carried;
- (iv) Identification of the designated officer(s) in charge of ensuring that the plan is properly implemented;

(v) Detailed reporting requirements and procedures for ports in Washington state where the vessel may visit; and

(vi) A translation of the plan into English if the ship's working language is another language.

(c) Training. The vessel owners or operators and appropriate crew must be trained in the application of the vessel's ballast water and sediment management strategies.

(d) Availability. Vessel owners or operators shall make the ballast water management plan readily available for examination by the department at all reasonable times. The vessel owner or operator shall readily transmit the management plan or any other specific information to the department regarding the vessel's ballast operations as the department may request.

(e) Alternative means of recordkeeping. The ballast water management plan may be an electronically recorded system or integrated into another management plan or system. At a minimum, any alternative method shall meet the provisions of this subsection.

(f) Alternative means of recordkeeping. The ballast water log or record book may be an electronically recorded system or integrated into another record book or system. At a minimum, any alternative method shall meet the provisions of this subsection.

(6) Ballast water log or record book.

(a) In general. Vessel owners or operators shall record all ballast water and sediment management operations in the vessel's ballast water log, record book, or other suitable documentation system. This information is used by the department to assess compliance, review ballast water and sediment management history, and recommend practices that can improve ballast water management compliance and efficiency.

(b) Content. Vessel owners or operators shall maintain a version of the ballast water log, record book, or other suitable documentation system in English on board the vessel that, at a minimum:

- (i) Records each operation involving ballast water or sediment management;
- (ii) Describes each such operation, including the location and circumstances of, and the reason for, the operation;
- (iii) Records the exact time and position of the start and stop of ballast water exchange or treatment operations for each tank;
- (iv) Describes the nature and circumstances of any situation under which any operation was conducted under a safety exemption set forth in subsection (4) of this section; and
- (v) Records ballast water and sediment management training.

(c) Availability. Vessel owners or operators shall make the ballast water log or record book readily available for examination by the department at all reasonable times. The vessel owner or operator shall transmit such information to the department regarding the ballast operations of the vessel as the department may require.

(d) Retention period. The ballast water log or record book shall be retained on board the vessel for a minimum of two years after the date on which the last entry in the book is made.

(e) Required signatures. The department will require, at a minimum, that each completed page and each completed vessel exchange or treatment operation in the ballast water log or record book be signed and dated by the vessel owner or operator or responsible officer; and that such owner, operator, or responsible officer attests to the accuracy of the information provided and certifies compliance with the requirements of this subsection.

(f) Alternative means of recordkeeping. The ballast water log or record book may be an electronically recorded system or integrated into another record book or system. At a minimum, any alternative method shall meet the provisions of this subsection.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-650-040 Vessel inspections. (1) In general. Department employees shall have the right to board and inspect vessels, without advance notice, to provide technical assistance, assess compliance, and enforce the requirements of this chapter as provided in RCW 77.120.070, so long as such inspections are conducted in accordance with the standards set forth herein.

The department intends, as resources allow, to board between five and ten percent of all vessels arriving at Washington ports each year, with a priority for inspections of vessels carrying high risk ballast water as described in WAC ((220-150-035)) 220-650-050. Multiple boardings of an individual vessel may occur throughout the year, depending on the vessel's risk and compliance history.

(2) **Conditions.** Department inspections shall be conducted under the following conditions:

(a) Authorized department inspectors: Inspections shall be conducted only by department employees, agents, or contractors specifically authorized by the department to conduct such inspections.

(b) Time: Inspections may be conducted at any time, due to the twenty-four hour nature of the regulated industry. In general, the department will not unduly interrupt normal cargo operations of the vessel. However, the department may interrupt vessel cargo operations where facts indicate that the discharge of unexchanged or untreated ballast water or sediment is occurring or is likely imminent.

(c) Location: Inspections may be conducted when the vessel is at anchor within waters of the state or in port within waters of the state.

(d) Scope of inspection: The department inspector shall limit inspection of the vessel to those areas reasonably necessary to inspect management plans, logs, or other ballast water and sediment-related records required by these rules and maintained on board the vessel, and to areas in which ballast water or sediment is contained, pumped, or treated. Inspectors may examine records related to ballast water management plans, logs, or other ballast water and sediment-related records and make copies of such records.

(e) Identification: Department inspectors must have official identification, announce their presence and intent at the time of inspection, perform their duties in a safe and profes-

sional manner, and follow all appropriate ship safety requirements.

(f) Vessel escort: The vessel owner or operator will provide an employee to escort the department inspector to those areas of the vessel that are subject to inspection under these rules.

(g) Safety: Nothing in this section relieves the vessel owner or operator of the responsibility for ensuring the safety and stability of the vessel or the safety of the crew and passengers.

(3) **Technical assistance.** Technical assistance is generally provided during every vessel boarding by a department ballast water inspector, but may also be the sole reason for a boarding. The purpose is to explain and provide details of state law to the officers and crew responsible for implementing the vessel's ballast water management plan. Based on the crew's familiarity with state law and ballast water management practices, the department inspector may provide a thorough overview or a brief update and be available to answer any questions they might have regarding the ballast management on board their specific vessel. The inspector will leave a state ballast water management information pamphlet with contact information on board so the vessel may contact the department directly to address any other questions that may come up regarding state requirements.

(4) **Ballast water management audit.** The department inspector may board a vessel and conduct an audit of its ballast water management documentation to verify compliance with state laws. An audit consists of reviewing the vessel's ballast water reporting form, management plan, and record book as required in this section. In addition, the inspector may request and review any other records that relate to ballast management operations, including: The Deck Log, GPS Log, Soundings Log, Stability Reports, Engine Room Log, and Oil Record Book. A vessel owner or operator who maintains a concise record of its ballast water management will expedite the audit. The department will provide a copy of a vessel audit checklist and findings to the vessel owner or operator prior to leaving the vessel.

(5) **Sampling ballast tanks.** Department inspectors may take samples from a vessel's ballast tanks in addition to the audit. These samples are used to help evaluate the risk that vessel poses for introducing nonindigenous species into waters of the state. Sampling may require the vessel's crew to provide safe access to ballast tanks for sampling, including lighting and ventilation of cargo holds, spaces, and voids as needed. The vessel's crew will provide the labor to open ballast tank manhole covers and present the tank for sample access. This may involve taking the head off of the tank level as necessary, to preclude overflowing the tank. If tank certification is necessary for access, the vessel owner or operator will be responsible for any costs incurred. At least one member of the vessel's crew will accompany the department ballast inspector at all times during the sampling process. A department inspector may also require a sample of tank sediment, where safe and practical, that can be collected by the vessel owner or operator under department observation or by the department inspector.

(6) **Exchange alternative and discharge standard performance inspections and testing.** The department may

review operations data and take ballast water or sediment samples from a vessel's equipment that is used to meet exchange alternative requirements under WAC ((~~220-150-043~~) 220-650-080 or discharge performance standards under WAC ((~~220-150-050~~) 220-650-090. Vessel owners or operators must provide in-line discharge sampling ports that allow for this testing.

(7) **Investigation of violations.** Where there is evidence that a violation has occurred, the department may investigate those suspected violations. In doing so, the department may use all appropriate and practical measures of detection and environmental monitoring. Where the department determines that a violation has occurred, the department will follow the protocols under WAC ((~~220-150-080~~) 220-650-120.

(8) **Petition for civil enforcement.** If a department inspector is denied access to any vessel where access was sought for the purposes of this subsection, the department may file a petition for civil enforcement pursuant to RCW 77.120.070(3) and 34.05.578.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-650-050 Vessels carrying high risk ballast water. (1) **In general.** The department will identify, publish, and maintain a list of vessels that pose an elevated risk of discharging ballast water or sediment containing nonindigenous species into the waters of the state. Vessels on this list will be prioritized for evaluation and boarding under WAC ((~~220-150-033~~) 220-650-040 and may require completion of an approved temporary compliance plan and/or temporary alternative strategy under WAC ((~~220-150-037~~) 220-650-060.

(2) **Listing.** The department will identify vessels that are carrying high risk ballast water using factors including, but not limited to:

- (a) A nonindigenous species profile of originating waters;
- (b) The volume and frequency of exchanged ballast water normally discharged;
- (c) Design limitations in vessels that prevent effective exchanges;
- (d) Frequency of voyages within coastal areas where exchange outside fifty nautical miles is not a viable option;
- (e) Frequency and severity of vessel or vessel owner or operator violation history; and
- (f) Frequency of vessel claims for safety exemptions.

(3) **Delisting.** The department will delist a vessel on the high risk list where the vessel owner or operator:

- (a) Demonstrates that its management operations meet or exceed interim open sea exchange requirements under WAC ((~~220-150-040~~ or ~~220-150-043~~) 220-650-070 or 220-650-080, unless WAC ((~~220-150-050~~) 220-650-090 applies; or
- (b) Demonstrates that its management operations meet or exceed the discharge performance standards under WAC ((~~220-150-050~~) 220-650-090; or
- (c) Completes an approved compliance plan and/or alternative strategy per WAC ((~~220-150-037~~) 220-650-060.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-650-060 Temporary compliance plans and alternative strategies. (1) **In general.** The department may require a vessel owner or operator to submit a temporary compliance plan or a temporary alternative strategy to bring its vessel into compliance with state ballast water management law. Temporary compliance plans and alternative strategies are only utilized when it is not feasible to otherwise comply with regulatory requirements, and then, only for the minimum time necessary to bring a vessel into compliance. If the department approves, at its sole discretion, a compliance plan or alternative strategy, the department will issue a formal waiver exempting the vessel owner or operator from specified provisions in these rules for a specified period of time, not to exceed two years from the approval date of the waiver, to allow the vessel owner or operator to implement corrective action to bring the vessel into full compliance with the statute and rules. Forms and guidance may be adopted by department policy to assist in the implementation of this subsection.

(2) **Compliance plan.** A temporary compliance plan describes how the vessel owner or operator plans to correct vessel equipment problems causing ballast water or sediment discharges that are not in compliance with state law. These temporary compliance plans are generally related to vessels that claim safety exemptions for design limitations or equipment failure, and vessels that are listed as carrying high risk ballast water and require accelerated implementation of WAC ((~~220-150-050~~) 220-650-090 to meet the state discharge performance standard. At a minimum, a temporary compliance plan will document the responsible vessel representative, objectives and expectations, scope of work to be performed, tasks to be completed by timeline, any deliverables, interim ballast water and sediment management plan, reporting requirements, and the total time period for which a waiver is requested, up to two years. Additional information may be required by the department on a case-by-case basis. An extension of the plan beyond two years may be granted by the department in its sole discretion.

(3) **Alternative strategy.** A temporary alternative strategy describes how the vessel owner or operator plans to conduct ballast management operations to sufficiently reduce the risk of introducing nonindigenous species into waters of the state to a level determined acceptable by the department. These temporary alternative strategies are generally related to vessels that cannot otherwise meet the full regulatory requirements due to extenuating circumstances. At a minimum, a temporary alternative strategy will document the responsible vessel owner or operator, objectives and expectations, scope of actions to be performed, tasks to be completed by timeline, any deliverables or reporting requirements, and the total time period for which a waiver is requested, not to exceed two years. Additional information may be required by the department on a case-by-case basis. An extension of the strategy beyond two years may be granted by the department, in its sole discretion.

(4) **Submission.** To seek a waiver of specified rules, a vessel owner or operator shall submit to the department a completed and signed temporary compliance plan or tempo-

rary alternative strategy at their convenience if not required by the department, or within sixty days of department notice under either WAC ((~~220-150-030(4)~~ or ~~220-150-035~~) ~~220-650-030~~ or ~~220-650-050~~, to avoid being in violation of these rules. Additional time may be allowed on a case-by-case basis. The department will notify the ballast water work group when a submission has been received and provide a copy if requested.

(5) **Review and approval.** The department will review a vessel's proposed temporary compliance plan or alternative strategy within sixty days of receipt, for completeness and suitability in accomplishing objectives. The department will then make one of the following determinations:

(a) Approval - the compliance plan or alternative strategy is acceptable for the period of time noted in the document. The department will then return the approved plan or strategy to the vessel owner or operator, attached to a waiver signed by the department;

(b) Incomplete - the document will be returned to the vessel owner or operator for revision or additional information under the original sixty-day review timeline unless otherwise extended; or

(c) Deny approval - the department determines, in its sole discretion, that the document is not suitable for meeting its regulatory objectives. The department may also deny the request if the parties do not come to agreement on an acceptable plan or strategy within sixty days of receipt of the plan by the department, unless such time frame is extended by the department in its sole discretion.

(6) **Availability.** Vessel owners or operators shall make a copy of the signed temporary compliance plan or alternative strategy document readily available for examination by the department as part of the vessel's ballast water management plan per WAC ((~~220-150-030~~) ~~220-650-030~~(5)). The department will make all approved compliance plans and alternative strategies available on the department's web site or electronically, as requested.

(7) **Revocation of approval.** The department may revoke the waiver if the vessel owner or operator is not meeting the terms of the temporary compliance plan or alternative strategy. The department may agree to revise the temporary compliance plan or alternative strategy if appropriate, reasonable, and practical. In the event the department issues a notice of revocation, the vessel owner or operator will cease discharging ballast water into waters of the state unless it can meet the applicable regulations. The vessel owner or operator may appeal the decision to revoke the waiver. The appeal must be made to the director within twenty days of notice, by electronic or hard copy written form, according to the procedures set forth in chapter 34.05 RCW, Part IV, and chapter 10-08 WAC.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-650-070 Interim open sea exchange requirements. (1) **Purpose.** Until otherwise required to meet performance standards under WAC ((~~220-150-050~~) ~~220-650-090~~ and prior to discharging ballast water into Washington waters, vessel owners or operators must exchange their

ballast water to meet or exceed state interim open sea exchange requirements or use an approved exchange alternative. An open sea exchange is intended to reduce the number of higher risk coastal organisms in a ballast tank by replacing them with open sea organisms that are less likely to invade waters of the state, and by changing the salinity and other ambient water conditions to further reduce populations of remaining coastal species. Vessel owners or operators who do not discharge ballast water into waters of the state are exempt from this section but must continue to meet the reporting and other requirements under WAC ((~~220-150-030~~) ~~220-650-030~~).

(2) **Open sea exchange methodology.**

(a) In general. An open sea exchange must result in an efficiency of at least ninety-five percent volumetric exchange of the total ballast water capacity for each tank. An open sea exchange requires using either an empty/refill method or a flow through method.

(b) Empty/refill exchange. Preferred - this type of exchange requires, for each ballast tank that contains ballast water to be discharged into waters of the state, at least one empty/refill cycle in an open sea exchange area designated by the department under subsection (3) of this section. Vessel owners or operators should remove as close to one hundred percent, but not less than ninety-five percent, of the ballast water as is safe to do so. If this is not possible, then perform a flow through exchange under (c) of this subsection.

(c) Flow through exchange. This type of exchange requires, for each ballast tank that contains ballast water to be discharged into waters of the state, pumping or otherwise forcing a minimum of three times the total ballast tank capacity's volume in an open sea exchange area designated by the department under subsection (3) of this section. For example, a ballast tank with a one thousand cubic meter capacity, regardless of actual ballast water in the tank, would require pumping three thousand cubic meters of open sea water through the tank. In all flow through exchange operations, open sea water must be pumped into the bottom and discharged out the top of the tank. Where department evaluation determines more flow through volume is required to meet the ninety-five percent exchange requirements, a compliance plan or alternative strategy may be required under WAC ((~~220-150-037~~) ~~220-650-060~~).

(3) **Open sea exchange areas.**

(a) In general. Ballast water exchanges must be conducted in open sea (also called midocean or mid-ocean) areas based upon originating port as defined herein. In all exchange situations, the vessel owner or operator must file a ballast water reporting form per WAC ((~~220-150-030~~) ~~220-650-030~~(2)).

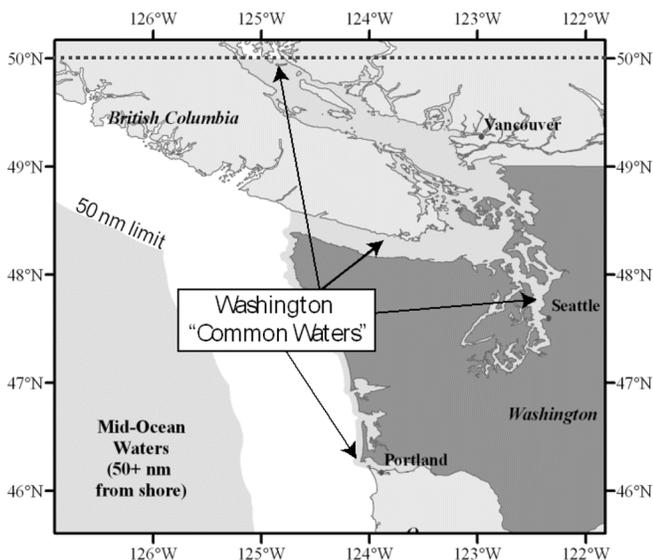
(b) Voyages from outside the United States Exclusive Economic Zone (EEZ). A vessel owner or operator en route to a state of Washington port or place, from a port or place outside the United States EEZ, shall conduct an open sea exchange:

- (i) Before entering waters of the state;
 - (ii) At least two hundred nautical miles from any shore;
- and
- (iii) In waters greater than two thousand meters deep.

(c) Coastal voyages. A vessel owner or operator who does not voyage two hundred nautical miles or greater from any shore shall conduct ballast water exchange:

- (i) Before entering waters of the state;
- (ii) At least fifty nautical miles from any shore; and
- (iii) In water at least two hundred meters deep.

(4) **Common water exemption.** Vessels voyaging from a port within the common water zone to a port in Washington state are exempt from having to conduct a ballast water exchange if the ballast water and sediment originated solely from a valid exchange prior to entering the common waters or from uptake within an area that includes only the waters of Washington state, the Oregon portions of the Columbia River system, and the internal waters of British Columbia south of latitude fifty degrees north, including the waters of the Straits of Georgia and Juan de Fuca (Figure 1). The common waters area relates only to vessels voyaging to a Washington state port or place from another Washington state port or place, or from designated Canadian and Oregon waters to waters of the state. It does not imply or provide any regulatory authority for vessels voyaging from waters of the state to Oregon and Canadian waters, or voyages to or between Canada and Oregon. Please refer to Canadian and Oregon ballast water laws for their requirements.



(5) **Safety exemptions.** Nothing in this chapter relieves the vessel owner or operator from ensuring the safety and stability of the vessel, its crew, or its passengers. A vessel owner or operator is not required to conduct an open sea exchange, in part or in full, if the vessel owner or operator determines that the operation would threaten the safety of the vessel, its crew, or its passengers. In these situations, the vessel operator must file a ballast water reporting form and is subject to all other provisions under WAC ((220-150-030)) 220-650-030(4).

(6) **Alternative discharge areas.** The department, in consultation with states of concurrent waters, may identify alternative discharge areas as promulgated by department policy.

(7) **Prohibited discharge areas.** A vessel may not discharge ballast water or sediment within a marine protected or conservation area as designated under chapter 220-16 WAC.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-650-080 Interim open sea exchange alternative. (1) **In general.** For purposes of this section, a vessel owner or operator may use an exchange alternative instead of conducting an open sea exchange, except for Columbia River ports unless specifically approved, provided:

(a) The vessel owner or operator is not otherwise required to meet discharge performance standards under WAC ((220-150-050)) 220-650-090; and

(b) The exchange alternative meets or exceeds the standards provided under Regulation D-2 of the International Convention for the Control and Management of Ships' Ballast Water and Sediment as signed on February 13, 2004.

(2) **Notification.** Vessel owners or operators must file a signed notification form, as provided by the department, stating that they intend to use an exchange alternative to meet state ballast water exchange requirements. A single notification form may cover multiple vessels under the authority of a single vessel owner or operator. The form must include the minimum content as required in subsection (3) of this section. This notification does not release vessel owners or operators from meeting other federal or state ballast water reporting or discharge regulations.

(3) **Notification form contents.** The department's notification of exchange alternative use will, at a minimum, require the following information:

(a) Vessel name(s), identification number(s) (International Maritime Organization, Lloyds of London, or USCG registry number), owner, agent, and vessel type(s);

(b) The manufacturer, brand name, model, and other information, as necessary, of the technology on board the vessel, and a brief description of the technology and its process for removing or inactivating organisms in ballast water;

(c) The name of the flag state that has approved the exchange alternative system, a copy of IMO type approval certification or final approval documentation, or other information that reasonably documents how the exchange alternative was tested to ensure it meets state open sea exchange requirements;

(d) If the exchange alternative will not be used on all ballast tanks, the number of tanks and the volume of each tank that will be managed using the exchange alternative;

(e) A recommendation from the state department of ecology, based upon a toxicity report provided in accordance with Appendix H of ecology publication number WQ-R-95-80, setting conditions necessary for the environmentally safe discharge of biocide treated ballast water;

(f) A statement that the vessel owner or operator will file a new notification if there are any changes in the information required in this subsection;

(g) A statement that the vessel will conduct a valid open sea exchange under this section if they do not use the exchange alternative; and

(h) The signature of the vessel owner or operator.

(4) **Submission.** The department will accept notification application forms up to eighteen months prior to the implementation date for that type of vessel under WAC (~~(220-150-050)~~) 220-650-090, or a subsequent, delayed implementation date. Applications received within the eighteen-month period may be accepted, but will not be granted the full grace period as provided in subsection (6)(c) of this section. Send the completed form to the department by email to ballastwater@dfw.wa.gov, or if email is not possible, by fax to (~~(360-902-2845)~~) 360-902-2943, or by U.S. mail to: WDFW, AIS Unit, (~~(600 Capitol Way N.)~~) P.O. Box 43200, Olympia, Washington (~~(98501-1090)~~) 98504-3200, USA. The vessel owner or operator will be notified of the department's receipt of the form within ten working days.

(5) **Acceptance.** The department will make a final decision on acceptance within forty-five days of receipt. If the notification is illegible or incomplete, it will be returned to the vessel owner or operator as unacceptable, with an explanation of the deficiencies. The notification is effective upon department verification of acceptance by email or in writing to the vessel owner or operator.

(6) **Notification conditions.** To maintain acceptance, the vessel owner or operator must meet all of the following conditions:

(a) All notification form content in subsection (3) of this section remains accurate;

(b) Vessel owners or operators shall maintain a copy of the accepted notification of exchange alternative use in the vessel's ballast water management plan under WAC (~~(220-150-030(5))~~) 220-650-030;

(c) Vessel owners or operators may use the exchange alternative for a period of five years from the date on which the equipment was first placed into service or until the vessel must meet discharge performance standards under WAC (~~(220-150-050)~~) 220-650-090, whichever is longer;

(d) The exchange alternative equipment is otherwise used as defined in WAC (~~(220-150-050)~~) 220-650-090 for installed equipment; and

(e) The department determines through inspections, sampling, investigations, or other methods, that the exchange alternative continues to meet, or is likely to continue to meet, open sea exchange standards.

