

WSR 13-12-053
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Behavioral Health and Service Integration Administration)

[Filed May 31, 2013, 3:28 p.m., effective July 1, 2013]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The new rules in chapters 388-877A, 388-877B, and 388-877C WAC establish program-specific rules for mental health, chemical dependency, and problem and pathological gambling services and replace the current rules in chapters 388-865, 388-816, and 388-805 WAC. The new rules support the department's chapter 388-877 WAC, which establish general administrative standards for agencies that provide behavioral health services. The department requires all agencies and providers affected by this rule to fully comply with the applicable requirements in chapters 388-877, 388-877A, 388-877B, and 388-877C WAC no later than September 1, 2013.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 388-805-001 What is the purpose of this chapter?, 388-805-005 What definitions are important throughout this chapter?, 388-805-010 What chemical dependency services are certified by the department?, 388-805-015 How do I apply for certification as a chemical dependency service provider?, 388-805-020 How do I apply for certification of a branch agency or added service?, 388-805-030 What are the requirements for opiate substitution treatment program certification?, 388-805-035 What are the responsibilities for the department when an applicant applies for approval of an opiate substitution treatment program?, 388-805-040 How does the department determine there is a need in the community for opiate substitution treatment?, 388-805-060 How does the department conduct an examination of nonresidential facilities?, 388-805-065 How does the department determine disqualification or denial of an application?, 388-805-070 What happens after I make application for certification?, 388-805-075 How do I apply for an exemption?, 388-805-085 What are the fee requirements for chemical dependency treatment programs?, 388-805-095 How long are certificates effective?, 388-805-100 What do I need to do to maintain agency certification?, 388-805-105 What do I need to do for a change in ownership?, 388-805-110 What do I do to relocate or remodel a facility?, 388-805-115 How does the department deem national accreditation?, 388-805-120 How does the department assess penalties?, 388-805-125 How does the department cancel certification?, 388-805-130 How does the department suspend or revoke certification?, 388-805-135 What is the prehearing, hearing and appeals process?, 388-805-140 What are the requirements for a provider's governing body?, 388-805-145 What are the key responsibilities required of an agency administrator?, 388-805-150 What must be included in an agency administrative manual?, 388-805-155 What are the requirements for provider facilities?, 388-805-200 What must be included in an agency personnel manual?, 388-805-205 What are agency personnel file requirements?, 388-805-210 What are the requirements for approved supervisors of persons who are in training to become a chemical dependency professional?, 388-805-220 What are the requirements to be a probation

assessment officer?, 388-805-225 What are the requirements to be a probation assessment officer trainee?, 388-805-230 What are the requirements for supervising probation assessment officer trainees?, 388-805-240 What are the requirements for student practice in treatment agencies?, 388-805-250 What are the requirements to be an information school instructor?, 388-805-260 What are the requirements for using volunteers in a treatment agency?, 388-805-300 What must be included in the agency clinical manual?, 388-805-305 What are patients' rights requirements in certified agencies?, 388-805-310 What are the requirements for chemical dependency assessments?, 388-805-315 What are the requirements for treatment, continuing care, transfer, and discharge plans?, 388-805-320 What are the requirements for a patient record system?, 388-805-325 What are the requirements for patient record content?, 388-805-330 What are the requirements for reporting patient noncompliance?, 388-805-350 What are the requirements for outcomes evaluation?, 388-805-400 What are the requirements for detoxification providers?, 388-805-410 What are the requirements for detox staffing and services?, 388-805-500 What are the requirements for residential providers?, 388-805-510 What are the requirements for residential providers admitting youth?, 388-805-520 What are the requirements for youth behavior management?, 388-805-530 What are the requirements for intensive inpatient services?, 388-805-540 What are the requirements for recovery house services?, 388-805-550 What are the requirements for long-term treatment services?, 388-805-600 What are the requirements for outpatient providers?, 388-805-610 What are the requirements for intensive outpatient treatment services?, 388-805-620 What are the requirements for outpatient services?, 388-805-625 What are the requirements for outpatient services for persons subject to RCW46.61.5056?, 388-805-630 What are the requirements for outpatient services in a school setting?, 388-805-640 What are the requirements for providing offsite chemical dependency treatment services?, 388-805-700 What are the requirements for opiate substitution treatment program providers?, 388-805-710 What are the requirements for opiate substitution medical management?, 388-805-715 What are the requirements for opiate substitution medication management?, 388-805-720 What are the requirements for drug testing in opiate substitution treatment?, 388-805-730 What are the requirements for opiate substitution treatment dispensaries?, 388-805-740 What are the requirements for opiate substitution treatment counseling?, 388-805-750 What are the requirements for opiate substitution treatment take-home medications?, 388-805-800 What are the requirements for ADATSA assessment services?, 388-805-810 What are the requirements for DUI assessment providers?, 388-805-820 What are the requirements for alcohol and other drug information school?, 388-805-830 What are the requirements for information and crisis services?, 388-805-840 What are the requirements for emergency service patrol?, 388-805-855 What are the requirements for screening and brief intervention services?, 388-816-0001 What is the purpose of this chapter?, 388-816-0005 What definitions are important throughout this chapter?, 388-816-0010 What problem and pathological gambling treatment programs are certified by the department?, 388-816-0015 How do I apply for certification as a new problem and

