

Chapter 388-877 WAC

BEHAVIORAL HEALTH SERVICES ADMINISTRATIVE REQUIREMENTS

WAC

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(6/15/16)

SECTION ONE—BEHAVIORAL HEALTH SERVICES—PURPOSE AND SCOPE

WAC 388-877-0100 Behavioral health services—Purpose and scope. The rules in chapter 388-877 WAC:

(1) Establish the following for agencies that provide behavioral health services:

- (a) Licensure and certification requirements;
- (b) Agency administrative requirements;
- (c) Agency personnel requirements;
- (d) Agency clinical policies and procedures; and
- (e) A grievance system that includes a grievance process, an appeal process, and access to administrative hearings for agencies that serve individuals whose services are covered by the federal medicaid program.

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

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

[Statutory Authority: RCW 70.02.290, 70.02.340, 70.96A.040(4), 71.05.560, 71.24.035 (5)(c), 71.34.380, and 2014 c 225. WSR 16-13-087, § 388-877-0100, filed 6/15/16, effective 7/16/16. Statutory Authority: Chapters 70.02, 70.96A, 71.05, 71.24, 71.34, 74.50 RCW, RCW 74.08.090, 43.20A.890, and 42 C.F.R. Part 8. WSR 13-12-054, § 388-877-0100, filed 5/31/13, effective 7/1/13.]

SECTION TWO—BEHAVIORAL HEALTH SERVICES—DEFINITIONS

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

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

"Administrator" means the designated person responsible for the operation of the licensed treatment agency and/or certified treatment service.

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

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

"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.

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

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

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

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

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

"Change in ownership" means one of the following:

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

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

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

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

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

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

"Community relations plan" means a plan to minimize the impact of an opiate substitution treatment program as defined by the Center for Substance Abuse Guidelines for the

Accreditation of Opioid Treatment Programs, section 2.C.(4).

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

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

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

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

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

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

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

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

(4) A bomb threat;

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

(6) Suicide attempt at the facility;

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

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

"Cultural competence" or **"culturally competent"** means the ability to recognize and respond to health-related beliefs and cultural values, disease incidence and prevalence, and treatment efficacy. Examples of culturally competent care include striving to overcome cultural, language, and communications barriers, providing an environment in which individuals from diverse cultural backgrounds feel comfort-

able discussing their cultural health beliefs and practices in the context of negotiating treatment options, encouraging individuals to express their spiritual beliefs and cultural practices, and being familiar with and respectful of various traditional healing systems and beliefs and, where appropriate, integrating these approaches into treatment plans.

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

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

"Designated chemical dependency specialist" means a person designated by the behavioral health organization (BHO) or by the county alcoholism and other drug addiction program coordinator designated by the BHO to perform the commitment duties described in RCW 70.96A.140 and qualified to do so by meeting standards adopted by the department.

"Designated mental health professional (DMHP)" means a mental health professional designated by the behavioral health organization (BHO), county, or other authority authorized in rule to perform duties under the involuntary treatment act as described in RCW 10.77.010, 71.05.020, 71.24.025 and 71.34.020.

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

- (1) Has a record of such an impairment; or
- (2) Is regarded as having such impairment.

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

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

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

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

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

"Licensed" means the status given to behavioral health agencies by the department under its authority to license and certify mental health programs chapters 71.05, 71.34, 71.24 RCW and its authority to certify substance use disorder treatment programs chapter 70.96A RCW.

"Medical practitioner" means a physician, advance registered nurse practitioner (ARNP), or certified physician assistant. An ARNP and a midwife with prescriptive author-

ity may perform practitioner functions related only to specific specialty services.

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

"Mental health professional (MHP)" means a designation given by the department to an agency staff member who is:

(1) A psychiatrist, psychologist, psychiatric advanced registered nurse practitioner (ARNP), or social worker as defined in chapters 71.05 and 71.34 RCW;

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

(3) A person with a master's degree or further advanced degree in counseling or one of the social sciences from an accredited college or university who has at least two years of experience in direct treatment of persons with mental illness or emotional disturbance, that was gained under the supervision of a mental health professional and is recognized by the department;

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

(5) A person who had an approved waiver to perform the duties of a mental health professional (MHP), that was requested by the behavioral health organization (BHO) and granted by the mental health division prior to July 1, 2001; or

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

"Minor" means an individual who is not yet eighteen years of age.

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

"Outpatient services" means behavioral health treatment services provided to an individual in a nonresidential setting.

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

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

(1) Is a self-identified consumer of mental health services.

(2) Is a counselor registered under chapter 18.19 RCW.

(3) Has completed specialized training provided by or contracted through DBHR. If the person was trained by trainers approved by the mental health division (now DBHR) before October 1, 2004, and has met the requirements in (1),

(2), and (4) by January 31, 2005, the person is exempt from completing this specialized training.

(4) Has successfully passed an examination administered by DBHR or an authorized contractor.

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

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

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

"Recovery" means a process of change through which an individual improves their health and wellness, lives a self-directed life, and strives to reach their full potential.

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

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

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

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

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

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

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

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

"Youth" means an individual who is seventeen years of age or younger.

[Statutory Authority: RCW 70.02.290, 70.02.340, 70.96A.040(4), 71.05.-560, 71.24.035 (5)(c), 71.34.380, and 2014 c 225. WSR 16-13-087, § 388-877-0200, filed 6/15/16, effective 7/16/16. Statutory Authority: Chapters 70.02, 70.96A, 71.05, 71.24, 71.34, 74.50 RCW, RCW 74.08.090, 43.20A.890, and 42 C.F.R. Part 8. WSR 13-12-054, § 388-877-0200, filed 5/31/13, effective 7/1/13.]

SECTION THREE—BEHAVIORAL HEALTH SERVICES—AGENCY LICENSURE AND CERTIFICATION

WAC 388-877-0300 Agency licensure—General information. The department licenses agencies to provide

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behavioral health treatment services. To gain and maintain licensure, an agency must meet the requirements of chapter 388-877 WAC, applicable local and state rules, and state and federal statutes. In addition, the agency must meet the applicable specific program requirements of chapter 388-877A WAC for mental health, chapter 388-877B WAC for substance use disorders, and/or chapter 388-877C WAC for problem and pathological gambling.

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

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

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

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

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

(i) Submit the request in writing to the department;

(ii) Assure the exemption request does not jeopardize the safety, health, or treatment of an individual; and

(iii) Assure the exemption request does not impede fair competition of another service agency.

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

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

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

(a) Notice of the agency closure or program cancellation at least thirty days before the date of closure or program cancellation;

(b) Assistance with relocation; and

(c) Information on how to access records to which the individual is entitled.

(6) If an agency certified to provide any behavioral health service closes, the agency must ensure all individual clinical records are kept and managed for at least six years after the closure before destroying the records in a manner that preserves confidentiality. In addition:

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

(i) Continue to retain and manage all individual clinical records; or

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(ii) Arrange for the continued storage and management of all individual clinical records.

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

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

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

[Statutory Authority: RCW 70.02.290, 70.02.340, 70.96A.040(4), 71.05.-560, 71.24.035 (5)(c), 71.34.380, and 2014 c 225. WSR 16-13-087, § 388-877-0300, filed 6/15/16, effective 7/16/16. Statutory Authority: RCW 43.20A.550, 74.04.050, 74.08.090 and chapters 70.02, 71.24 RCW. WSR 14-18-014, § 388-877-0300, filed 8/22/14, effective 9/22/14. Statutory Authority: Chapters 70.02, 70.96A, 71.05, 71.24, 71.34, 74.50 RCW, RCW 74.08.090, 43.20A.890, and 42 C.F.R. Part 8. WSR 13-12-054, § 388-877-0300, filed 5/31/13, effective 7/1/13.]

