WSR 24-10-095
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed April 30, 2024, 2:44 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-13-017.

Title of Rule and Other Identifying Information: Behavioral health agency regulations as they relate to 23-hour crisis relief centers (CRC) in Washington state. The department of health (department) is proposing to amend the behavioral health agency regulations in chapter 246-341 WAC, including WAC 246-341-0110, 246-341-0200, 246-341-0365, 246-341-0901, 246-341-0912, 246-341-1140 and new WAC 246-341-0903, in order to implement 2SSB 5120 (chapter 433, Laws of 2023), an act concerning the establishment of 23-hour CRCs in Washington state. The department is also proposing amendments in WAC 246-341-0200, 246-341-0515 and 246-341-0901 to align the regulations with statutory changes passed by the 2023 legislature, including 2SHB 1724 (chapter 425, Laws of 2023) and 2SSB 5555 (chapter 469, Laws of 2023, partial veto). Finally, the department is conducting general cleanup, where needed, throughout these WAC sections.

Hearing Location(s): On June 5, 2024, at 12:00 p.m., at the Department of Health, 111 Israel Road S.E., Town Center 2, Room 166 and 167, Tumwater, WA 98501; or virtually. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_6bE0eJteSridX4FAMvRNPA.

After registering, you will receive a confirmation email containing information about joining the webinar.

If you are in need of special accommodations to have proper access to this public hearing, such as American Sign Language interpretation or translation services, please contact Dan Overton at dan.overton@doh.wa.gov or 564-201-0579 by May 22, 2024, and we will do our best to accommodate your request.

Date of Intended Adoption: June 12, 2024.

Submit Written Comments to: Dan Overton, P.O. Box 47843, Olympia, WA 98504-7843, email https://fortress.wa.gov/doh/policyreview, fax 360-236-2321, by June 5, 2024.

Assistance for Persons with Disabilities: Contact Dan Overton, phone 564-201-0579, fax 360-236-2321, TTY 711, email dan.overton@doh.wa.gov, by May 22, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend existing WAC 246-341-0110, 246-341-0200, 246-341-0365, 246-341-0515, 246-341-0901, 246-341-0912, and 246-341-1140 and creating new WAC 246-341-0903 to develop standards for the licensure or certification of CRCs and to align existing regulations with other statutory changes made by the 2023 legislature. These statutory changes include changes made to the definition of "mental health professional" in RCW 71.05.020, as well as the creation of the profession of certified peer specialists. 2SSB 5120 also removed references to triage facilities from the law and instructed the department to convert the license or certification of any triage facilities to a crisis stabilization unit. The proposed rule language reflects this change.

Reasons Supporting Proposal: In 2023, 2SSB 5120 passed, creating 23-hour CRCs, a new type of behavioral health service model that will provide mental health and substance use crisis response to adults for no longer than 23 hours and 59 minutes at a time. Section 2 of 2SSB

5120 directs the department to adopt rules to develop standards for the licensure or certification of 23-hour CRCs. Other bills that passed in 2023 included 2SHB 1724 and 2SSB 5555 and resulted in conflicting language between the laws and the behavioral health agency rules in chapter 246-341 WAC. This rule-making project intends to address all of these interrelated topics. The department conducted workshops and solicited input from interested parties in order to develop standards that meet the intent of 2SSB 5120 and to ensure that the other proposed changes meet the intents of 2SHB 1724 and 2SSB 5555.

Statutory Authority for Adoption: RCW 71.24.037; and 2SSB 5120 (chapter 433, Laws of 2023), codified as RCW 71.24.916.

Statute Being Implemented: 2SSB 5120 (chapter 433, Laws of 2023), codified as RCW 71.24.916; 2SHB 1724 (chapter 425, Laws of 2023); and 2SSB 5555 (chapter 469, Laws of 2023, partial veto).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Dan Overton, 111 Israel Road S.E., Tumwater, WA 98501, 564-201-0579.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Dan Overton, P.O. Box 47843, Olympia, WA 98504-7843, phone 564-201-0579, fax 360-236-2321, TTY 711, email dan.overton@doh.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Explanation of exemptions: WAC 246-341-0200, 246-341-0901 and 246-341-0912 are exempt under RCW 34.05.310 (4)(d), as the proposed changes clarify language. WAC 246-341-0515 and 246-341-1140 are exempt under RCW 34.05.310 (4)(e), as the proposed changes are dictated by statute. WAC 246-341-0365 is exempt under RCW 34.05.310 (4)(f), as the proposed changes relate to the setting or adjusting of fees. WAC 246-341-0110 is exempt under both RCW 34.05.310 (4)(d) and 34.05.310 (4)(e), as the proposed changes both clarify language and are dictated by statute.

Scope of exemption for rule proposal:

Is partially exempt:

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement (SBEIS)

The following is a brief description of the proposed rule, including the current situation/rule, followed by the history of the issue and why the proposed rule is needed. A description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed

rule: 2SSB 5120 established a new type of behavioral health service model in the state of Washington called a 23-hour CRC. CRCs are meant to provide mental health and substance use crisis response to adults for no more than 23 hours and 59 minutes at a time and must accept all behavioral health crisis walks-ins and drop-offs from first responders, as well as individuals referred through the 988 system, regardless of behavioral health acuity.

