

WSR 25-01-139

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed December 17, 2024, 11:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-19-060.

Title of Rule and Other Identifying Information: WAC 182-531-1400 Psychiatric physician-related services and other professional mental health services, 182-531-1710 Alcohol and substance misuse counseling, and 182-538D-0200 Behavioral health services—Definitions.

Hearing Location(s): On January 22, 2025, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_6bEgwejCTa6c66AYPffGqQ.

If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than January 23, 2025.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, beginning December 18, 2024, 8:00 a.m., by January 22, 2025, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication relay service 711, email Johanna.Larson@hca.wa.gov, by January 3, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is revising these sections to add behavioral support specialists as an eligible provider type as directed by SSB 5189, section 11, chapter 270, Laws of 2023, and adds behavioral health support specialist definition which aligns with the state plan definition.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 18.227.100, 41.05.021, 41.05.160.

Statute Being Implemented: RCW 18.227.100, 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Jason Crabbe, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-9563; Implementation and Enforcement: Yvonne Keller, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-9563.

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. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

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 rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: This rule making implements RCW 18.227.100 (SSB 5189, section 11, chapter 270, Laws of 2023).

Scope of exemption for rule proposal:

Is fully exempt.

December 17, 2024
Wendy Barcus
Rules Coordinator

OTS-5916.2

AMENDATORY SECTION (Amending WSR 24-12-036, filed 5/30/24, effective 7/1/24)

WAC 182-531-1400 Psychiatric physician-related services and other professional mental health services. (1) The mental health services covered in this section are different from the mental health services covered under community mental health and involuntary treatment programs in chapter 182-538D WAC.

(2) Inpatient and outpatient mental health services not covered under chapter 182-538D WAC may be covered by the medicaid agency under this section.

Inpatient mental health services

(3) For hospital inpatient psychiatric admissions, providers must comply with chapter 182-538D WAC.

(4) The agency covers professional inpatient mental health services as follows:

(a) When provided by a psychiatrist, psychiatric advanced registered nurse practitioner (ARNP), psychiatric mental health nurse practitioner-board certified (PMHNP-BC), or psychologist in conjunction with the prescribing provider;

(b) The agency pays only for the total time spent on direct psychiatric client care during each visit, including services provided when making rounds. The agency considers services provided during rounds to be direct client care services and may include, but are not limited to:

- (i) Individual psychotherapy up to one hour;
- (ii) Family/group therapy; or
- (iii) Electroconvulsive therapy.

(c) One electroconvulsive therapy or narcosynthesis per client, per day, and only when performed by a psychiatrist.

Outpatient mental health services

(5) The agency covers outpatient mental health services when provided by the following licensed or certified health care practitioners who are eligible providers under chapter 182-502 WAC:

- (a) Psychiatrists;
- (b) Psychologists;
- (c) Psychiatric advanced registered nurse practitioners (ARNP);
- (d) Psychiatric mental health nurse practitioners-board certified (PMHNP-BC);
- (e) Mental health counselors;
- (f) Mental health counselor associates;
- (g) Independent clinical social workers;
- (h) Independent clinical social worker associates;
- (i) Advanced social workers;

- (j) Advanced social worker associates;
- (k) Marriage and family therapists; ((~~o~~))
- (l) Marriage and family therapist associates; or
- (m) Certified behavioral health support specialists.

(6) With the exception of child psychiatrists, as defined in RCW 71.34.020, qualified practitioners listed in subsection (5) of this section who diagnose and treat clients age 18 and younger must meet one of the following:

(a) The education and experience requirements for a child mental health specialist found in WAC 182-538D-0200; or

(b) Be working under the supervision of a practitioner who meets these requirements.

(7) The agency does not limit the total number of outpatient mental health visits a licensed health care professional can provide.

(8) The agency evaluates a request for covered outpatient mental health services in excess of the limitations in this section under WAC 182-501-0169.

(9) The agency covers outpatient mental health services with the following limitations:

(a) Diagnostic evaluations. One psychiatric diagnostic evaluation, per provider, per client, per calendar year, unless significant change in the client's circumstances renders an additional evaluation medically necessary and is authorized by the agency.