(7) **Other laws.** Nothing in these rules or laws authorizes the discharge of other pollutants or assures that the technology is safe to operate or that it meets other state, federal, and international laws governing business, marine applications, or other elements.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-650-100 Treatment notification and promising treatment waiver process. (1) **Purpose.** This section implements RCW 77.120.040 (5)(a). All vessels using treatment technologies designed to meet state ballast water discharge performance standards are required to notify the department prior to or within thirty days of their first use in waters of the state. A prior notification is preferred to assess compliance with state regulations in using treatment technology to meet discharge performance standards and to assist

vessel owners or operators in avoiding the discharge of ballast water that does not meet those standards or that poses other potential violations. It is the responsibility of the vessel owner or operator to show that the installed equipment meets state discharge performance standards. Vessel owners or operators wishing to use treatment technology that does not meet state standards may apply for a waiver to use the technology as promising technology under subsection (3) of this section.

(2) **Notification.** Vessel owners or operators using treatment technology must file a signed notification form, as provided by the department, stating that their vessel meets state discharge performance standards under WAC (~~(220-150-050)~~) 220-650-090. A single notification form may cover multiple vessels under the authority of a single vessel owner or operator. The form must include the minimum content as required in subsection (4) of this section.

(3) **Waiver for promising treatment technology use.**

(a) In general. Vessel owners or operators using promising treatment technology do not need to file a notification, but they must apply for a waiver to the interim open sea exchange requirements under WAC (~~(220-150-040)~~) 220-650-070.

(b) Criteria. The form must include the minimum content as required in subsection (4) of this section and be received by the department at least forty-five days prior to entering waters of the state. In addition, promising technology must meet one or more of the following criteria:

(i) The same manufacturer's treatment technology is being tested on a vessel that is enrolled in the USCG Shipboard Technology Evaluation Program (STEP), United States Environmental Protection Agency Environmental Technology Verification (ETV) program, or other department-recognized regional or national program;

(ii) The technology is approved as promising technology or a similar classification by the state of California, Oregon, Hawaii, or Alaska for use in their state waters; or

(iii) The technology is being actively evaluated under the IMO final approval process.

(4) **Notification and waiver application form content.**

(a) In general. Standard notification application and promising technology waiver forms are provided by the department and must be used for this subsection. A single waiver form may cover multiple vessels under the authority of a single vessel owner or operator.

(b) Content. The department's notification of treatment technology use and application for promising treatment technology waiver forms will, at a minimum, require the following information:

(i) Vessel name(s), identification number(s) (International Maritime Organization, Lloyds of London, or USCG registry number), owner, agent, and vessel type(s);

(ii) The manufacturer and brand name of the technology on board the vessel and a brief description of the technology and process for removing or inactivating organisms in ballast water;

(iii) The name of the organization or flag state that has approved the ballast water treatment technology, and the approval or certification number of the technology or other information that reasonably documents how the technology

was tested to ensure it meets, or is likely to meet in the case of promising treatment technology, state discharge performance standards for the vessel type on which it is being used;

(iv) If the treatment technology will not be used on all ballast tanks, the number of tanks and the volume of each tank that will be managed using the treatment technology;

(v) A recommendation from the state department of ecology, based upon a toxicity report provided in accordance with Appendix H of ecology publication number WQ-R-95-80, setting conditions necessary for the environmentally safe discharge of biocide-treated ballast water;

(vi) A statement that the vessel owner or operator will file a new notification if there are any changes in the information required in this subsection;

(vii) A statement that the vessel will conduct a valid ballast water exchange, under WAC ((~~220-150-040~~) 220-650-070), if it does not use the treatment technology; and

(viii) The signature of the vessel owner or operator.

(5) **Submission.** The department will accept notification and waiver application forms at any time. Send the completed form to the department by email to ballastwater@dfw.wa.gov, or if email is not possible, by fax to ((~~360-902-2845~~) 360-902-2943), or by U.S. mail to: WDFW, AIS Unit, ((~~600 Capitol Way N.~~) P.O. Box 43200, Olympia, Washington ((~~98501-1090~~) 98504-3200, USA). The vessel owner or operator will be notified of the department's receipt of the form within ten working days.

(6) **Acceptance.**

(a) Notification. The department will make a final decision on acceptance of a notification application form within forty-five days of receipt. If the notification is illegible or incomplete, it will be returned to the vessel owner or operator as unacceptable, with an explanation of the deficiencies. The notification is effective upon department verification of acceptance by email or in writing to the vessel owner or operator.

(b) Waiver for promising treatment technology use. The department will make a final decision on acceptance for a waiver within forty-five days of receipt. If the application is illegible or incomplete, it will be returned to the vessel owner or operator as incomplete, with an explanation of the deficiencies. The waiver is effective upon department verification of acceptance by email or in writing to the vessel owner or operator.

(7) **Notification and waiver acceptance conditions.**

(a) In general. To maintain acceptance, the vessel owner or operator must meet a minimum set of conditions.

(b) Conditions. Minimum conditions include:

(i) All acceptance form content in subsection (4) of this section remains accurate;

(ii) Vessel owners or operators shall maintain a copy of the accepted notification of treatment technology use or waiver form for promising treatment technology use in the vessel's ballast water management plan under WAC ((~~220-150-030~~) 220-650-030(5));

(iii) The technology is used as defined in subsection (8) of this section for installed treatment technology; and

(iv) The department determines through inspections, sampling, investigations, or other methods that the technology continues to meet, or is likely to continue to meet, ballast

water discharge performance standards under WAC ((~~220-150-050~~) 220-650-090).

(8) **Installed treatment technology.**

(a) In general. If ballast water treatment technology used for purposes of complying with the regulations under this subsection is installed on a vessel, maintained in good working order and used by the vessel, the vessel may use that technology for the shortest of:

(i) Federal requirements;

(ii) The life of the vessel on which the technology is used; or

(iii) The manufacturer's equipment life specifications.

(b) Incremental improvements. Vessel owners and operators are encouraged to incrementally improve installed treatment technology to meet higher discharge performance standards and reduce the risk of introducing nonindigenous species. The expectation is these improvements would take advantage of regular maintenance and upgrade schedules.

(c) Record or log book. All information regarding compliance with this subsection must be recorded in the vessel's ballast water record or log book per WAC ((~~220-150-030~~) 220-650-030(6)).

(9) **Other laws.** Nothing in these rules or laws authorizes the discharge of other pollutants or assures that the technology is safe to operate or that it meets other state, federal, and international laws governing business, marine applications, or other elements.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-650-110 Ballast tank sediment. (1) **Purpose.** A vessel owner or operator may not remove or discharge sediment or tank fouling organisms into waters of the state from spaces carrying ballast water unless that sediment or those organisms are discharged solely in the location from which they originated. Sediment is known to contain nonindigenous species that are otherwise missed during open sea exchange and operations that would otherwise meet ballast water discharge performance standards. These rules implement RCW 77.120.020 (1)(b) and the overall authority under RCW 77.120.030(3) and 77.120.040(5) to set standards by rule that provide a minimal risk of introducing nonindigenous species into the waters of the state.

(2) **Ballast tank sediment removal options.**

(a) In general. Three options are provided for the effective removal of sediment and any fouling organisms in a vessel's ballast tanks, including saltwater flushing, upland disposal, or use of an approved reception facility.

(b) Saltwater flushing. Ballast tanks must be cleaned as necessary in open sea exchange areas consistent with WAC ((~~220-150-040~~) 220-650-070(3)) voyage requirements unless common water rules apply under WAC ((~~220-150-040~~) 220-650-070(4)) except for ballast-related fouling organisms. Sediment may be removed by saltwater flushing of ballast water tanks by:

(i) Adding open sea water to a ballast water tank that contains residual quantities of ballast waters;

(ii) Mixing the open sea water with the residual ballast water and sediment in the tank through the motion of a vessel

or alternative means so that the sediment becomes suspended; and

(iii) Discharging the mixed water so that the salinity of the resulting residual ballast water in the tank exceeds thirty parts per thousand.

(c) Upland disposal. Tank sediment and fouling organisms may be removed from the vessel under controlled arrangements in port or in drydock, and disposed of in accordance with local, state, and federal law.

(d) Sediment reception facilities. The department, in consultation with the department of ecology, will adopt department policies as necessary for sediment reception facilities. These facilities must be approved by the department for use and provide for the disposal of such sediment in a way that effectively eliminates the risk of nonindigenous species and does not impair or damage the environment, human health, property, or resources of the disposal area.

(3) **Reporting.** Sediment cleaning and discharges must be recorded in the vessel's ballast water log or record book as defined in WAC (~~(220-150-030)~~) 220-650-030(6), or in another format conforming to the intent of that section.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-650-120 Penalties and enforcement. (1) **Purpose.** The department may issue a verbal warning, notice of correction, or notice of civil penalty up to twenty-seven thousand five hundred dollars for each day of a continuing violation of the requirements of ballast water management regulations pursuant to RCW 77.120.070. Each and every such violation will be a separate and distinct violation. The department may also seek criminal penalties where warranted.

(2) **Notice of correction.**

(a) In general. If, in the course of carrying out their duties under chapter 77.120 RCW or this chapter, a department employee becomes aware that a vessel owner or operator is not in compliance with applicable laws and rules enforced by the department, the department may issue a notice of correction as provided in RCW 43.05.100 to the vessel owner or operator.

(b) Content. A notice of correction, at a minimum, will include:

(i) A description of the condition that is not in compliance, and the text of the specific section or subsection of the applicable state law or rule;

(ii) A statement of what is required to achieve compliance;

(iii) The date and time by which the department requires compliance to be achieved;

(iv) Notice of the means to contact any technical assistance services provided by the department; and

(v) A description of when, where, and from whom to request an extension of time to achieve compliance for good cause.

(c) Context. A notice of correction is not a formal enforcement action, is not subject to appeal, and is a public record.

(d) Compliance. If the department issues a notice of correction, it shall not issue a civil penalty for the violations identified in the notice of correction unless the responsible party fails to comply with the notice.

(3) **Notice of penalty.**

(a) In general. If, in the course of carrying out their duties under chapter 77.120 RCW or this chapter, a department employee becomes aware that a vessel owner or operator is not in compliance with applicable laws and rules enforced by the department, the department may issue a notice of penalty as provided in RCW 43.05.110 to the vessel owner or operator.

(b) Conditions. The department may issue a notice of penalty without first issuing a notice of correction under subsection (2) of this section to the vessel owner or operator where:

(i) The vessel owner or operator has previously been subject to an enforcement action for the same or a similar type of violation of the same statute or rule or has previously been given a notice of correction for the same or similar type of violation of the same statute or rule;

(ii) Compliance is not achieved by the date established in a previously issued notice of correction, whereupon every day's continuance thereafter will be a separate and distinct violation;

(iii) The violation has a probability of, or actually resulted in, the discharge of ballast water and/or sediments that do not meet the requirements set forth in WAC (~~(220-150-040, 220-150-043, 220-150-050, or 220-150-070)~~) 220-650-070, 220-650-080, 220-650-090, or 220-650-110; or

(iv) The violation was committed by a business that employs fifty or more employees on at least one day in each of the preceding twelve months.

(c) Context. A notice of penalty is a formal enforcement action, is subject to appeal, and is a public record.

(d) Compliance. If the department issues a notice of penalty, it shall calculate a civil penalty for the violation(s) as provided in subsection (4) of this section.

(4) **Calculation and payment of civil penalties.**

(a) In general. The department will assess civil penalties for each separate and distinct violation for each day of a continuing violation of the requirements of ballast water management regulations.

(b) Base penalty. There are three base civil penalties:

(i) Two thousand dollars for violations that are not related to or do not result in the discharge of ballast water that does not meet open sea exchange or discharge performance standards;

(ii) Five thousand dollars for failing to comply with a notice of correction issued under subsection (2) of this section; and

(iii) Five thousand dollars for violations that result in a discharge of ballast water that does not meet open sea exchange or discharge performance standards.

(c) Level of intent. Evidence of intent to violate the laws and rules governing ballast water and sediment management may result in an increase in the base penalty up to twenty-seven thousand five hundred dollars for each separate and distinct violation for each day of a continuing violation. Evidence includes, but is not limited to:

(i) Intention. In making a determination of intent, the department will consider, but not be limited to, the following considerations: The vessel owner or operator knowingly violated state laws and rules; whether precautions were taken to avoid the violation; and/or whether an inspection, warning, notice of correction, or enforcement action was served on the violator prior to the violation. For this factor, up to double the base penalty may be added.

(ii) Cooperation. The department will consider whether the violator did or did not make any attempt to correct the problem. Timeliness of action(s) and/or ignoring or evading agency contacts or directives will determine whether the penalty will be increased. For this factor, up to double the base penalty may be added.

(iii) Previous violation(s). The department will consider whether the violator has previous violations of a ballast water rule or regulation as documented in an enforcement action. The department may consider company organizations and assignment of operational responsibilities when evaluating previous violations. A substantially larger penalty will result if the violator has a history of violations with adverse impacts or the potential for adverse impacts or that shows a pattern of ignoring the rules or the act. Enforcement actions for the purposes of this section will include notices of penalty, the amounts of those civil penalties, and criminal citations when those enforcement actions are associated with ballast water violations. For this factor, up to quadruple the base penalty may be added.

(d) Quality and quantity of risk. Evidence showing the potential or actual discharge of high risk ballast water or sediment may result in an increase in the base penalty up to twenty-seven thousand five hundred dollars for each separate and distinct violation for each day of a continuing violation. Evidence includes, but is not limited to:

(i) Vessels carrying high risk ballast water and/or sediment listed under in WAC (~~(220-150-035)~~) 220-650-050. For this factor, up to double the base penalty may be added.

(ii) Volume of ballast water and sediment discharged or potentially discharged. For this factor, up to quadruple the base penalty may be added.

(e) Payment. Unless a timely appeal is filed, all civil penalties imposed must be paid to the department within thirty days after the date of the written notice imposing the civil penalty. If a timely appeal is filed, then all civil penalties imposed must be paid upon the completion of all administrative and judicial review proceedings and the issuance of a final notice affirming the penalty in whole or in part.

(f) Failure to pay. Any determination not timely contested is final and may be reduced to a judgment enforceable in any court with jurisdiction. Where the department prevails, using any judicial process to collect a penalty under this section, the department shall also be awarded its costs and reasonable attorneys' fees.

(5) Appeals.

(a) In general. A person who is subject to a notice of penalty shall have the rights provided by this section to request an adjudicative proceeding to contest the notice. No person other than the recipient of the notice or the recipient's legal representative shall have standing to request an adjudicative proceeding. The adjudicative proceeding shall be in compli-

ance with provisions of chapter 34.05 RCW, the Administrative Procedure Act, except as modified herein by the department.

(b) Timing for request. An adjudicative proceeding to contest a notice of penalty must be requested no later than twenty days from the date of service of the notice. To be timely, the request must be physically received by the department director in Olympia, Washington, during normal business hours on or before the twentieth day following the date of service of the order, except that if the twentieth day falls on a Saturday, Sunday, or state holiday, then the request for hearing shall be timely if received on the next business day. The person requesting an adjudicative proceeding may prove that it was timely requested by obtaining a written receipt of service from the department director, or by providing an affidavit showing personal service on the department director, or by a U.S. mail return receipt requested service showing receipt by the department on or before the last day set by this rule.

(c) Manner and content of request. Each request for adjudicative proceeding shall substantially comply with this subsection.

(i) The request shall be in writing;

(ii) The request shall identify the notice of penalty that the person seeks to contest. This can be done by reference to the number of the notice, by reference to the subject and date of the notice, or by reference to a copy of the notice attached to the request;

(iii) The request shall state the grounds upon which the person contests the notice of penalty. If the person contests the factual basis for the notice, the person shall allege the facts that the person contends are relevant to the appeal; and

(iv) The request shall identify the relief that the person seeks from the adjudicative proceeding by specifying whether the person asks to have the notice vacated, or provisions of the notice corrected.

(6) **Coordination with United States Coast Guard (USCG).** The department will report state violations, penalties and enforcement actions taken on vessels, as requested by cooperative agreement, to the appropriate sector representative of the USCG. The department will also report suspected federal violations to the USCG.

(7) **Other laws.** These regulations are in addition to any other state or federal laws related to ballast water management.

WSR 18-08-025

PERMANENT RULES

PROFESSIONAL EDUCATOR

STANDARDS BOARD

[Filed March 26, 2018, 2:54 p.m., effective April 26, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amends WAC 181-79A-132 and 181-79A-211 to clarify that dual endorsements can be earned at the same time and that candidates are eligible if they hold, or have held a certain certificate.

Citation of Rules Affected by this Order: Amending WAC 181-79A-132 and 181-79A-211.

Statutory Authority for Adoption: RCW 28A.410.220.

Adopted under notice filed as WSR 18-01-122 on December 19, 2017.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street, Olympia, WA 98504, phone 360-725-6238, fax 360-586-4548, email david.brenna@k12.wa.us, web site www.pesb.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: March 22, 2018.

David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 14-24-005, filed 11/19/14, effective 12/20/14)

WAC 181-79A-132 Dual endorsement requirement.

Per WAC 181-82A-215, all teachers are required to hold at least one endorsement, provided, a teacher who obtains a special education, early childhood special education, bilingual education, or English language learner endorsement after September 1, 2019, must earn and/or hold a second endorsement in another endorsement area that may be earned at the preresidency level. Special education, early childhood special education, bilingual education, English language learner, and traffic safety do not qualify as the other endorsement area. Provided, that individuals applying for a Washington state teacher certificate that have completed an out-of-state teacher preparation program may have two years in which to add the second endorsement.

AMENDATORY SECTION (Amending WSR 17-15-135, filed 7/19/17, effective 8/19/17)

WAC 181-79A-211 Academic and experience requirements for certification—Administrators. Candidates for the respective administrative certificate shall complete the following requirements in addition to those set forth in WAC 181-79A-150 and 181-79A-213.

(1) Superintendent.

(a) Initial.

(i) The candidate shall hold an approved master's degree and have completed subsequent to the baccalaureate degree

at least forty-five quarter credit hours (thirty semester credit hours) of graduate level course work in education.

(ii) The candidate shall hold or have held a valid teacher, educational staff associate, program administrator or principal certificate; excluding certificates issued under WAC 181-79A-231, or comparable out-of-state certificates.

(b) Continuing.

(i) The candidate shall hold an approved master's degree and have completed subsequent to the baccalaureate degree at least sixty quarter credit hours (forty semester credit hours) of graduate level course work in education or shall hold a doctorate in education.

(ii) The candidate shall hold or have held a valid teacher, educational staff associate, program administrator or principal certificate; excluding certificates issued under WAC 181-79A-231, or comparable out-of-state certificates.

(iii) Candidates applying for continuing superintendent's certificate shall provide documentation of one hundred eighty days or full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(2) Principal.

(a) Residency.

(i) The candidate shall hold an approved master's degree.

(ii) The candidate shall have completed an approved program for the preparation of principals.

(iii) The candidate shall have three years of documented successful school-based experience in an instructional role with students; provided, candidates who were enrolled in an approved principal program prior to July 1, 2013, are not subject to the three-year minimum experience requirement.

(iv) The candidate shall hold or have held:

(A) A valid teacher's certificate, excluding certificates issued under WAC 181-79A-231; or

(B) A valid education staff associate certificate, excluding certificates issued under WAC 181-79A-231.

(v) Persons whose teacher of educational staff associate certificates were revoked, suspended or surrendered are not eligible for principals certificates.

(b) Continuing.

(i) The candidate shall hold a valid initial principal's certificate, an approved master's degree and shall have completed at least fifteen quarter (ten semester) credit hours of graduate course work offered by a college or university with a state approved principal program or one hundred fifty clock hours of study, which meet the state continuing education clock hour criteria pursuant to chapter 181-85 WAC, or a combination of credits and clock hours equivalent to the above. Such study shall:

(A) Be based on the principal performance domains included in WAC 181-78A-270 (2)(a) or (b);

(B) Be taken subsequent to the issuance of the initial principal's certificate; and

(C) Be determined in consultation with and approved by the candidate's employer or the administrator of a state approved principal preparation program.

(ii) Provided, That a candidate who held a valid initial principal's certificate on August 31, 1998, may meet the aca-

demarcation requirement for the continuing certificate described in WAC 181-79A-211 (2)(c)(i), if the candidate meets requirements for and applies for the continuing certificate by the expiration date on that initial certificate.

(iii) The candidate must meet requirements for a principal's certificate pursuant to WAC 181-79A-150(4).

(iv) Candidates applying for the continuing principal's certificate shall provide documentation of three contracted school years of full-time employment as a principal or assistant principal.

(c) Professional certificate.

(i) The candidate shall have completed an approved professional certificate program by September 2018.

(ii) The candidate shall have documentation of three contracted school years of employment as a principal or assistant principal.

(3) Program administrator.

(a) Initial.

The candidate shall hold an approved master's degree and have completed subsequent to the baccalaureate degree at least twenty-four quarter credit hours (sixteen semester credit hours) of graduate level course work in education.

(b) Residency certificate.

The candidate shall hold an approved master's degree and have completed an approved program for the preparation of program administrators.

(c) Continuing.

(i) The candidate shall hold a valid initial program administrator's certificate, an approved master's degree and have completed subsequent to the baccalaureate degree at least thirty quarter credit hours (twenty semester credit hours) of graduate level course work in education or shall hold a doctorate in education.

(ii) Candidates applying for continuing program administrator's certificate shall provide documentation of one hundred eighty days or full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(d) Professional certificate.

The candidate shall have completed an approved professional certificate program by September 2018.

WSR 18-08-032

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed March 27, 2018, 10:56 a.m., effective April 27, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is amending WAC 388-78A-2590, 388-78A-2592 and 388-78A-2594, in order to conform to current department practice related to management agreements. For example, the amendments are removing language

indicating that the department approves all management agreements.

Citation of Rules Affected by this Order: Amending WAC 388-78A-2590, 388-78A-2592, and 388-78A-2594.

Statutory Authority for Adoption: Chapter 18.20 RCW.

Adopted under notice filed as WSR 18-02-099 on January 3, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: March 26, 2018.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2590 Management agreements—

General. (1) If the proposed or current licensee uses a manager, the licensee must have a written management agreement (~~(approved by the department)~~) that is consistent with this chapter.

(2) The proposed or current licensee must notify the department of its use of a manager upon:

- (a) Initial application for a license;
- (b) Retention of a manager following initial application;
- (c) Change of managers; and
- (d) Modification of existing management agreement.

(3) The proposed or current licensee must provide to the department a written management agreement, including an organizational chart showing the relationship between the proposed or current licensee, management company, and all related organizations.

(4) The written management agreement must be submitted:

- (a) Sixty days before:
 - (i) The initial licensure date;
 - (ii) The proposed change of ownership date; or
 - (iii) The effective date of the management agreement; or
- (b) Thirty days before the effective date of any amendment to an existing management agreement.

(5) The proposed licensee or the current licensee must notify the resident and their representatives sixty days before entering into a new management agreement.

(6) A proposed licensee must submit a management agreement attestation form, as required by the assisted living facility application.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2592 Management agreements—Licensee. (1) The licensee is responsible for:

(a) The daily operations and provisions of services in the assisted living facility ~~((see))~~, as required by WAC 388-78A-2730 (1)(a)(i));

(b) Ensuring the assisted living facility is operated in a manner consistent with all laws and rules applicable to assisted living facilities ~~((see WAC 388-78A-2730 (1)(b)))~~, as required by WAC 388-78A-2730 (1)(b);

(c) Ensuring the manager acts in conformance with ~~((a department approved))~~ the management agreement; and

(d) Ensuring the manager does not represent itself as, or give the appearance that it is the licensee.