The department is adopting compliance requirements in rule for businesses that wish to provide CRC services, including small businesses. However, with CRCs, it is mostly the statute (RCW 71.24.916) that will be dictating the professional services that a small business is likely to need, with the department either clarifying the statutory requirements in the proposed rules or building on these requirements for the sake of patient and staff safety.

SBEIS Table 1 identifies and summarizes which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS).

SBEIS Table 1. Summary of Businesses Required to Comply to the Proposed Rule

NAICS Code (4, 5, or 6 digit)	NAICS Business Description	Number of Businesses in Washington State	Minor Cost Threshold
621420	Outpatient Mental Health and Substance Abuse Centers	393	$4,376.75

The department conducted an analysis of probable costs of businesses in the industry to comply with the proposed rule and includes the cost of equipment, supplies, labor, professional services, and administrative costs. The analysis considers if compliance with the proposed rule will cause businesses in the industry to lose sales or revenue. The complete analysis may be obtained by contacting the department. The following is a summary of the analysis: Seven organizations participated in informational gathering interviews. Four already hold a behavioral health agency (BHA) license in the state of Washington and three will be applying for a new license. Since some of the organizations are already providing behavioral health services in Washington state, they may already be in compliance with aspects of the proposed rule.

Two of the organizations that were interviewed identified as small businesses[1], meaning that they currently have, or plan to have, 50 or fewer employees.

[1] RCW 19.85.020: Definitions. (wa.gov) "(3) "Small business" means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has fifty of [or] fewer employees."

In most instances, the department did not collate or provide average costs because of the variation in responses received. The analysis is intended to give the reader an array of any potential additional costs for the proposed rule section.

Portions of the proposed rule are exempt from the requirements of the Regulatory Fairness Act as identified above. The remaining sections of the proposed rule have probable costs for businesses in the industry.

Summary of all Cost(s):

SBEIS Table 2. Summary of Probable Cost(s)

Description of Proposed Rule	Probable Cost(s)
Following requirements for outpatient crisis services	No additional cost impact up to indeterminate additional probable costs (including equipment, staffing, and training).
36-hour maximum time frame	No additional cost impact up to the following additional probable costs: **Staffing** Indeterminate additional probable costs. **Equipment** Additional probable costs of $5,000 (privacy screens, beds) up to $100,000 (unspecified). **Other/miscellaneous** Indeterminate additional probable costs (may include meal costs, food storage, linens, environmental services, medication and treatment, other accommodation costs).
Medical stability for EMS drop-offs	No additional cost impact up to indeterminate additional probable costs (may include $400 in transportation costs, per patient, for patients whose EMS medical stability assessment does not match the facility's admission criteria).
Medication dispensing and management	**Dispensing License** Indeterminate additional probable costs for contracting with pharmacy vendors or procuring a license to dispense medication. **Staffing** Indeterminate additional probable costs associated with adding various job cadres to the staff mix, to be able to administer/dispense medications. **Equipment** Additional probable one-time costs ranging from $19,000 (to purchase a Pyxis machine) to $70-80,000 (to purchase an Omnicell machine), plus additional probable recurring costs associated with monthly subscription fees ($110/month) and IT lines. **Medication room** Additional probable cost of $200,000 for a medication room. **Other** Indeterminate additional probable cost for updating computer systems for prescriptions.
Nursing assessment for minor physical or basic health needs	Additional probable costs of $12.22 to $61.10 to conduct each nursing assessment.
Restraint and seclusion	No additional cost impact up to $25,000-$30,000 in conversion costs, per room. Indeterminate additional probable cost for staffing (1:1 monitoring).
Infection control plan	No additional cost impact up to $1,947.30 to develop an infection control plan. Indeterminate probable costs for staff training on the infection control plan.
Orientation	Additional probable costs of $5.87 to $61.00 to complete the orientation, per person.
Screenings for suicide risk, violence risk, nature of the crisis, and physical and cognitive health needs.	Additional probable costs of $14.43 to $225.02 to complete the screening, per person.
Support for declined admissions	Additional probable costs of $9.31 to $76.89 to provide the support, per person.
Assessment appropriate to the nature of the crisis	Additional probable costs of $48.88 to $9,760.00 to create the assessment. Additional probable costs of $13.96 to $61.00 to complete each assessment.
Variance for no-refusal policy	Additional probable costs of $1,800 to $52,500 for a CRC to purchase new recliners for the purpose of overflow. Indeterminate additional probable costs may include additional staffing ($600/day) and costs associated with patient volume.
Description of recliner	Additional probable costs of $9,000 to $164,500 for a CRC to purchase new recliners that will best suit their patients and facility.
Construction standards - Facility Guidelines Institute	No additional cost impact up to $960,000 for building conversion.
Additional construction standards	No additional cost impact up to $25,000 for the delayed egress system.
Construction review process	Indeterminate additional probable costs (project review fee, plus cost of architect and Life Safety Code staff involvement in the construction review process).

* Probable costs are not intended to be summed and represent a summary of respondents answers to the additional probable costs to comply with the proposed rule.