WAC 388-877-0305 Agency licensure—Application.

To apply for licensure to provide any behavioral health service, an agency must submit an initial application that is signed by the agency's administrator.

(1) The application must include the following:

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

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

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

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

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

(i) Suitable for the purposes intended;

(ii) Not a personal residence; and

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

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

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

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

(i) Payment of associated fees.

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

(6/15/16)

[Statutory Authority: RCW 70.02.290, 70.02.340, 70.96A.040(4), 71.05.-560, 71.24.035 (5)(c), 71.34.380, and 2014 c 225. WSR 16-13-087, § 388-877-0305, filed 6/15/16, effective 7/16/16. Statutory Authority: RCW 43.20A.550, 74.04.050, 74.08.090 and chapters 70.02, 71.24 RCW. WSR 14-18-014, § 388-877-0305, filed 8/22/14, effective 9/22/14. Statutory Authority: Chapters 70.02, 70.96A, 71.05, 71.24, 71.34, 74.50 RCW, RCW 74.08.090, 43.20A.890, and 42 C.F.R. Part 8. WSR 13-12-054, § 388-877-0305, filed 5/31/13, effective 7/1/13.]

WAC 388-877-0310 Agency licensure—Deeming. (1)

The department may deem an agency to be in compliance with state minimum standards for licensure and program-specific certification based on the agency being currently accredited by a national accreditation agency recognized by and having a current agreement with the department. To apply to the department for deemed status with a recognized accreditation body, go to <http://www.dshs.wa.gov/dbhr/dadeeming.shtml>.

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

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

(4) Specific licensing and certification requirements of any:

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

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

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

(6) An agency:

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

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

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

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

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

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

[Statutory Authority: Chapters 70.02, 70.96A, 71.05, 71.24, 71.34, 74.50 RCW, RCW 74.08.090, 43.20A.890, and 42 C.F.R. Part 8. WSR 13-12-054, § 388-877-0310, filed 5/31/13, effective 7/1/13.]

WAC 388-877-0315 Agency licensure—Renewals. A

department-issued license, including program-specific certification, expires up to twelve months from the effective date. To renew a license or certification, an agency must submit a renewal request signed by the agency's designated official.

(1) The original renewal request must:

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

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

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

[Statutory Authority: Chapters 70.02, 70.96A, 71.05, 71.24, 71.34, 74.50 RCW, RCW 74.08.090, 43.20A.890, and 42 C.F.R. Part 8. WSR 13-12-054, § 388-877-0315, filed 5/31/13, effective 7/1/13.]

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

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

(a) A review of:

- (i) Agency policies and procedures;
- (ii) Personnel records;
- (iii) Clinical records;
- (iv) Facility accessibility;

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

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

(b) Interviews with:

- (i) Individuals served by the agency; and
- (ii) Agency staff members.

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

(a) A discussion of findings;

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

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

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

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

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

[Statutory Authority: Chapters 70.02, 70.96A, 71.05, 71.24, 71.34, 74.50 RCW, RCW 74.08.090, 43.20A.890, and 42 C.F.R. Part 8. WSR 13-12-054, § 388-877-0320, filed 5/31/13, effective 7/1/13.]

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

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

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

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

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

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

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

[Statutory Authority: Chapters 70.02, 70.96A, 71.05, 71.24, 71.34, 74.50 RCW, RCW 74.08.090, 43.20A.890, and 42 C.F.R. Part 8. WSR 13-12-054, § 388-877-0325, filed 5/31/13, effective 7/1/13.]

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

[Statutory Authority: Chapters 70.02, 70.96A, 71.05, 71.24, 71.34, 74.50 RCW, RCW 74.08.090, 43.20A.890, and 42 C.F.R. Part 8. WSR 13-12-054, § 388-877-0330, filed 5/31/13, effective 7/1/13.]

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

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

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

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

(d) The agency owner or agency administrator:

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

(ii) Was convicted of child abuse or adjudicated as a perpetrator of substantiated child abuse;

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

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

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

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

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

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

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

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

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

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

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

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

(xiv) Does not meet criminal background check requirements;

(xv) Fails to provide satisfactory application materials;

or

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

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

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

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

(a) The agency voluntarily cancels licensure or certification.

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

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

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

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

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

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

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

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

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

(6/15/16)

[Statutory Authority: RCW 70.02.290, 70.02.340, 70.96A.040(4), 71.05.-560, 71.24.035 (5)(c), 71.34.380, and 2014 c 225. WSR 16-13-087, § 388-877-0335, filed 6/15/16, effective 7/16/16. Statutory Authority: RCW 43.20A.550, 74.04.050, 74.08.090 and chapters 70.02, 71.24 RCW. WSR 14-18-014, § 388-877-0335, filed 8/22/14, effective 9/22/14. Statutory Authority: Chapters 70.02, 70.96A, 71.05, 71.24, 71.34, 74.50 RCW, RCW 74.08.090, 43.20A.890, and 42 C.F.R. Part 8. WSR 13-12-054, § 388-877-0335, filed 5/31/13, effective 7/1/13.]

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

(1) The agency must also submit the following:

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

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

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

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

(a) Suitable for the purposes intended;

(b) Not a personal residence; and

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

[Statutory Authority: Chapters 70.02, 70.96A, 71.05, 71.24, 71.34, 74.50 RCW, RCW 74.08.090, 43.20A.890, and 42 C.F.R. Part 8. WSR 13-12-054, § 388-877-0340, filed 5/31/13, effective 7/1/13.]

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

(1) The application must include the following:

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

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

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

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

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

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

(a) Approves the new service(s); and

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

[Statutory Authority: Chapters 70.02, 70.96A, 71.05, 71.24, 71.34, 74.50 RCW, RCW 74.08.090, 43.20A.890, and 42 C.F.R. Part 8. WSR 13-12-054, § 388-877-0345, filed 5/31/13, effective 7/1/13.]

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

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

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

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

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

[Statutory Authority: Chapters 70.02, 70.96A, 71.05, 71.24, 71.34, 74.50 RCW, RCW 74.08.090, 43.20A.890, and 42 C.F.R. Part 8. WSR 13-12-054, § 388-877-0350, filed 5/31/13, effective 7/1/13.]

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

(a) The agency to notify the department in writing of the new address;

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

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

(2) The agency:

(a) Is subject to an on-site review under WAC 388-877-0320 when changing locations.

(b) Must receive a new license under the new location's address before providing any behavioral health service at that address.

[Statutory Authority: Chapters 70.02, 70.96A, 71.05, 71.24, 71.34, 74.50 RCW, RCW 74.08.090, 43.20A.890, and 42 C.F.R. Part 8. WSR 13-12-054, § 388-877-0355, filed 5/31/13, effective 7/1/13.]

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

(1) Notify the department in writing of the facility remodel at least thirty days before the day the remodeling begins; and

(2) Submit a floor plan documenting accessibility and maintenance of confidentiality during and after the remodel.

[Statutory Authority: Chapters 70.02, 70.96A, 71.05, 71.24, 71.34, 74.50 RCW, RCW 74.08.090, 43.20A.890, and 42 C.F.R. Part 8. WSR 13-12-054, § 388-877-0360, filed 5/31/13, effective 7/1/13.]