(2) The licensee must not give the manager responsibilities that are so extensive that the licensee is relieved of daily responsibility for the daily operations and provision of services in the assisted living facility. If the licensee does so, then the department must determine that a change of ownership has occurred.

(3) The licensee and manager must act in accordance with the terms of the ~~((department approved))~~ management agreements. If the department determines they are not, then the department may ~~((take licensing action))~~ impose enforcement remedies.

(4) The licensee may enter into a management agreement only if the management agreement creates a principal/agent relationship between the licensee and manager.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2594 Management agreements—Department review. ~~((Upon receipt of a proposed))~~ The department may review a management agreement((;)) at any time. Following the review, the department may require:

(1) The proposed or current licensee or manager to provide additional information or clarification;

(2) Any changes necessary to:

(a) Bring the management agreement into compliance with this chapter; and

(b) Ensure that the licensee has not been relieved of the responsibility for the daily operations of the facility.

(3) The licensee to participate in monthly meetings and quarterly on-site visits to the assisted living facility.

WSR 18-08-033

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed March 27, 2018, 11:16 a.m., effective April 27, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is creating new sections in chapter 388-106 WAC, Long-term care services, for two new benefit packages for medicaid alternative care (MAC) and

tailored supports for older adults (TSOA) as part of Washington's medicaid transformation demonstration.

Citation of Rules Affected by this Order: New WAC 388-106-1900, 388-106-1905, 388-106-1910, 388-106-1915, 388-106-1920, 388-106-1921, 388-106-1925, 388-106-1930, 388-106-1931, 388-106-1932, 388-106-1933, 388-106-1935, 388-106-1940, 388-106-1945, 388-106-1950, 388-106-1955, 388-106-1960, 388-106-1965, 388-106-1970, 388-106-1975, 388-106-1980, 388-106-1985, and 388-106-1990.

Statutory Authority for Adoption: RCW 74.08.090.

Adopted under notice filed as WSR 17-24-128 on December 6, 2017.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-106-1900:

- In the definition of "caregiver phases," the five phases were listed.
- The definition of "GetCare" was modified to include the use of GetCare system.

WAC 388-106-1910:

- The modifier "full" was added to 388-106-1910 (2)(a)(ii) so it would mirror the language in WAC 388-106-1905 (2)(a)(i).

WAC 388-106-1915:

- Language was added to clarify that TCARE assessment recommends services but caregiver and care receiver may select any service from the list of services.
- Language was added to clarify that the GetCare assessment does not recommend or restrict the services available to the care receiver.

WAC 388-106-1985:

- Language was added to clarify that there is no right to an administrative hearing for presumptive eligibility determinations described in WAC 388-106-1905(2) and 388-106-1910(2).

WAC 388-106-1920:

- The maximum amount of step three services was edited to clarify when the maximum amount changes.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 23, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 23, Amended 0, Repealed 0.

Date Adopted: March 26, 2018.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 18-09 issue of the Register.

WSR 18-08-035
PERMANENT RULES
HEALTH CARE AUTHORITY

[Filed March 27, 2018, 1:22 p.m., effective April 27, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The agency is amending WAC 182-538-070 Payments to managed care organizations (MCO), to align language regarding enhancement payments for MCO enrollees assigned to federally qualified health centers and rural health clinics with the agency's rules found in chapters 182-548 and 182-549 WAC.

Citation of Rules Affected by this Order: Amending WAC 182-538-070.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 18-04-088 on February 5, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: March 27, 2018.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-24-098, filed 12/1/15, effective 1/1/16)

WAC 182-538-070 Payments to managed care organizations (MCOs). (1) The medicaid agency pays apple health managed care organizations (MCOs) monthly capitated premiums that:

(a) Have been developed using generally accepted actuarial principles and practices;

(b) Are appropriate for the populations to be covered and the services to be furnished under the MCO contract;

(c) Have been certified by actuaries who meet the qualification standards established by the American Academy of Actuaries and follow the practice standards established by the Actuarial Standards Board;

(d) Are based on analysis of historical cost, rate information, or both; and

(e) Are paid based on legislative allocations.

(2) The MCO is solely responsible for payment of MCO-contracted health care services. The agency will not pay for a service that is the MCO's responsibility, even if the MCO has not paid the provider for the service.

(3) The agency pays an enhancement rate ~~((to federally qualified health care centers (FQHC) and rural health clinics (RHC)))~~ for each MCO enrollee assigned to ~~((the FQHC or RHC. The enhancement rate from the agency is in addition to the negotiated payments FQHCs and RHCs receive from the MCOs for services provided to MCO enrollees. To ensure that the appropriate amounts are paid to each FQHC or RHC, the agency performs an annual reconciliation of the enhancement payments with the FQHC or RHC))~~ a federally qualified health center (FQHC) or rural health clinic (RHC) according to chapters 182-548 and 182-549 WAC.

(4) The agency pays MCOs a delivery case rate, separate from the capitation payment, when an enrollee delivers a child(ren) and the MCO pays for any part of labor and delivery.

WSR 18-08-040
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed March 28, 2018, 12:22 p.m., effective April 28, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Eligibility for membership in the public employees' retirement system, teachers' retirement system, school employees' retirement system and public safety employees' retirement system. To clarify that eligibility for early retirement does not make a member ineligible to establish membership in another state retirement system.

Citation of Rules Affected by this Order: Amending WAC 415-106-725, 415-108-725, 415-110-725, and 415-112-546.

Statutory Authority for Adoption: RCW 41.50.050(5).

Adopted under notice filed as WSR 18-05-098 on February 21, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 28, 2018.

Tracy Guerin
Director

AMENDATORY SECTION (Amending WSR 09-19-046, filed 9/10/09, effective 10/11/09)

WAC 415-106-725 If I have retired from another retirement system or am eligible to retire, am I excluded from participating in PSERS? (1) If you have **retired** from another retirement system authorized by the laws of this state, you cannot participate in PSERS membership unless:

(a) You accrued less than fifteen years of service credit in the other retirement system; or

(b) You are a LEOFF Plan 2 retiree returning to work in a PSERS eligible position and choose to participate in PSERS membership. See WAC 415-104-111.

(2) If you are **eligible ((to retire)) for normal retirement** from another retirement system listed in RCW 41.50.030, you cannot participate in PSERS membership unless:

(a) You accrued less than fifteen years of service credit in the other retirement system; or

(b) You are a dual member as described in RCW 41.54.010.

(3) If you are **receiving a disability allowance** from another retirement system listed in RCW 41.50.030, you cannot participate in PSERS membership unless you are a LEOFF Plan 2 retiree returning to work in a PSERS eligible position and choose to participate in PSERS membership. See WAC 415-104-111.

(4) **Defined terms used.** Definitions for the following terms used in this section are:

(a) "Membership" - RCW 41.37.020.

(b) "Service" - RCW 41.37.010.

(c) "Normal retirement" - A member is eligible for normal retirement when they have met their plan's age and/or service credit requirements for a full retirement benefit. Normal retirement does not include early retirement with a reduced benefit, or early retirement with employment restrictions prior to full retirement age. See the following plan definitions of normal retirement:

Public Employees' Retirement System (PERS) Plan 1 - RCW 41.40.180;

Public Employees' Retirement System (PERS) Plan 2 - RCW 41.40.630(1);

Public Employees' Retirement System (PERS) Plan 3 - RCW 41.40.820(1);

Public Safety Employees' Retirement System (PSERS) - RCW 41.37.210 (1) and (2);

School Employees' Retirement System (SERS) Plan 2 - RCW 41.35.420(1);

School Employees' Retirement System (SERS) Plan 3 - RCW 41.35.680(1);

Teachers' Retirement System (TRS) Plan 1 - RCW 41.32.480(1);

Teachers' Retirement System (TRS) Plan 2 - RCW 41.32.765(1);

Teachers' Retirement System (TRS) Plan 3 - RCW 41.32.875(1);

Washington State Patrol Retirement System (WSPRS) - RCW 43.43.250(2).

AMENDATORY SECTION (Amending WSR 09-19-046, filed 9/10/09, effective 10/11/09)

WAC 415-108-725 If I have retired from another retirement system or am eligible to retire, am I excluded from participating in PERS? (1) If you have **retired** from another retirement system authorized by the laws of this state you cannot participate in PERS membership unless:

(a) You established membership in PERS prior to March 19, 1976;

(b) You accrued less than fifteen years of service credit in the other retirement system; or

(c) You are a LEOFF Plan 2 retiree returning to work in a PERS eligible position and choose to participate in PERS membership. See WAC 415-104-111.

(2) If you are **eligible ((to retire)) for normal retirement** from another retirement system listed in RCW 41.50.030, you cannot participate in PERS membership unless:

(a) You established membership in PERS prior to March 19, 1976;

(b) You accrued less than fifteen years of service credit in the other retirement system; or

(c) You are a dual member as described in RCW 41.54.010.

(3) If you are **receiving a disability allowance** from another retirement system listed in RCW 41.50.030, you cannot participate in PERS membership unless:

(a) You established membership in PERS prior to March 19, 1976; or

(b) You are a LEOFF Plan 2 retiree returning to work in a PERS eligible position and choose to participate in PERS membership. See WAC 415-104-111.

(4) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Membership" - RCW 41.40.023.

(b) "Service" - RCW 41.40.010.

(c) "Normal retirement" - A member is eligible for normal retirement when they have met their plan's age and/or service credit requirements for a full retirement benefit. Normal retirement does not include early retirement with a reduced benefit, or early retirement with employment restrictions prior to full retirement age. See the following plan definitions of normal retirement:

Public Employees' Retirement System (PERS) Plan 1 - RCW 41.40.180;

Public Employees' Retirement System (PERS) Plan 2 - RCW 41.40.630(1);

Public Employees' Retirement System (PERS) Plan 3 - RCW 41.40.820(1);

Public Safety Employees' Retirement System (PSERS) - RCW 41.37.210 (1) and (2);

School Employees' Retirement System (SERS) Plan 2 - RCW 41.35.420(1);

School Employees' Retirement System (SERS) Plan 3 - RCW 41.35.680(1);

Teachers' Retirement System (TRS) Plan 1 - RCW 41.32.480(1);

Teachers' Retirement System (TRS) Plan 2 - RCW 41.32.765(1);

Teachers' Retirement System (TRS) Plan 3 - RCW 41.32.875(1);

Washington State Patrol Retirement System (WSPRS) - RCW 43.43.250(2).

AMENDATORY SECTION (Amending WSR 09-19-046, filed 9/10/09, effective 10/11/09)

WAC 415-110-725 If I have retired from another retirement system or am eligible to retire, am I excluded from participating in SERS? (1) If you have retired from another retirement system authorized by the laws of this state, you cannot participate in SERS membership unless:

(a) You accrued less than fifteen years of service credit in the other retirement system; or

(b) You are a LEOFF Plan 2 retiree returning to work in a SERS eligible position and choose to participate in SERS membership. See WAC 415-104-111.

(2) If you are **eligible ((to retire)) for normal retirement** from another retirement system listed in RCW 41.50.030, you cannot participate in SERS membership unless:

(a) You accrued less than fifteen years of service credit in the other retirement system; or

(b) You are a dual member as described in RCW 41.54-010.

(3) If you are **receiving a disability allowance** from another retirement system listed in RCW 41.50.030, you cannot participate in SERS membership unless you are a LEOFF Plan 2 retiree returning to work in a SERS eligible position and choose to participate in SERS membership. See WAC 415-104-111.

(4) Defined terms used. Definitions for the following terms used in this section may be found in the sections listed.

(a) "Membership" - RCW 41.35.030.

(b) "Service" - RCW 41.35.010.

(c) "Normal retirement" - A member is eligible for normal retirement when they have met their plan's age and/or service credit requirements for a full retirement benefit. Normal retirement does not include early retirement with a reduced benefit, or early retirement with employment restrictions prior to full retirement age. See the following plan definitions of normal retirement:

Public Employees' Retirement System (PERS) Plan 1 - RCW 41.40.180;

Public Employees' Retirement System (PERS) Plan 2 - RCW 41.40.630(1);

Public Employees' Retirement System (PERS) Plan 3 - RCW 41.40.820(1);

Public Safety Employees' Retirement System (PSERS) - RCW 41.37.210 (1) and (2);

School Employees' Retirement System (SERS) Plan 2 - RCW 41.35.420(1);

School Employees' Retirement System (SERS) Plan 3 - RCW 41.35.680(1);

Teachers' Retirement System (TRS) Plan 1 - RCW 41.32.480(1);

Teachers' Retirement System (TRS) Plan 2 - RCW 41.32.765(1);

Teachers' Retirement System (TRS) Plan 3 - RCW 41.32.875(1);

Washington State Patrol Retirement System (WSPRS) - RCW 43.43.250(2).

AMENDATORY SECTION (Amending WSR 09-19-046, filed 9/10/09, effective 10/11/09)

WAC 415-112-546 If I have retired from another retirement system or am eligible to retire, am I excluded from participating in TRS? (1) If you have retired from another retirement system authorized by the laws of this state, you cannot participate in TRS membership unless:

(a) You established membership in TRS prior to March 19, 1976;

(b) You accrued less than fifteen years of service credit in the other retirement system; or

(c) You are a LEOFF Plan 2 retiree returning to work in a TRS eligible position and choose to participate in TRS membership. See WAC 415-104-111.

(2) If you are **eligible ((to retire)) for normal retirement** from another retirement system listed in RCW 41.50.030, you cannot participate in TRS membership unless:

(a) You established membership in TRS prior to March 19, 1976;

(b) You accrued less than fifteen years of service credit in the other retirement system; or

(c) You are a dual member as described in RCW 41.54-010.

(3) If you are **receiving a disability allowance** from another retirement system listed in RCW 41.50.030, you cannot participate in TRS membership unless you are a LEOFF Plan 2 retiree returning to work in a TRS eligible position and choose to participate in TRS membership. See WAC 415-104-111.

(4) **Defined terms used.** Definitions for the following terms used in this section are:

(a) "Membership" - RCW 41.32.032.

(b) "Service" - RCW 41.32.010.

(c) "Normal retirement" - A member is eligible for normal retirement when they have met their plan's age and/or service credit requirements for a full retirement benefit. Normal retirement does not include early retirement with a reduced benefit, or early retirement with employment restrictions prior to full retirement age. See the following plan definitions of normal retirement:

Public Employees' Retirement System (PERS) Plan 1 - RCW 41.40.180;

Public Employees' Retirement System (PERS) Plan 2 - RCW 41.40.630(1);

Public Employees' Retirement System (PERS) Plan 3 - RCW 41.40.820(1);

Public Safety Employees' Retirement System (PSERS) - RCW 41.37.210 (1) and (2);

School Employees' Retirement System (SERS) Plan 2 - RCW 41.35.420(1);

School Employees' Retirement System (SERS) Plan 3 - RCW 41.35.680(1);

Teachers' Retirement System (TRS) Plan 1 - RCW 41.32.480(1);

Teachers' Retirement System (TRS) Plan 2 - RCW 41.32.765(1);

Teachers' Retirement System (TRS) Plan 3 - RCW 41.32.875(1);

Washington State Patrol Retirement System (WSPRS) - RCW 43.43.250(2).

WSR 18-08-043

PERMANENT RULES

ARTS COMMISSION

[Filed March 28, 2018, 4:57 p.m., effective April 28, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The Washington state creative districts is a new program. These rules outline requirements for certification and give guidance to cities, counties, towns or other entities applying for state certification. In addition, these rules also outline requirements for renewal, denial and reporting.

Citation of Rules Affected by this Order: New WAC 30-42-010 through 30-42-070; and amending WAC 30-12-010 and 30-02-010.

Statutory Authority for Adoption: RCW 43.46.110.

Other Authority: Chapter 43.46 RCW.

Adopted under notice filed as WSR 18-05-076 on February 20, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 7, Amended 2, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 7, Amended 2, Repealed 0.

Date Adopted: March 28, 2018.

Karen Hanan
Executive Director

AMENDATORY SECTION (Amending WSR 18-02-086, filed 1/2/18, effective 2/2/18)

WAC 30-02-010 Definitions. The following definitions shall apply throughout Title 30 WAC:

"Accession" means to formally acquire a work of art for the state art collection, including the action of assigning an accession or control number to the work of art.

"Appeal procedure" means the procedure as established in WAC 30-12-036 (Request for review of denied applications) whereby an applicant may request a review of a denied application.

"Application form" means the printed, electronic, or web-based forms created and published by staff to be used in commission program applications.

"Application guidelines" means the published document that provides the public with information on how to apply for commission programs, including eligibility requirements, review criteria, deadlines, timelines, and appeal procedure. Application guidelines may be published in a printed format and/or in electronic format accessible through the commission's web site.

"Art advisory committee" means a committee formed by staff and a partner agency to develop plans and overall project specifications, and to make funding allocation decisions related to the state art collection.

"Art in public places program" means the visual art program of the commission established by the legislature in RCW 43.46.090 to acquire works of art and to develop, administer, and manage the state art collection.

"Art selection committee" means a committee formed by a partner agency, and approved by staff, to review and select artists to create works of art for the state art collection, or to review and select works of art for or from the state art collection, through a process facilitated by staff.

"Artistic disciplines" means dance, design, folk and traditional arts, media arts, music, literature, theater, visual arts, and interdisciplinary arts.

"Artistic excellence" means evidence of some or all of the following: Mastery of skills and techniques, communication of unique vision or perspective, professional approaches to process and presentation. Additionally, for groups and organizations, includes the contribution the artistic work(s) make to the development of the artists involved, the art form and the arts generally; or for services delivered, the contribution the services make to the development of a vibrant arts and cultural community in the state.

"Arts professional" means an individual who has professional work experience in the arts or an arts-related field.

"Board" means the board of commissioners, consisting of nineteen members appointed by the governor and four members of the legislature appointed to the Washington state arts commission pursuant to RCW 43.46.015.

"Chair" means the chair of the board, elected pursuant to WAC 30-08-050 and fulfilling duties as established in Title 30 WAC.

"Collections management" means the ongoing care, preservation, and maintenance of the state art collection, including activities such as the management of conservation, restoration, deaccession, documentation, inventory, labeling, loans, and resiting of works of art.

"Commission" means the collective entity of the Washington state arts commission, including the board, executive director, and staff.

"Commissioner" means an individual appointed to the board of the Washington state arts commission.

"Conservation" means treatment of malfunctioning or damaged works of art for the purpose of bringing them to a stable condition so that future routine and special maintenance can be effective. Conservation-related activities may also include examination and documentation.

"Creative district" means a land area designated by a local government in accordance with RCW 43.46.105 that contains either a hub of cultural facilities, creative industries, or arts-related businesses, or multiple vacant properties in close proximity that would be suitable for redevelopment as a creative district.

"Curator" means a qualified visual arts professional with past curatorial experience selected to recommend works of art for acquisition to the state art collection.

"Deaccession" means board action to remove an accessioned work of art from the state art collection.

"Disability" is defined in RCW 49.60.040(7).

"Eligibility requirements" means published standards by which applications are reviewed to determine if they meet the minimum required qualifications to apply for a commission program.

"Executive director" means that person employed pursuant to RCW 43.46.045 to carry out the functions of that chapter and Title 30 WAC.

"Grant" means a contract for arts or cultural services between the commission and an organization or individual, awarded through a competitive application process and approved or ratified by the board.

"Inventory" means a periodic survey of the physical state and current location of works of art in the state art collection.

"Local government" means a local governing body, city, county, town, municipal county, tribal government, or other entity as approved.

"Nonprofit" means incorporation under the nonprofit laws of the state of Washington or another state, and determination by the Internal Revenue Service (IRS) that the incorporated entity is exempt from taxation under Section 501 (c)(3) of the IRS code.

"Panel" means a group of individuals convened by staff to review applications, nominations, or staff recommendations based on published review criteria, in order to make recommendations to the board or executive director.

"Partner agency" means a state agency, K-12 public school, university, college, community college, or other public entity working with the art in public places program.

"Professional artist" means an individual who has a history of paid work as an artist.

"Public artist roster" means the board approved list of professional artists eligible to create visual works of art for the state art collection.

"Public benefit" means evidence of some or all of the following: Potential impact on the artistic, cultural, professional, or economic development of a community or individuals; and/or potential to broaden access to, expand and diver-

sify the audiences for, and/or strengthen communities through the arts.

"Resiting" means the relocation of a work of art in the state art collection within the jurisdiction of a partner agency or between partner agencies.

"Restoration" means treatment that returns a malfunctioning or damaged work of art to a known or assumed state, often through the addition of nonoriginal material.

"Review criteria" means the standards used by panels to evaluate applications, nominations, or staff recommendations.

"Roster" means a list of approved arts professionals who have the skills and experience to address the needs of a specific commission program.

"Routine maintenance" means a regular procedure to preserve a work of art in the state art collection in proper condition: Clean, presentable, and in working order.

"Site responsive" means created, planned, or intended for a particular site. A site responsive work of art addresses both the physical characteristics of its location and the context of the community in which it is situated.

"Special maintenance" means anticipated but infrequent activities required to maintain aesthetic and/or structural aspects of the works of art in the state art collection, including integrity of the overall surface and/or individual elements.

"Staff" means employees of the Washington state arts commission, under the direction of the executive director, pursuant to RCW 43.46.045, employed to carry out the functions of that chapter, and Title 30 WAC.

"State art collection" means all works of art and select design models commissioned or purchased under RCW 43.17.200, 28A.58.055, 28A.335.210, 43.46.090, and 43.19.-455.

"State-certified creative district" means a creative district whose application for certification has been approved by the commission.

"Teaching artist" means a professional artist who is dedicated to arts education as an integral part of his/her professional practice, and who has cultivated skills as an educator in concert with skills as an artist.

"Underserved" means populations whose opportunities to experience the arts are limited by geography, historical exclusion and marginalization due to race, ethnicity, sexual orientation, gender identity, economics, disability, or other social or institutionally imposed barriers.

"Under-resourced" means a lack of access to specialized, professional, financial, or institutional expertise and communal knowledge, and/or working with neglected or dated infrastructures and limited or absent assets and resources resulting in lack of recognition, competitiveness, and cyclical absent or diminished funding.

"Washington state arts commission" means the collective entity of the Washington state arts commission, including the board and staff.

AMENDATORY SECTION (Amending WSR 10-23-102, filed 11/16/10, effective 12/17/10)

WAC 30-12-010 Scope of this chapter. This chapter is to establish rules that apply generally to programs and ser-

vices of the Washington state arts commission. Additional rules for specific programs are established in application guidelines, and in chapters 30-40 WAC (Art in public places program), 30-41 WAC (Poet laureate program), 30-42 WAC (Creative districts program), and 30-44 WAC (Governor's arts and heritage awards).

Chapter 30-42 WAC

CREATIVE DISTRICTS PROGRAM

NEW SECTION

WAC 30-42-010 Authority. The Washington state arts commission is authorized under RCW 43.46.100 through 43.46.115 to establish and administer the creative districts program. Staff has authority to develop, administer, and manage the creative districts program.