The department does not anticipate that compliance with the proposed rule will cause businesses in the industry to lose sales or revenue.

The following is an analysis on if the proposed rule may impose more-than-minor costs for businesses in the industry. It includes a summary of how the costs were calculated: The estimated costs of the proposed rule will likely exceed the minor cost threshold.

Summary of how the costs were calculated: The minor cost threshold for Outpatient Mental Health and Substance Abuse Centers as of 2022 is $4,376.75, based on 0.3 percent of average annual gross business income as calculated by data collected by the United States Bureau of Labor Statistics (SBEIS Table 1).

Many of the cost estimates that the department collected for this analysis are indeterminate because the CRC service model is new to the state and respondents have not yet finalized plans for their business model. For example, in some cases, respondents are still in the process of acquiring the building that they will be utilizing for CRC services and, therefore, cannot definitively say how many recliners they will be certifying and the number and types of staff that they will have. Additionally, reimbursement rates have not been finalized and this is a crucial determining factor for whether there will be any loss of sales/revenue and how each of these CRCs will set up their business models. Similarly, many of the additional probable costs that the department was able to ascertain from the key informant interviews have a per-patient multiplier. Even in instances where the department was able to create a range, an estimated recurrent cost cannot be ascertained because respondents do not have a reliable estimate of what their patient volumes will be. Therefore, based on the cost analysis as identified in SBEIS Table 2, the department estimates that it is likely that businesses that choose to provide CRC services will exceed the minor cost threshold of $4,376.75.

Determination on if the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule: The department estimates that the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule.

Explanation of the determination: At this time, the department is not able to determine whether the proposed rule will disproportionately impact small businesses. For this cost/benefit analysis, the department interviewed seven organizations interested in standing up a CRC, and only two of the seven were small businesses. This is a very small sample. Additionally, CRCs are a new service model that is being introduced to the state of Washington. While respondents provided the department with their best estimates for probable costs, certain aspects of each organization's business model may change once reimbursement rates are finalized by the health care authority.

Based on the qualitative and quantitative data provided during interviews, the department did not find evidence that costs would differ between the small and large businesses. The two small businesses indicated that they would most likely have the smallest number of certified recliners (10), versus 20-25 certified recliners for the large businesses. Limiting the number of certified recliners is a business decision that may result in lower costs but larger economies of scale (where fixed costs are spread over output).[2]

[2] Economies of scale are realized when a cost (especially start-up costs/fixed costs) are spread over a larger amount of output (in this case larger patient volume which in turn leads to increased reimbursement).

The following steps have been identified and taken to reduce the costs of the rule on small businesses: The department conducts rule making with a lens that attempts to consider all possible scenarios and reduce barriers in all situations. Considering this approach when conducting rule making for CRCs, it was imperative to make certain that all aspects of the rule were "scalable," meaning that a small, rural organization could stand up a CRC with minimum standards comparable to their size/resources. For example, after discussion with interested parties, the department did not put a limit on the number of certified recliners that a CRC may have in the proposed rule. Instead, this number will be determined by the size of the multipatient observation area. The Facility Guidelines Institute standards that are referenced in the proposed rule state that there shall be a minimum of 80 square feet per patient in the observation area, and further specify the clearance that shall be provided between recliners. As long as the CRC follows these requirements, each facility will be able to scale the number of recliners to the size of their building/space. Additionally, in most cases throughout the proposed rule, each CRC will be able to determine what kinds of staff will conduct the orientation, the screenings, and assessments, provide support in the case of a declined admission, etc. This will provide flexibility for the CRCs to hire the appropriate staff mix for their facility.

Description of how small businesses were involved in the development of the proposed rule: BHAs that are subscribed to the department's BHA GovDelivery listserv received invitations to participate in rule-making workshops for this project. Additionally, Section 22 of 2SSB 5120 specifically instructed the department to consult with various interested parties, including the Washington council for behavioral health, during the rule-making process. This helped disseminate information regarding this rule-making project to BHAs.

The department made every effort to ensure that interested parties, including small businesses, could participate in this rule-making process. The department held 11 progressive rules workshops between August and October 2023 to develop standards for the licensure/certification of CRCs. Additionally, weekly debriefing sessions were scheduled each week for attendees who were unable to attend each rules workshop. These debriefing sessions were held after standard work hours.

Rule-making workshops were open to anyone interested in participating. Workshops typically had 40-60 participants. Detailed notes from every workshop were shared publicly via GovDelivery emails and posted on the department's web page.

The estimated number of jobs that will be created or lost as a result of the compliance with the proposed rule: The department does not anticipate that compliance with the proposed rule will result in either jobs being created or lost. The addition of the CRC service model to the behavioral health service landscape in the state of Washington will most likely create jobs within this sector. However, the proposed rule itself creates the standards to which those jobs will be applied.

A copy of the statement may be obtained by contacting Dan Overton, P.O. Box 47843, Olympia, WA 98504-7843, phone 564-201-0579, fax 360-236-2321, TTY 711, email dan.overton@doh.wa.gov.