pathological gambling treatment program?, 388-816-0020 How do currently certified or licensed agencies apply for added service?, 388-816-0025 What are the requirements for treatment program facilities?, 388-816-0030 How does the department conduct an examination of facilities?, 388-816-0035 How does the department determine disqualification or denial of an application?, 388-816-0040 What happens after I make application for certification?, 388-816-0045 How do I apply for an exemption?, 388-816-0070 What do I need to do to maintain program certification?, 388-816-0075 What do I need to do for a change in ownership?, 388-816-0080 What do I do to relocate or remodel a facility?, 388-816-0085 How does the department assess penalties?, 388-816-0090 How does the department cancel certification?, 388-816-0095 How does the department suspend or revoke certification?, 388-816-0100 What is the prehearing, hearing and appeal process?, 388-816-0105 What are the requirements for the governing body of the program?, 388-816-0110 What are the key responsibilities required of a program administrator?, 388-816-0115 What must be included in a program administrative manual?, 388-816-0120 What must be included in a treatment program personnel manual?, 388-816-0125 What are treatment program personnel file requirements?, 388-816-0130 What are the minimum qualifications for clinical staff members providing problem and pathological gambling treatment?, 388-816-0135 What must be included in the treatment program clinical manual?, 388-816-0140 What are clients' rights requirements in certified treatment programs?, 388-816-0145 What are the requirements for problem and pathological gambling assessments?, 388-816-0150 What are the requirements for treatment, continuing care, transfer, and discharge plans?, 388-816-0155 What are the requirements for a client record system?, 388-816-0160 What are the requirements for client record content?, 388-816-0165 What are the requirements for reporting client noncompliance?, 388-816-0170 What are the requirements for outcomes evaluation?, 388-816-0175 What are the requirements for outpatient services?, 388-816-0180 What are the requirements for providing off-site problem and pathological gambling treatment services?, 388-865-0103 Fee requirements for mental health treatment programs, 388-865-0410 Consumer rights, 388-865-0415 Access to services, 388-865-0430 Clinical record, 388-865-0435 Consumer access to their clinical record, 388-865-0436 Clinical record access procedures, 388-865-0440 Availability of consumer information, 388-865-0445 Establishment of procedures to bill for services, 388-865-0450 Quality management process, 388-865-0452 Emergency crisis intervention services—Additional standards, 388-865-0453 Peer support services, 388-865-0454 Provider of crisis telephone services only, 388-865-0456 Case management services—Additional standards, 388-865-0458 Psychiatric treatment, including medication supervision—Additional standards, 388-865-0462 Day treatment services—Additional standards, 388-865-0464 Consumer employment services—Additional standards, 388-865-0465 Adult residential treatment facility certification—Additional standards, 388-865-0466 Community support outpatient certification—Additional standards, 388-865-0468 Emergency crisis intervention services certification—Additional standards, 388-865-0470 The process for initial licensing of ser-

vice providers, 388-865-0472 Licensing categories, 388-865-0476 Licensure based on deemed status, 388-865-0478 Renewal of a community support service provider license, 388-865-0480 Procedures to suspend, or revoke a license, 388-865-0482 Procedures to contest a licensing decision, and 388-865-0484 Process to certify providers of involuntary services.

