

WSR 24-05-046

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed February 15, 2024, 11:58 a.m., effective February 15, 2024, 11:58 a.m.]

Effective Date of Rule: Immediately upon filing.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: ESB [E2SSB] 5440 (section 13, chapter 453, Laws of 2023) took effect December 1, 2023, so courts may start referring people, and the department of social and health services (department) is expected to have a pilot program in place which requires rules. There have only been six months after the legislature passed the law, thus this did not allow enough time for both program development and regular rule-making procedures. The CR-101 was filed as WSR 23-24-046 on November 30, 2023.

Purpose: The department will be adopting new rules to implement the provisions of ESB [E2SSB] 5440 (chapter 453, Laws of 2023). The department is adding new sections in chapter 388-106 WAC to support the new civil transitions program created as a result of ESB [E2SSB] 5440. These sections include WAC 388-106-2000 through 388-106-2050. The proposed rules describe eligibility for the civil transitions program and the package of services provided for individuals who are referred by the behavioral health administration who have been found not functionally and financially eligible for long-term support services due to a brain injury, intellectual, or developmental disability. The rules will describe services and the duration.

Citation of Rules Affected by this Order: New WAC 388-106-2000, 388-106-2005, 388-106-2010, 388-106-2015, 388-106-2020, 388-106-2025, 388-106-2030, 388-106-2035, 388-106-2040, 388-106-2045, and 388-106-2050.

Statutory Authority for Adoption: RCW 74.08.090 and 74.09.520.

Other Authority: ESB [E2SSB] 5440 (chapter 453, Laws of 2023).

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Legislation passed ESB [E2SSB] 5440 (chapter 453, Laws of 2023) that addressed timely competency evaluations and restoration services for individuals experiencing behavioral health disorders consistent with the Trueblood settlement. Section 13 of the bill requires the aging and long-term support administration (ALTSA) and the developmental disabilities administration to provide services for individuals that have been found by the court to be not competent and not restorative to stand trial due to a diagnosis of dementia, traumatic brain injury, or intellectual or developmental disability. ALTSA is to provide services whether the individual meets financial eligibility requirements or is determined functionally eligible for services.

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 11, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental 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 11, 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 11, Amended 0, Repealed 0.

Date Adopted: February 14, 2024.

Katherine I. Vasquez
Rules Coordinator

SHS-5009.5

NEW SECTION

WAC 388-106-2000 What definitions apply to the civil transitions program? "Aging and long-term services administration (AL TSA)" is an administration within the department of social and health services, that promotes choice, independence, and safety through innovative services and partnerships with tribes, advocates, providers, and caregivers to support seniors and people with disabilities so they can live with good health, independence, dignity, and control over decisions that affect their lives.

"Behavioral health administration (BHA)" is an administration within the department of social and health services, that supports sustainable recovery, independence, and wellness. This is done by funding and supporting effective prevention and intervention services for youth and family, and treatment and recovery support for youth and adults with addiction and mental health conditions (also known as behavioral health). BHA operates three state psychiatric hospitals and the office of forensic mental health services that deliver high quality services to adults and children with complex needs.

"Civil transitions program" is a program implemented according to Engrossed Second Substitute Senate Bill 5440 to provide support services to individuals recently subject to criminal charges and found incompetent to stand trial due to an intellectual or developmental disability, traumatic brain injury, or dementia.

"Competency evaluation" is an assessment of the ability of a defendant to understand and rationally participate in a court process under the United States criminal justice system.

"Conditional services" is a term that describes the services available under the civil transitions program for an individual who does not meet functional eligibility criteria under medicaid personal care level of care under WAC 388-106-0210 or nursing facility level of care under WAC 388-106-0355 or is not financially eligible for Washington apple health, or is not functionally or financially eligible.

"Dementia" is a general term for loss of memory, language, problem-solving, and other thinking abilities that are severe enough to interfere with daily life. The term "dementia" is no longer used to refer to the etiological subgroups for which it is standard, but it is instead included under the newly titled term significant neurocognitive disease. For consistency, the term "dementia" is still used in the DSM-5 and can be applied in situations where patients and doctors are familiar with it. The phrase neurocognitive disorder is commonly

used, while dementia is the standard word for illnesses such as the degenerative dementias that typically impact older persons (DSM-5-TR).