NEW SECTION

WAC 30-42-020 Purpose. A state-certified creative districts program supports communities to encourage economic and cultural development. The program supports activities that include, but are not limited to: Attracting artists and creative entrepreneurs, creating or expanding a hub of economic or business activity, establishing marketable tourism assets, revitalizing neighborhoods or preserve historic or cultural heritage, or other activities that may enhance and celebrate a community's unique cultural or economic identity as it relates to arts and cultural activities.

NEW SECTION

WAC 30-42-030 Application process. (1) Applications will be reviewed and processed pursuant to WAC 30-12-017.

(2) The application must be submitted on a standard form developed and approved by the commission.

(3) Application cycles, forms, guidelines, eligibility requirements, and review criteria are established and published by staff.

(4) The creative districts program manager serves on panels pursuant to WAC 30-12-030 (Panels) and 30-12-035 (Conflicts of interest in panels and program committees).

NEW SECTION

WAC 30-42-040 Requirements for certification. In order to receive certification as a state-certified creative district, a creative district must:

(1) Be a geographically contiguous area or other approved configuration;

(2) Be distinguished by physical, artistic, or cultural resources that play a vital role in the quality and life of a community, including its economic and cultural development;

(3) Be the site of a concentration of artistic or cultural activity, a major arts or cultural institution or facility, arts and entertainment businesses, an area with arts and cultural activities, or artistic or cultural production;

(4) Be engaged in the promotional, preservation, and educational aspects of the arts and culture of the community

and contribute to the public through interpretive, educational, or recreational uses; and

(5) Satisfy any additional criteria required by the commission that in its discretion will further the objectives of creative district certification.

NEW SECTION

WAC 30-42-050 Review of creative districts applications, approval and denial. The commission shall make available electronically the approved application forms, procedures and processes and post to the agency web site.

(1) Upon review of application for certification, the commission shall approve or reject the application. The commission may request additional relevant information at any time during the application, review, and certification process.

(2) Certification is based upon the criteria specified in RCW 43.46.105.

(3) If the commission approves an application for certification, it must notify the applicant in writing and must specify the terms and conditions of the approval.

(4) If an application is denied, the commission shall notify the applicant in writing within thirty days of determination that the application does not meet the state requirements and the applicant cannot meet the state requirements with the information at hand.

(5) Denied applications may reapply, if the deadline for accepting applications has not passed when all of the criteria can be met.

(6) Denied applications may appeal per WAC 30-12-036.

NEW SECTION

WAC 30-42-060 Creative districts certification and district activities. (1) State-certified creative districts shall use the state-certified designation when promoting their creative district, and shall acknowledge the arts commission as a technical resource and agency of support in compliance with certification requirements.

(2) State-certified creative districts may be eligible for resources as described in RCW 43.46.110(7).

(3) The commission shall require periodic written reports from any state-certified creative district for the purpose of reviewing the activities of the district, including the compliance of the district with the developed policies and standards. Written reports shall be filed a minimum of annually, and may be filed on a quarterly basis.

NEW SECTION

WAC 30-42-070 Creative districts recertification and revocation. (1) The state certification as a creative district is valid for five years. Creative districts may renew certification after five years, in compliance with arts commission guidelines.

(2) The commission may revoke a certification previously granted, for failure by a local government or organization to fully comply with commission requirements. Disputes shall be resolved through adjudicative proceedings as described in chapter 34.05 RCW.

WSR 18-08-053
PERMANENT RULES
GAMBLING COMMISSION

[Filed March 30, 2018, 2:05 p.m., effective May 1, 2018]

Effective Date of Rule: May 1, 2018.

Purpose: The purpose of the new rule is to set the individual license fees under the new license fee restructure. The key changes to individual fees in this third package:

- Establishes the license fees for individuals.
- Requires all representatives to apply and pay a fee when adding or changing employers consistent with all other individual licensees. The fees are consistent with other fees for this transaction.
- Outlines in rule the card room employees required to pay "out-of-state" new application fees.

Citation of Rules Affected by this Order: New WAC 230-05-175 Individual license fees.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 18-03-171 on January 23, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 1, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 30, 2018.

Brian J. Considine
 Legal and Legislative Manager

NEW SECTION

WAC 230-05-175 Individual license fees. Individuals must pay the following fees:

(1) Annual license and additional employer fees:

License Type	New Application Fee	Annual Renewal Fee	Additional or Change of Employer Fee
Call center for enhanced raffle representative	\$275	\$170	-
Card room employee license - Nonhouse-banked (Class A)	\$200	\$95	\$65
Card room employee license - Class F and house-banked (Class B)	\$275 (in-state) \$340 (out-of-state)	\$170	\$65
Charitable or nonprofit gambling manager	\$200	\$95	\$95
Commercial gambling manager	\$200	\$95	\$95
Distributor representative	\$275	\$170	\$65
Linked bingo prize provider representative	\$275	\$170	\$65
Manufacturer representative	\$275	\$170	\$65
Gambling service supplier representative	\$275	\$170	\$65

(2) Class B card room employees must pay the out-of-state application fee if over the last ten years the applicant lived outside of Washington for six nonconsecutive months or more.

(3) Other service fees:

Transaction	Fee
Change of name	\$30
Card room employee emergency waiver request	\$65
Duplicate license	\$30

(4) Military personnel returning from service. If a license expires while an individual is on active military service, the individual may apply to have their license reissued at the renewal fee. The application must be received within six

months after completing their active military service. The applicant must provide evidence of the completion date of active military service.

WSR 18-08-056
PERMANENT RULES
GAMBLING COMMISSION

[Filed March 30, 2018, 2:59 p.m., effective July 1, 2018]

Effective Date of Rule: July 1, 2018.

Purpose: The purpose of the fourth rules package and rule changes are to clarify that annual activity report filers will report their gambling activity for their license year through June 30, 2018, on July 30, 2018. All licensees will

begin reporting their activity quarterly beginning with the third quarter July 1 - September 30.

Six rules were previously included in rule package #2, and were removed for revisions and added to rule package #4.

- WAC 230-05-102, all licensed organizations report activity quarterly beginning with the July 1 through September 30, 2018, quarter;
- WAC 230-07-155, reporting annual activities for raffles, enhanced raffles, amusement games, Class A, B or C bingo, or combination licenses;
- WAC 230-07-160, reporting annual activity for agricultural fairs;
- WAC 230-09-056, activity reports for fund-raising events;
- WAC 230-10-457, activity reports for linked bingo prize providers; and
- WAC 230-13-169, annual activity reports for commercial amusement game licensees.

Amend the use of I.D. stamps:

- I.D. stamps will only be required for punchboards/pull-tabs;
- The commission will provide I.D. stamps to punchboards/pull-tab manufacturers at no cost; and
- The following rules were revised:
 - o WAC 230-10-040 Disposable bingo cards—Additional requirements;
 - o WAC 230-10-180 Electronic bingo card daubers requirements;
 - o WAC 230-16-160 I.D. stamps for gambling equipment;
 - o WAC 230-16-165 Obtaining I.D. stamps;
 - o WAC 230-16-175 Placing I.D. stamps and records entry labels; and
 - o WAC 230-16-180 Records retention for I.D. stamp records.

Citation of Rules Affected by this Order: Amending WAC 230-05-102, 230-07-155, 230-07-160, 230-09-056, 230-10-040, 230-10-180, 230-10-457, 230-13-169, 230-16-160, 230-16-165, 230-16-175, and 230-16-180.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 18-04-014 on January 26, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 12, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 12, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 30, 2018.

Brian J. Considine
Legal and Legislative Manager

NEW SECTION

WAC 230-05-102 All licensed organizations report activity quarterly beginning with the July 1, 2018, through September 30, 2018, quarter.

(1) Beginning July 1, 2018, all licensed organizations must submit activity reports quarterly, regardless of whether they previously submitted reports annually, quarterly, or semi-annually and regardless of when their permit or license year ends.

(2) This includes gambling service suppliers and any other licensed organizations that did not previously submit activity reports.

(3) Licensed organizations that report annually must submit an activity report from the beginning of their license year through June 30, 2018. These reports are due July 30, 2018.

Beginning July 1, 2018, licensed organizations that report annually will report quarterly as set forth in this section.

(4) The activity reports must be in the format we require and must:

Cover the period:	Be received by us no later than:
July 1 through September 30	October 30
October 1 through December 31	January 30
January 1 through March 31	April 30
April 1 through June 30	July 30

(5) All licensed organizations must submit quarterly license fees to us for each licensed gambling activity after the first quarter of their license year that begins on or after July 1, 2018, as set forth in WAC 230-05-124.

AMENDATORY SECTION (Amending WSR 13-19-056, filed 9/16/13, effective 10/17/13)

WAC 230-07-155 Reporting annual activity for raffles, enhanced raffles, amusement games, Class A, B, or C bingo, or combination licenses. (1) Raffle, enhanced raffle, amusement game, Class A, B, or C bingo, or combination licensees must submit an annual report of all their activities in the format we require.

(2) We must receive the completed report in our office postmarked no later than thirty days following the expiration of their license(s). Licensed organizations that report annually must submit an activity report from the beginning of their license year through June 30, 2018, by July 30, 2018. These reports are due July 30, 2018.

Beginning July 1, 2018, reports required by this section must be submitted quarterly, as set forth in WAC 230-05-102.

(3) The highest ranking officer or his/her designee must sign the report.

(4) If the licensee has someone else prepare the report, then the preparer must include his/her name and phone number on the report.

(5) Licensees that operate retail sales activities in conjunction with bingo games must report the net income from those retail sales activities.

AMENDATORY SECTION (Amending WSR 07-10-032, filed 4/24/07, effective 1/1/08)

WAC 230-07-160 Reporting annual activity for agricultural fairs. (1) Charitable or nonprofit licensees who operate bingo, raffles, and/or amusement games only at agricultural fairs and other special properties and permittees as defined in WAC 230-03-015 who operate bingo under another's license at agricultural fairs and other special properties must submit an annual report of all their activities in the format we require.

(2) We must receive the completed report in our office postmarked no later than thirty days following the expiration of the license year. Licensed organizations that report annually must submit an activity report from the beginning of their license year through June 30, 2018, by July 30, 2018. These reports are due July 30, 2018.

Beginning July 1, 2018, reports required by this section must be submitted quarterly, as set forth in WAC 230-05-102.

(3) Permittees operating under another's license must provide the licensee with all information about the permitted operation that is needed by the licensee to complete the annual activity report not less than ten days before the time that we require the licensee to file his or her report.

(4) The highest ranking officer or his or her designee must sign the report. If the licensee has someone else prepare the report, then the preparer must include his or her name and phone number on the report.

AMENDATORY SECTION (Amending WSR 07-21-116, filed 10/22/07, effective 1/1/08)

WAC 230-09-056 Activity reports for fund-raising events. Fund-raising event licensees must submit an activity report to the commission concerning the operation of the licensed activities of each event. Licensees must complete the report in the format we require and the report must be:

(1) Received at our administrative office or postmarked no later than thirty days after the end of the authorized operating day or days(~~(; and)~~). Licensed organizations that report annually must submit an activity report from the beginning of their license year through June 30, 2018, by July 30, 2018. These reports are due July 30, 2018.

Beginning July 1, 2018, reports required by this section must be submitted quarterly, as set forth in WAC 230-05-102.

(2) Signed by the licensee's highest ranking executive officer or designee. If someone other than the licensee or an employee prepares the report, the preparer must print his or her name and phone number on the report.

AMENDATORY SECTION (Amending WSR 07-10-033, filed 4/24/07, effective 1/1/08)

WAC 230-10-040 Disposable bingo cards—Additional requirements. (1) Disposable bingo cards must:

(a) Meet all bingo card requirements; and
(b) Be imprinted with a unique set and configuration of numbers on each card; and
(c) Not duplicate cards within a specific product line; and

(d) Include a control system in each set which:
(i) Identifies that specific set and each specific card within that set; and

(ii) Allows tracking of the transfer of cards from the point of manufacture to the operator; and

~~(iii) Facilitates sale by the operator to the player(;~~and~~
(e) Have an identification and inspection stamp from us sold to the licensed manufacturer or to the operator and attached to the series by the licensed manufacturer, the operator, or us)).~~

(2) Bingo licensees using the combination receipting method may divide sets or collations of cards into no more than ten subgroups. Licensees must follow disposable bingo card inventory control requirements for each subgroup.

AMENDATORY SECTION (Amending WSR 07-21-116, filed 10/22/07, effective 1/1/08)

WAC 230-10-180 Electronic bingo card daubers requirements. (1) Electronic bingo card daubers must:

(a) Be manufactured by licensed manufacturers; and
(b) Be sold, leased, and serviced by licensed distributors or manufacturers. Operators may perform routine maintenance; and

~~(c) ((Have an I.D. stamp from us that was sold to the licensed manufacturer or the operator and attached by the licensed manufacturer, the operator, or us; and~~

~~(d))~~ Be unable to modify the computer program which operates the dauber units or the electronic database which stores the bingo cards; and

~~((e))~~ (d) Store preprinted bingo cards a player purchases. The electronic images of cards stored in daubers are for player convenience only and are not bingo cards for purposes of this title; and

~~((f))~~ (e) Use cards that meet all requirements of bingo cards and electronic bingo cards; and

~~((g))~~ (f) Allow players to input the numbers called; and
~~((h))~~ (g) Compare input numbers to bingo cards stored in an electronic database; and

~~((i))~~ (h) Identify to the player those stored bingo cards that contain the input numbers.

(2) Operators providing electronic daubers must have the cards printed, placed in a master index, and available for on-site inspection at the request of law enforcement agencies, customers, or us.

AMENDATORY SECTION (Amending WSR 07-21-116, filed 10/22/07, effective 1/1/08)

WAC 230-10-457 Activity reports for linked bingo prize providers. Linked bingo prize providers must submit

activity reports to us twice a year for their sales and services. The activity reports must be in the format we require and must:

- (1) Cover the periods:
 - (a) January 1 through June 30; and
 - (b) July 1 through December 31; and
- (2) Be received at our administrative office or post-marked no later than thirty days following the end of the reporting period. Licensed organizations that report annually must submit an activity report from the beginning of their license year through June 30, 2018, by July 30, 2018. These reports are due July 30, 2018.

Beginning July 1, 2018, reports required by this section must be submitted quarterly, as set forth in WAC 230-05-102; and

- (3) Be signed by the licensee's highest ranking executive officer or a designee. If someone other than the licensee or an employee prepares the report, the preparer must print his or her name and business telephone number on the report; and
- (4) Submit a report for any period of time their license was valid, even if they had no activity or did not renew.

AMENDATORY SECTION (Amending WSR 08-20-007, filed 9/18/08, effective 1/1/09)

WAC 230-13-169 Annual activity reports for commercial amusement game licensees. Commercial amusement game licensees must submit an annual activity report to us in the format we require and must:

- (1) Cover the license year of one calendar year or less; and
- (2) Be received at our administrative office or post-marked no later than thirty days following the end of the reporting period. Licensed organizations that report annually must submit an activity report from the beginning of their license year through June 30, 2018, by July 30, 2018. These reports are due July 30, 2018.

Beginning July 1, 2018, reports required by this section must be submitted quarterly, as set forth in WAC 230-05-102; and

- (3) Be signed by the licensee's highest ranking executive officer or a designee. If someone other than the commercial amusement game licensee or its employee prepares the report, then it must provide the preparer's name and business telephone number; and
- (4) Submit a report for any period of time their license was valid, even if they had no activity or did not renew their license; and
- (5) Complete the report according to the instructions furnished with the report.

AMENDATORY SECTION (Amending WSR 07-19-069, filed 9/17/07, effective 1/1/08)

WAC 230-16-160 I.D. stamps for gambling equipment. ~~((1) If gambling equipment requires our approval, manufacturers and distributors must not attach I.D. stamps to the equipment until we approve it.~~

- ~~(2))~~ Manufacturers must permanently and prominently attach our I.D. stamps to their gambling equipment. Once

attached, no one may remove or tamper with the I.D. stamps. Manufacturers must attach I.D. stamps to:

- ~~((a))~~ (1) Punch boards; and
- ~~((b))~~ (2) Pull-tab flares ~~(; and~~
- ~~(c)~~ Pull-tab dispensers; and
- ~~(d)~~ Disposable bingo card packing slips; and
- ~~(e)~~ Coin or token activated amusement games operated at locations with a Class A license; and
- ~~(f)~~ Electronic bingo card daubers; and
- ~~(g)~~ Electronic card facsimile tables; and
- ~~(h)~~ Other items specified by the director)).

AMENDATORY SECTION (Amending WSR 07-19-069, filed 9/17/07, effective 1/1/08)

WAC 230-16-165 ((Purchasing)) Obtaining I.D. stamps. (1) Manufacturers must ~~((purchase))~~ obtain I.D. stamps from us and attach them to the equipment specified in this chapter.

(2) Any manufacturer may return damaged stamps to us with a detailed listing of the damaged stamps ~~((and must pay a service charge))~~. We will then replace the I.D. stamps.

~~((3) Owners of gambling equipment which require annual I.D. stamps must purchase I.D. stamps from us and attach them to their gambling equipment. Annual I.D. stamps expire on December 31 each year, even if the equipment was placed out for play mid-year.~~

~~(4) Owners of pull-tab dispensers must purchase I.D. stamps to replace worn I.D. stamps on pull-tab dispensers. The owner must send us:~~

- ~~(a) A copy of the invoice for the purchase of the dispenser from the manufacturer, distributor, or operator; or~~
- ~~(b) A complete description of the pull-tab dispenser, serial number, manufacturer, and the previous I.D. stamp number, if known.)~~

AMENDATORY SECTION (Amending WSR 07-19-069, filed 9/17/07, effective 1/1/08)

WAC 230-16-175 Placing I.D. stamps and records entry labels. ~~((4))~~ Manufacturers must attach I.D. stamps and records entry labels to approved gambling equipment in the following way:

~~((a))~~ (1) **Punch boards** - On the reverse side of the board in an area that will not obstruct removal of punches. If sufficient space is not available on the reverse side, licensees may wrap the records entry labels around or partially attach them to the edge of the punch board as long as this does not obstruct display of prizes available or other information we require.

~~((b))~~ (2) **Pull tabs** - On the face or reverse side of the flare. If placed on the face, the I.D. stamps and records entry labels must not obstruct prizes available or other information we require.

~~((c))~~ **Disposable bingo cards** - On the packing label on the outside of the shipping carton. Manufacturers must attach records entry labels to the packing slip. When they pack a set or collation of cards in more than one shipping container, manufacturers may attach the I.D. stamp to the first container and print the I.D. stamp number on all remaining shipping containers.

~~(2) Electronic pull tab dispensers, electronic bingo card daubers, and electronic facsimile card tables—Manufacturers or owners must attach I.D. stamps on the outside of the main body, in an area that is not normally removed and replaced, and in a way that does not obstruct the view of the pull tabs available for play, the bingo cards, or the card facsimiles.~~

~~(3) Electromechanical and mechanical pull tab dispensers—Manufacturers or owners must attach I.D. stamps on the outside of the main body, in an area that is not normally removed and replaced, and in a way that does not obstruct the view of the pull tabs available for play or the card facsimiles. Licensees may discard records entry labels.~~

~~(4) Amusement games—Owners must attach I.D. stamps on the outside of the main body, in an area that is not normally removed and replaced, and in a way that does not obstruct the view of the amusement game prizes.)~~

AMENDATORY SECTION (Amending WSR 07-19-069, filed 9/17/07, effective 1/1/08)

WAC 230-16-180 Record retention for I.D. stamp records. Manufacturers must keep records that provide an accountability trail for all I.D. stamps (~~(purchased)~~).

(1) For I.D. stamps attached to gambling equipment and sold, manufacturers must keep the I.D. stamps records for at least three years and include, at least:

- (a) The name of the purchaser;
- (b) The date of the sale; and
- (c) The invoice number recording the sale.

(2) For all unused or damaged I.D. stamps, manufacturers must indefinitely retain the I.D. stamps or provide records that include enough detail to allow us to account for all I.D. stamps.

**WSR 18-08-057
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 18-53—Filed March 30, 2018, 3:58 p.m., effective April 30, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Update WAC 220-351-080; this WAC includes fees for the combination guide license that are no longer valid for license year 2018. These fees were updated in HB [ESHB] 1597 effective January 1, 2018.

Citation of Rules Affected by this Order: Amending WAC 220-351-080.

Statutory Authority for Adoption: RCW 77.04.090, 77.04.130, 77.15.568, 77.08.010, 77.65.510, 77.65.515, 77.65.520.

Adopted under notice filed as WSR 18-03-148 on January 22, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 29, 2018.

Amy Windrope
for Joe Stohr
Director

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-351-080 Combined fish guide license. A combined fish guide license allows the holder to offer or perform the services of a food fish guide and a game fish guide. The fee for a resident combined fish guide license is ~~\$(435)~~ 815 and the fee for a nonresident combined fish guide license is ~~\$(1,435)~~ 1,045. The application fee and surcharge for regional fishery enhancement groups as required by RCW 77.95.090 are included in the overall cost of the combined fish guide license.

**WSR 18-08-058
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Rule 18-54—Filed March 30, 2018, 4:01 p.m., effective April 30, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Updating the term wholesale fish dealer to wholesale fish buyer in WAC 220-360-140.

Citation of Rules Affected by this Order: Amending WAC 220-360-140.

Statutory Authority for Adoption: RCW 77.04.090, 77.04.130, 77.15.568, 77.08.010, 77.65.510, 77.65.515, 77.65.520.

Adopted under notice filed as WSR 17-22-131 on November 1, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 29, 2018.

Amy Windrope
for Joe Stohr
Director

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-360-140 Identification of wild stocks of clams, mussels, or oysters—Reporting requirements for the commercial harvest of wild clams, mussels, or oysters from nonstate aquatic lands—Conversion to private sector cultured aquatic products. (1) Based upon RCW 15.85.020(3), the following shellfish are distinguished from private sector cultured aquatic products and are identified as wild stocks that are regulated under this chapter:

(a) All clams, mussels, or oysters that were not propagated, farmed, or cultivated under the active supervision and management of a private sector aquatic farmer; and

(b) All clams, mussels, or oysters that were set naturally prior to the time an aquatic farm was established and placed under the active supervision and management of a private sector aquatic farmer.

(2) Examples of harvested wild stocks of shellfish include, but are not limited to, the following:

(a) Any harvest of clams, mussels, or oysters from a site that is not registered as an aquatic farm unless there is some ability to demonstrate that the shellfish was propagated, farmed, or cultivated under the active supervision of an aquatic farmer;

(b) Any harvest of clams, mussels, or oysters that were naturally set prior to the time an aquatic farm was established at the site and placed under the active supervision and management of an aquatic farmer; and

(c) Shellfish that is harvested from a newly registered aquatic farm during a period when the shellfish is presumed to come from a wild stock as specified in subsection (5) of this section.