April 30, 2024

Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary

OTS-5377.1

AMENDATORY SECTION (Amending WSR 22-24-091, filed 12/6/22, effective 5/1/23)

WAC 246-341-0110 Behavioral health—Available certifications. (1) A behavioral health agency licensed by the department must hold one or more of the following certifications:

(a) Behavioral health information and assistance;
(b) Behavioral health support;
(c) Mental health peer respite;
(d) Clubhouse;
(e) Behavioral health outpatient intervention, assessment and treatment;
(f) Behavioral health outpatient crisis((~~, observation, and intervention~~)) services;
(g) 23-hour crisis relief center services;
(h) Designated crisis responder services;
((~~(h)~~)) (i) Opioid treatment program;
((~~(i)~~)) (j) Withdrawal management;
((~~(j)~~)) (k) Behavioral health residential or inpatient intervention, assessment and treatment;
((~~(k)~~)) (l) Involuntary behavioral health residential or inpatient;
((~~(l)~~)) (m) Intensive behavioral health treatment;
((~~(m)~~)) (n) Crisis stabilization unit ((~~and triage~~));
((~~(n)~~)) (o) Competency restoration;
((~~(o)~~)) (p) Problem gambling and gambling disorder; or
((~~(p)~~)) (q) Applied behavior analysis.

(2) The type of certification(s) held by the agency determines which behavioral health services the agency is approved to provide.

AMENDATORY SECTION (Amending WSR 22-24-091, filed 12/6/22, effective 5/1/23)

WAC 246-341-0200 Behavioral health—Definitions. The definitions in this section and RCW 71.05.020, 71.24.025, and 71.34.020 apply throughout this chapter unless the context clearly requires otherwise.

(1) "23-hour crisis relief center" has the same meaning as under RCW 71.24.025.
(2) "Administrator" means the designated person responsible for the day-to-day operation of either the licensed behavioral health agency, or certified treatment service, or both.

((~~(2)~~)) (3) "Adult" means an individual 18 years of age or older. For purposes of the medicaid program, adult means an individual 21 years of age or older.

((~~(3)~~)) (4) "ASAM criteria" means admission, continued service, transfer, and discharge criteria for the treatment of substance use disorders as published by the American Society of Addiction Medicine (ASAM).

((~~(4)~~)) (5) "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.

((~~(5)~~)) (6) "Behavioral health" means the prevention, treatment of, and recovery from any or all of the following disorders: Substance use disorders, mental health disorders, co-occurring disorders, or problem gambling and gambling disorders.

((~~(6)~~)) (7) "Behavioral health agency," "licensed behavioral health agency," or "agency" means an entity licensed by the department to provide behavioral health services under chapter 71.24, 71.05, or 71.34 RCW.

((~~(7)~~)) (8) "Behavioral health service" means the specific service(s) that may be provided under an approved certification.

((~~(8)~~)) (9) "Branch site" means a physically separate licensed site, governed by the same parent organization as the main site, where qualified staff provides certified treatment services.

((~~(9)~~)) (10) "Campus" means an area where all of the agency's buildings are located on contiguous properties undivided by:

(a) Public streets, not including alleyways used primarily for delivery services or parking; or

(b) Other land that is not owned and maintained by the owners of the property on which the agency is located.

((~~(10)~~)) (11) "Care coordination" or "coordination of care" 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.

((~~(11)~~)) (12) "Certified" or "certification" means the status given by the department that authorizes the agency to provide specific types of behavioral health services included under the certification category.

((~~(12)~~)) (13) "Child," "minor," and "youth" mean:

(a) An individual under the age of 18 years; or

(b) An individual age 18 to 21 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 18 to 21 years who receives EPSDT services is not considered a "child" for any other purpose.

((~~(13)~~)) (14) "Clinical supervision" means regular and periodic activities performed by a mental health professional, co-occurring disorder specialist, or substance use disorder professional licensed, certified, or registered under Title 18 RCW. Clinical supervision may include review of assessment, diagnostic formulation, individual service plan development, 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. In

the context of this chapter, clinical supervision is separate from clinical supervision required for purposes of obtaining supervised hours toward fulfilling requirements related to professional licensure under Title 18 RCW.

((~~(14)~~)) (15) "Complaint" means an alleged violation of licensing or certification requirements under chapters 71.05, 71.12, 71.24, 71.34 RCW, and this chapter, which has been authorized by the department for investigation.

((~~(15)~~)) (16) "Consent" means agreement given by an individual after being 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, that must be provided in a terminology that the individual can reasonably be expected to understand. Consent can be obtained from an individual's parent or legal representative, when applicable.

((~~(16)~~)) (17) "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.

((~~(17)~~)) (18) "Co-occurring disorder" means the coexistence 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.

((~~(18)~~)) (19) "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.

((~~(19)~~)) (20) "Deemed" means a status that is 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 the department.

((~~(20)~~)) (21) "Disability" means a physical or mental impairment that substantially limits one or more major life activities of the individual and the individual:

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

(b) Is regarded as having such impairment.

((~~(21)~~)) (22) "Face-to-face" means either in person or by way of synchronous video conferencing.

((~~(22)~~)) (23) "Individual service record" means either a paper, or electronic file, or both that is maintained by the behavioral health agency and contains pertinent behavioral health, medical, and clinical information for each individual served.