Neurocognitive disorder is characterized by the progressive and persistent deterioration of cognitive function. Cognitive deficits are sufficient to interfere with independence, do not occur exclusively in the context of a delirium, and are not attributable to another mental disorder (e.g. major depressive disorder, schizophrenia).

Specific major neurocognitive diagnosis, primary diagnosis:

- (a) Major neurocognitive disorder due to Alzheimer's disease;
- (b) Major frontotemporal neurocognitive disorder (Pick's);
- (c) Major neurocognitive disorder with Lewy bodies;
- (d) Major vascular neurocognitive disorder (Vascular);
- (e) Major neurocognitive disorder due to traumatic brain injury;
- (f) Substance or medication-induced major neurocognitive disorder (alcohol-related);
- (g) Major neurocognitive disorder due to HIV infection;
- (h) Major neurocognitive disorder due to Prion disease;
- (i) Major neurocognitive disorder due to Parkinson's disease;
- (j) Major neurocognitive disorder due to Huntington's disease.

"Not Competent" means a legal determination has been made by a court that a defendant is unable to stand trial based on being diagnosed with a mental disease or defect which prevents them from understanding court proceedings or being able to rationally assist in their own defense per chapter 10.77 RCW.

"Not Restorable" means a court has found that a person lacks the capacity to have competency restored via inpatient or outpatient treatment.

"Office of forensic mental health services (OFMHS)" is a division of the department of social and health services' behavioral health administration that oversees the state's adult forensic mental health system.

"Washington apple health" means the public health insurance programs for eligible Washington residents defined in WAC 182-500-0120. Washington apple health or apple health is the name used in Washington state for medicaid, the children's health insurance program (CHIP), and state-only funded health care programs.

NEW SECTION

WAC 388-106-2005 Who is eligible to apply to receive services under the civil transitions program? You are eligible to apply for services under the civil transitions program if you:

- (1) Are referred to ALTSA from the BHA starting December 1, 2023;
- (2) Have been determined by a court as not competent to stand trial due to a diagnosis of dementia, a traumatic brain injury, or an intellectual or developmental disability, and your competency is not restorable;

(3) Complete an assessment of your functional eligibility using the comprehensive assessment reporting evaluation (CARE) tool under WAC 388-106-0050 to determine if you are functionally eligible for:

- (a) Nursing facility level of care under WAC 388-106-0355; or
 - (b) Medicaid personal care level of care under WAC 388-106-0210;
- and

(4) File an application for Washington apple health so the department can determine if you are financially eligible for medicaid-

funded long-term services and supports. The application process is described in WAC 182-503-0005.

NEW SECTION

WAC 388-106-2010 What services may I receive under the civil transitions program if I am not functionally and financially eligible for long-term services and supports? (1) If you meet the criteria in WAC 388-106-2005 but are not functionally eligible for medicaid personal care level of care under WAC 388-106-0210 or nursing facility level of care under WAC 388-106-0355, or you are not financially eligible for Washington apple health, you may receive conditional services, subject to available funds, under the civil transitions program.

(2) If you meet the criteria in WAC 388-106-2005 but have yet to complete a CARE assessment and are, or at risk of becoming a "homeless person" as defined in RCW 43.185C.010, you may receive supportive housing services under the civil transitions program, as funding allows.

(3) Conditional services are described in WAC 388-106-2020.

NEW SECTION

WAC 388-106-2015 What services may I receive under the civil transitions program if I am functionally and financially eligible for long-term services and supports? If you are referred to AL TSA for services under the civil transitions program and you are both functionally eligible for long-term services and supports under chapter 388-106 WAC and financially eligible for medicaid-funded long-term services and supports, you are eligible for any service offered by AL TSA based on your assessment and identified in your plan of care. Financial eligibility criteria for long-term services and supports is determined under chapters 182-513 and 182-515 WAC.

NEW SECTION

WAC 388-106-2020 What conditional services may I receive under the civil transitions program? The legislature has appropriated specific funding for the civil transitions program for the provision of conditional services. If you meet the criteria in WAC 388-106-2005 you are eligible for conditional services as described below, subject to available funding.