Statutory Authority for Adoption: Chapters 70.02, 70.96A, 71.05, 71.24, 71.34, 74.50 RCW; RCW 74.08.090, 43.20A.890.

Other Authority: 42 C.F.R. Part 8.

Adopted under notice filed as WSR 13-02-028 on December 20, 2012.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-877A-0100 The rules in ~~WAC 388-877A-0100 through 388-877A-0197~~ this section apply to ... 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. (2)(c) Family therapy ...; ~~and ...~~ (2)(d) Case management ...; (2)(e) ~~The optional mental health services described in (3) of this subsection; and (f) The recovery support services described in (4) of this subsection.~~

(3) ~~The following are optional services which a~~ A behavioral health agency certified for outpatient mental health services may choose to provide optional outpatient mental health services. Optional outpatient mental health services require additional program-specific certification by the department's division of behavioral health and recovery (DBHR) and include the following: (a) ~~Peer support services (see WAC 388-877A-0175);~~ (b) Psychiatric medication services (see WAC 388-877A-0180); (b) Day support services (see WAC 388-877A-0190); (c) ~~Medication support services (see WAC 388-877A-0185)~~ Less restrictive alternative (LRA) support services (see WAC 388-877A-0195); and (d) Day support services (see WAC 388-877A-0190) Services provided in a residential treatment facility (see WAC 388-877A-0197); (e) ~~Less restrictive alternative (LRA) support services (see WAC 388-877A-0195); and (f) Residential treatment facility (see WAC 388-877A-0197).~~ (4) A behavioral health agency certified for outpatient mental health services may also provide recovery support services. Recovery support services require program-specific certification and include the following: (a) Employment services (see WAC 388-877A-0330); and (b) Peer support services (see WAC 388-877A-0340); (c) Wraparound facilitation services (see WAC 388-877A-0350); and (d) Medication support services (see WAC 388-877A-0360). (4) (5) An agency ... (c)(i) General requirements ...; and (c)(ii) Applicable Pprogram-specific requirements in ~~WAC 388-877A-0140 through 388-877A-0197~~ for each outpatient mental health service provided, and each optional and recovery support service requiring program-specific certification that the agency elects to provide; and- (iii) Department of Corrections Access to Confidential Mental Health Information requirements in WAC 388-865-600 [388-865-0600] through 388-865-0640. (5) (6) At the verbal or written request ... the agency must, if applicable: (6) (7) (7) (8) (8) (9) (9) (10)(b) Securely Ttransport confidential ...

WAC 388-877A-0110 (2)(a) Clinical supervision from ... who ~~is licensed~~ has received fifteen hours of training in clinical supervision approved by department of health as an ~~independent practitioner under chapter 18.19 RCW;~~ and

WAC 388-877A-0120(5) Progress notes ... session or group type, or documentation as to why this did not occur. (10) That staff members met with ~~each~~ the individual ... (10)(c) Provide and document the individual as was provided ... (11) That a discharge summary ... date of discharge, continuing care plan goals,

WAC 388-877A-0130 Outpatient mental health services—~~Additional~~ Assessment standards.

WAC 388-877A-0135(5) Document coordination with ... the individual ~~identities~~ identifies as being ... (6) Identify services ~~modalities,~~ mutually agreed upon by the individual and provider, for this treatment episode.

WAC 388-877A-0150(4) Ensure ~~all~~ any nonmental health professionals facilitating a group receives supervision by a mental health professional. ~~The mental health professional must document the supervision.~~ (5) ~~Ensure~~ Any group containing more than twelve individual ~~must have~~ has at least ... (5) (6) Ensure ... Group notes must include: (a) ~~€~~ The attendance of the individual; (b) ~~€~~ The participation of the individual; (c) ~~€~~ Progress towards ... service plan; and; (d) ~~€~~ Any significant events ... by the individual; and (e) If the group was facilitated by a nonmental health professional as described in (4) of this section, documentation the non-mental health professional was supervised by a mental health professional.

WAC 388-877A-0155 (1)(a) A mental health professional who has documented coursework, continuing education and/or training in family therapy; or that specifically address family systems theories and techniques in family therapy; or (2) With the individual's ... family members ~~of~~ or other ...