((~~(23)~~)) (24) "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 under chapters 71.05, 71.12, 71.34, and 71.24 RCW and its authority to

certify problem gambling and gambling disorder treatment programs under RCW 43.70.080(5) and 41.05.750.

((~~(24)~~)) (25) "Medical practitioner" means a physician licensed under chapter 18.57 or 18.71 RCW, advance registered nurse practitioner (ARNP) licensed under chapter 18.79 RCW, or physician assistant licensed under chapter 18.71A RCW.

((~~(25)~~)) (26) "Mental health disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on a person's cognitive or volitional functions.

((~~(26)~~)) (27) "Mental health professional" or "MHP" means a person who meets the ((~~qualifications in WAC 246-341-0515 (4)~~)) definition in RCW 71.05.020.

((~~(27)~~)) (28) "Peer ((~~counselor~~))" means ((~~the same~~)) a peer counselor as defined in WAC 182-538D-0200 or a certified peer specialist certified under chapter 18.420 RCW.

((~~(28)~~)) (29) "Peer support" means services provided by peer counselors to individuals under the supervision of a mental health professional or individual appropriately credentialed to provide substance use disorder treatment. Peer support provides scheduled activities that promote recovery, self-advocacy, development of natural supports, and maintenance of community living skills.

((~~(29)~~)) (30) "Problem gambling and gambling disorder" means one or more of the following disorders:

(a) "Gambling disorder" 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 gambling disorder that compromises, disrupts, or damages family or personal relationships or vocational pursuits.

((~~(30)~~)) (31) "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 or support services, progress in recovery, and progress toward intended outcomes.

((~~(31)~~)) (32) "Secretary" means the secretary of the department of health.

((~~(32)~~)) (33) "State minimum standards" means minimum requirements established by rules adopted by the secretary and necessary to implement chapters 71.05, 71.24, and 71.34 RCW for delivery of behavioral health services.

((~~(33)~~)) (34) "Substance use disorder professional" or "SUDP" means a person credentialed by the department as a substance use disorder professional (SUDP) under chapter 18.205 RCW.

((~~(34)~~)) (35) "Substance use disorder professional trainee" or "SUDPT" means a person credentialed by the department as a substance use disorder professional trainee (SUDPT) under chapter 18.205 RCW.

((~~(35)~~)) (36) "Summary suspension" means the immediate suspension of either a facility's license or program-specific certification or both by the department pending administrative proceedings for suspension, revocation, or other actions deemed necessary by the department.

((~~(36)~~)) (37) "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.

((~~(37)~~)) (38) "Suspend" means termination of a behavioral health agency's license or program specific certification to provide behavio-

ral 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.

AMENDATORY SECTION (Amending WSR 22-24-091, filed 12/6/22, effective 5/1/23)

WAC 246-341-0365 Agency licensure and certification—Fee requirements. (1) An agency must include payment of licensing and certification fees required under this chapter with the initial application, renewal application, or with requests for other services.

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

(3) The department will not refund fees when licensure or certification is denied, revoked, or suspended.

(4) The applicant shall submit the following fees for approved substance use disorder treatment programs:

New agency application	$1,000
Branch agency application	$500
Application to add one or more certifications	$200
Application to change ownership	$500
Initial and annual certification fees for withdrawal management, residential, and nonresidential services	
Withdrawal management 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 246-341-0310
Nonresidential services	$750 per year for agencies not renewing certification through deeming
	$200 per year for agencies certified through deeming per WAC 246-341-0310
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

(5) An agency providing substance use disorder treatment programs 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 withdrawal management and residential beds; and

(b) The agency provider's national accreditation status.

(6) The applicant shall submit the following fees for approved mental health treatment programs:

Initial licensing application fee	$1,000
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
Annual licensing fees for deemed agencies	
Annual licensing fee for deemed agencies licensed by the department	$500
Complaint/critical incident investigation fee	
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

(7) Agencies providing nonresidential mental health services or inpatient or residential mental health services in accordance with WAC 246-341-1118 must report the number of annual service hours provided.

(a) Existing licensed agencies must compute the annual service 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 12 months of operation.

(8) Agencies providing mental health peer respite services, 23-hour crisis relief center services, intensive behavioral health treatment services, evaluation and treatment services, and competency evaluation and restoration treatment services must pay the following certification fees:

(a) Ninety dollars initial certification fee, per bed or recliner; and

(b) Ninety dollars annual certification fee, per bed or recliner.

AMENDATORY SECTION (Amending WSR 22-24-091, filed 12/6/22, effective 5/1/23)

WAC 246-341-0515 Personnel—Agency staff requirements. Each behavioral health agency must ensure that all of the following staff requirements are met:

(1) All staff providing clinical services are appropriately credentialed for the services they provide, which may include a co-occurring disorder specialist enhancement.

(2) All staff providing clinical services receive clinical supervision.

(3) An agency providing group counseling or group therapy must have a staff ratio of at least one staff member to every 16 individuals during group counseling or therapy sessions.