(i) For clients 20 years of age and younger, additional evaluations are paid for when medically necessary and authorized by the agency, per WAC 182-534-0100 and 182-501-0165.

(ii) For clients five years of age and younger, the agency pays for the following without requiring prior authorization:

(A) Up to five sessions to complete a psychiatric diagnostic evaluation; and

(B) Evaluations in the home or community setting, including reimbursement for provider travel.

(iii) For clients age five through age 20, the services in (a)(ii)(A) and (B) of this subsection are paid for when medically necessary and authorized by the agency.

(b) Psychotherapy. One or more individual or family/group psychotherapy visits, with or without the client, per day, per client, when medically necessary.

(c) Medication management. One psychiatric medication management service, per client, per day, in an outpatient setting when performed by one of the following:

(i) Psychiatrist;

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

or

(iii) Psychiatric mental health nurse practitioner-board certified (PMHNP-BC).

(10) To receive payment for providing mental health services, providers must bill the agency using the agency's published billing instructions.

AMENDATORY SECTION (Amending WSR 21-20-132, filed 10/6/21, effective 11/6/21)

WAC 182-531-1710 Alcohol and substance misuse counseling. (1)

The medicaid agency covers alcohol and substance misuse counseling

through screening, brief intervention, and referral to treatment (SBIRT) services when delivered by, or under the supervision of, a qualified licensed physician or other qualified licensed health care professional within the scope of their practice.

(2) SBIRT is a comprehensive, evidence-based public health practice designed to identify, reduce and prevent problematic use, abuse, and dependence on alcohol and illicit drugs. SBIRT can be used to identify people who are at risk for or have some level of substance use disorder which can lead to illness, injury, or other long-term morbidity or mortality. SBIRT services are provided in a wide variety of medical and community health care settings such as primary care centers, hospital emergency rooms, trauma centers, and dental offices.

(3) The following health care professionals are eligible to become qualified SBIRT providers to deliver SBIRT services or supervise qualified staff to deliver SBIRT services:

(a) Advanced registered nurse practitioners, in accordance with chapters 18.79 RCW and 246-840 WAC;

(b) Substance use disorder professionals (SUDP), in accordance with chapters 18.205 RCW and 246-811 WAC;

(c) Licensed practical nurses, in accordance with chapters 18.79 RCW and 246-840 WAC;

(d) Mental health counselors, in accordance with chapters 18.225 RCW and 246-809 WAC;

(e) Marriage and family therapists, in accordance with chapters 18.225 RCW and 246-809 WAC;

(f) Independent and advanced social workers, in accordance with chapters 18.225 RCW and 246-809 WAC;

(g) Physicians, in accordance with chapters 18.71 RCW and 246-919 WAC;

(h) Physician assistants, in accordance with chapters 18.71A RCW and 246-918 WAC;

(i) Psychologists, in accordance with chapters 18.83 RCW and 246-924 WAC;

(j) Registered nurses, in accordance with chapters 18.79 RCW and 246-840 WAC;

(k) Dentists, in accordance with chapters 18.260 RCW and 246-817 WAC; (~~and~~)

(l) Dental hygienists, in accordance with chapters 18.29 RCW and 246-815 WAC; and

(m) Certified behavioral health support specialists, in accordance with chapters 18.227 RCW and 246-821 WAC.

(4) To become a qualified SBIRT provider, eligible licensed health care professionals must:

(a) Complete agency-approved SBIRT training and mail or fax the SBIRT training certificate or other proof of this training completion to the agency; or

(b) Have an addiction specialist certification and mail or fax proof of this certification to the agency.

(5) The agency pays for SBIRT as follows:

(a) Screenings, which are included in the reimbursement for the evaluation and management code billed;

(b) Brief interventions, limited to four sessions per client, per provider, per calendar year; and

(c) When billed by one of the following qualified SBIRT health care professionals:

(i) Advanced registered nurse practitioners;

(ii) Mental health counselors;

- (iii) Marriage and family therapists;
- (iv) Independent and advanced social workers;
- (v) Physicians;
- (vi) Psychologists;
- (vii) Dentists; and
- (viii) Dental hygienists.