WAC 388-877A-0170(1) An agency must provide ~~€~~ case management services that: (a) ~~€~~ Assist an individual to achieve the goals stated in the plan; ~~These services~~ (b) ~~€~~ Support consumer employment ... gender and culture; and (c) ~~Case management services~~ Assist an ... (2) Rehabilitative case management ... provided to: (a) ~~€~~ Assist in an individual's ... inpatient facility; and (b) ~~€~~ Minimize the risk ...

WAC 388-877A-0175 Struck entire section.

WAC 388-877A-0180 Optional ~~€~~ Outpatient mental health services requiring program-specific certification—Psychiatric medication services—Optional. Psychiatric medication ... as needed. Psychiatric ~~M~~ medication services are optional outpatient mental health services ~~but~~ that require program-specific certification by the department's division of behavioral health and recovery. These services ~~must~~ may only be provided ... (3) Must ensure that all medications administered by staff ~~are administered by staff practicing ...~~ (7)(a) Medications are kept in ... within a well-illuminated well-lit, locked ... ;

WAC 388-877A-0185 Struck entire section.

WAC 388-877A-0190 Optional ~~€~~ Outpatient mental health services requiring program-specific certification—Day support services—Optional. Day support services are optional outpatient mental health services that require program-specific certification. These services ~~are provided in~~

~~an intensive rehabilitative program that~~ provide a range ... (1) All day support services are provided by, or under the supervision of, a mental health professional. (2) There is ... (2) (3) Staff is ... (3) (4) The services occur ...

WAC 388-877A-0195 Optional ~~€~~ Outpatient mental health services requiring program-specific certification—Less restrictive alternative (LRA) support services—Optional. Less restrictive alternative (LRA) support services are optional outpatient mental health services that require program-specific certification by the department's division of behavioral health and recovery. These services are provided ... ~~The court system assigns an individual to an agency and the~~ An agency ... support. An agency providing court-ordered LRA support services ... (1)(b) Provides ... on appropriate interventions. (4) Ensure a ~~detained and~~ committed ... (7)(a) At least one time every seven days for ~~an individual~~ the initial on a fourteen-day days following release from inpatient treatment or an individual on a ninety-day or one hundred eighty-day less restrictive ... (8) Keep a record ... evaluation by a mental health professional of each ... Evaluations must occur ... and include documentation of assessment and rationale: (a) For requesting a petition for an additional period of less restrictive treatment under an involuntary treatment order; or (b) Allowing the less restrictive court order expire without an extension request.

WAC 388-877A-0197 Outpatient mental health services—Residential treatment facility (RTF)—Optional. A residential treatment facility (RTF) may provides outpatient mental health ... An agency that operates an mental health RTF that provides mental health treatment services must: (1) ~~Be a~~ Ensure that the facility is licensed ... (2) Be certified ... the following outpatient services: (a) ... (b) Optional outpatient mental health ~~Less restrictive ...;~~ and (c) Optional outpatient mental health ~~M~~ medication support services (see WAC 388-877A-01850360).

Section Two—Crisis Mental Health Services

WAC 388-877A-0200 The definitions ... mental health services. 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.

WAC 388-877A-0210(3) ~~With the exception to providing crisis telephone services,~~ Staff access ... (4) Subsection (3) of this section does not apply to agencies that only provide crisis telephone services.

WAC 388-877A-0220(1) A brief summary of ~~Each~~ crisis service ... (2) The names ...; and (3) A brief summary of the service encounter; and (4) A follow-up plan ...

WAC 388-877A-0230 (1)(b) Have a written ... to a voluntary or ... (2)(d)(i) Any ~~F~~ follow up contacts made; (ii) Any ~~R~~ referrals made ...

WAC 388-877A-0240(3) Ensure face-to-face ... mental health professional, or a staff member under the supervision of a mental health professional with documented training in crisis response. (10) Ensure that any ~~mental health professional~~ staff member who engages ... (11) Provide staff members ... sent record(s). ~~The~~ This information ...

WAC 388-877A-0260(3) Have a written ... for staff members who respond to a crisis are providing stabilization services in an ... (4) Have a protocol ... crisis plan twenty-four hours a day, seven days a week. (6) Ensure that any mental health professional staff member who engages ... (7) Have a written ... treatment facility twenty-four hours a day, seven days a week.