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

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

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

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

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

Application Fees for Agency Certification for Approved Substance Use Disorder Treatment Programs	
New agency application	\$1,000

Application Fees for Agency Certification for Approved Substance Use Disorder Treatment Programs	
Branch agency application	\$500
Application to add one or more services	\$200
Application to change ownership	\$500
Initial and Annual Certification Fees for Detoxification, Residential, and Nonresidential Services	
Detoxification and residential services	\$100 per licensed bed, per year, for agencies not renewing certification through deeming
	\$50 per licensed bed, per year, for agencies renewing certification through deeming per WAC 388-877-0310
Nonresidential services	\$750 per year for agencies not renewing certification through deeming
	\$200 per year for agencies certified through deeming per WAC 388-877-0310
Complaint/Critical Incident Investigation Fees	
All agencies	\$1,000 per substantiated complaint investigation and \$1,000 per substantiated critical incident investigation that results in a requirement for corrective action

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

(a) The number of licensed detoxification and residential beds; and

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

(7) The department charges the following fees for approved mental health treatment programs:

Initial Licensing Application Fee for Mental Health Treatment Programs	
Licensing application fee	\$1,000 initial licensing fee
Initial and Annual Licensing Fees for Agencies not Deemed	
Annual service hours provided:	Initial and annual licensing fees:
0-3,999	\$728
4,000-14,999	\$1,055
15,000-29,999	\$1,405
30,000-49,999	\$2,105
50,000 or more	\$2,575

Annual Licensing Fees for Deemed Agencies	
Deemed agencies licensed by DBHR	\$500 annual licensing fee
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

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

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

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

(9) For inpatient evaluation and treatment facility initial and annual certification bed fees charged by the department, see WAC 388-865-0511.

[Statutory Authority: RCW 70.02.290, 70.02.340, 70.96A.040(4), 71.05-560, 71.24.035 (5)(c), 71.34.380, and 2014 c 225. WSR 16-13-087, § 388-877-0365, filed 6/15/16, effective 7/16/16. Statutory Authority: RCW 43.20A.550, 74.04.050, 74.08.090 and chapters 70.02, 71.24 RCW. WSR 14-18-014, § 388-877-0365, filed 8/22/14, effective 9/22/14. Statutory Authority: Chapters 70.02, 70.96A, 71.05, 71.24, 71.34, 74.50 RCW, RCW 74.08.090, 43.20A.890, and 42 C.F.R. Part 8. WSR 13-12-054, § 388-877-0365, filed 5/31/13, effective 7/1/13.]

WAC 388-877-0370 Agency licensure and program-specific certification—Appealing a department decision.

(1) To appeal a decision made by the department, an agency must file a written request for a hearing:

- (a) Signed by the agency's administrator.
- (b) Within twenty-eight days of the date of the department's written decision.
- (c) To the Board of Appeals, P.O. Box 2465, Olympia, WA 98504, with a method that shows proof of receipt.
- (d) That includes all of the following:
 - (i) A copy of the department's decision that is being contested.
 - (ii) The agency's reason for contesting the decision.
 - (iii) The specific rules, laws, and policy the agency believes are being violated.

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

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

(6/15/16)

[Statutory Authority: Chapters 70.02, 70.96A, 71.05, 71.24, 71.34, 74.50 RCW, RCW 74.08.090, 43.20A.890, and 42 C.F.R. Part 8. WSR 13-12-054, § 388-877-0370, filed 5/31/13, effective 7/1/13.]

SECTION FOUR—BEHAVIORAL HEALTH SERVICES—AGENCY ADMINISTRATION

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

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

[Statutory Authority: Chapters 70.02, 70.96A, 71.05, 71.24, 71.34, 74.50 RCW, RCW 74.08.090, 43.20A.890, and 42 C.F.R. Part 8. WSR 13-12-054, § 388-877-0400, filed 5/31/13, effective 7/1/13.]

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

- (a) All administrative matters;
- (b) Individual care services; and
- (c) Meeting all applicable rules, policies, and ethical standards.
- (2) The administrator must:
 - (a) Delegate to a staff person the duty and responsibility to act in the administrator's behalf when the administrator is not on duty or on call.
 - (b) Ensure administrative, personnel, and clinical policies and procedures are adhered to and kept current to be in compliance with the rules in this chapter, as applicable.
 - (c) Employ sufficient qualified personnel to provide adequate treatment services and facility security.
 - (d) Ensure all persons providing clinical services are credentialed for their scope of practice as required by the department of health.
 - (e) Identify at least one person to be responsible for clinical supervision duties.
 - (f) Ensure that there is an up-to-date personnel file for each employee, trainee, student, volunteer, and for each contracted staff person who provides or supervises an individual's care.
 - (g) Ensure that personnel records document that Washington state patrol background checks consistent with RCW 43.43.830 through 43.43.834 have been completed for each employee in contact with individuals receiving services.

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

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

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

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

- (i) Cultural competency;
- (ii) Use of evidence based and promising practices; and
- (iii) In response to:
 - (A) Critical incidents;
 - (B) Complaints; and
 - (C) Grievances.

[Statutory Authority: Chapters 70.02, 70.96A, 71.05, 71.24, 71.34, 74.50 RCW, RCW 74.08.090, 43.20A.890, and 42 C.F.R. Part 8. WSR 13-12-054, § 388-877-0410, filed 5/31/13, effective 7/1/13.]

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

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

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

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

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

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

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

(b) Lists all addresses where the entity performs services.

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

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

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

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

(5) **Interpreter services for individuals with Limited English Proficiency (LEP) and individuals who have sensory disabilities.** Documentation that demonstrates the agency's ability to provide or coordinate services for individuals with LEP and individuals who have sensory disabilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Different types of disasters or emergencies;

(b) Placement of posters showing routes of exit;

(c) The need to mention evacuation routes at public meetings;

(d) Communication methods for individuals, staff, and visitors, including persons with a visual or hearing impairment or limitation;

(e) Evacuation of mobility impaired individuals; and

(f) Evacuation of children if child care is offered.

(18) **Individual rights.** A description of how the agency has individual participation rights and policies consistent

with WAC 388-877-0600 and if applicable, WAC 388-877-0680.

(19) **Individual complaints and grievances.** A description of how the agency addresses an individual's complaint, consistent with WAC 388-877-0605, and/or the grievance system, consistent with WAC 388-877-0650 through 388-877-0675.

[Statutory Authority: RCW 70.02.290, 70.02.340, 70.96A.040(4), 71.05.-560, 71.24.035 (5)(c), 71.34.380, and 2014 c 225. WSR 16-13-087, § 388-877-0420, filed 6/15/16, effective 7/16/16. Statutory Authority: RCW 43.20A.550, 74.04.050, 74.08.090 and chapters 70.02, 71.24 RCW. WSR 14-18-014, § 388-877-0420, filed 8/22/14, effective 9/22/14. Statutory Authority: Chapters 70.02, 70.96A, 71.05, 71.24, 71.34, 74.50 RCW, RCW 74.08.090, 43.20A.890, and 42 C.F.R. Part 8. WSR 13-12-054, § 388-877-0420, filed 5/31/13, effective 7/1/13.]

WAC 388-877-0430 Agency administration—Treatment facility requirements. Each agency licensed by the department to provide any behavioral health service must ensure that its treatment facility:

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

[Statutory Authority: Chapters 70.02, 70.96A, 71.05, 71.24, 71.34, 74.50 RCW, RCW 74.08.090, 43.20A.890, and 42 C.F.R. Part 8. WSR 13-12-054, § 388-877-0430, filed 5/31/13, effective 7/1/13.]