(3) ~~((The sale of))~~ It is unlawful to sell wild stocks of clams, mussels, and oysters ~~((must be))~~ unless properly reported ((through the use of)) on a shellfish receiving ticket((s)). The failure to report the sale of shellfish with a fish receiving ticket when it is required is unlawful activity and constitutes a violation of WAC 220-352-020 and RCW 77.15.630. Any person selling wild stocks of clams, mussels, and oysters must sell the harvest to a ~~((licensed))~~ Washington wholesale fish ~~((dealer))~~ buyer, who is then required to complete the fish ticket. Alternatively, if the person harvesting the clams, mussels, or oysters sells this shellfish at retail or arranges for the harvested shellfish to be transported out-of-state, they must be a ~~((licensed))~~ wholesale ~~((dealer))~~ fish buyer and must complete a fish receiving ticket for each day's sales or for each shipment.

(4) Wild stock sales may not be reported on aquatic farm quarterly production reports. Only private sector cultured

aquatic products may be reported on quarterly production reports.

(5) The following shellfish are presumed to be wild shellfish that are subject to these regulations:

(a) All mussels, oysters, and clams other than geoducks that are commercially harvested from the nonstate lands within the first twelve months after a complete application for the aquatic farm registration is filed; and

(b) All geoducks commercially harvested from the nonstate lands within the first thirty-six months after a complete application for the aquatic farm registration is filed.

The presumption that shellfish harvested from a newly registered aquatic farm during these time periods are from wild stocks may be overcome by a showing that the harvested shellfish were actually propagated, farmed, or cultivated under the active supervision of an aquatic farmer. After twelve or thirty-six months, respectively, all shellfish produced from a registered aquatic farm will be presumed to be private sector cultured aquatic products, and must be reported on quarterly aquatic farm reports. If a person does not commercially harvest mussels, oysters, or clams other than geoducks for the first twelve months after the aquatic farm registration, or does not commercially harvest geoducks for the first thirty-six months after registration, there is no requirement to obtain an emerging commercial fishery license or trial fishery permit.

WSR 18-08-061

PERMANENT RULES

PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed April 2, 2018, 9:44 a.m., effective May 3, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amends WAC 181-85-075 to reflect changes made to clock hour requirements for renewal of certification.

Citation of Rules Affected by this Order: Amending WAC 181-85-075.

Statutory Authority for Adoption: RCW 28A.410.220.

Adopted under notice filed as WSR 18-02-101 on January 3, 2018.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street, Olympia, WA 98504, phone 360-725-6238, fax 360-586-4548, email david.brenna@k12.wa.us, web site www.presb.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 2, 2018.

David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 17-23-176, filed 11/21/17, effective 12/22/17)

WAC 181-85-075 Continuing education requirement. Continuing education requirements are as follows:

(1) Each holder of a continuing certificate affected by this chapter shall be required to complete during a five-year period one hundred continuing education credit hours, as defined in WAC 181-85-025 and 181-85-030, prior to the lapse date of the first issue of the continuing certificate and during each five-year period between subsequent lapse dates as calculated in WAC 181-85-100.

(2) Individuals holding a valid continuing certificate in subsection (1) of this section may choose to renew the certificate via annual professional growth plans developed since the certificate was issued. Professional growth plans are defined in WAC 181-79A-030. Completion of four annual professional growth plans during each five-year period between subsequent lapse dates meets the requirement for renewal. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred hours to meet the requirements of subsection (1) of this section. ~~((The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks defined in WAC 181-79A-207 for teachers, and as published by the professional educator standards board for administrators and educational staff associates.))~~ For educators holding multiple certificates in chapter 181-85 or 181-79A WAC ~~((or WAC 181-79A-251)),~~ a professional growth plan for teacher, administrator, or educational staff associate shall meet the requirement for all certificates held by an individual which is affected by this section. ~~((Until June 30, 2018, each completed annual professional growth plan shall receive the equivalent of thirty continuing education credit hours. Beginning July 1, 2018, each completed annual professional growth plan shall receive the equivalent of twenty-five continuing education credit hours.~~

~~Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal.))~~

(3) Provided, That each holder of a ~~((continuing or a standard))~~ certificate affected by this chapter may present a copy of a valid certificate issued by the National Board for Professional Teaching Standards in lieu of the completion of the continuing education credit hours required by this chapter.

(4) Each holder of a ~~((continuing school psychologist))~~ certificate affected by this chapter may present a copy of a valid National Certified School Psychologist certificate issued by the National Association of School Psychologists

in lieu of the completion of the continuing education credit hours required by this chapter.

(5) Each holder of a certificate affected by this chapter may present a copy of a valid certificate of clinical competence (CCC) issued by the American Speech-Language Hearing Association (ASHA) in lieu of the completion of the continuing education credit hours required by this chapter.

(6) Beginning September 1, 2014, continuing education or professional growth plans for teachers at the elementary and secondary levels in STEM-related subjects must include a specific focus on the integration of science, mathematics, technology, and/or engineering instruction as per RCW 28A.410.2212. This renewal requirement applies to the following endorsement areas: Elementary education; early childhood education; middle level mathematics and science; secondary mathematics; secondary science; the designated sciences; and career and technical education. Specific endorsements in these endorsement areas are as published by the professional educator standards board. Applications for certificate renewal dated September 1, 2019, and beyond must demonstrate completion of at least fifteen continuing education credit hours, or at least one goal from an annual professional growth plan with an emphasis on the integration of science, technology, engineering, and mathematics. This requirement is considered to be met by holders of a valid National Board Certificate issued by the National Board for Professional Teaching Standards (NBPTS).

~~((6))~~ (7) Provided, as per RCW 28A.410.278(2) beginning September 1, 2016, in-service training, continuing education, or professional growth plans shall incorporate professional development on the revised teacher and principal evaluation systems under RCW 28A.405.100 as a requirement for renewal of continuing or professional level certificates. Applications for certificate renewal dated September 1, 2019, and beyond for all teachers, principals, program administrators, and superintendents with continuing or professional certificates must document completion of at least fifteen ~~((eleven))~~ continuing education credit hours, or at least one goal from an annual professional growth plan, related to knowledge and competency of the teacher and principal evaluation criteria or system. This requirement is considered to be met by holders of a valid National Board Certificate issued by the National Board for Professional Teaching Standards (NBPTS).

WSR 18-08-062

PERMANENT RULES

PUBLIC DISCLOSURE COMMISSION

[Filed April 2, 2018, 10:21 a.m., effective May 3, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Two WAC are referenced in WAC 390-32-030 which have been decodified and reference is made to current citations.

Citation of Rules Affected by this Order: Amending WAC 390-32-030.

Statutory Authority for Adoption: RCW 42.17A.110(1).

Adopted under notice filed as WSR 17-23-021 on December 7 [6], 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: December 7, 2017 [January 23, 2018].

B. G. Sandahl
Deputy Director

AMENDATORY SECTION (Amending WSR 17-03-028, filed 1/6/17, effective 2/6/17)

WAC 390-32-030 Complaint publication—Fair Campaign Practices Code—Alternative to investigation or adjudicative proceeding. (1) Written and signed complaints alleging a violation of one or more specific provisions of WAC 390-32-010. The Fair Campaign Practices Code may be submitted to the commission by any person.

(a) Subject to the limitations in subsection (4) of this section, upon receipt of a complaint under subsection (1) of this section, the executive director shall forward a copy of the complaint to the respondent within twenty-four hours, accompanied by a request for a response to the complaint returned within five business days from the date of mailing.

(b) Upon receipt of any response, the executive director shall forward a copy of the response to the complainant. A copy of the complaint and the response shall be sent to news media at the expiration of the five business days for response. The complaint and the response shall be available at the commission office for public inspection and copying. If no response is received within five business days, the complaint shall be made public without a response.

(c) The commission will not issue comments or opinions about complaints or responses received under this subsection.

(2) As provided by WAC (~~(390-37-055)~~) 390-37-060, and considering the factors set forth in WAC (~~(390-37-056)~~) 390-37-061, the executive director may authorize the processing of a complaint alleging violations of chapter 42.17A RCW or Title 390 WAC according to the complaint publication process provided in this section.

(a) Subject to the limitations in subsection (4) of this section, upon receipt of a complaint authorized by the executive director for processing under this subsection, the executive director shall forward a copy of the complaint to the respondent, accompanied by a request for a response to the complaint to be returned within five business days from the date of mailing.

(b) Complaints authorized by the executive director for processing under this subsection shall be forwarded to the

respondent within eight days prior to the date that ballots must be available under RCW 29A.40.070(1).

(c) Upon receipt of any response, the executive director shall forward a copy of the response to the complainant. A copy of the complaint and the response shall be sent to news media at the expiration of the five business days for response. The complaint and the response shall be available at the commission office for public inspection and copying. If no response is received within five days, the complaint shall be made public without a response.

(d) Except as provided under (a) or (b) of this subsection, the publication of complaints or responses under this subsection shall constitute the final disposition of complaints authorized by the executive director for processing under this section.

(3) Following the processing of a complaint under subsection (2) of this section, the executive director shall review the complaint and any response received. Whenever a complaint and response indicate that a material violation of chapter 42.17A RCW may have occurred and/or the respondent may not be in substantial compliance with the relevant statutes and rules, considering the factors set forth in WAC (~~(390-37-056)~~) 390-37-061, the executive director may:

(a) Dispose of the complaint through an additional alternative response as provided in WAC (~~(390-37-055)~~) 390-37-060; or

(b) Direct a formal investigation be conducted.

(4) The commission will make no attempt to secure a reply to and will make no public release of complaints received within eight days of the date that ballots must be mailed to voters under RCW 29A.40.070(1).

(5) The filing of a complaint with the commission under this section or any provision of chapter 390-37 WAC constitutes implied consent to have the complainant's identity disclosed.

WSR 18-08-064
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed April 2, 2018, 1:57 p.m., effective May 3, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amends WAC 181-79A-030 on renewal requirements for educator certificates with either professional growth plans or clock hours. Amends WAC 181-79A-251 to comport with the changes in WAC 181-79A-030. All changes are the continuing work to implement requirements in HB [E2SHB] 1341, Laws of 2017.

Citation of Rules Affected by this Order: Amending WAC 181-79A-030 and 181-79A-251.

Statutory Authority for Adoption: RCW 28A.410.220.

Adopted under notice filed as WSR 18-02-100 on January 3, 2018.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street, Olympia, WA 98504, phone 360-725-6238, fax 360-586-4548, email david.brenna@k12.wa.us, web site www.pesb.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 2, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 2, 2018.

David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 14-24-057, filed 11/25/14, effective 12/26/14)

WAC 181-79A-030 Definitions. The following definitions shall apply to terms used in this chapter:

(1) The terms, "program approval," "endorsement," "interstate compact," "college or university," and "~~((regionally))~~ accredited institution of higher education," as defined in WAC ~~((180-78-010 and))~~ 181-78A-010 shall apply to the provisions of this chapter.

(2) "Certificate" means the license issued by the superintendent of public instruction to teachers, administrators, and educational staff associates verifying that the individual has met the requirements set forth in this chapter.

(3) "Certificate renewal" means the process whereby the validity of a certificate, subject to expiration, is extended.

(4) "Certificate reinstatement" means the process whereby the validity of an expired certificate is regained.

(5) "Lapsed certificate" means a residency certificate that is subject to the timelines and renewal described under WAC 181-79A-251.

(6) "Expired certificate" means a teacher certificate that can only be reinstated under WAC 181-79A-251.

(7) "Classroom teaching" means instructing pupils in an instructional setting.

(8) "Approved baccalaureate degree" for the purpose of this chapter, means a baccalaureate from ~~((a regionally))~~ an accredited college or university in any of the subject areas of the endorsement listed in chapter 181-82 WAC as now or hereafter amended: Provided, That if a candidate is accepted into a program in Washington state on or before August 31, 2000, and completes the program on or before August 31, 2003, in accordance with WAC 181-79A-299, the candidate may hold a baccalaureate degree in any of the subject areas of the endorsements listed in WAC 181-79A-302. Such degrees shall require the completion of at least forty-five quarter hours (thirty semester hours) of course work in the subject area: Provided, That a candidate who holds a baccalaureate degree in another academic field will not be required to obtain a second baccalaureate degree if the candidate pro-

vides evidence to the superintendent of public instruction that he or she has completed the required forty-five quarter or thirty semester hours of course work in one of the subject areas of the endorsements listed in chapter 181-82 WAC: Provided further, That a candidate who holds a baccalaureate degree in early childhood education, elementary education, or special education will not be required to obtain a second baccalaureate degree if the candidate provides evidence to the superintendent of public instruction that he or she has completed thirty quarter or twenty semester credit hours in one academic field in an approved endorsement area pursuant to WAC 181-82A-202.

(9) "Issues of abuse course work requirement" means completion of course work or an in-service program on issues of abuse. The content shall discuss the identification of physical, emotional, sexual, and substance abuse~~((;))~~; commercial sexual abuse of a minor, as defined in RCW 9.68A.100; sexual exploitation of a minor as defined in RCW 9.68A.040; information on the impact of abuse on the behavior and learning abilities of students~~((;))~~; discussion of the responsibilities of a teacher to report abuse or provide assistance to students who are victims of abuse~~((;))~~; and methods for teaching students about abuse of all types and their prevention. Additionally, content areas identified by the legislature in RCW 28A.410.035 shall be required in the issues of abuse course, including ~~((exploitation of minors and suicide prevention))~~ knowledge and skill standards pertaining to recognition, initial screening and response to emotional or behavioral distress in students including, but not limited to, indicators of possible substance abuse, violence and youth suicide.

(10) "Approved master's degree" for the purpose of this chapter, means a master's or doctorate degree from ~~((a regionally))~~ an accredited college or university.

(11) "Credit hour(s)" means credit (normally 100 level or above) awarded by ~~((a regionally))~~ an accredited institution of higher education.

(12) "Previous standards" means a certification system in place prior to a revision in rules that results in changed names and/or validity periods for the certificates issued.

(13) "Application for certification" means an application for a certificate or endorsement that includes a signed affidavit (as specified in WAC 181-79A-157) by the applicant. Such application shall be considered valid for two years from the date of receipt by the superintendent of public instruction, or its designee.

(14) "Professional growth team" for the purpose of certificate renewal ~~((of the professional certificate,))~~ means a team comprised of the individual renewing the certificate and a minimum of one colleague, who holds a current Washington state educator certificate, chosen by the individual.

(15) "Professional growth plan."

(a) Teacher individualized professional growth plan means the document which identifies the formalized learning opportunities and professional development activities that relate to the specific competencies, knowledge, skills and experiences needed to meet the standards at the "career level" benchmarks as published by the professional educator standards board.

(b) Principal/program administrator individualized professional growth plan means the document which identifies

the formalized learning opportunities and professional development activities that relate to the specific competencies, knowledge, skills and experiences needed to meet the standards at the "career level" benchmarks ((set forth in WAC 181-78A-540(1))) as published by the professional educator standards board.

(c) ESA individualized professional growth plan means the document which identifies the formalized learning opportunities and professional development activities that relate to the specific competencies, knowledge, skills and experiences needed to meet the standards ((and) at the career level benchmarks ((set forth in WAC 181-78A-540(2))) as published by the professional educator standards board.

(d) Only one professional growth plan may be completed each year. Professional growth plans will be completed during the period beginning July 1st of one year and ending June 30th of the following year. Completion of the professional growth plan will include review by the professional growth team, as defined in subsection (14) of this section.

(e) Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal, per RCW 28A.405.100 (12)(c)(vi).

(f) Until June 30, 2018, individuals who complete the requirements of the annual professional growth plan to renew their certificate shall receive the equivalent of thirty hours of continuing education credit hours. Beginning July 1, 2018, individuals who complete an annual professional growth plan to renew their certificate shall receive the equivalent of twenty-five continuing education credit hours.

(g) For educators holding multiple certificates in chapter 181-85 or 181-79A WAC, a professional growth plan for teacher, administrator or educational staff associate shall meet the requirements for all certificates held by an individual.

(16) "A positive impact on student learning" means that a teacher through instruction and assessment has been able to document students' increased knowledge and/or demonstration of a skill or skills related to the state goals and/or essential academic learning requirements: Provided, That teachers employed by private schools who are candidates for the professional teaching certificate shall document students' increased knowledge and/or demonstration of a skill or skills related to either:

(a) The state goals or essential academic learning requirements; or

(b) Such alternative learning goals as the private school has established.

(17) "Professional certificate support provider" means any organization or institution operating training or consulting services as a public entity or private company holding an appropriate business license.

(18) "Approved private school" means any organization of institution providing educational services to children including, but not limited to, approved private schools, state institutions, juvenile institutions, nonpublic agencies providing special education services, development centers, and bureau of Indian affairs schools.

AMENDATORY SECTION (Amending WSR 17-23-176, filed 11/21/17, effective 12/22/17)

WAC 181-79A-251 Teacher residency and professional certification—Renewal and reinstatement. (1) Residency certificates shall be renewed under one of the following options:

(a) Individuals who hold, or have held, residency certificates have the following options for renewal:

(i) One hundred continuing education credit hours as defined in chapter 181-85 WAC, or four annual professional growth plans as defined in WAC 181-79A-030, completed within the previous five years from the date of the five-year renewal application. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

Subsequent five-year renewals shall be issued based on completion of one hundred continuing education credit hours since the issue date of the latest five-year residency teacher renewal certificate or four professional growth plans developed since the certificate was issued. Completion of four annual professional growth plans during each five-year period between subsequent lapse dates meets the requirement for renewal. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

~~((The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and career level benchmarks defined in WAC 181-79A-207 for teachers.~~

~~For educators holding multiple certificates in chapter 181-85 or 181-79A WAC, a professional growth plan for teacher, administrator or educational staff associate shall meet the requirements for all certificates held by an individual per this chapter.~~

~~Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal.~~

~~Until June 30, 2018, individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours. Beginning July 1, 2018, individuals who complete an annual professional growth plan to renew their professional certificate shall receive the equivalent of twenty-five continuing education credit hours.)~~

Provided, application for subsequent renewals shall not be submitted earlier than twelve months prior to the expiration date of the current renewal.

Expired five-year residency teacher renewal certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the five-year renewal application or by completing four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

An expired certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour or professional growth plan requirement within the five years prior to the date of the renewal application.

Candidates who apply for the five-year residency teacher renewal certificate who have not successfully completed course work or an in-service program on issues of abuse, must complete the abuse course work requirement as defined in WAC 181-79A-030(~~(6)~~) and required per RCW (~~28A.410.2212~~) 28A.410.035.

Continuing education for teachers at the elementary and secondary levels in science, technology, engineering, and mathematics (STEM) related subjects must include a specific focus on the integration of STEM instruction as per RCW 28A.410.2212. This (~~renewal requirement applies to the following endorsement areas: Elementary education; early childhood education; middle level mathematics and science; secondary mathematics and science; the designated secondary sciences; technology; and career and technical education. Applications for certificate renewal dated September 1, 2019, and beyond must demonstrate completion of at least fifteen continuing education credit hours with an emphasis on the integration of STEM. This requirement is considered to be met by holders of a valid National Board Certificate issued by the National Board for Professional Teaching Standards (NBPTS))~~) STEM continuing education requirement for certificate renewal is as described in WAC 181-85-075(6).

(ii) Individuals who have attempted and failed the professional certificate assessment are eligible for a two-year renewal.

(iii) Individuals who have not been employed (~~or employed less than full-time~~) as a teacher during the dated, three-year residency certificate may receive a two-year renewal by submitting an affidavit to the certification office confirming that they will register and submit a uniform assessment portfolio or they will complete assessment for National Board for Professional Teaching Standards. Individuals not employed as a teacher may permit their certificate to lapse until such time they register for the professional certificate assessment, or the National Board Certification.

(iv) Individuals whose three- or five-year residency certificate has lapsed may receive a two-year renewal by submitting an affidavit to the certification office confirming that they will register and submit a uniform assessment portfolio for the professional certificate assessment or assessment for National Board for Professional Teaching Standards(~~Provided, That teachers holding certificates expiring in 2014, 2015, or 2016 who have completed the available sections for the National Board Teacher Certificate may receive an additional two-year renewal in 2016 or 2017 to complete the assessment~~)).

(b) A residency certificate expires after the first renewal if the candidate has not registered for and submitted a portfolio assessment prior to June 30th of the expiration year, to achieve the professional certificate, Provided: When the first two-year residency teacher renewal certificate expires, teachers have three renewal options:

(i) Individuals who were employed but failed the professional certification assessment, may receive a second two-year renewal;

(ii) Individuals who were (~~unemployed or employed less than full-time~~) not employed as a teacher during the first two-year renewal may permit their certificate to lapse. Upon contracting to return to a teacher role, individuals may apply for a final, second two-year renewal by submitting an affidavit to the certification office confirming that they will register and submit a uniform assessment portfolio for the professional certification assessment;

(iii) An individual who completes a National Board Certification assessment but does not earn National Board Certification, may use that completed assessment to apply for a final, second two-year renewal by submitting an affidavit to the certification office confirming that they will complete and submit their scores from the assessment for National Board for Professional Teaching Standards or register and submit the Washington uniform assessment portfolio as per this section, WAC 181-79A-251.

(2) Teacher professional certificate.

(a) Individuals who hold a professional teacher certificate may have that certificate renewed for additional five-year periods by the completion of one hundred continuing education credit hours as defined in chapter 181-85 WAC or by completing four professional growth plans annually during the period in which the certificate is valid as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

Provided, application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current renewal.

Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the five-year renewal application or by completing four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

An expired professional certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour or professional growth plan requirement within the five years prior to the date of the renewal application. All continuing education credit hours shall relate to one of the three standards: Effective instruction, professional contributions or professional development.

(b) (~~Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal.~~

(c) ~~Until June 30, 2018, individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours. Beginning July 1, 2018, individuals who complete an annual professional growth plan to renew their professional certificate~~

shall receive the equivalent of twenty-five continuing education credit hours.

(d) The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks defined in WAC 181-79A-207.

(e) ~~Beginning September 1, 2014,)~~ Continuing education or professional growth plans for teachers at the elementary and secondary levels in STEM-related subjects must include a specific focus on the integration of science, technology, engineering, and mathematics (STEM) instruction as per RCW 28A.410.2212. ~~This ((renewal requirement applies to the following endorsement areas: Elementary education; early childhood education; middle level mathematics and science; secondary mathematics and science; the designated secondary sciences; technology; and career and technical education endorsements. Applications for certificate renewal dated September 1, 2019, and beyond must demonstrate completion of at least fifteen continuing education credit hours, or at least one goal from an annual professional growth plan, with an emphasis on the integration of science, technology, engineering and mathematics)) STEM continuing education requirement for certificate renewal is as described in WAC 181-85-075(6). This requirement is for all professional teacher certificate holders regardless of date of issuance of the first professional certificate. ((This requirement is considered to be met by holders of a valid National Board Certificate issued by the National Board for Professional Teaching Standards (NBPTS)).~~

(f)) (c) Provided, That a professional certificate may be renewed based on the possession of a valid teaching certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater. Such renewal is only available one time during the validity period of the National Board Certificate and cannot be the same National Board Certificate used to obtain the professional certificate.