WAC 388-877A-0270 Crisis peer support services provide a wide range of activities to assist an individual ... and recovery process. Through (1) Peer support services: (a) Include: (i) Developing self advocacy and natural supports; (ii) Maintenance of community living skills; (iii) Promoting socialization skills; (iv) The practice ... (b) (1) Peer support services Are intended ... (d) Ensure that any staff member ... of emergency communication as described in RCW 71.05.710.

WAC 388-877A-0280(6) Ensure that a ... individual when responding to a crisis in a private home or a nonpublic setting. (7) Ensure that a DMHP who engages in home visits a home visit to a private home or a nonpublic setting is provided ... (12)(a) That the evaluation was conducted in accordance with timelines required by RCW 71.05.050, 71.05.153 and 71.34.710. (b) That the individual ... (b) That if the evaluation was conducted in a hospital emergency department or inpatient unit, it occurred in accordance with the timelines required by RCW 71.05.050, 71.05.153, and 71.34.710. (c) If the individual was not detained; (i) a description ... follow-plan; and (d) If the individual is a minor thirteen years of age or older and not detained, d) Documentation that ... under RCW 71.34.710, if the individual is a minor thirteen years of age or older. (e) (d) If the ... (d)(v) Consideration of an offender's the individual's ... history ... (e) Documentation that the individual, or the individual's guardian or conservator, received a copy of the following: (i) Return of service order Notice of detention; (ii) Notice of rights; and (iii) Initial petition provided to the individual, or the individual's guardian or conservator.

Section Three—Mental Health—Limited Scope Recovery Support Services Requiring Program-Specific Certification

WAC 388-877A-0300 Limited scope Recovery support services requiring program-specific certification—General. The rules in WAC 388-877A-0300 through 388-877A-0360 this section apply to behavioral health agencies that provide limited scope one or more recovery support service that require program-specific certification by the department's division of behavioral health and recovery services. The definitions in ... also apply to limited scope these services. 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. (1) Limited scope Recovery support services ... (2) Limited scope Recovery support services requiring program-specific certification include: (3) An agency providing any limited scope recovery support service requiring program-specific certification must: (3)(c)(ii) Applicable Program-specific requirements in WAC 388-877A-0330 through 388-877A-0360. (4) An agency that provides any

recovery support service requiring program-specific certification may operate through ... certified for an outpatient mental health services listed in WAC 388-877A-0100(2). (5) For all limited scope When providing any recovery support service requiring program-specific certification, an agency must:

WAC 388-877A-0310 Limited scope Recovery support services requiring program-specific certification—Agency staff requirements. In addition to ... an agency providing any limited scope recovery support service that requires program-specific certification service must ensure: (1) Each staff member ... receiving any limited scope recovery support service in ...

WAC 388-877A-0320 Limited scope Recovery support services requiring program-specific certification—Clinical record content and documentation. In addition to ... agency providing any limited scope recovery support service that requires program-specific certification in WAC 388-877A-0330 through 388-877A-0360 must maintain ...: (1)(b) Each A brief summary of each service encounter ...; and (c) Names of participant(s) ... the service; and (d) A brief summary of the service encounter.

WAC 388-877A-0330 Limited scope Recovery support services requiring program-specific certification—Employment services. Employment services are limited scope a recovery support services that requires program-specific certification by the department's division of behavioral health and recovery. These services assist in ...

WAC 388-877A-0340 Limited scope Recovery support services requiring program-specific certification—Peer support services. Peer support services are limited scope a recovery support services that requires program-specific certification by the department's division of behavioral health and recovery. (1) Peer support services that provide a wide ... and recovery process: through (1) Peer support services include: (a) ... (d) The practice of peer counselors who share sharing their ... (2)(a) Are credentialed under Meet the requirements of WAC 388-865-0107. (2)(b)(ii) Within the scope of their the peer counselor's training and department of health credential. (e) (3) An agency providing peer support services must Document the following in a timely manner in an individual service plan: (i) The frequency, duration, and expected outcome of all peer support services provided to the individual; and (ii) For each service encounter, objective progress toward the goals established in the individual service plan.