SECTION FIVE—BEHAVIORAL HEALTH SERVICES—PERSONNEL

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

- (1) **Hiring practices.** Identification of how the agency:
 - (a) Ensures all persons providing or supervising clinical services have an active registration, certification, or license granted by the department of health consistent with the services provided; and
 - (b) Ensures the requirements of WAC 388-06-0170 are met if the agency provides services to youths.
- (2) **Background checks.** Identification of how the agency conducts Washington state background checks on each agency employee in contact with individuals receiving services, consistent with RCW 43.43.830 through 43.43.842.
- (3) **Excluded provider list.** A description of how the agency conducts a review of the list of excluded individuals/entities (LEIE) searchable database (found on the Office of Inspector General, U.S. Department of Health and Human Services website at <http://oig.hhs.gov>) for each employee in

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contact with individuals receiving services, to include a procedure on how the agency:

- (a) Reviewed the LEIE database at the time of the employee's hire and annually thereafter; and
- (b) Assured the employee is not currently debarred, suspended, proposed for debarment, declared ineligible, or voluntary excluded from participating in transactions involving certain federal funds.
- (4) **Drug free workplace.** Identification of how the agency provides for a drug free work place that includes:
 - (a) Agency program standards of prohibited conduct; and
 - (b) Actions to be taken in the event a staff member misuses alcohol or other drugs.
- (5) **Supervision.** Identification of how supervision is provided to assist program staff and volunteers to increase their skills, and improve quality of services to individuals and families.
- (6) **Staff training.** A description of how the agency provides training within thirty days of an employee's hire date and annually thereafter:
 - (a) Consistent with the agency's certified services.
 - (b) On cultural competency that assists staff in recognizing when cultural barriers interfere with clinical care that includes a review of:
 - (i) Populations specific to the agency's geographic service area; and
 - (ii) Applicable available community resources.
 - (c) On procedures for how to respond to individuals in crisis that includes a review of:
 - (i) Emergency procedures;
 - (ii) Program policies and procedures; and
 - (iii) Rights for individuals receiving services and supports.
 - (d) That addresses the requirements of this chapter.

[Statutory Authority: Chapters 70.02, 70.96A, 71.05, 71.24, 71.34, 74.50 RCW, RCW 74.08.090, 43.20A.890, and 42 C.F.R. Part 8. WSR 13-12-054, § 388-877-0500, filed 5/31/13, effective 7/1/13.]

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

- (1) The personnel record must contain the following:
 - (a) Documentation of annual training, including documentation that the employee successfully completed training on cultural competency (see WAC 388-877-0500 (6)(b)).
 - (b) A signed and dated commitment to maintain patient (individual) confidentiality in accordance with state and federal confidentiality requirements.
 - (c) A record of an orientation to the agency that includes:
 - (i) An overview of the administrative, personnel and clinical policies and procedures.
 - (ii) The duty to warn or to take reasonable precautions to provide protection from violent behavior when an individual has communicated an actual imminent threat of physical violence against a reasonably identifiable victim or victims. Taking reasonable precautions includes notifying law enforcement as required and allowed by law.

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

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

(v) The facility evacuation plan.

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

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

(i) A job title;

(ii) Minimum qualifications for the position; and

(iii) A summary of duties and responsibilities.

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

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

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

(a) Are separate from clinical records; and

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

[Statutory Authority: Chapters 70.02, 70.96A, 71.05, 71.24, 71.34, 74.50 RCW, RCW 74.08.090, 43.20A.890, and 42 C.F.R. Part 8. WSR 13-12-054, § 388-877-0510, filed 5/31/13, effective 7/1/13.]

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

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

(2) The assigned supervisor:

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

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

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

[Statutory Authority: Chapters 70.02, 70.96A, 71.05, 71.24, 71.34, 74.50 RCW, RCW 74.08.090, 43.20A.890, and 42 C.F.R. Part 8. WSR 13-12-054, § 388-877-0520, filed 5/31/13, effective 7/1/13.]

WAC 388-877-0530 Personnel—Agency requirements for volunteers and student practicum. Each agency licensed by the department to provide any behavioral health service is responsible to provide orientation to any volunteer or student assisting the agency. In addition, the agency must ensure and document that:

(1) Each volunteer meets the qualifications of the position they are assigned.

(2) Each student who uses the agency as a setting for student practicum is supported by an educational institution.

(a) The agency and the educational institution must have a written agreement that describes:

(i) The nature and scope of student activity at the treatment setting; and

(ii) The plan for supervision of student activities.

(b) The agency must obtain and retain a confidentiality statement signed by the student and the student's academic supervisor.

[Statutory Authority: Chapters 70.02, 70.96A, 71.05, 71.24, 71.34, 74.50 RCW, RCW 74.08.090, 43.20A.890, and 42 C.F.R. Part 8. WSR 13-12-054, § 388-877-0530, filed 5/31/13, effective 7/1/13.]

SECTION SIX—BEHAVIORAL HEALTH SERVICES—CLINICAL

WAC 388-877-0600 Clinical—Individual rights. (1)

Each agency licensed by the department to provide any behavioral health service must develop a statement of individual participant rights applicable to the service categories the agency is licensed for, to ensure an individual's rights are protected in compliance with chapters 70.96A, 71.05, 71.12, and 71.34 RCW. In addition, the agency must develop a general statement of individual participant rights that incorporates at a minimum the following statements. "You have the right to:

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

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

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

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

(e) Be free of any sexual harassment;

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

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

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

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

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

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

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

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

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

(d) Posted in public areas; and

(e) Available to any participant upon request.

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

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

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

[Statutory Authority: RCW 70.02.290, 70.02.340, 70.96A.040(4), 71.05.-560, 71.24.035 (5)(c), 71.34.380, and 2014 c 225. WSR 16-13-087, § 388-877-0600, filed 6/15/16, effective 7/16/16. Statutory Authority: Chapters 70.02, 70.96A, 71.05, 71.24, 71.34, 74.50 RCW, RCW 74.08.090, 43.20A.-890, and 42 C.F.R. Part 8. WSR 13-12-054, § 388-877-0600, filed 5/31/13, effective 7/1/13.]

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

(1) The DBHR complaint manager can be contacted at 360-725-3752 or DBHRcomplaintmgr@dshs.wa.gov.

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

- (a) An issue with a behavioral health service or case management;
- (b) A possible violation of a DSHS rule; and
- (c) The individual believes their rights have been or are being violated.

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

- (a) The name of the agency or agency provider involved;
- (b) The name of the person making the complaint and the person's contact information;
- (c) The name of the individual receiving the service and the individual's contact information;
- (d) A description of the complaint issue and the date or timeframe it occurred; and
- (e) The final finding and/or resolution and the date of the decision if the individual previously discussed the concern with the behavioral health organization (BHO), the agency, or agency provider.

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

- (a) Examine any part of the facility at reasonable times and as needed.
- (b) Review and evaluate agency records, including but not limited to:

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

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

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

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

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

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

- (i) Restricting access to a treatment program;
- (ii) Restricting access to the individual involved with the complaint issue;

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

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

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

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

(b) Person representing the individual.

(c) A witness involved in the complaint issue.

(d) An employee of the agency.

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

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

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

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

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

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

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

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

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

[Statutory Authority: RCW 70.02.290, 70.02.340, 70.96A.040(4), 71.05.-560, 71.24.035 (5)(c), 71.34.380, and 2014 c 225. WSR 16-13-087, § 388-877-0605, filed 6/15/16, effective 7/16/16. Statutory Authority: Chapter 49.60 RCW, RCW 71.05.560, 71.24.035 (5)(c), 71.34.380, and 42 C.F.R. § 438.400. WSR 15-14-058, § 388-877-0605, filed 6/25/15, effective 7/26/15.]

