

WSR 24-19-081
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Behavioral Health Administration)
[Filed September 17, 2024, 9:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-14-109.

Title of Rule and Other Identifying Information: Chapter 388-881 WAC, Sexual predator program—External oversight, and possible other sections in chapter 388-880 WAC.

Hearing Location(s): On October 22, 2024, at 10:00 a.m., virtually via Microsoft Teams or call in. See the department of social and health services (DSHS) website at <https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings> for the most current information.

Date of Intended Adoption: Not earlier than October 23, 2024.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, beginning noon on September 18, 2024, by 5:00 p.m. on October 22, 2024.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email shelley.tencza@dshs.wa.gov, by 5:00 p.m. on October 8, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DSHS is proposing to amend chapter 388-881 WAC, Sexual predator program, to update gender neutral language throughout as well as identify current practices.

Reasons Supporting Proposal: These changes are due to the progression and change within the special commitment center (SCC) program, which includes the oversight of the program from external sources.

Statutory Authority for Adoption: RCW 71.09.800.

Statute Being Implemented: RCW 71.09.800.

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

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting: Christina Wells, SCC, 253-363-0274; Implementation and Enforcement: Keith Devos, CEO, SCC, 253-617-6322.

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

A cost-benefit analysis is not required under RCW 34.05.328. Not a significant legislative rule. RCW 34.05.328 (5)(b)(ii): Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party.

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 relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Explanation of exemptions: RCW 34.05.328 (5)(b)(ii): Rules relating only to internal governmental operations that are not subject to violation by a nongovernmental party.

Scope of exemption for rule proposal:

Is fully exempt.

September 16, 2024
Katherine I. Vasquez
Rules Coordinator

SHS-5056.1

AMENDATORY SECTION (Amending WSR 02-02-054, filed 12/27/01, effective 1/27/02)

WAC 388-881-010 External oversight of the special commitment center. Independent external oversight of the SCC (~~(shall)~~) must include:

- (1) (~~A governing body;~~)
- ~~(2))~~ Professional standards to be used as a benchmark for evaluation;
- ~~((3))~~ (2) An inspection of care according to accepted professional standards;
- ~~((4))~~ (3) An (~~ombudsman~~) ombudsperson service; and
- ~~((5))~~ (4) External investigation of incidents.

AMENDATORY SECTION (Amending WSR 02-02-054, filed 12/27/01, effective 1/27/02)

WAC 388-881-020 External oversight—Professional standards. (1) The department (~~(shall)~~) must develop (~~(and governing body approve for use)~~) professional practice standards applicable to treatment programs for adults civilly committed (~~(adult)~~) for sex (~~(offenders)~~) offenses.

- (2) Such standards (~~(shall)~~) must include provisions requiring:
 - (a) Staff competency, training, and supervision;
 - (b) Adequacy of treatment components and measures of progress;
 - (c) A treatment-supportive environment;
 - (d) Provision of medical services appropriate to a residential treatment setting; and
 - (e) Program oversight.

AMENDATORY SECTION (Amending WSR 02-02-054, filed 12/27/01, effective 1/27/02)

WAC 388-881-025 External oversight—Annual inspection of care (IOC). (1) An independent, annual, on-site inspection of care, performed according to professional standards approved under this chapter, (~~(shall)~~) will be conducted of the SCC at least annually.

(2) The purpose of the IOC (~~(shall be)~~) is to provide objective measures of service delivery, for internal program use and quality management (~~(, to the governing body)~~).

(3) Members of the inspection of care team (~~(shall)~~) will be contracted by the department annually for a specified period during which they (~~(shall)~~) must:

- (a) Conduct an on-site and documentary inspection;
- (b) Prepare interim and final, and, as requested by the SCC (~~((superintendent or governing body))~~) chief executive officer, supplementary reports;
- (c) Receive and consider SCC program responses to all reports.
- (4) The IOC team (~~((shall))~~) must be of no fewer than (~~((four))~~) three and no more than six persons.
 - (a) At least one member of the IOC team must not be a DSHS employee; and
 - (b) At least one member must be a sex offender treatment provider.

AMENDATORY SECTION (Amending WSR 02-02-054, filed 12/27/01, effective 1/27/02)

WAC 388-881-030 External oversight—(~~(Ombudsman))~~ Ombudsperson service. (1) The SCC (~~((shall))~~) must retain an (~~((ombudsman))~~) ombudsperson service for the purpose of conducting independent, neutral reviews of program conformance with internal SCC policies in the care, control, and treatment of residents at the SCC.

(2) The (~~((ombudsman))~~) ombudsperson function (~~((shall))~~) must be outside the supervision of the (~~((superintendent))~~) chief executive officer of the SCC and of the assistant secretary for the behavioral health (~~((and rehabilitation services))~~) administration.

(3) In performance of the (~~((ombudsman))~~) ombudsperson function, the individual(s) so employed (~~((shall))~~) must be afforded access to all records and documents normally available to public inspection according to rules and policies of the department and of the state of Washington.

AMENDATORY SECTION (Amending WSR 02-02-054, filed 12/27/01, effective 1/27/02)

WAC 388-881-035 External oversight—Investigation of incidents. (~~((1))~~) The Washington state patrol shall investigate incidents which involve SCC residents in accordance with department policy.

(2) The scope and authority for such investigations shall be determined through an interagency agreement between the department and the Washington state patrol.

(3) Criteria to determine which incidents (~~((justify))~~) will be investigated by an external (~~((investigation shall))~~) entity must be (~~((approved))~~) determined by the DSHS secretary(~~((, DSHS))~~).

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-881-015 External oversight—Governing body.