(1) If you do not meet medicaid personal care level of care under WAC 388-106-0210 or nursing facility level of care under WAC 388-106-0355, and you are not financially eligible for Washington apple health, you can receive the following conditional services:

(a) Community transition or sustainability services; and

(b) Supportive housing as defined in WAC 388-106-1705.

(2) If you are determined functionally eligible for medicaid personal care level of care under WAC 388-106-0210, but you are not financially eligible for Washington apple health, you may receive the

following conditional services if they are included in your plan of care:

- (a) Personal care services as defined in WAC 388-106-0010;
 - (b) Community transition or sustainability services; and
 - (c) Supportive housing as defined in WAC 388-106-1705.
- (3) If you are determined functionally eligible for nursing facility level of care under WAC 388-106-0355 but you are not financially eligible for Washington apple health, you may receive the following conditional services if they are included in your plan of care:
- (a) Personal care services as defined in WAC 388-106-0010;
 - (b) Nurse delegation as defined in WAC 388-106-0270;
 - (c) Personal emergency response system (PERS) as defined in WAC 388-106-0270;
 - (d) Assistive technology as defined in WAC 388-106-0270;
 - (e) Supportive housing as defined in WAC 388-106-1705;
 - (f) Community transition services as defined in WAC 388-106-0270;
- and
- (g) Community transition or sustainability services.

NEW SECTION

WAC 388-106-2025 Who can provide long-term services and supports when I am eligible for the civil transitions program conditional services? The following types of providers can provide conditional services under the civil transitions program:

- (1) Individual providers (IPs) who provide services to clients in their own home as defined in WAC 388-106-0040 and 388-106-0010.
- (2) Home care agencies that provide services to clients in their own home. Home care agencies must be licensed under chapter 70.127 RCW and chapter 246-335 WAC and be contracted with the department of social and health services.
- (3) Providers who are contracted with the department to provide goods and services.
- (4) Durable medical equipment vendors that have a core provider agreement with the health care authority.
- (5) Supportive housing providers as defined in WAC 388-106-1715 or 182-559-200.

NEW SECTION

WAC 388-106-2030 Where can I receive civil transitions program conditional services? You can receive conditional services under the civil transitions program:

- (1) In your own home as defined in WAC 388-106-0030, or an interim setting while you secure permanent housing; and
- (2) While you are out of your home accessing the community or working while:
 - (a) within the state of Washington; or
 - (b) in a recognized out of state bordering city as defined in WAC 182-501-0175.

NEW SECTION

WAC 388-106-2035 When will the department authorize my civil transitions program conditional services? Within available funds, the department will authorize conditional services under the civil transitions program when you have:

(1) Completed an assessment of your functional eligibility using the comprehensive assessment reporting evaluation (CARE) tool under WAC 388-106-0050;

(2) Applied for Washington apple health;

(3) Been found eligible for conditional services under WAC 388-106-2010 and 388-106-2020;

(4) Given consent for services and approved your care plan; and

(5) Chosen a DSHS qualified provider per WAC 388-71-0510.

NEW SECTION

WAC 388-106-2040 When will my civil transitions program conditional services end? (1) If, at the time of your initial assessment you were found ineligible for medicaid-funded long-term services and supports, your civil transitions program conditional services, except supportive housing, will end the earlier of:

(a) The date you are found both functionally and financially eligible for medicaid-funded long-term services and supports;

(b) Six months from the start date of your services; or

(c) When the department has exhausted available funds.

(2) For conditional supportive housing services, your eligibility will be reviewed in six-month increments based upon available funding, up to a maximum of 24 months.

NEW SECTION

WAC 388-106-2045 Do I have a right to an administrative hearing on civil transitions program conditional services? You have a right to an administrative hearing if you disagree with a decision made by the department about your eligibility for services under the civil transitions program. The department will notify you in writing of the right to contest a decision and provide you with information on how to request a hearing.

NEW SECTION

WAC 388-106-2050 Can an exception to rule (ETR) be granted for civil transitions program conditional services? If you receive conditional services under the civil transitions program, an exception to rule under WAC 388-440-0001 will not be granted.