WAC 388-877-0610 Clinical—Initial assessment.

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

(1) The initial assessment must be:

(a) Conducted in person; and

(b) Completed by a professional appropriately credentialed or qualified to provide substance use disorder, mental health, and/or problem and pathological gambling services as determined by state law.

(2) The initial assessment must include and document the individual's:

(a) Identifying information;

(b) Presenting issues;

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

(d) Medical concerns;

(e) Medications currently taken;

(f) Brief mental health history;

(g) Brief substance use history, including tobacco;

(h) Brief problem and pathological gambling history;

(i) The identification of any risk of harm to self and others, including suicide and/or homicide;

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

(k) Information that a person is or is not court-ordered to treatment or under the supervision of the department of corrections; and

(l) Treatment recommendations or recommendations for additional program-specific assessment.

[Statutory Authority: RCW 70.02.290, 70.02.340, 70.96A.040(4), 71.05.-560, 71.24.035 (5)(c), 71.34.380, and 2014 c 225. WSR 16-13-087, § 388-877-0610, filed 6/15/16, effective 7/16/16. Statutory Authority: Chapters 70.02, 70.96A, 71.05, 71.24, 71.34, 74.50 RCW, RCW 74.08.090, 43.20A.890, and 42 C.F.R. Part 8. WSR 13-12-054, § 388-877-0610, filed 5/31/13, effective 7/1/13.]

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

(1) The individual service plan must:

(a) Be completed or approved by a professional appropriately credentialed or qualified to provide mental health, substance use disorder, and/or problem and pathological gambling services.

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

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

(d) Document that the plan was mutually agreed upon and a copy was provided to the individual.

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

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

(g) Be strength-based.

(h) Contain measurable goals or objectives, or both.

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

[Ch. 388-877 WAC p. 14]

(2) If the individual service plan includes assignment of work to an individual, the assignment must have therapeutic value and meet all the requirements in (1) of this section.

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

[Statutory Authority: RCW 70.02.290, 70.02.340, 70.96A.040(4), 71.05.-560, 71.24.035 (5)(c), 71.34.380, and 2014 c 225. WSR 16-13-087, § 388-877-0620, filed 6/15/16, effective 7/16/16. Statutory Authority: RCW 43.20A.550, 74.04.050, 74.08.090 and chapters 70.02, 71.24 RCW. WSR 14-18-014, § 388-877-0620, filed 8/22/14, effective 9/22/14. Statutory Authority: Chapters 70.02, 70.96A, 71.05, 71.24, 71.34, 74.50 RCW, RCW 74.08.090, 43.20A.890, and 42 C.F.R. Part 8. WSR 13-12-054, § 388-877-0620, filed 5/31/13, effective 7/1/13.]

WAC 388-877-0630 Clinical—Individual clinical record system. Each agency licensed by the department to provide any behavioral health service must:

(1) Maintain a comprehensive clinical record system that includes policies and procedures that protect an individual's personal health information; and

(2) Ensure that the individual's personal health information is shared or released only in compliance with applicable state and federal law.

(3) If maintaining electronic individual clinical records:

(a) Provide secure, limited access through means that prevent modification or deletion after initial preparation;

(b) Provide for a backup of records in the event of equipment, media, or human error; and

(c) Provide for protection from unauthorized access, including network and internet access.

(4) Retain an individual's clinical record, including an electronic record, for a minimum of six years after the discharge or transfer of any individual.

(5) Retain a youth's or child's individual clinical record, including an electronic record, for at least six years after the most recent discharge, or at least three years following the youth's or child's eighteenth birthday.

(6) Meet the access to clinical records requirements in WAC 388-877-0650.

[Statutory Authority: Chapters 70.02, 70.96A, 71.05, 71.24, 71.34, 74.50 RCW, RCW 74.08.090, 43.20A.890, and 42 C.F.R. Part 8. WSR 13-12-054, § 388-877-0630, filed 5/31/13, effective 7/1/13.]

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

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

(2) Demographic information.

(3) An initial assessment.

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

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

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

(c) There is a court order exempting the individual participant from reporting requirements. A copy of the court

order must be included in the record if the participant claims exemption from reporting requirements.

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

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

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

(c) When appropriate, the agency requested an evaluation by a designated mental health professional when the provider becomes aware of a violation of the court-ordered treatment and the violation concerns public safety.

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

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

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

(7) Documentation the individual was informed of applicable federal and state confidentiality requirements.

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

(a) RCW 70.02.050;

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

(c) RCW 70.02.230 and 70.02.240 if the individual received mental health treatment services.

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

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

(11) If treatment is court-ordered, a copy of the order.

(12) Documentation of coordination of care, as needed.

(13) Documentation of all service encounters.

(14) Medication records, if applicable.

(15) Laboratory reports, if applicable.

(16) Properly completed authorizations for release of information, if applicable.

(17) Copies of applicable correspondence.

(18) Discharge information.

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

[Statutory Authority: RCW 70.02.290, 70.02.340, 70.96A.040(4), 71.05.-560, 71.24.035 (5)(c), 71.34.380, and 2014 c 225. WSR 16-13-087, § 388-877-0640, filed 6/15/16, effective 7/16/16. Statutory Authority: RCW 43.20A.550, 74.04.050, 74.08.090 and chapters 70.02, 71.24 RCW. WSR 14-18-014, § 388-877-0640, filed 8/22/14, effective 9/22/14. Statutory Authority: Chapters 70.02, 70.96A, 71.05, 71.24, 71.34, 74.50 RCW, RCW 74.08.090, 43.20A.890, and 42 C.F.R. Part 8. WSR 13-12-054, § 388-877-0640, filed 5/31/13, effective 7/1/13.]

(6/15/16)

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

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

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

(i) Any material confidential to another person, agency, or provider; and

(ii) Reports not originated by the agency.

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

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

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

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

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

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

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

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

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

[Statutory Authority: RCW 43.20A.550, 74.04.050, 74.08.090 and chapters 70.02, 71.24 RCW. WSR 14-18-014, § 388-877-0650, filed 8/22/14, effective 9/22/14. Statutory Authority: Chapters 70.02, 70.96A, 71.05, 71.24, 71.34, 74.50 RCW, RCW 74.08.090, 43.20A.890, and 42 C.F.R. Part 8. WSR 13-12-054, § 388-877-0650, filed 5/31/13, effective 7/1/13.]

WAC 388-877-0654 How individuals can express concern about their rights, services, or treatment. (1) An individual applying for, eligible for, or receiving mental health services or substance use disorder services, or both, authorized by a behavioral health organization (BHO), the individual's representative, or the individual's legal guardian, may access the BHO's grievance system to express concern about their rights, services, or treatment. The grievance system includes:

(a) A grievance process;

(b) An appeal process; and

(c) Access to administrative hearings.

(2) Before requesting an administrative hearing, the individual must exhaust:

(a) The grievance process, subject to WAC 388-877-0660; or

(b) The appeal process, subject to WAC 388-877-0670.

(3) Individuals may also use the free and confidential ombuds services through the BHO that contracts with the behavioral health agency in which they receive behavioral health services. Ombuds services are provided independent of BHOs and agency services providers and are offered to individuals at any time to help them with resolving issues or problems at the lowest possible level during the grievance, appeal, or administrative hearing process.