(4) ((~~A mental health professional is:~~

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

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

~~(c) An agency staff member with a designation given by the department or an attestation by the licensed behavioral health agency that the person meets the following:~~

~~(i) Holds 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 recognized by the department or attested to by the licensed behavioral health agency;~~

~~(ii) Who meets the waiver criteria of RCW 71.24.260, and the waiver was granted prior to 1986; or~~

~~(iii) 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.~~

~~(5)~~)) An agency providing problem gambling and gambling disorder treatment services must ensure staffing in accordance with WAC 246-341-1200.

AMENDATORY SECTION (Amending WSR 22-24-091, filed 12/6/22, effective 5/1/23)

WAC 246-341-0901 Behavioral health outpatient crisis ((~~outreach, observation and intervention~~)) services—Certification standards. (1) Agencies certified for outpatient behavioral health crisis ((~~outreach, observation and intervention~~)) services provide face-to-face and other means of services to stabilize an individual in crisis to prevent further deterioration, provide immediate treatment or intervention in the least restrictive environment at a location best suited to meet the needs of the individual which may be in the community, a behavioral health agency, or other setting.

(2) An agency certified for outpatient behavioral health crisis ((~~outreach, observation and intervention~~)) services does not need to meet the requirements in WAC 246-341-0640.

(3) An agency providing outpatient behavioral health crisis ((~~outreach, observation and intervention~~)) services for substance use disorder must ensure a professional appropriately credentialed to provide substance use disorder treatment is available or on staff 24 hours a day, seven days a week.

(4) An agency providing any outpatient behavioral health crisis ((~~outreach, observation and intervention~~)) services must:

(a) Provide crisis telephone support in accordance with WAC 246-341-0670;

(b) For mental health crisis, ensure face-to-face outreach services are provided by a mental health professional or department-credentialed staff person with documented training in crisis response;

(c) For a substance use disorder crisis, ensure face-to-face outreach services are provided by a professional appropriately credentialed to provide substance use disorder treatment, or individual who has completed training that covers substance use disorders;

(d) Develop and implement policies and procedures for training staff to identify and assist individuals in crisis before assigning the staff member unsupervised duties;

(e) Resolve the crisis in the least restrictive manner possible;

(f) 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;

(g) Determine if an individual has a crisis plan and request a copy if available;

(h) Assure communication and coordination with the individual's mental health or substance use treatment provider, if indicated and appropriate;

(i) As appropriate, refer individuals to voluntary or involuntary treatment facilities for admission on a seven day a week, 24 hour a day basis, including arrangements for contacting the designated crisis responder;

(j) Maintain a current list of local resources for referrals, legal, employment, education, interpreter and social and health services;

(k) Transport or arrange for transport of an individual in a safe and timely manner, when necessary;

(l) Be available 24 hours a day, seven days a week; and

(m) Include family members, significant others, and other relevant treatment providers, as necessary, to provide support to the individual in crisis.

(5) Documentation of a crisis service must include the following:

(a) A brief summary of each crisis service encounter, including the:

(i) Date;

(ii) Time, including time elapsed from initial contact to face-to-face contact, if applicable; and

(iii) Nature and duration of the encounter.

(b) The names of the participants;

(c) A disposition including any referrals for services and individualized follow-up plan;

(d) Whether the individual has a crisis plan and any request to obtain the crisis plan; and

(e) The name and credential, if applicable, of the staff person providing the service.

(6) An agency utilizing ((~~certified~~)) peer<u>s</u> ((~~counselors~~)) to provide crisis outreach services must:

(a) Ensure services are provided by a person recognized by the health care authority as a peer ((~~counselor~~)), as defined in WAC 246-341-0200;

(b) Ensure services provided by a peer ((~~counselor~~)) are within the scope of the peer<u>'s</u> ((~~counselor's~~)) training and credential;

(c) Ensure peer<u>s</u> ((~~counselors~~)) receive annual training that is relevant to their unique working environment.

(7) When services are provided in a private home or nonpublic setting, the agency must:

(a) 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 personal residence or in a nonpublic location;

(b) 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 personal residence or other nonpublic location;

(c) Ensure that any staff member who engages in home visits is provided access, by their employer, to a wireless telephone or comparable device, for the purpose of emergency communication;

(d) Provide staff members who are sent to a personal residence or other nonpublic 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.

(8) If utilizing peers ((~~counselors~~)) for crisis outreach response:

(a) Ensure that a peer ((~~counselor~~)) responding to an initial crisis visit is accompanied by a mental health professional or individual appropriately credentialed to provide substance use disorder treatment as appropriate to the crisis;

(b) Develop and implement policies and procedures for determining when peers ((~~counselors~~)) may provide follow-up crisis outreach services without being accompanied by a mental health professional or individual appropriately credentialed to provide substance use disorder treatment as appropriate to the crisis.