~~((g) For educators holding multiple certificates in WAC 181-79A-251, 181-79A-2510, 181-79A-2511, or 181-79A-2512, or in chapter 181-85 WAC, a professional growth plan for teacher, administrator, or education staff associate shall meet the requirement for all certificates held by an individual which is affected by this section.~~

(h)) (d) Provided, as per RCW 28A.410.278(2) ~~((beginning September 1, 2016)), in-service training, continuing education, or professional growth plans shall incorporate professional development on the revised teacher and principal evaluation systems under RCW 28A.405.100 as a requirement for renewal of continuing or professional level certificates. ((Applications for certificate renewal dated September 1, 2019, and beyond for all teachers must document completion of at least fifteen clock hours, or at least one goal from an annual professional growth plan, related to knowledge and competency of the teacher and principal evaluation criteria or system.~~

~~This requirement is considered met by holders of a valid National Board Certificate issued by the National Board for Professional Teaching Standards (NBPTS).)) This continu-~~

ing education requirement related to the teacher and principal evaluation system is as described in WAC 181-85-075(7).

WSR 18-08-065

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed April 2, 2018, 2:28 p.m., effective May 3, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is amending WAC 388-78A-2020 Definitions, in order to ensure compliance with requirements of SB [SSB] 5600, which states the new definition of abuse to include financial exploitation of a vulnerable adult. It also defines chemical, mechanical, and physical restraint.

Citation of Rules Affected by this Order: Amending WAC 388-78A-2020.

Statutory Authority for Adoption: Chapter 18.20 RCW.

Adopted under notice filed as WSR 18-03-146 on January 22, 2018.

Changes Other than Editing from Proposed to Adopted Version: 1. The phrase "and a resident" was removed from the definition of "sexual abuse."

2. The word "screaming" was replaced with the word "swearing."

3. The definition of "exploitation" removed and replaced with the definition of "personal exploitation."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: April 2, 2018.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-05-035, filed 2/12/14, effective 3/15/14)

WAC 388-78A-2020 Definitions. "Abandonment" means action or inaction by a person with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or

punishment on a ~~((resident))~~ vulnerable adult. In instances of abuse of a ~~((resident))~~ vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and personal exploitation of a ~~((resident))~~ vulnerable adult, and improper use of restraint against a vulnerable adult, which have the following meanings:

(1) "~~((Mental))~~ Sexual abuse" means any ~~((willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a resident from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing;))~~ form of nonconsensual sexual conduct, including, but not limited to, unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse also includes any sexual conduct between a staff person, who is not also a resident or a client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not it is consensual.

(2) "Physical abuse" means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, or prodding~~((, or the use of chemical restraints or physical restraints;))~~.

(3) "~~((Sexual))~~ Mental abuse" means ~~((any form of nonconsensual sexual contact, including, but not limited to, unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual contact may include interactions that do not involve touching, including but not limited to sending a resident sexually explicit messages, or euing or encouraging a resident to perform sexual acts. Sexual abuse includes any sexual contact between a staff person and a resident, whether or not it is consensual;))~~ a willful verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. Mental abuse may include ridiculing, yelling, or swearing.

(4) "Personal exploitation" means an act of forcing, compelling, or exerting undue influence over a ~~((resident))~~ vulnerable adult causing the ~~((resident))~~ vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the ~~((resident))~~ vulnerable adult to perform services for the benefit of another.

(5) "Improper use of restraint" means the inappropriate use of chemical, physical, or mechanical restraints for convenience or discipline or in a manner that:

(a) Is inconsistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW;

(b) Is not medically authorized; or

(c) Otherwise constitutes abuse under the section.

"Activities of daily living" means the following tasks related to basic personal care: Bathing; toileting; dressing; personal hygiene; mobility; transferring; and eating.

"Administrator" means an assisted living facility administrator who must be in active administrative charge of the assisted living facility as required in this chapter. Unless exempt under RCW 18.88B.041, the administrator must complete long-term care training and home care aide certification.

"Adult day services" means care and services provided to a nonresident individual by the assisted living facility on the assisted living facility premises, for a period of time not to exceed ten continuous hours, and does not involve an overnight stay.

"Ambulatory" means capable of walking or traversing a normal path to safety without the physical assistance of another individual:

(1) "Nonambulatory" means unable to walk or traverse a normal path to safety without the physical assistance of another individual;

(2) "Semiambulatory" means physically and mentally capable of traversing a normal path to safety with the use of mobility aids, but unable to ascend or descend stairs without the physical assistance of another individual.

"Applicant" means ~~((the))~~ a person, as defined in this section, that has submitted, or is in the process of submitting, an application for ~~((a))~~ an assisted living facility license.

"Assisted living facility" means any home or other institution, however named, that is advertised, announced, or maintained for the express or implied purpose of providing housing, basic services, and assuming general responsibility for the safety and well-being of the residents, and may also provide domiciliary care, consistent with this chapter to seven or more residents after July 1, 2000. However, an assisted living facility that is licensed for three to six residents prior to or on July 1, 2000, may maintain its assisted living facility license as long as it is continually licensed as an assisted living facility. "Assisted living facility" may also include persons associated with the assisted living facility to carry out its duties under this chapter. "Assisted living facility" does not include facilities certified as group training homes under RCW 71A.22.040, nor any home, institution, or section that is otherwise licensed and regulated under state law that provides specifically for the licensing and regulation of that home, institution, or section. "Assisted living facility" also does not include independent senior housing, independent living units in continuing care retirement communities, or other similar living situations including those subsidized by the U.S. Department of Housing and Urban development.

"Basic services" means housekeeping services, meals, nutritious snacks, laundry, and activities.

"Bathing fixture" means a bathtub, shower or sit-down shower.

"Bathroom" means a room containing at least one bathing fixture.

~~((("Assisted living facility" means any home or other institution, however named, which is advertised, announced, or maintained for the express or implied purpose of providing housing, basic services, and assuming general responsibility for the safety and well-being of the residents, and may also provide domiciliary care, consistent with this chapter to seven or more residents after July 1, 2000. However, an assisted living facility that is licensed for three to six resi-~~

den~~t~~s prior to or on July 1, 2000, may maintain its assisted living facility license as long as it is continually licensed as an assisted living facility. "Assisted living facility" does not include facilities certified as group training homes pursuant to RCW 71A.22.040, nor any home, institution or section thereof which is otherwise licensed and regulated under the provisions of state law providing specifically for the licensing and regulation of such home, institution or section thereof. Nor shall it include any independent senior housing, independent living units in continuing care retirement communities, or other similar living situations including those subsidized by the Department of Housing and Urban Development. "Assisted living facility" may also include persons associated with the assisted living facility to carry out its duties under this chapter.)

"Building code" means the building codes and standards adopted by the Washington state building code council.

"Caregiver" means anyone providing direct personal care to another person including, but not limited to: Cuing, reminding, or supervision of residents, on behalf of an assisted living facility, except volunteers who are directly supervised.

"Construction review services" means the office of construction review services within the Washington state department of health.

"Continuing care contract" means, as stated in RCW 70.38.025, a contract providing a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related, or personal care services, which is conditioned upon the transfer of property, the payment of an entrance fee to the provider of such services, or the payment of periodic charges for the care and services involved. A continuing care contract is not excluded from this definition because the contract is mutually terminable or because shelter and services are not provided at the same location.

"Continuing care retirement community" means, as stated in RCW 70.38.025, an entity which provides shelter and services under continuing care contracts with its members and which sponsors or includes a health care facility or a health service.

"Contractor" means an agency or person who contracts with a licensee to provide resident care, services, or equipment.

"Crimes relating to financial exploitation" means the same as "crimes relating to financial exploitation" as defined in RCW 43.43.830 or 43.43.842.

"Department" means the Washington state department of social and health services.

"Dietitian" means an individual certified under chapter 18.138 RCW.

"Direct supervision" means oversight by a person on behalf of the assisted living facility who has met training requirements, demonstrated competency in core areas, or has been fully exempted from the training requirements, is on the premises, and is quickly and easily available to the caregiver.

"Document" means to record, with signature, title, date, and time:

(1) Information about medication administration, medication assistance or disposal, a nursing care procedure, acci-

dent, occurrence or change in resident condition that may affect the care or needs of a resident; and

(2) Processes, events, or activities that are required by law, rule, or policy.

"Domiciliary care" means:

(1) Assistance with activities of daily living provided by the assisted living facility either directly or indirectly; ((~~or~~))

(2) Health support services, if provided directly or indirectly by the assisted living facility; or

(3) Intermittent nursing services, if provided directly or indirectly by the assisted living facility.

"Enforcement remedy" means one or more of the department's responses to an assisted living facility's non-compliance with chapter 18.20 RCW and this chapter, as authorized by RCW 18.20.190.

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.020(6).

"Food service worker" means according to chapter 246-217 WAC, an individual who works (or intends to work) with or without pay in a food service establishment and handles unwrapped or unpackaged food or who may contribute to the transmission of infectious diseases through the nature of ((his/her)) the individual's contact with food products ((and/or)) or equipment and facilities. This does not include persons who simply assist residents with meals.

"General responsibility for the safety and well-being of the resident" means the provision of any one or more of the following:

(1) Prescribed general low sodium diets;

(2) Prescribed general diabetic diets;

(3) Prescribed mechanical soft foods;

(4) Emergency assistance;

(5) Monitoring of the resident;

(6) Arranging health care appointments with outside health care providers and reminding residents of such appointments as necessary;

(7) Coordinating health care services with outside health care providers consistent with WAC 388-78A-2350;

(8) Assisting the resident to obtain and maintain glasses, hearing aids, dentures, canes, crutches, walkers, wheelchairs, and assistive communication devices;

(9) Observation of the resident for changes in overall functioning;

(10) Blood pressure checks as scheduled;

(11) Responding appropriately when there are observable or reported changes in the resident's physical, mental, or emotional functioning; ((~~or~~))

(12) Medication assistance as permitted under RCW 69.41.085 and as described in RCW 69.41.010 and chapter 246-888 WAC.

"Harm" means a physical or mental or emotional injury or damage to a resident including those resulting from neglect or violations of a resident's rights.

"Health support services" means any of the following optional services:

- (1) Blood glucose testing;
- (2) Puree diets;
- (3) Calorie controlled diabetic diets;
- (4) Dementia care;
- (5) Mental health care; ~~((or))~~
- (6) Developmental disabilities care.

"Independent living unit" means:

- (1) Independent senior housing;
- (2) Independent living unit in a continuing care retirement community or other similar living environments;
- (3) Assisted living facility unit where domiciliary services are not provided; or
- (4) Assisted living facility unit where one or more items listed under "general responsibilities" are not provided.

"Independent senior housing" means an independent living unit occupied by an individual or individuals sixty or more years of age.

"Infectious" means capable of causing infection or disease by entrance of organisms into the body, which grow and multiply there, including, but not limited to, bacteria, viruses, protozoans, and fungi.

"Licensee" means ~~((the))~~ a person, as defined in this ~~((chapter))~~ section, to whom the department issues ~~((the))~~ an assisted living facility license.

"Licensed resident bed capacity" means the resident occupancy level requested by ~~((the))~~ a licensee and approved by the department. All residents receiving domiciliary care or the items or services listed under general responsibility for the safety and well-being of the resident as defined in this section count towards the licensed resident bed capacity. Adult day services clients do not count towards the licensed resident bed capacity.

"Long-term care worker~~((s))~~" ~~((as))~~ or **"caregiver"** means the same as **"long-term care workers"** is defined in RCW 74.39A.009~~((, has the same meaning as the term "caregiver"))~~.

"Majority owner" means any person that owns:

- (1) More than fifty percent interest; ~~((or))~~
- (2) If no one person owns more than fifty percent interest, the largest interest portion; or
- (3) If more than one person owns equal largest interest portions, then all persons owning those equal largest interest portions.

"Manager" means ~~((the))~~ a person, as defined in this ~~((chapter))~~ section, ~~((providing))~~ that provides management services on behalf of ~~((the))~~ a licensee.

"Management agreement" means a written, executed agreement between ~~((the))~~ a licensee and ~~((the))~~ manager regarding the provision of certain services on behalf of the licensee.

"Mandated reporter~~((s))~~:"

- (1) Is an employee of the department, law enforcement officer, social worker, professional school personnel, individual provider, ~~((an))~~ employee of a facility, ~~((an))~~ operator of a facility, ~~((an))~~ employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency, county coroner or medical examiner,

Christian Science practitioner, or health care provider subject to chapter 18.130 RCW; and

(2) For the purpose of the definition of mandated reporter, "facility" means a residence licensed or required to be licensed under chapter 18.20 RCW (assisted living facility), chapter 18.51 RCW (nursing homes), chapter 70.128 RCW (adult family homes), chapter 72.36 RCW (soldiers' homes), chapter 71A.20 RCW (residential habilitation centers), or any other facility licensed by the department.

"Maximum facility capacity" means the maximum number of individuals that the assisted living facility may serve at any one time, as determined by the department.

(1) The maximum facility capacity includes all residents ~~((and))~~, respite care residents, and adult day services clients.

(2) The maximum facility capacity is equal to the lesser of:

(a) The sum of the number of approved bed spaces for all resident rooms (total number of approved bed spaces), except as specified in subsection (3) of this section; ~~((or))~~

(b) Twice the seating capacity of the dining area(s) consistent with WAC ~~((388-78A-2300-1)(h))~~ 388-78A-2300(1)(h); ~~((or))~~

(c) The number of residents permitted by calculating the ratios of toilets, sinks, and bathing fixtures to residents consistent with WAC 388-78A-3030; ~~((or))~~

(d) For assisted living facilities licensed on or before December 31, 1988, the total day room area in square feet divided by ten square feet, consistent with WAC 388-78A-3050; or

(e) For assisted living facilities licensed after December 31, 1988, the total day room area in square feet divided by twenty square feet, consistent with WAC 388-78A-3050.

(3) For the purposes of providing adult day services consistent with WAC 388-78A-2360, one additional adult day services client may be served, beyond the total number of approved bed spaces, for each additional sixty square feet of day room area greater than the area produced by multiplying the total number of approved bed spaces by twenty square feet, provided that:

(a) There is at least one toilet and one hand washing sink accessible to adult day services clients for every eight adult day services clients or fraction thereof;

(b) The total number of residents and adult day services clients does not exceed twice the seating capacity of the dining area(s) consistent with WAC 388-78A-2300 (1)(h); and

(c) The adult day services program area(s) and building do not exceed the occupancy load as determined by the local building official or state fire marshal.

"Medication administration" means the direct application of a prescribed medication whether by injection, inhalation, ingestion, or other means, to the resident's body ~~((of the resident))~~ by an individual legally authorized to do so.

"Medication assistance" means assistance with self-administration of medication rendered by a nonpractitioner to a resident of an assisted living facility in accordance with chapter 246-888 WAC.

"Medication organizer" means a container with separate compartments for storing oral medications organized in daily doses.

"Medication service" means any service provided either directly or indirectly by an assisted living facility related to medication administration, medication administration provided through nurse delegation, medication assistance, or resident self-administration of medication.

"Neglect" means:

(1) A pattern of conduct or inaction resulting in the failure to provide the goods and services that maintain physical or mental health of a resident, or that fails to avoid or prevent physical or mental harm or pain to a resident; or

(2) An act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the resident's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

"Nonresident individual" means an individual who resides in independent senior housing, independent living units in continuing care retirement communities, ~~((or in))~~ other similar living ~~((environments))~~ environment, or ~~((in))~~ an unlicensed room located within an assisted living facility. A nonresident individual ~~((may))~~ must not receive from the assisted living facility:

(1) Domiciliary care directly or indirectly; or

(2) ~~((The))~~ Items or services listed in the definition of "general responsibility for the safety and well-being of the resident~~((s))~~," except as allowed under WAC 388-78A-2032 or when the person is receiving adult day services.

"Nonpractitioner" means any individual who is not a practitioner as defined in WAC 388-78A-2020 and chapter 69.41 RCW.

"Nurse" means an individual currently licensed under chapter 18.79 RCW as either a:

(1) ~~((L))~~ Licensed practical nurse~~((s))~~ (LPN); or

(2) ~~((R))~~ Registered nurse~~((s))~~ (RN).

"Over-the-counter (OTC) medication" means any medication that may be legally purchased without a prescriptive order, including, but not limited to, aspirin, antacids, vitamins, minerals, or herbal preparations.

"Person" means any individual, firm, partnership, corporation, company, association, joint stock association or any other legal or commercial entity.

"Physician" means an individual licensed under chapter 18.57 or 18.71 RCW.

"Personal exploitation" means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is consistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

"Practitioner" includes a licensed physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant. Refer to chapter 69.41 RCW for a complete listing of practitioners.

"Prescribed medication" means any medication (legend drug, controlled substance, and over-the-counter) that is prescribed by an authorized practitioner.

"Prescriber" means a health care practitioner authorized by Washington state law to prescribe drugs.

"Problem" means a violation of any WAC or RCW applicable to the operation of an assisted living facility:

(1) **"Recurring problem"** means, for all purposes other than those described in RCW 18.20.400, that the department has cited the assisted living facility for a violation of WAC or RCW and the circumstances of either (a) or (b) of this subsection are present~~((s))~~. If the previous violation in (a) or (b) of this subsection was pursuant to WAC or RCW that has changed at the time of the new violation, citation to the equivalent current WAC or RCW section is sufficient. When there is a change in licensees between the first and the second or third citations, the new licensee must accept, and the department will consider, the prior licensee's compliance and enforcement record as part of the new licensee's compliance record at that assisted living facility if any person affiliated with the new licensee was affiliated with the prior licensee at the same assisted living facility. A person is considered affiliated with the licensee if the person is an applicant for the assisted living facility license, or is listed on the license application as a partner, officer, director, or majority owner of the applicant.

(a) The department previously imposed an enforcement remedy for a violation of the same section of WAC or RCW for substantially the same problem following any type of inspection within the preceding thirty-six months~~((s))~~.

(b) The department previously cited a violation under the same section of WAC or RCW for substantially the same problem following any type of inspection on two occasions within the preceding thirty-six months.

~~((c))~~ If the previous violation in (a) or (b) of this subsection was pursuant to WAC or RCW that has changed at the time of the new violation, citation to the equivalent current WAC or RCW section is sufficient.

~~((d))~~ When there is a change in licensees between the first and the second or third citations, the new licensee must accept, and the department will consider, the prior licensee's compliance and enforcement record as part of the new licensee's compliance record at that assisted living facility if any person affiliated with the new licensee was affiliated with the prior licensee at the same assisted living facility. A person is considered affiliated with the licensee if the person is an applicant for the assisted living facility license, or is listed on the license application as a partner, officer, director, or majority owner of the applicant.

(2) **"Serious problem"** means~~((s))~~

~~((a))~~ that there has been a violation of a WAC or RCW~~((s))~~ and;

~~((b))~~ Significant harm has actually occurred to a) (a) The resident was significantly harmed; or

~~((c))~~ (b) It is likely that ~~((significant harm))~~ the resident will be significantly harmed or ~~((death will occur to a resident))~~ die.

(3) **"Uncorrected problem"** means the department has cited a violation of WAC or RCW following any type of inspection and the violation remains uncorrected at the time the department makes a subsequent inspection for the specific purpose of verifying whether such violation has been corrected. When there is a change in ~~((licensees occurs))~~ licensee, the new licensee is responsible for correcting any remaining violations that may exist, including complying with any plan of correction in effect immediately prior to the change in ~~((licensees))~~ licensee.

"Prospective resident" means an individual who ~~((is seeking))~~ seeks admission to a licensed assisted living facility and ~~((who))~~ has completed and signed an application for admission, or ~~((such application for admission has been completed and signed in their behalf by their))~~ the individual's legal representative ~~((if any, and if not, then the))~~ or designated representative, if any, completed and signed the application on their behalf.

"Reasonable accommodation" ~~((and))~~ or **"reasonably accommodate"** have the meaning given in federal and state antidiscrimination laws and regulations which include, but are not limited to, the following:

(1) Reasonable accommodation means that the assisted living facility must:

(a) Not impose admission criteria that excludes individuals unless the criteria is necessary for the provision of assisted living facility services;

(b) Make reasonable modification to its policies, practices or procedures if the modifications are necessary to accommodate the needs of the resident;

(c) Provide additional aids and services to the resident.

(2) Reasonable accommodations are not required if:

(a) The resident or individual applying for admission presents a significant risk to the health or safety of others that cannot be eliminated by the reasonable accommodation;

(b) The reasonable accommodations would fundamentally alter the nature of the services provided by the assisted living facility; or

(c) The reasonable accommodations would cause an undue burden, meaning a significant financial or administrative burden.

"RCW" means Revised Code of Washington.

"Records" means:

(1) **"Active records"** means the current, relevant documentation regarding residents necessary to provide care and services to residents; or

(2) **"Inactive records"** means historical documentation regarding the provision of care and services to residents that is no longer relevant to the current delivery of services and has been thinned from the active record.

"Resident" means an individual who:

(1) Chooses to reside in an assisted living facility, including an individual receiving respite care;

(2) Is not related by blood or marriage to the operator of the assisted living facility;

(3) Receives basic services; and

(4) Receives one or more of the services listed in the definition of "general responsibility for the safety and well-being of the resident," and may receive domiciliary care or respite care provided directly, or indirectly, by the assisted living facility. Whereas, a nonresident individual may receive services that are permitted under WAC 388-78A-2032.

"Resident's representative" means one of the following:

(1) The legal representative who is the person or persons identified in RCW 7.70.065 and who may act on behalf of the resident pursuant to the scope of their legal authority. The legal representative ~~((shall))~~ must not be affiliated with the licensee, assisted living facility, or management company,

unless the affiliated person is a family member of the resident~~((; or))~~.

(2) If there is no legal representative, a person designated voluntarily by a competent resident in writing, to act in the resident's behalf concerning the care and services provided by the assisted living facility and to receive information from the assisted living facility if there is no legal representative. The resident's representative ~~((may))~~ must not be affiliated with the licensee, assisted living facility, or management company, unless the affiliated person is a family member of the resident. The resident's representative under this subsection ~~((shall))~~ must not have authority to act on behalf of the resident once the resident is no longer competent. The resident's competence ~~((shall))~~ must be determined using the criteria in RCW ~~((11.88.010(1)(e)))~~ 11.88.010(1)(e).

"Respite care" means short-term care for any period in excess of twenty-four continuous hours for a resident to temporarily relieve the family or other caregiver of providing that care.

"Restraint" means any method or device used to prevent or limit free body movement, including, but not limited to:

(1) Confinement, unless agreed to as provided in WAC 388-78A-2370;

(2) **"Chemical restraint"** ~~((which))~~ means ~~((a psycho-pharmacologic))~~ the administration of any drug ~~((that is used for discipline or convenience and not required))~~ to ~~((treat the resident's medical symptoms; and))~~ manage a vulnerable adult's behavior in a way that reduces the safety risk to the vulnerable adult or others, has the temporary effect of restricting the vulnerable adult's freedom of movement, and is not standard treatment for the vulnerable adult's medical or psychiatric condition.

(3) **"((Physical)) Mechanical restraint"** ~~((which))~~ means ~~((a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body, is used for discipline or convenience, and not required to treat the resident's medical symptoms))~~ any device attached or adjacent to the vulnerable adult's body that they cannot easily remove and restricts freedom of movement or normal access to the vulnerable adult's body. "Mechanical restraint" does not include the use of devices, materials, or equipment that are:

(a) Medically authorized, as required, and;

(b) Used in a manner that is consistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW.