[Ch. 388-877 WAC p. 15]

(4) See WAC 388-865-0262 for more information on ombuds services through the behavioral health ombuds office.

[Statutory Authority: RCW 70.02.290, 70.02.340, 70.96A.040(4), 71.05.-560, 71.24.035 (5)(c), 71.34.380, and 2014 c 225. WSR 16-13-087, § 388-877-0654, filed 6/15/16, effective 7/16/16.]

WAC 388-877-0655 Grievance system—Definitions.

The terms and definitions in this section and WAC 388-877-0200 apply to the grievance system rules.

(1) "Action" means, in the case of a behavioral health organization (BHO):

(a) The denial or limited authorization of a requested service, including the type or level of service;

(b) The reduction, suspension, or termination of a previously authorized service;

(c) The denial in whole or in part, of payment for a service;

(d) The failure to provide services in a timely manner, as defined by the state; or

(e) The failure of a BHO or its contracted behavioral health agency to act within the grievance system timeframes as provided in WAC 388-877-0660 through 388-877-0675.

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

(3) "Appeal" means an oral or written request by an individual, or with the individual's written permission, the individual's representative, for the behavioral health organization (BHO) to review an "action," as defined in this section. See also "expedited appeal."

(4) "Appeal process" is one of the processes included in the grievance system that allows an individual to appeal an action made by the behavioral health organization (BHO) and communicated on a "notice of action."

(5) "Expedited appeal process" allows an individual, in certain circumstances, to file an appeal that will be reviewed by the behavioral health organization (BHO) more quickly than a standard appeal.

(6) "Grievance" means an expression of dissatisfaction about any matter other than an "action."

(7) "Grievance process" is one of the processes included in the grievance system that allows an individual to express concern or dissatisfaction about a behavioral health service.

(8) "Grievance system" means the processes through a behavioral health organization (BHO) in which an individual applying for, eligible for, or receiving behavioral health services may express dissatisfaction about services. The grievance system must be established by the BHO, must meet the requirements of 42 C.F.R. Sec. 438, Subpart F, and include:

(a) A grievance process;

(b) An appeal process; and

(c) Access to the department's administrative hearing process.

(9) "Individual" means a person who applies for, is eligible for, or receives behavioral health organization (BHO)-authorized behavioral health services from an agency licensed by the department as a behavioral health agency. For the purposes of accessing the grievance system, the definition

of individual also includes the following if another person is acting on the individual's behalf:

(a) In the case of a minor, the individual's parent or, if applicable, the individual's custodial parent;

(b) The individual's legal guardian; or

(c) The individual's representative if the individual gives written permission.

(10) "Notice of action" is a written notice a behavioral health organization (BHO) provides to an individual to communicate an "action."

(11) "Regional support network" or "RSN" no longer exists as of March 31, 2016. See WAC 388-865-0238, "Behavioral health organization."

[Statutory Authority: RCW 70.02.290, 70.02.340, 70.96A.040(4), 71.05.-560, 71.24.035 (5)(c), 71.34.380, and 2014 c 225. WSR 16-13-087, § 388-877-0655, filed 6/15/16, effective 7/16/16.]

WAC 388-877-0660 Grievance process. (1) The grievance process is used by an individual or the individual's representative to express dissatisfaction in person, orally, or in writing about any matter other than an "action," as defined in WAC 388-877-0655, to:

(a) The behavioral health agency providing the behavioral health services; or

(b) The behavioral health organization (BHO), if the agency is contracted with the BHO.

(2) If an individual receives behavioral health services through a behavioral health agency that is not contracted with a BHO, the agency, through its internal process, is responsible to handle the individual's grievances or expressions of dissatisfaction.

(3) The ombuds serving the behavioral health agency or BHO may assist the individual in resolving the grievance at the lowest possible level.

(4) Grievances are subject to the rules in this section, WAC 388-877-0650, 388-877-0655, and 388-877-0665 through 388-877-0680. An individual may choose to file a grievance with the behavioral health agency that provides the behavioral health services or with the BHO, subject to the following:

(a) **Filing a grievance with a behavioral health agency.** If the individual first files a grievance with the behavioral health agency and the individual is not satisfied with the agency's written decision on the grievance, or if the individual does not receive a copy of that decision from the agency within the time required under subsection (6) of this section, the individual may then choose to file the grievance with the BHO. If the individual is not satisfied with the BHO's written decision on the grievance, or if the individual does not receive a copy of the decision from the BHO within the time required under subsection (6) of this section, the individual can request an administrative hearing to have the grievance reviewed and the BHO's decision or failure to make a timely decision about it.

(b) **Filing a grievance with a BHO.** If the individual first files a grievance with the BHO (and not the agency), and the individual either is not satisfied with the BHO's written decision on the grievance, or does not receive a copy of the decision within the time required under subsection (6) of this section, the individual can request an administrative hearing to have the grievance reviewed and the BHO's decision or

failure to make a timely decision about it. Once an individual gets a decision on a grievance from a BHO, the individual cannot file the same grievance with the behavioral health agency, even if that agency or its staff member(s) is the subject of the grievance.

(5) An individual may also request an administrative hearing if a written notice regarding the grievance was not received within the timeframes established in subsection (6) of this section.

(6) When an individual files a grievance, the behavioral health agency or BHO receiving the grievance must:

(a) Acknowledge the receipt of the grievance in writing within five business days;

(b) Investigate the grievance;

(c) Apply the rules in subsection (7) of this section; and

(d) Send the individual who filed the grievance a written notice describing the decision within ninety calendar days from the date the grievance was filed.

(7) The behavioral health agency or BHO receiving the grievance must ensure all of the following:

(a) Other people, if the individual chooses, are allowed to participate in the grievance process.

(b) The individual's right to have currently authorized behavioral health services continued pending resolution of the grievance and, if applicable, through subsequent steps of the grievance system.

(c) That a grievance is resolved even if the individual is no longer receiving behavioral health services.

(d) That the persons who make decisions on a grievance:

(i) Were not involved in any previous level of review or decision making; and

(ii) Are mental health or chemical dependency professionals who have appropriate clinical expertise if the grievance involves clinical issues.

(e) That the individual and, if applicable, the individual's representative, receive a written notice containing the decision within ninety days from the date a grievance is received by the agency or BHO. This timeframe can be extended up to an additional fourteen days:

(i) If requested by the individual or the individual's representative; or

(ii) By the agency or BHO when additional information is needed and the BHO can demonstrate that it needs additional information and that the added time is in the individual's interest.

(f) That the written notice includes:

(i) The decision on the grievance;

(ii) The reason for the decision; and

(iii) The right to request an administrative hearing and the required timeframe to request the hearing.

(g) That full records of all grievances and materials received or compiled in the course of processing and attempting to resolve the grievance are maintained and:

(i) Kept for six years after the completion of the grievance process;

(ii) Made available to the department upon request as part of the state quality strategy;

(iii) Kept in confidential files separate from the individual's clinical record; and

(iv) Not disclosed without the individual's written permission, except to the department or as necessary to resolve the grievance.

[Statutory Authority: RCW 70.02.290, 70.02.340, 70.96A.040(4), 71.05.-560, 71.24.035 (5)(c), 71.34.380, and 2014 c 225. WSR 16-13-087, § 388-877-0660, filed 6/15/16, effective 7/16/16.]