(6) The agency evaluates a request for additional sessions in excess of the limitations or restrictions according to WAC 182-501-0169.

(7) To be paid for providing alcohol and substance misuse counseling through SBIRT, providers must bill the agency using the agency's published billing instructions.

OTS-5917.2

AMENDATORY SECTION (Amending WSR 19-24-063, filed 11/27/19, effective 1/1/20)

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

"Adult" means a person age (~~(eighteen)~~) 18 or older. For purposes of the medicaid program, people age (~~(eighteen)~~) 18 through age (~~(twenty)~~) 20 have the early and periodic screening, diagnostic and treatment (EPSDT) benefit described in chapter 182-534 WAC. In the medicaid program, EPSDT is available until a person reaches age (~~(twenty-one)~~) 21.

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

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

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

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

"Certified behavioral health support specialist (BHSS)" means a person who delivers brief behavioral health services under the supervision of a provider outlined in WAC 246-821-410. To provide services as a BHSS, this person must have a bachelor's degree and have completed the BHSS educational program recognized by DOH.

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

"Child" means a person under the age of (~~(eighteen)~~) 18. For the purposes of the medicaid program, people age (~~(eighteen through age twenty)~~) have the early and periodic screening, diagnostic and treatment

(EPSDT)) 18 through age 20 have the EPSDT benefit described in chapter 182-534 WAC. In the medicaid program, EPSDT is available until a person reaches age ~~((twenty-one))~~ 21.

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

"Community support services" means services authorized, planned, and coordinated through resource management services including, at a minimum, assessment, diagnosis, emergency crisis intervention available ~~((twenty-four))~~ 24 hours, seven days a week; prescreening determinations for people who are mentally ill being considered for placement in nursing homes as required by federal law; screening for patients being considered for admission to residential services; diagnosis and treatment for children who are mentally or severely emotionally disturbed discovered under screening through the federal Title XIX ~~((early and periodic screening, diagnosis, and treatment (EPSDT)))~~ EPSDT program; investigation, legal, and other nonresidential services under chapter 71.05 RCW; case management services; psychiatric treatment including medication supervision; counseling; psychotherapy; assuring transfer of relevant patient information between service providers; recovery services; and other services determined by behavioral health administrative service organizations (BH-ASOs) and managed care organizations (MCOs).

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

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

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

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

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

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

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

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

(b) Is regarded as having such impairment.

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

(a) African American;

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

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

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

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

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

(c) Asian/Pacific Islander; or

(d) Hispanic.

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

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

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

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

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

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

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

"Mental health specialist" means:

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

(i) A minimum of (~~one hundred~~) 100 actual hours (not quarter or semester hours) of special training in child development and the treatment of children and youth with serious emotional disturbance and their families; and

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

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

(i) A minimum of (~~one hundred~~) 100 actual hours (not quarter or semester hours) of specialized training devoted to the mental health problems and treatment of people age (~~sixty~~) 60 and older; and

(ii) The equivalent of one year of full-time experience in the treatment of people age (~~sixty~~) 60 and older, under the supervision of a geriatric mental health specialist.

(c) An **"ethnic minority mental health specialist"** is defined as a mental health professional who has demonstrated cultural competence attained through major commitment, ongoing training, experience and/or specialization in serving ethnic minorities, including:

(i) Evidence of one year of service specializing in serving the ethnic minority group under the supervision of an ethnic minority mental health specialist; and

~~((i))~~ (ii) One of the following:

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

~~((ii))~~ (B) A minimum of ~~((one hundred))~~ 100 actual hours (not quarter or semester hours) of specialized training devoted to ethnic minority issues and treatment of ethnic minorities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) Adults and children who are acutely mentally ill;
- (b) Adults who are chronically mentally ill;
- (c) Children who are severely emotionally disturbed; or
- (d) Adults who are seriously disturbed and determined solely by a behavioral health organization to be at risk of becoming acutely or chronically mentally ill.

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

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

"Youth" means a person who is age (~~seventeen~~) 17 or younger.