WAC 388-877A-0350 Limited scope Recovery support services requiring program-specific certification—Wrap-around facilitation services. Wraparound facilitation services are a recovery support services that requires program-specific certification by the department's division of behavioral health and recovery. These services address the ... of an identified child individual twenty years of age ... and the child's individual's family. (1)(a) Provided to a child an individual who requires the services of a mental health provider and two one or more child serving systems; (c) Provided in partnership with the child and the child's individual, the individual's family, and the individual's mental health provider. (2) An agency providing ... must have at least one of each of the following staff members employ or contract with: (a) A mental health professional ... oversight of the facilitation of a child

and family team (CFT) wraparound facilitation services. (2)(c) A staff member certified to provide a child and adolescent needs and strengths (CANS) assessment. (3) In addition to the staff requirements in (2) of this subsection, an agency must ensure the following individuals are available to assist in the planning and provision of wraparound facilitation services, as needed: (a) An employee ... ~~(d)~~ (b) An employee ... (c) A staff member certified to provide a child and adolescent needs and strengths (CANS) assessment. (3) An agency providing wraparound facilitation services must ensure each individual has completed a CANS assessment that supports the need for wraparound facilitation services, before the services are received. (4) An agency must coordinate and maintain a CFT that meets the identified needs of the child and the child's family. (5) (4) All team meetings wraparound facilitation services: (a) Must include the identified child and the child's individual, the individual's family, and the individual's mental health provider; and (b)(i) Natural supports. Natural supports include ... identified by the child individual and/or the child's individual's family to be active participants in the individual's support network of the identified child. (ii) System supports. System supports ... to the identified child individual or that ... to the child's individual's adult care giver ... affects the child individual. ~~(6)~~ (5) An agency ... (a)(i)(C) The schedule of team child and family team (CFT) meetings. (ii) Describes the child's individual's and the child's individual's family's vision ... (iv) Is integrated with the person's individual service plan (see WAC 388-877-0620 and 388-877A-0135). (v) Identifies the ... of the child individual and child's individual's family ... ~~(vi)~~ (vi) (vii) (viii) (viii) Assists the child individual and the child's individual's family ... (ix) (ix) Is signed by all team CFT members, including the child individual and the child's individual's parent or if applicable ... (d) The review of ... during each team CFT meeting ... of the identified child individual and the child's individual's family.

WAC 388-877A-0360 ~~Limited scope~~ Recovery support services requiring program-specific certification—Medication support services. Medication support services are limited scope recovery support services that require program-specific certification. These services are performed ... (1) Medication support services: are certified by the department's division of behavioral health and recovery ~~(DBHR)~~ only when the agency: (a) Is also certified to provide program-specific psychiatric medication services (see WAC 388-877A-0180); or (b) Has an agreement with another behavioral health agency certified to provide psychiatric medication services. The agreement must specify the responsibility for medication support services, and the documentation of the requirements. (2) Medication support services ~~(a)~~ Occur face-to-face and: (a) Include one-on-one ... (b) Include reporting any pertinent information related to the individual's adherence to the medication back to ... medication services any pertinent information related to the individual's adherence to the medication. (d) Are provided to any individual who: (i) Has a history of low medication adherence; (ii) Is newly on medication; or (iii) Is new to the specific medication prescribed. ~~(2)(3)~~(b) Ensure that ... providing medication support monitoring and/or ... (c) Have appropriate policies and processes procedures in place ... to the individual. The policies and

processes procedures must address: (i) The maintenance of a medication log documenting medications that are received, prescribed, and dispensed. (ii) Reasonable Precautions that ... transporting medications to the intended individual and to assure and, to maintain staff safety during the transporting. (d)(i) Medication must be kept maintained in ... (d)(ii) Medication kept ... separately from medication samples ... (d)(v) Syringes ... must be properly stored separately and disposed of safely. (d)(vi) Refrigerated ... required temperatures. (e) Ensure that no outdated medications are disposed of retained, and outdated medications are disposed of in accordance ... of pharmacy, and ensure that no outdated medications are retained. (f)(iii) Documentation of ... reflected in the individual service plan. (iv) Documentation of ... adherence and/or side effects.