WAC 388-877-0665 Notice of action. (1) The behavioral health organization's (BHO's) notice of action provided to an individual must be in writing, be in the individual's primary language, be easily understood and, at a minimum, explain:

(a) The action the BHO or its contractor (behavioral health agency) has taken or intends to take;

(b) The reason for the action and a citation of the rule(s) being implemented;

(c) The individual's right to file an appeal with the BHO and the required timeframes if the individual does not agree with the decision or action;

(d) The circumstances under which an expedited resolution is available and how to request it; and

(e) The individual's right to receive behavioral health services while an appeal is pending, how to make the request, and that the individual may be held liable for the cost of services received while the appeal is pending if the appeal decision upholds the decision or action.

(2) When the BHO or its contracted behavioral health agency does not reach service authorization decisions within the required timeframes, or fails to provide services in a timely manner or to act within the grievance system timeframes, as defined in rule, it is considered a denial. In these cases, the BHO sends a formal notice of action, which includes the individual's right to request an administrative hearing.

[Statutory Authority: RCW 70.02.290, 70.02.340, 70.96A.040(4), 71.05.-560, 71.24.035 (5)(c), 71.34.380, and 2014 c 225. WSR 16-13-087, § 388-877-0665, filed 6/15/16, effective 7/16/16.]

WAC 388-877-0670 Appeal process. (1) The appeal process is used by an individual to ask the behavioral health organization (BHO) to review an action that the BHO has communicated on a written notice of action (see WAC 388-877-0665). An individual's representative may appeal an action with the individual's written consent. If a written notice of action was not received, an appeal may still be filed.

(2) The individual requesting review of an action must file an appeal and receive a notice of the resolution from the BHO before requesting an administrative hearing.

(3) The appeal process can be:

(a) Standard as described in subsection (6) of this section; or

(b) Expedited if the criteria in subsection (7) of this section are met.

(4) The appeal process must:

(a) Provide an individual a reasonable opportunity to present evidence and allegations of fact or law in person as well as in writing. The BHO must inform the individual of the limited time available.

(b) Provide the individual opportunity, before and during the appeal process, to examine the individual's clinical

record, including medical records and any other documents and records considered during the appeal process.

(c) Include the following, as applicable, as parties to the appeal:

(i) The individual, the individual's representative, or both; or

(ii) The legal representative of a deceased individual's estate.

(5) The BHO must ensure that the persons who make decisions on an appeal:

(a) Were not involved in any previous level of review or decision making; and

(b) Are mental health or chemical dependency professionals who have appropriate clinical expertise in the type of behavioral health service involved in the appeal.

(6) **Standard appeal process.** The standard appeal process includes the following:

(a) **Standard appeals for actions communicated on a notice of action-continued services not requested.** An individual who disagrees with a decision or action communicated on a notice of action may file an appeal orally or in writing. An oral filing of an appeal must be followed with a written and signed appeal. All of the following apply:

(i) The individual must file the appeal within ninety calendar days from the date on the notice of action.

(ii) The BHO must confirm receipt of the appeal in writing within five business days.

(iii) The BHO must send the individual a written notice of the resolution within forty-five calendar days of receiving the appeal. This timeframe may be extended up to fourteen additional days if the individual requests an extension or the BHO can demonstrate that it needs additional information and that the added time is in the individual's interest. The written notice of the resolution must include:

(A) The BHO's decision;

(B) The reason for the decision; and

(C) The right to request an administrative hearing if the individual disagrees with the decision. The hearing must be requested within ninety calendar days from the date on the notice of the resolution.

(b) **Standard appeals for termination, suspension, or reduction of previously authorized services—continued services requested.** An individual receiving a notice of action from the BHO that terminates, suspends, or reduces previously authorized services may file an appeal orally or in writing and request continuation of those services pending the BHO's decision on the appeal. An oral filing of an appeal and request for continuation of services must be followed with a written and signed appeal and include a written request for continuation of services pending the BHO's decision on the appeal. All of the following apply:

(i) The individual must:

(A) File the appeal with the BHO on or before the later of the following:

(I) Within ten calendar days of the date on the notice of action; or

(II) The intended effective date of the BHO's proposed action.

(B) Request continuation of services.

(ii) The BHO must:

(A) Confirm receipt of the appeal and the request for continued services with the individual orally or in writing within five business days;

(B) Send a notice in writing that follows up on any oral confirmation made; and

(C) Include in the notice that if the appeal decision is not in favor of the individual, the BHO may recover the cost of the behavioral health services provided pending the BHO decision.

(iii) The BHO's written notice of the resolution must contain:

(A) The BHO's decision on the appeal;

(B) The reason for the decision; and

(C) The right to request an administrative hearing if the individual disagrees with the decision and include the following timeframes:

(I) Within ten calendar days from the date on the notice of the resolution if the individual is asking that services be continued pending the outcome of the hearing.

(II) Within ninety calendar days from the date on the notice of the resolution if the individual is not asking for continued services.

(7) **Expedited appeal process.** If an individual or the individual's behavioral health provider feels that the time taken for a standard resolution of an appeal could seriously jeopardize the individual's life or health and ability to attain, maintain, or regain maximum function, an expedited appeal and resolution of the appeal can be requested. If the BHO denies the request for the expedited appeal and resolution of an appeal, it must transfer the appeal to the timeframe for standard resolutions under subsection (6) of this section, and make reasonable efforts to give the individual prompt oral notice of the denial and follow up within two calendar days with a written notice.

(a) Both of the following apply to expedited appeal requests:

(i) The action taken on the notice of action is for denial of a requested service, termination, suspension, or reduction of previously authorized behavioral health services; and

(ii) The appeal must be filed with the BHO, either orally or in writing, within:

(A) Ten calendar days of the BHO's mailing the written notice of action that communicated the action, or the intended effective date of the BHO's proposed action, if the individual is requesting continued benefits; or

(B) Twenty calendar days from the date on the BHO's written notice of action that communicated the action if the individual is not requesting continued benefits.

(b) The BHO must:

(i) Confirm receipt of the request for an expedited appeal in person or by telephone.

(ii) Send the individual a written notice of the resolution within three business days of receiving the request for an expedited appeal.

(c) The BHO may extend the timeframes up to fourteen additional days if the individual requests an extension or the BHO can demonstrate it needs additional information and that the added time is in the individual's interest.

(8) **Duration of continued services during the appeal process.** When an individual has requested continued behavioral health services pending the outcome of the appeal pro-

cess and the criteria in this section have been met, the BHO ensures the services are continued until one of the following occurs:

(a) The individual withdraws the appeal.

(b) The BHO provides a written notice of the resolution that contains a decision that is not in favor of the individual and the individual does not request an administrative hearing within ten days from the date the BHO mails the notice. (See WAC 388-877-0675, Administrative Hearings, for rules on duration of continued services during the administrative hearing process.)

(c) The time period of a previously authorized service has expired.

(d) A behavioral health treatment service limit of a previously authorized service has been fulfilled.

(9) **Recovery of the cost of behavioral health services in adverse decisions of appeals.** If the final written notice of the resolution of the appeal is not in favor of the individual, the BHO may recover the cost of the behavioral health services furnished to the individual while the appeal was pending to the extent that they were provided solely because of the requirements of this section.

(10) The BHO must maintain full records of all appeals and ensure an individual's records are:

(a) Kept for six years after the completion of the appeal process;

(b) Made available to the department upon request as part of the state quality strategy;

(c) Kept in confidential files separate from the individual's clinical record; and

(d) Not disclosed without the individual's written permission, except to the department or as necessary to resolve the appeal.

[Statutory Authority: RCW 70.02.290, 70.02.340, 70.96A.040(4), 71.05.-560, 71.24.035 (5)(c), 71.34.380, and 2014 c 225. WSR 16-13-087, § 388-877-0670, filed 6/15/16, effective 7/16/16.]