NEW SECTION

WAC 246-341-0903 23-hour crisis relief center services—Certification standards. (1) General requirements: An agency certified for 23-hour crisis relief center services must:

(a) Follow requirements for outpatient crisis services in WAC 246-341-0901;

(b) Provide services to address mental health and substance use crisis issues which may include treatment of chemical withdrawal symptoms;

(c) Limit patient stays to a maximum of 23 hours and 59 minutes, except in the following circumstances in which the patient may stay up to a maximum of 36 hours when:

(i) A patient is waiting on a designated crisis responder evaluation; or

(ii) A patient is making an imminent transition to another setting as part of an established aftercare plan;

(d) Be staffed 24 hours a day, seven days a week, with a multidisciplinary team capable of meeting the needs of individuals experiencing all levels of crisis in the community including, but not limited to, nurses, department-credentialed professionals who can provide mental health and substance use disorder assessments, peers, and access to a prescriber;

(e) Offer walk-in options and drop-off options for first responders and persons referred through the 988 system, without a requirement for medical clearance for these individuals;

(f) Only accept emergency medical services drop-offs of individuals determined to be medically stable by emergency medical services in accordance with department guidelines on transport to behavioral health service facilities developed pursuant to RCW 70.168.170 (available at https://doh.wa.gov/BHA or by contacting the department at ochsfacilities@doh.wa.gov or 360-236-2957.

(g) Have a no refusal policy for law enforcement, including tribal law enforcement;

(h) Provide the ability to dispense medications and provide medication management in accordance with WAC 246-337-105, except that references to RTF in WAC 246-337-105 shall be understood to mean behavioral health agency (BHA);

(i) Maintain capacity to deliver minor wound care for nonlife-threatening wounds, and provide care for most minor physical or basic health needs that can be identified and addressed through a nursing assessment;

(j) Identify pathways to transfer individuals to more medically appropriate services if needed;

(k) If restraint or seclusion are used, follow requirements in WAC 246-337-110 (3) through (19) except that references to RTF in WAC 246-337-110 shall be understood to mean behavioral health agency (BHA);

(l) Establish and maintain relationships with entities capable of providing for reasonably anticipated ongoing service needs of clients, unless the licensee itself provides sufficient services:

(i) For individuals identifying as American Indian/Alaska Native (AI/AN), relationships will be with tribal behavioral health systems;

(ii) For individuals identifying as veterans, relationships will be with the local/regional Veterans Administration Medical Center (VAMC);

(m) When appropriate, coordinate connection to ongoing care; and

(n) Have an infection control plan inclusive of:

(i) Hand hygiene;

(ii) Cleaning and disinfection;

(iii) Environmental management; and

(iv) Housekeeping functions.

(2) Orientation and initial screening: An agency certified for 23-hour crisis relief center services must:

(a) Orient all walk-ins and drop-offs upon arrival;

(b) Screen all individuals for:

(i) Suicide risk and, when clinically indicated, engage in comprehensive suicide risk assessment and planning;

(ii) Violence risk and, when clinically indicated, engage in comprehensive violence risk assessment and planning;

(iii) Nature of the crisis; and

(iv) Physical and cognitive health needs, including dementia screening;

(c) Following initial screening, if admission is declined, the agency must:

(i) Document and make available to the department instances of declined admissions, including those that were not eligible for admission, declined due to no capacity, or those declined for any other reason;

(ii) Provide support to the individual to identify and, when appropriate, access services or resources necessary for the individual's health and safety.

(3) Admission: An agency certified for 23-hour crisis relief center services must:

(a) Accept eligible admissions 90 percent of the time when the facility is not at its full capacity; and

(b) Provide an assessment appropriate to the nature of the crisis to each individual admitted to a recliner. The assessment must inform the interval for monitoring the individual based on their medical condition, behavior, suspected drug or alcohol misuse, and medication status.

(4) For the purposes of this section:

(a) Eligible admission includes individuals 18 years of age or older who are identified upon screening as needing behavioral health crisis services, and whose physical health needs can be addressed by the crisis relief center in accordance with subsection (1)(i) of this section;

(b) Full capacity means all certified recliners are occupied by individuals receiving crisis services;

(c) An agency may temporarily exceed the number of certified recliners only to comply with the no refusal policy for law enforcement, up to the maximum occupancy allowed by the local building department for patient care spaces within the licensed unit;

(d) A recliner means a piece of equipment used by individuals receiving crisis services that can be in a sitting position and fully reclined.

(5) An agency certified to provide 23-hour crisis relief center services must be constructed in such a way to be responsive to the unique characteristics of the types of interventions used to provide care for all levels of behavioral health acuity and accessibility needs. These rules are not retroactive and are intended to be applied as outlined below.

(a) The construction review rules in subsections (6) and (7) of this section will be applied to the following agencies who are providing 23-hour crisis relief center services:

(i) New buildings to be certified to provide 23-hour crisis relief center services;

(ii) Conversion of an existing building or portion of an existing building certified or to be certified to provide 23-hour crisis relief center services;

(iii) Additions to an existing building certified or to be certified to provide 23-hour crisis relief center services;

(iv) Alterations to an existing building certified or to be certified to provide 23-hour crisis relief center services;

(v) Buildings or portions of buildings certified to provide 23-hour crisis relief center services and used for providing 23-hour crisis relief center services; and

(vi) Excludes nonpatient care buildings used exclusively for administration functions.

(b) The requirements of this chapter in effect at the time the complete construction review application and fee are received by the department, apply for the duration of the construction project.

(6) Standards for design and construction.