Section One—Chemical Dependency—Detoxification Services

WAC 388-877B-0100 Chemical dependency detoxification services—General. The rules in WAC 388-877B-01200100 through 388-877B-01400130 apply to ... services. The definitions ... detoxification services. 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. (1) Chemical dependency detoxification services ... (2) A behavioral health agency certified for detoxification services may choose to provide optional chemical dependency youth detoxification services (see WAC 388-877B-0130). Optional youth detoxification services require additional program-specific certification by the department's division of behavioral health and recovery (DBHR). ~~(2)~~ (3)(d)(ii) Specific applicable requirements ... ~~(3)~~ (4) ...

WAC 388-877B-0110 Chemical dependency detoxification services—Agency staff requirements. In addition to meeting ... an agency providing chemical dependency detoxification services ... (4) Each CDPT has ... in WAC 246-811-049. The An approved supervisor's must decrease the hours of individual contact hours must be decreased by twenty percent for each full-time CDPT under their supervision supervised.

WAC 388-877B-0120 Chemical dependency detoxification services—Clinical record contents and documentation requirements. In addition to the ... an agency providing chemical dependency detoxification ... (5) Documentation of progress notes ... occur, or documentation as to why this did not occur. Progress notes ... of the shift or event, and the name of the staff member who provided it.

WAC 388-877B-0130 Chemical dependency detoxification services requiring program-specific certification—Additional standards for youth detoxification services. Youth detoxification services are chemical dependency treatment services provided to ... An agency providing youth detoxification services are optional detoxification services that require program-specific certification by the department's division of behavioral health and recovery. must meet the additional requirement in this section. The An agency providing youth detoxification services must: (1) Admit youth ... permission of the ... (3)(b) An individual ...

for clinically appropriateness ... (5) ~~Attempt to~~ Must notify ... document all notifications and attempts of notification in the clinical record.

Section Two—Chemical Dependency—Residential Treatment Services

WAC 388-877B-0200 Chemical dependency ~~R~~residential treatment services—General. The rules in ... provide chemical dependency residential ... to chemical dependency residential treatment services. The definitions ... residential treatment services. 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. (2) Residential treatment services require additional program-specific certified certification by the department's division of behavioral health and recovery and include: (a) Intensive inpatient services (see WAC 388-877B-0250); (b) Recovery house treatment services (see WAC 388-877B-0260); and (c) Long-term residential treatment services (see WAC 388-877B-0270); and (d) Youth residential services (see WAC 388-877B-0280). (3)(d)(ii) Specific applicable requirements in ... (4)(g)(i) Urine analysis (UA) Urinalysis and ... (6) ... the requirements for ~~DUI~~ driving under the influence (DUI) assessment ...

WAC 388-877B-0210 Chemical dependency ~~R~~residential treatment services—Agency staff requirements. In addition to ... an agency providing chemical dependency residential treatment ... (1)(c) ... maintained by the CDP-; and (d) Has not committed, permitted, aided or abetted the commission of an illegal act or unprofessional conduct as defined under RCW 18.130.180. (2) Each CDPT has ... for each full-time CDPT ~~or other licensed or registered counselor~~ supervised.

WAC 388-877B-0220 Chemical dependency ~~R~~residential treatment services—Clinical record content and documentation requirements. In addition to the ... an agency providing chemical dependency residential treatment ... (1)(a) ... under 42 ~~CFR C.F.R.~~ Part 2. (d) Documentation of ... type occur, or documentation as to why this did not occur.

WAC 388-877B-0230 Chemical dependency ~~R~~residential treatment services—Chemical dependency—Additional assessment standards. An individual must ... before receiving chemical dependency residential ...

WAC 388-877B-0240 Chemical dependency ~~R~~residential treatment services—Noncompliance reporting requirements. An agency providing chemical dependency residential ... for an individual ~~order~~ ordered into chemical ... An agency that fails ... to penalties ~~at~~ as stated in ... (1) 42 ~~CFR C.F.R.~~ 45 ~~CFR C.F.R.~~ (2) Notifying the ... release, or department of corrections (DOC) if the individual is under ~~department of corrections (DOC)~~ supervision. (3)(b) An individual's ~~departure~~ report of subsequent alcohol ... drug related request arrests.