WAC 388-877-0675 Administrative hearings. (1) An administrative hearing (also known as "fair hearing") is a proceeding before an administrative law judge (ALJ) that gives an individual, as defined in WAC 388-877-0200, an opportunity to be heard in disputes about a behavioral health program or service.

(2) An individual must first exhaust the grievance process described in WAC 388-877-0660, or the appeal process described in WAC 388-877-0670 before requesting an administrative hearing.

(3) An individual requesting an administrative hearing must do so within one of the following timeframes:

(a) If continued services are not requested, a hearing must be requested within ninety calendar days from:

(i) The date on the written notice from the agency or behavioral health organization (BHO) at the end of the grievance process; or

(ii) The date on the written notice of the resolution received from the BHO at the end of the appeal process.

(b) If continued services are requested pending the outcome of the administrative hearing, all of the following apply:

(6/15/16)

(i) The decision on a notice of action must be for termination, suspension, or reduction of the individual's behavioral health services and the individual appealed this decision;

(ii) The individual received a written notification of the resolution of the appeal from the BHO that upholds the decision on the notice of action; and

(iii) The individual requests an administrative hearing and continued behavioral health services within ten calendar days of the date on the written notification of the resolution.

(4) If an individual requests an expedited administrative hearing, the expedited hearing must be requested within ten calendar days from the date on the notice of the resolution. Subsection (3)(b) of this section applies if continued behavioral health services are requested.

(5) If a written notice was not received under subsection (3) or (4) of this section, the individual may still request an administrative hearing.

(6) When the criteria in this section are met for continued services, the BHO continues the individual's behavioral health treatment services during the administrative hearing process until one of the following occurs:

(a) The individual withdraws the hearing request.

(b) The administrative law judge issues a hearing decision adverse to the individual.

(c) The period covered by the original authorization of mental health services has expired.

(7) If the administrative hearing decision is not in favor of the individual, the BHO may recover the cost of the behavioral health services furnished to the individual while the hearing was pending to the extent that they were provided solely because of the requirements of this section.

(8) For purposes of this chapter, hearings include administrative hearings, adjudicative proceedings, and any other similar term referenced under chapter 34.05 RCW, the Administrative Procedure Act, Title 388 WAC, chapter 10-08 WAC, or other law. Chapter 34.05 RCW and chapter 388-02 WAC govern cases where an individual has an issue involving a service that is not funded by medicaid. Chapter 34.05 RCW and chapter 182-526 WAC govern cases where an individual has an issue involving a service that is funded by medicaid.

[Statutory Authority: RCW 70.02.290, 70.02.340, 70.96A.040(4), 71.05.-560, 71.24.035 (5)(c), 71.34.380, and 2014 c 225. WSR 16-13-087, § 388-877-0675, filed 6/15/16, effective 7/16/16.]

WAC 388-877-0680 Individual rights specific to medicaid recipients. (1) Medicaid recipients have general individual rights and medicaid-specific rights when applying for, eligible for, or receiving behavioral health services authorized by a behavioral health organization (BHO).

(a) General rights that apply to all individuals, regardless of whether an individual is or is not a medicaid recipient, include:

(i) All applicable statutory and constitutional rights;

(ii) The participant rights provided under WAC 388-877-0600; and

(iii) Applicable necessary supplemental accommodation services in chapter 388-472 WAC.

(b) Medicaid-specific rights that apply specifically to medicaid recipients include the following. You have the right to:

(i) Receive medically necessary behavioral health services, consistent with access to care standards adopted by the department in its managed care waiver with the federal government. Access to care standards provide minimum standards and eligibility criteria for behavioral health services and are available on the behavioral health administration's (BHA) division of behavioral health and recovery (DBHR) website.

(ii) Receive the name, address, telephone number, and any languages offered other than English, of behavioral health providers in your BHO.

(iii) Receive information about the structure and operation of the BHO.

(iv) Receive emergency or urgent care or crisis services.

(v) Receive post-stabilization services after you receive emergency or urgent care or crisis services that result in admission to a hospital.

(vi) Receive age and culturally appropriate services.

(vii) Be provided a certified interpreter and translated material at no cost to you.

(viii) Receive information you request and help in the language or format of your choice.

(ix) Have available treatment options and alternatives explained to you.

(x) Refuse any proposed treatment.

(xi) Receive care that does not discriminate against you.

(xii) Be free of any sexual exploitation or harassment.

(xiii) Receive an explanation of all medications prescribed and possible side effects.

(xiv) Make a mental health advance directive that states your choices and preferences for mental health care.

(xv) Receive information about medical advance directives.

(xvi) Choose a behavioral health care provider for yourself and your child, if your child is under thirteen years of age.

(xvii) Change behavioral health care providers at any time for any reason.

(xviii) Request and receive a copy of your medical or behavioral health services records, and be told the cost for copying.

(xix) Be free from retaliation.

(xx) Request and receive policies and procedures of the BHO and behavioral health agency as they relate to your rights.

(xxi) Receive the amount and duration of services you need.

(xxii) Receive services in a barrier-free (accessible) location.

(xxiii) Medically necessary services in accordance with the early periodic screen, diagnosis and treatment (EPSDT) under WAC 182-534-0100, if you are twenty years of age or younger.

(xxiv) Receive enrollment notices, informational materials, materials related to grievances, appeals, and administrative hearings, and instructional materials relating to services provided by the BHO, in an easily understood format and non-English language that you prefer.

(xxv) Be treated with dignity, privacy and respect, and to receive treatment options and alternatives in a manner that is appropriate to your condition.

(xxvi) Participate in treatment decisions, including the right to refuse treatment.

(xxvii) Be free from seclusion or restraint used as a means of coercion, discipline, convenience or retaliation.

(xxviii) A second opinion from a qualified professional within your BHO area at no cost, or to have one arranged outside the network at no cost to you, as provided in 42 C.F.R. § 438.206(3).

(xxix) Receive medically necessary behavioral health services outside of the BHO if those services cannot be provided adequately and timely within the BHO.

(xxx) File a grievance with the BHO if you are not satisfied with a service.

(xxxi) Receive a notice of action so that you may appeal any decision by the BHO that denies or limits authorization of a requested service, that reduces, suspends, or terminates a previously authorized service, or that denies payment for a service, in whole or in part.

(xxxii) File an appeal if the BHO fails to provide services in a timely manner as defined by the state, or act within the timeframes provided in 42 CFR § 438.408(b).

(xxxiii) Request an administrative (fair) hearing if your grievance or appeal is not resolved in your favor.

(xxxiv) Services by the behavioral health ombuds office to help you in filing a grievance or appeal, or to request an administrative hearing.

(2) A behavioral health agency licensed by the division of behavioral health and recovery (DBHR) and certified by DBHR to provide mental health and/or substance use disorder services must ensure the medicaid rights described in subsection (1)(b) of this section are:

(a) Provided in writing to each medicaid recipient, and if appropriate, the recipient's legal representative, on or before admission;

(b) Upon request, given to the medicaid recipient in an alternative format or language appropriate to the recipient and, if appropriate, the recipient's legal representative;

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

(d) Posted in public areas.

[Statutory Authority: RCW 70.02.290, 70.02.340, 70.96A.040(4), 71.05.-560, 71.24.035 (5)(c), 71.34.380, and 2014 c 225. WSR 16-13-087, § 388-877-0680, filed 6/15/16, effective 7/16/16.]