(4) **"Physical restraint"** means the application of physical force without the use of any device, for the purpose of restraining the free movement of a vulnerable adult's body. "Physical restraint" does not include:

(a) Briefly holding without undue force a vulnerable adult in order to calm or comfort the vulnerable adult; or

(b) Holding a vulnerable adult's hand to safely escort the vulnerable adult from one area to another.

"Room" means a space set apart by floor to ceiling partitions on all sides with all openings provided with doors or windows.

(1) **"Sleeping room"** means a room where a resident is customarily expected to sleep and contains a resident's bed.

(2) **"Resident living room"** means the common space in a resident unit that is not a sleeping room, bathroom, or closet.

"Significant change" means a change in the resident's physical, mental, or psychosocial status that causes either life-threatening conditions or clinical complications.

"Special needs" means a developmental disability, mental illness, or dementia.

"Staff person" means any assisted living facility employee ~~((or))~~, temporary employee, or contractor, whether employed or retained by the licensee or any management company ~~((;))~~ or volunteer.

"State fire marshal" means the director of fire protection under the direction of the chief of the Washington state patrol.

"Toilet" means a disposal apparatus used for urination and defecation ~~((;))~~ fitted with a seat and flushing device.

"Volunteer" means an individual who interacts with residents without reimbursement.

"Vulnerable adult" includes a person:

(1) Sixty years of age or older who has the functional, mental, or physical inability to care for ~~((himself or herself))~~ themselves; ~~((or))~~

(2) Found incapacitated under chapter 11.88 RCW; ~~((or))~~

(3) Who has a developmental disability as defined under RCW 71A.10.020; ~~((or))~~

(4) Admitted to any facility, including any assisted living facility; ~~((or))~~

(5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; ~~((or))~~

(6) Receiving services from an individual provider ~~((;))~~; or

(7) For the purposes of requesting and receiving background checks pursuant to RCW 43.43.832, ~~((it shall also include adults))~~ includes a person who is an adult of any age who ~~((lack))~~ lacks the functional, mental, or physical ability to care for themselves.

"WAC" means Washington Administrative Code.

"Wellness program" means an educational program provided by the assisted living facility. It is a proactive and preventative approach to assist residents and nonresident individuals in achieving optimal levels of health, social, and emotional functioning. A wellness program does not include medical care or interventions.

"Willful" means the deliberate, or nonaccidental ~~((;))~~ action or inaction by an alleged perpetrator that ~~((he/she))~~ the alleged perpetrator knows or reasonably should have known could cause a negative outcome, including harm, injury, pain, or anguish.

"WISHA" means the Washington Industrial Safety and Health Act, chapter 49.17 RCW administered by the Washington state department of labor and industries.

WSR 18-08-066

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed April 2, 2018, 3:29 p.m., effective May 3, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is amending the list of disqualifying crimes found in WAC 388-113-0020 related to the passage of HB [ESHB] 1153 and HB [E2SHB] 1163 in the 2017 legislative session.

Citation of Rules Affected by this Order: Amending WAC 388-113-0020.

Statutory Authority for Adoption: RCW 74.08.090, 43.43.842, 74.39A.056.

Adopted under notice filed as WSR 17-22-090 on October 30, 2017.

Changes Other than Editing from Proposed to Adopted Version: Reference to chapter 388-106 WAC was included in the question but inadvertently left out of the answer.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: April 2, 2018.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-14-025, filed 6/24/14, effective 7/25/14)

WAC 388-113-0020 Which criminal convictions and pending charges automatically disqualify an individual from having unsupervised access to adults or minors who are receiving services in a program under chapters 388-71, 388-101, ~~388-106~~, 388-76, 388-78A, 388-97, 388-825, and 388-107 WAC? (1) Individuals who must satisfy background checks requirements under chapters 388-71, 388-101, ~~388-106~~, 388-76, 388-78A, 388-97, 388-825, and 388-107 WAC ~~((may))~~ must not work in a position that may involve unsupervised access to minors or vulnerable adults if ~~((he or she))~~ the individual has been convicted of or has a pending charge for ~~((one))~~ any of the following crimes:

- Abandonment of a child;
- Abandonment of a dependent person;
- Abuse or neglect of a child;
- Arson 1;

Adopted under notice filed as WSR 18-04-117 on February 7, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 9, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 9, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 9, Repealed 0.

Date Adopted: March 23, 2018.

Ashley Probart
Executive Director

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

WAC 479-05-012 Emergent nature project submission and limitations. An eligible agency may request the transportation improvement board to consider a project for funding outside of the normal call for projects. To be considered as emergent nature, a project must demonstrate one or more of the following:

(1) There has been a significant change in the location or development of traffic generators in the area of the project.

(2) The work proposed is necessary to avoid or reduce serious traffic congestion in the area of the project in the near future.

(3) A partially funded project that, if completed, would enable a community to secure an unanticipated economic development opportunity.

(4) Other funding sources the local agency has applied for or secured for the project.

(5) ~~((The funding of the project would not adversely impact currently funded projects.))~~ The project request is a result of a federal, state, or locally declared emergency and must be funded prior to the normal call for projects.

In meeting one or more of the criteria, the project request may not adversely impact currently funded projects. The agency may be asked to make a presentation to the board on the project.

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

WAC 479-06-080 Final settlement. Up to five percent of total transportation improvement board funds may be retained until the agency submits final, complete, and accurate closeout documentation for a project.

A unilateral closeout of a project may be initiated by the board or executive director when an agency has not

responded to requests for final documentation ~~((and all funds are expended))~~.

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

WAC 479-14-006 Previously funded projects. Projects are not eligible to compete for funding within the termini limits of a previously funded project for a period of ten years from contract completion. ~~((A project that is divided into multiple phases is not considered a previously funded project.))~~

Exceptions: The executive director may consider project applications during the normal call for projects that meet one or more of the following criteria:

(1) Installation of traffic demand or system management improvements based on updated warrants;

(2) New technology, standards, or FHWA approvals (such as LED technology) that was not available when the project was previously funded;

(3) Have previously received preservation program funding.

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-14-121 What projects are eligible for urban program funding. Eligible projects are:

(1) Improvements on federally classified arterials;

(2) Within a city qualifying for urban designation upon the next federal census as long as the project carries a federal arterial functional classification; or

(3) Within the urban growth area in counties ~~((which are in full compliance with Washington state's Growth Management Act))~~.

Any urban street that is not functionally classified at the time of award must obtain federal functional classification prior to approval to expend board funds.

Sidewalks with five feet minimum clear width are required on both sides of the arterial unless a deviation is granted under WAC 479-14-200.

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-14-215 Small city match funding allocation. Within the small city arterial program, up to ten percent of the annual allocation may be portioned as an amount available for small cities to match the minimum federal funding ~~((provided))~~ match required for local government federal aid ~~((of))~~ transportation ~~((, on a first come/first served basis))~~ projects.

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-14-270 Small city federal match funding eligibility and application. (1) Cities with a population under five thousand may request grant funds to match a federal grant as part of the normal call for projects. The project must ~~((meet TIB eligibility requirements for the small city~~

~~arterial program described under WAC 479-14-221. A TIB funding application form must be submitted to apply for federal match funding.)):~~

~~(a) Meet TIB eligibility requirements for the small city arterial program described under WAC 479-14-221; and~~

~~(b) Submit a TIB funding small city arterial program application form to apply for federal match funding.~~

~~(2) Cities with a population under five thousand may request grant funds to match federal transportation funding for emergent federal match projects. The project must:~~

~~(a) Meet TIB eligibility requirements for the small city arterial program described under WAC 479-14-221; and~~

~~(b) Submit a TIB funding small city arterial program application form.~~

~~Projects may be selected until the funding allocation is expended.~~

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-14-271 Restriction on use of small city federal match funding. Federal match funds are only for transportation projects funded through federal transportation grants. ~~((All other local funding sources must be sought before applying for federal match funds from TIB.))~~

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-14-431 Award criteria for the sidewalk program. The board establishes the following criteria for use in evaluating sidewalk program grant applications for both urban and small city sidewalk projects:

(1) Safety improvement - Projects that address hazard mitigation and accident reduction.

(2) Pedestrian access - Projects that improve or provide access to facilities including:

- (a) Schools;
- (b) Public buildings;
- (c) Central business districts;
- (d) Medical facilities;
- (e) Activity centers;
- (f) High density housing (including senior housing);
- (g) Transit facilities;

~~((4))~~ (3) Completes or extends existing sidewalks.

~~((3))~~ (4) Completes or extends sidewalks to facilities listed in subsection (2) of this section that are identified in local agency latecomer agreements. The local agency must agree to collect the latecomer fee at the time of development and place the fee in its transportation improvement program.

(5) Local support - Addresses local needs and is supported by the local community.

~~((4))~~ (6) Sustainability - ~~((Improves))~~ Right sizing sidewalk or shared use path width and material type, provides hardscaping and ~~((appropriate))~~ native plantings, addresses low impact development or natural drainage practices~~((, and encourages pervious surface use)).~~

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-14-461 Matching requirement for the sidewalk program. The sidewalk program provides funding which will be matched by other funds as follows:

(1) The urban sidewalk program ~~((requires a match of at least twenty percent of total project costs.))~~ provides funding which will be matched by other funds as follows:

(a) For cities:

(i) If the city valuation is under one billion dollars, the matching rate is ten percent of total project costs.

(ii) If the city valuation is one billion dollars to two and one-half billion dollars, the rate is fifteen percent of total project costs.

(iii) If the city valuation is over two and one-half billion dollars, the rate is twenty percent of total project costs.

(b) For counties:

(i) If the road levy valuation is under three billion dollars, the rate is ten percent of total project costs.

(ii) If the road levy valuation is between three billion dollars to ten billion dollars, the rate is fifteen percent of total project costs.

(iii) If the road levy valuation is over ten billion dollars, the rate is twenty percent of total project costs.

(c) For transportation benefit districts, the match is based on the valuation of the city or county in which the project is located. If the project lies within more than one city or county, the match is determined by the city or county that has the greatest valuation.

(2) ~~The small city sidewalk program ((matching rates are dependent on the city population))~~ provides funding which will be matched by other funds as follows:

~~(a) ((Cities with a population of one thousand and below are not required to provide matching funds.~~

~~(b) Cities with a population over one thousand but less than five thousand, require a match of at least five percent of the total project costs.))~~ If the city assessed valuation is under one hundred million dollars, no cash match is necessary.

(b) If the city assessed valuation is from one hundred million dollars to five hundred million dollars, a five percent match will be contributed.

(c) If the city assessed valuation is greater than five hundred million dollars, a match of ten percent will be contributed.

The board uses the current published valuation from the department of revenue.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 479-14-272 Small city federal match funding priority.

WSR 18-08-075
PERMANENT RULES
HEALTH CARE AUTHORITY

[Filed April 3, 2018, 12:12 p.m., effective May 4, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The agency is amending WAC 182-501-0135 Patient review and coordination (PRC), as follows:

- Adding PRC program clients that may change managed care organizations (MCO) and assigned primary care providers in a time period of less than twelve months;
- Revising the section about billing PRC program clients that receive nonemergency health care services obtained from providers to specify "nonpharmacy" providers; and
- Clarifying information about administrative hearing and appeals for clients receiving services through fee-for-service (FFS) and MCOs.

The agency is amending WAC 182-502-0160 Billing a client, specifically subsection (6)(c), to correct a WAC reference, and subsection (6)(d), to align the language with changes to WAC 182-501-0135.

Citation of Rules Affected by this Order: Amending WAC 182-501-0135 and 182-502-0160.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 18-03-085 on January 16, 2018.

Changes Other than Editing from Proposed to Adopted Version:

Proposed/Adopted	WAC Subsection	Reason
Original WAC 182-501-0135 Patient review and coordination (PRC)		
Proposed	(g) A client who requests an administrative hearing or appeal and who has already been assigned providers will remain placed in the PRC program unless a final administrative order is entered that orders the client's removal from the program.	The agency added "in all other cases," clarifying that this subsection covers any client who requests an administrative hearing or appeal while already placed in the PRC program. (Subsection (e) refers to a timely request for an appeal of an initial PRC placement, and subsection (f) refers to untimely request for an appeal of an initial PRC placement.)
Adopted	(g) A client who requests an administrative hearing or appeal <u>in all other cases</u> and who has already been assigned providers will remain placed in the PRC program unless a final administrative order is entered that orders the client's removal from the program.	

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: April 3, 2018.

Wendy Barcus
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-05-006, filed 2/6/13, effective 3/9/13)

WAC 182-501-0135 Patient review and coordination (PRC). (1) **Patient review and coordination (PRC)** is a health and safety program that coordinates care and ensures clients enrolled in PRC use services appropriately and in accordance with agency rules and policies.

(a) PRC applies to medical assistance fee-for-service and managed care clients.

(b) PRC is authorized under federal medicaid law by 42 U.S.C. 1396n (a)(2) and 42 C.F.R. 431.54.

(2) **Definitions.** Definitions found in chapter 182-500 WAC and WAC 182-526-0010 apply to this section. The following definitions apply to this section only:

"Appropriate use" - Use of health care services that are safe and effective for a client's health care needs.

"Assigned provider" - An agency-enrolled health care provider or one participating with an agency-contracted managed care organization (MCO) who agrees to be assigned as a primary provider and coordinator of services for a fee-for-service or managed care client in the PRC program. Assigned providers can include a primary care provider (PCP), a pharmacy, a prescriber of controlled substances, and a hospital for nonemergency services.

"At-risk" - A term used to describe one or more of the following:

- (a) A client with a medical history of:
 - (i) Seeking and obtaining health care services at a frequency or amount that is not medically necessary; or
 - (ii) Potential life-threatening events or life-threatening conditions that required or may require medical intervention.
- (b) Behaviors or practices that could jeopardize a client's medical treatment or health including, but not limited to:
 - (i) Indications of forging or altering prescriptions;
 - (ii) Referrals from medical personnel, social services personnel, or MCO personnel about inappropriate behaviors or practices that place the client at risk;
 - (iii) Noncompliance with medical or drug and alcohol treatment;
 - (iv) Paying cash for medical services that result in a controlled substance prescription or paying cash for controlled substances;
 - (v) Arrests for diverting controlled substance prescriptions;
 - (vi) Positive urine drug screen for illicit street drugs or nonprescribed controlled substances;

(vii) Negative urine drug screen for prescribed controlled substances; or

(viii) Unauthorized use of a client's services card for an unauthorized purpose.

"Care management" - Services provided to clients with multiple health, behavioral, and social needs to improve care coordination, client education, and client self-management skills.

~~("Client" - A person enrolled in an agency health care program and receiving service from fee-for-service provider(s) or an MCO contracted with the agency.)~~

"Conflicting" - Drugs or health care services that are incompatible or unsuitable for use together because of undesirable chemical or physiological effects.

"Contraindicated" - A medical treatment, procedure, or medication that is inadvisable or not recommended or warranted.

"Duplicative" - Applies to the use of the same or similar drugs and health care services without due medical justification. Example: A client receives health care services from two or more providers for the same or similar condition(s) in an overlapping time frame, or the client receives two or more similarly acting drugs in an overlapping time frame, which could result in a harmful drug interaction or an adverse reaction.

"Emergency department information exchange (EDIE)" - An internet-delivered service that enables health care providers to better identify and treat high users of the emergency department and special needs patients. When patients enter the emergency room, EDIE can proactively alert health care providers through different venues such as fax, phone, email, or integration with a facility's current electronic medical records.

"Emergency medical condition" - See WAC 182-500-0030.

"Emergency services" - See 42 C.F.R. 447.53.

"Just cause" - A legitimate reason to justify the action taken, including but not limited to, protecting the health and safety of the client.

"Managed care client" - A medical assistance client enrolled in, and receiving health care services from, an agency-contracted managed care organization (MCO).

~~("Managed care organization" or "MCO" - See WAC 182-538-050.)~~

"Prescriber of controlled substances" - Any of the following health care professionals who, within their scope of professional practice, are licensed to prescribe and administer controlled substances (see chapter 69.50 RCW, Uniform Controlled Substance Act) for a legitimate medical purpose:

- (a) A physician under chapter 18.71 RCW;
- (b) A physician assistant under chapter 18.71A RCW;
- (c) An osteopathic physician under chapter 18.57 RCW;
- (d) An osteopathic physician assistant under chapter 18.57A RCW; and
- (e) An advanced registered nurse practitioner under chapter 18.79 RCW.

"Primary care provider" or "PCP" - A person licensed or certified under Title 18 RCW including, but not limited to, a physician, an advanced registered nurse practitioner (ARNP), or a physician assistant (PA) who supervises,

coordinates, and provides health care services to a client, initiates referrals for specialty and ancillary care, and maintains the client's continuity of care.

(3) **Clients selected for PRC review.** The agency or MCO selects a client for PRC review when either or both of the following occur:

(a) A usage review report indicates the client has not used health care services appropriately; or

(b) Medical providers, social service agencies, or other concerned parties have provided direct referrals to the agency or MCO.

(4) **When a fee-for-service client is selected for PRC review,** the prior authorization process as defined in WAC 182-500-0085 may be required:

(a) Prior to or during a PRC review; or

(b) When the client is currently in the PRC program.

(5) **Review for placement in the PRC program.** When the agency or MCO selects a client for PRC review, the agency or MCO staff, with clinical oversight, reviews either the client's medical history or billing history, or both, to determine if the client has used health care services at a frequency or amount that is not medically necessary (42 C.F.R. 431.54(e)).

(6) **Usage guidelines for PRC placement.** Agency or MCO staff use the following usage guidelines to initiate review for PRC placement. A client may be placed in the PRC program when either the client's medical history or billing history, or both, documents any of the following:

(a) Any two or more of the following conditions occurred in a period of ninety consecutive calendar days in the previous twelve months. The client:

(i) Received services from four or more different providers, including physicians, ARNPs, and PAs not located in the same clinic or practice;

(ii) Had prescriptions filled by four or more different pharmacies;

(iii) Received ten or more prescriptions;

(iv) Had prescriptions written by four or more different prescribers not located in the same clinic or practice;

(v) Received similar services in the same day not located in the same clinic or practice; or

(vi) Had ten or more office visits;

(b) Any one of the following occurred within a period of ninety consecutive calendar days in the previous twelve months. The client:

(i) Made two or more emergency department visits;

(ii) Exhibits "at-risk" usage patterns;

(iii) Made repeated and documented efforts to seek health care services that are not medically necessary; or

(iv) Was counseled at least once by a health care provider, or an agency or MCO staff member with clinical oversight, about the appropriate use of health care services;

(c) The client received prescriptions for controlled substances from two or more different prescribers not located in the same clinic or practice in any one month within the ninety-day review period; or

(d) The client has either a medical history or billing history, or both, that demonstrates a pattern of the following at any time in the previous twelve months:

(i) Using health care services in a manner that is duplicative, excessive, or contraindicated; or

(ii) Seeking conflicting health care services, drugs, or supplies that are not within acceptable medical practice;

~~(iii) Being on substance abuse programs such as the Alcohol and Drug Abuse Treatment and Support Act (ADATSA)).~~

(7) **PRC review results.** As a result of the PRC review, the agency or MCO may take any of the following steps:

(a) Determine that no action is needed and close the client's file;

(b) Send the client and, if applicable, the client's authorized representative a one-time only ~~((letter))~~ written notice of concern with information on specific findings and notice of potential placement in the PRC program; or

(c) Determine that the usage guidelines for PRC placement establish that the client has used health care services at an amount or frequency that is not medically necessary, in which case the agency or MCO will take one or more of the following actions:

(i) Refer the client for education on appropriate use of health care services;

(ii) Refer the client to other support services or agencies; or

(iii) Place the client into the PRC program for an initial placement period of no less than twenty-four months. For clients younger than eighteen years of age, the MCO must get agency approval prior to placing the client into the PRC program.

(8) **Initial placement in the PRC program.** When a client is initially placed in the PRC program:

(a) The agency or MCO places the client for no less than twenty-four months with one or more of the following types of health care providers:

(i) Primary care provider (PCP);

(ii) Pharmacy for all prescriptions;

(iii) Prescriber of controlled substances;

(iv) Hospital for nonemergency services unless referred by the assigned PCP or a specialist. A client may receive covered emergency services from any hospital; or

(v) Another qualified provider type, as determined by agency or MCO program staff on a case-by-case basis.

(b) The managed care client will remain in the same MCO for no less than twelve months unless:

(i) The client moves to a residence outside the MCO's service area and the MCO is not available in the new location; or

(ii) The client's assigned PCP no longer participates with the MCO and is available in another MCO, and the client wishes to remain with the current provider; ~~((or))~~

(iii) The client is in a voluntary enrollment program or a voluntary enrollment county;

(iv) The client is in the address confidentiality program (ACP), indicated by P.O. Box 257, Olympia, WA 98507; or

(v) The client is an American Indian/Alaska native.

(c) A managed care client placed in the PRC program must remain in the PRC program for no less than twenty-four months regardless of whether the client changes MCOs or becomes a fee-for-service client.

(9) **Notifying the client about placement in the PRC program.** When the client is initially placed in the PRC program, the agency or the MCO sends the client and, if applicable, the client's authorized representative, a written notice that:

(a) Informs the client of the reason for the PRC program placement;

(b) Directs the client to respond to the agency or MCO within ten ~~((business))~~ calendar days of the date of the written notice;

(c) Directs the client to take the following actions:

(i) Select providers, subject to agency or MCO approval;

(ii) Submit additional health care information, justifying the client's use of health care services; or

(iii) Request assistance, if needed, from the agency or MCO program staff.

(d) Informs the client of administrative hearing or appeal rights (see subsection (14) of this section).

(e) Informs the client that if a response is not received within ten calendar days of the date of the written notice, the client will be assigned a provider(s) by the agency or MCO.

(10) **Selection and role of assigned provider.** A client will have a limited choice of providers.

(a) The following providers are not available:

(i) A provider who is being reviewed by the agency or licensing authority regarding quality of care;

(ii) A provider who has been suspended or disqualified from participating as an agency-enrolled or MCO-contracted provider; or

(iii) A provider whose business license is suspended or revoked by the licensing authority.

(b) For a client placed in the PRC program, the assigned:

(i) Provider(s) must be located in the client's local geographic area, in the client's selected MCO, and be reasonably accessible to the client.

(ii) PCP supervises and coordinates health care services for the client, including continuity of care and referrals to specialists when necessary.

(A) The PCP:

(I) Provides the plan of care for clients that have documented use of the emergency department for a reason that is not deemed to be an emergency medical condition;

(II) Files the plan of care with each emergency department that the client is using or with the emergency department information exchange;

(III) Makes referrals to substance abuse treatment for clients who are using the emergency department for substance abuse issues; and

(IV) Makes referrals to mental health treatment for clients who are using the emergency department for mental health treatment issues.

(B) The assigned PCP must be one of the following:

(I) A physician;

(II) An advanced registered nurse practitioner (ARNP); or

(III) A licensed physician assistant (PA), practicing with a supervising physician.

(ii) Prescriber of controlled substances prescribes all controlled substances for the client;

(iv) Pharmacy fills all prescriptions for the client; and

(v) Hospital provides all hospital nonemergency services.