Facilities constructed and intended for use under this section shall comply with:

(a) The following sections of the 2022 edition of the *Guidelines for Design and Construction of Hospitals* as developed by the Facility Guidelines Institute and published by the Facility Guidelines Institute, 9750 Fall Ridge Trail, St. Louis, MO 63127 (available at https://www.fgiguidelines.org or by contacting the department at ochsfacilities@doh.wa.gov or 360-236-2957):

(i) 1.1 Introduction;

(ii) 1.2 Planning, Design, Construction, and Commissioning;

(iii) 2.1 Common Elements for Hospitals;

(iv) 2.2 – 3.2 Specific Requirements for General Hospitals, Behavioral Health Crisis Unit;

(v) Part 4: Ventilation of Health Care Facilities; and

(b) The following specific requirements:

(i) A public walk-in entrance;

(ii) A designated area for first responder drop-off;

(iii) A bed in a private space for individuals who are admitted for greater than 24 hours per subsection (1)(c) of this section;

(iv) A system or systems within the building that give staff awareness of the movements of individuals within the facility. If a door control system is used, it shall not prevent an individual from leaving the licensed space on their own accord, except temporary delays. Such systems include:

(A) Limited egress systems consistent with state building code, such as delayed egress;

(B) Appropriate staffing levels to address safety and security; and

(C) Policies and procedures that are consistent with the assessment of the individual's care needs and plan and do not limit the rights of a voluntary individual;

(v) Access to a telephone for individuals receiving services.

(7) Construction review process.

(a) Preconstruction. The applicant or licensee must request and attend a presubmission conference with the department for projects with a construction value of $250,000 or more. The presubmission conference shall be scheduled to occur at the end of the design development phase or the beginning of the construction documentation phase of the project.

(b) Construction document review. The applicant or licensee must submit accurate and complete construction documents for proposed new construction to the department for review within 10 business days of submission to the local authorities. The construction documents must include:

(i) A written functional program outlining the types of services provided, types of individuals to be served, and how the needs of the individuals will be met including a narrative description of:

(A) Program goals;

(B) Staffing and health care to be provided, as applicable;

(C) Room functions;

(D) Safety and security efforts;

(E) Restraint and seclusion;

(F) Medication storage; and

(G) Housekeeping;

(ii) Drawings prepared, stamped, and signed by an architect or engineer licensed by the state of Washington under chapter 18.08 RCW. The services of a consulting engineer licensed by the state of Washington may be used for the various branches of the work, if appropriate;

(iii) Drawings with coordinated architectural, mechanical, and electrical work drawn to scale showing complete details for construction;

(iv) Specifications that describe with specificity the workmanship and finishes;

(v) Shop drawings and related equipment specifications;

(vi) An interim life safety measures plan to ensure the health and safety of occupants during construction and renovation; and

(vii) An infection control risk assessment indicating appropriate infection control measures, including keeping the surrounding occupied area free of dust and fumes during construction, and ensuring rooms or areas are well ventilated, unoccupied, and unavailable for use until free of volatile fumes and odors.

(8) Copies of the reference material listed in subsections (1)(f) and (6)(a) of this section are available for public inspection at the department's office at Department of Health, Town Center 2, 111 Israel Road S.E., Tumwater, WA 98501.

AMENDATORY SECTION (Amending WSR 22-24-091, filed 12/6/22, effective 5/1/23)

WAC 246-341-0912 Designated crisis responder (DCR) services—Certification standards. Designated crisis responder (DCR) services are services provided by a DCR to evaluate an individual in crisis and determine if involuntary services are required. An agency providing DCR services must do all of the following:

(1) Ensure that services are provided by a DCR;

(2) Ensure staff members utilize the protocols for DCRs required by RCW 71.05.214;

(3) Document that services provided to the individual were in accordance with the requirements in chapter 71.05 or 71.34 RCW, as applicable; and

(4) Meet the outpatient behavioral health crisis ((~~outreach, observation and intervention~~)) services certification standards in WAC 246-341-0901.

AMENDATORY SECTION (Amending WSR 22-24-091, filed 12/6/22, effective 5/1/23)

WAC 246-341-1140 Crisis stabilization unit ((~~and triage~~))—Certification standards. An agency certified to provide crisis stabilization unit ((~~or triage~~)) services must meet all of the following criteria:

(1) ((~~A triage facility must be licensed as a residential treatment facility under chapter 71.12 RCW.~~

~~(2)~~)) If a crisis stabilization unit ((~~or triage facility~~)) 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)~~)) (2) Ensure that a mental health professional is on-site at least eight hours per day, seven days a week, and accessible 24 hours per day, seven days per week.

((~~(4)~~)) (3) Ensure a mental health professional assesses an individual within three hours of the individual's arrival at the facility.

((~~(5)~~)) (4) For persons admitted to the crisis stabilization unit ((~~or triage facility~~)) on a voluntary basis, the individual service record must meet the individual service record requirements in WAC 246-341-0640.

((~~(6)~~)) (5) An agency certified to provide crisis stabilization unit ((~~or triage~~)) services must meet the service standards for residential and inpatient behavioral health services in WAC 246-341-1105 and the applicable standards in WAC 246-341-1131 if providing involuntary crisis stabilization unit ((~~or triage~~)) services.