(c) A client placed in the PRC program must remain with the assigned providers for twelve months after the assignments are made, unless:

(i) The client moves to a residence outside the provider's geographic area;

(ii) The provider moves out of the client's local geographic area and is no longer reasonably accessible to the client;

(iii) The provider refuses to continue to serve the client;

(iv) The client did not select the provider. The client may request to change an assigned provider once within thirty calendar days of the ~~((initial))~~ assignment; ~~((or))~~

(v) The client's assigned PCP no longer participates with the MCO. In this case, the client may select a new provider from the list of available providers in the MCO or follow the assigned provider to the new MCO; or

(vi) The client is in the address confidentiality program (ACP), indicated by P.O. Box 257, Olympia, WA 98507.

(d) When an assigned prescribing provider no longer contracts with the agency or the MCO:

(i) All prescriptions from the provider are invalid thirty calendar days following the date the contract ends;

(ii) All prescriptions from the provider are subject to applicable prescription drugs (outpatient) rules in chapter 182-530 WAC or appropriate MCO rules; and

(iii) The client must choose or be assigned another provider according to the requirements in this section.

(11) PRC placement.

(a) The initial PRC placement is no less than twenty-four consecutive months.

(b) The second PRC placement is no less than an additional thirty-six consecutive months.

(c) Each subsequent PRC placement is no less than seventy-two consecutive months.

(12) Agency or MCO review of a PRC placement period. The agency or MCO reviews a client's use of health care services prior to the end of each PRC placement period described in subsection (11) of this section using the guidelines in subsection (6) of this section.

(a) The agency or MCO assigns the next PRC placement if the usage guidelines for PRC placement in subsection (6) of this section apply to the client.

(b) When the agency or MCO assigns a subsequent PRC placement, the agency or MCO sends the client and, if applicable, the client's authorized representative, a written notice informing the client:

(i) Of the reason for the subsequent PRC program placement;

(ii) Of the length of the subsequent PRC placement;

(iii) That the current providers assigned to the client continue to be assigned to the client during the subsequent PRC placement;

(iv) That all PRC program rules continue to apply;

(v) Of administrative hearing or appeal rights (see subsection (14) of this section); and

(vi) Of the rules that support the decision.

(c) The agency may remove a client from PRC placement if the client:

(i) Successfully completes a treatment program that is provided by a chemical dependency service provider certified by the agency under chapter 388-805 WAC;

(ii) Submits documentation of completion of the approved treatment program to the agency; and

(iii) Maintains appropriate use of health care services within the usage guidelines described in subsection (6) of this section for six consecutive months after the date the treatment ends.

(d) The agency or MCO determines the appropriate placement for a client who has been placed back into the program.

(e) A client will remain placed in the PRC program regardless of change in eligibility program type or change in address.

(13) Client financial responsibility. A client placed in the PRC program may be billed by a provider and held financially responsible for nonemergency health care services ~~((when the client obtains nonemergency services and the))~~ obtained from a nonpharmacy provider ((who renders the services is not assigned or referred under the PRC program)) when the provider is not an assigned or appropriately referred provider as described in subsection (10) of this section. See WAC 182-502-0160.

(14) Right to administrative hearing or appeal.

(a) A fee-for-service client who ~~((believes the agency has taken an invalid action pursuant to this section may request a hearing))~~ disagrees with an agency decision regarding placement or continued placement in the PRC program has the right to an administrative hearing regarding this placement. A client must request an administrative hearing from the agency within ninety days of the written notice of placement or continued placement to exercise this right.

(b) A managed care client who ~~((believes the MCO has taken an invalid action pursuant to this section or chapter 182-538 WAC must exhaust the MCO's internal appeal process set forth in WAC 182-538-110 prior to requesting a hearing. Managed care clients cannot change MCOs until the appeal or hearing is resolved and there is a final ruling))~~ disagrees with an MCO decision regarding placement or continued placement in the PRC program has a right to appeal this decision in the same manner as an adverse benefit determination under WAC 182-538-110.

(i) An appeal must be filed with the MCO within sixty calendar days of the written notice of the MCO's decision.

(ii) A client must exhaust the right to appeal through the MCO prior to requesting an administrative hearing.

(iii) A client who disagrees with the resolution of the appeal by the MCO may request an administrative hearing.

(iv) A client may exercise the right to an administrative hearing by filing a request within one hundred twenty calendar days from the written notice of resolution of the appeal by the MCO.

(c) A client ~~((must request the hearing or appeal within ninety calendar days after the client receives the written notice of placement in the PRC program))~~ enrolled in an MCO cannot change MCOs until the MCO appeal and any administrative hearing process has been completed and a final order entered.

(d) The agency conducts ~~((a))~~ an administrative hearing according to chapter 182-526 WAC. ~~((Definitions for the terms "hearing," "initial order," and "final order" used in this subsection are found in WAC 182-526-0010.))~~

(e) A client who requests ~~((a))~~ an administrative hearing or appeal within ten calendar days from the date of the written notice of an initial PRC placement ~~((period under subsection (11)(a) of this section))~~ will not be placed in the PRC program until ~~((the date an initial order is issued that supports the client's placement in the PRC program or otherwise))~~ ordered by an administrative law judge (ALJ) or review judge.

(f) A client who requests ~~((a))~~ an administrative hearing or appeal more than ten calendar days from the date of the written notice ~~((under subsection (9) of this section))~~ of initial PRC placement will remain placed in the PRC program ~~((unless))~~ until a final administrative order is entered that orders the client's removal from the program.

(g) A client who requests ~~((a))~~ an administrative hearing or appeal ~~((within ninety calendar days from the date of receiving the written notice under subsection (9) of this section))~~ in all other cases and who has already been assigned providers will remain placed in the PRC program unless a final administrative order is entered that orders the client's removal from the program.

(h) An ALJ may rule ~~((that))~~ the client be placed in the PRC program prior to the date the record is closed and prior to the date the initial order is issued based on a showing of just cause.

~~((i) The client who requests a hearing challenging placement into the PRC program has the burden of proving the agency's or MCO's action was invalid. For standard of proof, see chapter 182-526 WAC.))~~

AMENDATORY SECTION (Amending WSR 13-15-044, filed 7/11/13, effective 8/11/13)

WAC 182-502-0160 Billing a client. (1) The purpose of this section is to specify the limited circumstances in which:

(a) Fee-for-service or managed care clients can choose to self-pay for medical assistance services; and

(b) Providers (as defined in WAC 182-500-0085) have the authority to bill fee-for-service or managed care clients for medical assistance services furnished to those clients.

(2) The provider is responsible for:

(a) Verifying whether the client is eligible to receive medical assistance services on the date the services are provided;

(b) Verifying whether the client is enrolled with a medicaid agency-contracted managed care organization (MCO);

(c) Knowing the limitations of the services within the scope of the eligible client's medical program (see WAC 182-501-0050 (4)(a) and 182-501-0065);

(d) Informing the client of those limitations;

(e) Exhausting all applicable medicaid agency or agency-contracted MCO processes necessary to obtain authorization for requested service(s);

(f) Ensuring that translation or interpretation is provided to clients with limited English proficiency (LEP) who agree to be billed for services in accordance with this section; and

(g) Retaining all documentation which demonstrates compliance with this section.

(3) Unless otherwise specified in this section, providers must accept as payment in full the amount paid by the agency or agency-contracted MCO for medical assistance services furnished to clients. See 42 C.F.R. § 447.15.

(4) A provider must not bill a client, or anyone on the client's behalf, for any services until the provider has completed all requirements of this section, including the conditions of payment described in the agency's rules, the agency's fee-for-service billing instructions, and the requirements for billing the agency-contracted MCO in which the client is enrolled, and until the provider has then fully informed the client of his or her covered options. A provider must not bill a client for:

(a) Any services for which the provider failed to satisfy the conditions of payment described in the agency's rules, the agency's fee-for-service billing instructions, and the requirements for billing the agency-contracted MCO in which the client is enrolled.

(b) A covered service even if the provider has not received payment from the agency or the client's MCO.

(c) A covered service when the agency or its designee denies an authorization request for the service because the required information was not received from the provider or the prescriber under WAC 182-501-0165 (7)(c)(i).

(5) If the requirements of this section are satisfied, then a provider may bill a fee-for-service or a managed care client for a covered service, defined in WAC 182-501-0050(9), or a noncovered service, defined in WAC 182-501-0050(10) and 182-501-0070. The client and provider must sign and date the HCA form 13-879, Agreement to Pay for Healthcare Services, before the service is furnished. Form 13-879, including translated versions, is available to download at <http://hrsa.dshs.wa.gov/mpforms.shtml>. The requirements for this subsection are as follows:

(a) The agreement must:

(i) Indicate the anticipated date the service will be provided, which must be no later than ninety calendar days from the date of the signed agreement;

(ii) List each of the services that will be furnished;

(iii) List treatment alternatives that may have been covered by the agency or agency-contracted MCO;

(iv) Specify the total amount the client must pay for the service;

(v) Specify what items or services are included in this amount (such as ~~((pre-operative))~~ preoperative care and post-operative care). See WAC 182-501-0070(3) for payment of ancillary services for a noncovered service;

(vi) Indicate that the client has been fully informed of all available medically appropriate treatment, including services that may be paid for by the agency or agency-contracted MCO, and that he or she chooses to get the specified service(s);

(vii) Specify that the client may request an exception to rule (ETR) in accordance with WAC 182-501-0160 when the agency or its designee denies a request for a noncovered service and that the client may choose not to do so;

(viii) Specify that the client may request an administrative hearing in accordance with chapter 182-526 WAC to appeal the agency's or its designee denial of a request for

prior authorization of a covered service and that the client may choose not to do so;

(ix) Be completed only after the provider and the client have exhausted all applicable agency or agency-contracted MCO processes necessary to obtain authorization of the requested service, except that the client may choose not to request an ETR or an administrative hearing regarding agency or agency designee denials of authorization for requested service(s); and

(x) Specify which reason in subsection (b) below applies.

(b) The provider must select on the agreement form one of the following reasons (as applicable) why the client is agreeing to be billed for the service(s). The service(s) is:

(i) Not covered by the agency or the client's agency-contracted MCO and the ETR process as described in WAC 182-501-0160 has been exhausted and the service(s) is denied;

(ii) Not covered by the agency or the client's agency-contracted MCO and the client has been informed of his or her right to an ETR and has chosen not to pursue an ETR as described in WAC 182-501-0160;

(iii) Covered by the agency or the client's agency-contracted MCO, requires authorization, and the provider completes all the necessary requirements; however the agency or its designee denied the service as not medically necessary (this includes services denied as a limitation extension under WAC 182-501-0169); or

(iv) Covered by the agency or the client's agency-contracted MCO and does not require authorization, but the client has requested a specific type of treatment, supply, or equipment based on personal preference which the agency or MCO does not pay for and the specific type is not medically necessary for the client.

(c) For clients with limited English proficiency, the agreement must be the version translated in the client's primary language and interpreted if necessary. If the agreement is translated, the interpreter must also sign it;

(d) The provider must give the client a copy of the agreement and maintain the original and all documentation which supports compliance with this section in the client's file for six years from the date of service. The agreement must be made available to the agency or its designee for review upon request; and

(e) If the service is not provided within ninety calendar days of the signed agreement, a new agreement must be completed by the provider and signed by both the provider and the client.

(6) There are limited circumstances in which a provider may bill a client without executing form 13-879, Agreement to Pay for Healthcare Services, as specified in subsection (5) of this section. The following are those circumstances:

(a) The client, the client's legal guardian, or the client's legal representative:

(i) Was reimbursed for the service directly by a third party (see WAC 182-501-0200); or

(ii) Refused to complete and sign insurance forms, billing documents, or other forms necessary for the provider to bill the third party insurance carrier for the service.

(b) The client represented himself/herself as a private pay client and not receiving medical assistance when the cli-

ent was already eligible for and receiving benefits under a medical assistance program. In this circumstance, the provider must:

(i) Keep documentation of the client's declaration of medical coverage. The client's declaration must be signed and dated by the client, the client's legal guardian, or the client's legal representative; and

(ii) Give a copy of the document to the client and maintain the original for six years from the date of service, for agency or the agency's designee review upon request.

(c) The bill counts toward the financial obligation of the client or applicant (such as spenddown liability, client participation as described in ~~((WAC 388-513-1380))~~ chapters 182-513 and 182-515 WAC, emergency medical expense requirement, deductible, or copayment required by the agency or its designee). See subsection (7) of this section for billing a medically needy client for spenddown liability;

(d) The client is ~~((under))~~ placed in the agency's or an agency-contracted MCO's patient review and coordination (PRC) program ~~((WAC 182-501-0135))~~ and ~~((receives))~~ obtains nonemergency services from a nonpharmacy provider ~~((s or health care facilities other than those to whom the client is assigned or referred under the PRC program))~~ that is not an assigned or appropriately referred provider as described in WAC 182-501-0135;

(e) The client is a dual-eligible client with medicare Part D coverage or similar creditable prescription drug coverage and the conditions of WAC 182-530-7700 (2)(a)(iii) are met;

(f) The service is within a service category excluded from the client's benefits package. See WAC 182-501-0060;

(g) The services were noncovered ambulance services (see WAC 182-546-0250(2));

(h) A fee-for-service client chooses to receive nonemergency services from a provider who is not contracted with the agency or its designee after being informed by the provider that he or she is not contracted with the agency or its designee and that the services offered will not be paid by the client's health care program; and

(i) An agency-contracted MCO enrollee chooses to receive nonemergency services from providers outside of the MCO's network without authorization from the MCO, i.e., a nonparticipating provider.

(7) Under chapter 182-519 WAC, an individual who has applied for medical assistance is required to spend down excess income on health care expenses to become eligible for coverage under the medically needy program. An individual must incur health care expenses greater than or equal to the amount that he or she must spend down. The provider is prohibited from billing the individual for any amount in excess of the spenddown liability assigned to the bill.

(8) There are situations in which a provider must refund the full amount of a payment previously received from or on behalf of an individual and then bill the agency for the covered service that had been furnished. In these situations, the individual becomes eligible for a covered service that had already been furnished. Providers must then accept as payment in full the amount paid by the agency or its designee or managed care organization for medical assistance services furnished to clients. These situations are as follows:

(a) The individual was not receiving medical assistance on the day the service was furnished. The individual applies for medical assistance later in the same month in which the service was provided and the agency or its designee makes the individual eligible for medical assistance from the first day of that month;

(b) The client receives a delayed certification for medical assistance as defined in WAC 182-500-0025; or

(c) The client receives a certification for medical assistance for a retroactive period according to 42 C.F.R. § 435.914(a) and defined in WAC 182-500-0095.

(9) Regardless of any written, signed agreement to pay, a provider may not bill, demand, collect, or accept payment or a deposit from a client, anyone on the client's behalf, or the agency or its designee for:

(a) Copying, printing, or otherwise transferring health care information, as the term health care information is defined in chapter 70.02 RCW, to another health care provider. This includes, but is not limited to:

- (i) Medical/dental charts;
 - (ii) Radiological or imaging films; and
 - (iii) Laboratory or other diagnostic test results.
- (b) Missed, canceled, or late appointments;
- (c) Shipping and/or postage charges;
- (d) "Boutique," "concierge," or enhanced service packages (e.g., newsletters, 24/7 access to provider, health seminars) as a condition for access to care; or

(e) The price differential between an authorized service or item and an "upgraded" service or item (e.g., a wheelchair with more features; brand name versus generic drugs).

WSR 18-08-084

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed April 4, 2018, 9:03 a.m., effective May 5, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is amending WAC 388-106-1045 and creating WAC 388-106-1046 and 388-106-1047 in order to clarify the definition for nurse services intervention, specifically private duty nursing, to define the scope of services to be authorized and the necessity for documentation to support the required services in contracted adult family homes.

Citation of Rules Affected by this Order: New WAC 388-106-1046 and 388-106-1047; and amending WAC 388-106-1045.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Adopted under notice filed as WSR 18-05-073 on February 16, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 1, Repealed 0.

Date Adopted: April 3, 2018.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-05-079, filed 2/15/11, effective 3/18/11)

WAC 388-106-1045 (~~Can~~) When may I receive private duty nursing (PDN) services in a (~~licensed~~) contracted PDN adult family home (AFH)? You may (~~be eligible to~~) receive private duty nursing (PDN) services (~~if you are residing~~) in an adult family home (AFH) (~~if the AFH provider (owner and operator)~~) when:

(1) (~~Possesses a current Washington state registered nurse license and is in good standing~~) You are assessed;

(~~2~~) Signs a contract amendment with ADSA by which the provider agrees to ensure provision of twenty-four hour personal care and nursing care services. Nursing care services must be provided in accordance with chapter 18.79 RCW) (a) Using the comprehensive assessment reporting evaluation (CARE) assessment tool as provided in WAC 388-106-0500; and

(~~3~~) Provides your PDN service through an RN or an LPN under the supervision of an RN. The level of PDN services provided to you is based on the CARE assessment, the department designated PDN skilled task log or its approved equivalent, and other documentation that determines eligibility and the number) (b) By an aging and long-term support administration (AL TSA) community nurse consultant (CNC) or developmental disabilities administration (DDA) nurse care consultant (NCC) who, using their professional judgment, determines that you require a minimum of eight hours of PDN (~~hours to be authorized;~~) services per day.

(~~4~~) Provides the PDN services to you. Your service plan may authorize you to receive four to eight hours per day and cannot exceed eight PDN care hours per day;

(5) Has a nursing service plan prescribed for you by your primary care provider. The primary care provider must) (2) You reside in an AFH that:

(a) (~~Oversee your care plan, which must be updated at least once every six months~~) Meets all AFH licensing requirements under chapter 388-76 WAC; and

(b) (~~Monitor your client's medical stability~~) Has a PDN contract with AL TSA; and

(c) Meets all other requirements in WAC 388-106-1046.

(~~6~~) Document the services provided in the care plan, including the submission of the PDN seven-day look back skilled nursing task log by the licensed nursing to the CN or

~~NCC for review for initial eligibility and ongoing eligibility every six months; and~~

~~(7) Maintain records in compliance with AFH licensing and contract requirements)) (3) Your detailed service plan is reviewed and signed by your primary care provider at your initial assessment and at least every six months thereafter, and your detailed service plan is submitted to an ALTSA CNC or DDA NCC for review along with the following documents:~~

- ~~(a) Physical exam findings completed by your physician;~~
- ~~(b) Current Physician's orders;~~
- ~~(c) Current nursing assessment;~~
- ~~(d) Current plan of care;~~
- ~~(e) The nursing progress notes for the seven days prior to assessment, if applicable; and~~
- ~~(f) The PDN skilled nursing task log for dates corresponding with the nursing progress notes, if applicable.~~

NEW SECTION

WAC 388-106-1046 When may an adult family home (AFH) be paid an all-inclusive daily rate for private duty nursing (PDN) services? An adult family home (AFH) may be paid for private duty nursing (PDN) services when:

(1) The AFH provider, as defined in WAC 388-76-10000, ensures that personal care and nursing services are available in the home 24 hours per day.

(2) The AFH provider is either:

(a) A registered nurse (RN) licensed in Washington state in good standing under RCW 18.79.030(1); or

(b) Operates an in-home services agency licensed through the Washington state department of health (DOH) to provide home health services under chapter 246-335 WAC; and

(i) Employs a resident manager or entity representative, who is a registered nurse licensed in Washington state in good standing under RCW 18.79.030(1); and

(ii) The PDN program manager has approved a plan submitted by the AFH provider to replace the resident manager or entity representative in the event the resident manager or entity representative is no longer employed by the AFH; and

(iii) Ensures that a sufficient number of capable, qualified, and trained staff are available to provide necessary care and services consistent with each client's negotiated service agreement at all times, including but not limited to routine conditions, emergencies, fires, and disaster situations; and

(iv) May use nurses employed by their own in-home services agency to provide PDN for clients in the AFH.

(3) The RN resident manager or RN entity representative employed by the AFH provider, as required under subsection (2):

(a) Manages the daily operations of the AFH and oversees the care provided to the client; and

(b) Must notify the local fire agency, gas, phone, and electric companies at the time of each PDN client's admission to the AFH.

NEW SECTION

WAC 388-106-1047 What is included in the all-inclusive daily rate payment to the adult family home (AFH)

providing private duty nursing (PDN) services? Department of social and health services (DSHS) will pay the adult family home (AFH) an all-inclusive daily rate for a private duty nursing (PDN) client, which includes payment for PDN services, all skilled nursing tasks, and all personal care services. DSHS will not authorize payment for nurse delegation services or hours provided by the in-home services agency nurses in addition to the PDN all-inclusive daily rate.

WSR 18-08-091
PERMANENT RULES
LIQUOR AND CANNABIS
BOARD

[Filed April 4, 2018, 10:47 a.m., effective May 5, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Rules are needed to clarify the requirements for private label spirits between a spirits manufacturer and a spirits retailer.

Citation of Rules Affected by this Order: New WAC 314-12-146.

Statutory Authority for Adoption: RCW 66.08.030.

Adopted under notice filed as WSR 18-03-185 on January 24, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: April 4, 2018.

Jane Rushford
Chair

NEW SECTION

WAC 314-12-146 Private label spirits. Distillers, crafter distillers, spirit certificate of approval holders, and manufacturers of spirits may produce private label spirits for on-premises and off-premises spirits retailers under the following conditions:

(1) There may be no exclusivity between the producer and the retailer for the private label spirit product. The spirit product must be reasonably available to all spirits retailers licensed to sell spirits;

(2) A copy of the contract between the producer and the spirits retailer for all private label spirits products must be available to the board for inspection; and

(3) The distiller, craft distiller, spirit certificate of approval holder, or manufacturer of spirits must submit a TTB certificate of label approval for each private label produced to the board for review.

(d) Merchant Marine identification card issued by the United States Coast Guard; and

(e) Enrollment card issued by the governing authority of a federally recognized Indian tribe located in Washington, if the enrollment card incorporates security features comparable to those implemented by the department of licensing for Washington driver's licenses.

(2) If the identification document has an expiration date, a person may not use the document after the expiration date to verify his or her age.

WSR 18-08-094
PERMANENT RULES
LIQUOR AND CANNABIS
BOARD

[Filed April 4, 2018, 11:51 a.m., effective May 5, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The rule for acceptable forms of identification need[s] to be revised to add NEXUS cards and passport cards.

Citation of Rules Affected by this Order: Amending WAC 314-11-025.

Statutory Authority for Adoption: RCW 66.08.030.

Adopted under notice filed as WSR 18-03-187 on January 24, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: April 4, 2018.

Jane Rushford
Chair

AMENDATORY SECTION (Amending WSR 12-17-006, filed 8/1/12, effective 9/1/12)

WAC 314-11-025 What are the forms of acceptable identification? (1) Following are the forms of identification that are acceptable to verify a person's age for the purpose of selling, serving, or allowing a person to possess or consume alcohol:

(a) Driver's license, instruction permit, or identification card of any state, or province of Canada, from a U.S. territory or the District of Columbia, or "identocard" issued by the Washington state department of licensing per RCW 46.20.117;

(b) United States armed forces identification card issued to active duty, reserve, and retired personnel and the personnel's dependents, which may include an embedded, digital signature in lieu of a visible signature;

(c) Passport, passport card, NEXUS card;