WAC 388-877B-0250 Chemical dependency ~~R~~residential treatment services requiring program-specific certification—Intensive inpatient services. Intensive inpatient services are chemical dependency residential treatment services that provide ... Intensive inpatient services require program-

specific certification by the department's division of behavioral health and recovery. (3) Document progress notes ... occur, or documentation as to why this did not occur.

WAC 388-877B-0260 Chemical dependency ~~R~~residential treatment services requiring program-specific certification—Recovery house. Recovery house services are chemical dependency residential treatment services that provide ... Recovery house services require program-specific certification by the department's division of behavioral health and recovery.

WAC 388-877B-0270 Chemical dependency ~~R~~residential treatment services requiring program-specific certification—Long-term treatment services. Long-term treatment services are chemical dependency residential treatment services that provide ... Long-term treatment services require program-specific certification by the department's division of behavioral health and recovery. (3) Document progress ... occur, or documentation as to why this did not occur. (4)(d) Assistance with ... obtaining safe ~~house~~ housing.

WAC 388-877B-0280 Chemical dependency ~~R~~residential treatment services requiring program-specific certification—Additional standards for ~~y~~ Youth residential services. Youth residential services are chemical dependency residential treatment services ... seventeen years of age or younger. An agency providing y Youth residential services require program-specific certification by the department's division of behavioral health and recovery must meet the additional requirements in this section. (13) ~~Attempt to~~ Must notify ...

Section Three—Chemical dependency—Outpatient treatment services

WAC 388-877B-0300 Chemical dependency ~~O~~outpatient treatment services—General. ... 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. (2) Chemical dependency ~~O~~outpatient treatment services require additional program-specific certified certification by the department's division of behavioral health and recovery and include: (a) Level II intensive outpatient treatment services (see WAC 388-877B-0350); and (b) Level I ~~O~~outpatient treatment services (see WAC 388-877B-0360). (3)(c)(ii) Specific applicable requirements in ... (5)(d)(i) Urine analysis Urinalysis ... (9)(a)(ii) The Pprimary purpose ... (iii) The Llevel of services ...

WAC 388-877B-0310 Chemical dependency ~~O~~outpatient treatment services—Agency staff requirements. In addition to ..., an agency providing chemical dependency outpatient ... (2)(d) Has not committed, permitted, aided or abetted the commission of an illegal act or unprofessional conduct as defined under RCW 18.130.180. (4) Each chemical dependency ... An approved supervisor must decrease the hours of individual contact by twenty percent for each full-time CDPT ~~or other licensed or registered counselor~~ supervised.

WAC 388-877B-0320 Chemical dependency ~~O~~outpatient treatment services—Clinical record content and documentation. In addition to the ..., an agency providing chemical dependency outpatient ... (1)(a) 42 ~~CFR C.F.R.~~ (1)(c) Documentation of ... or group type occur or documentation

as to why this did not occur. (2)(b)(ii) ~~Patient~~ The individual's bio-psychosocial problems;

WAC 388-877B-0330 Chemical dependency ~~O~~outpatient treatment services—Additional assessment standards. (6) A history of legal involvement. (12)(b) A history of school ... for learning ... ability to ~~under~~ understand written material. (c) Past and present ... including a history of running away ... Corrected and renumbered subsection (8)(c) through (f) to subsections (9) through (12).

WAC 388-877B-0340 Chemical dependency ~~O~~outpatient treatment services—Noncompliance reporting requirements. An agency providing chemical dependency outpatient ... An agency that fails ... subject to penalties ~~at~~ as stated in ... (1) ~~42 C.F.R. 45 C.F.R. 42 C.F.R.~~ (2) Notifying the ... conditional release, or department of corrections (DOC) if the individual is under department of corrections DOC supervision.

WAC 388-877B-0350 Chemical dependency ~~O~~outpatient treatment services requiring program-specific certification—Level II ~~intensive outpatient services. Level II~~ intensive outpatient services are chemical dependency outpatient treatment services that provide a concentrated program of individual and group counseling, ... activated activities. Level II intensive outpatient services require program-specific certification by the department's division of behavioral health and recovery. An agency providing Level II intensive ... (1) Develop an initial individualized service plan ... (3) Document progress ... occur, or documentation as to why this did not occur.

WAC 388-877B-0360 Chemical dependency ~~O~~outpatient treatment services requiring program-specific certification—Level I ~~O~~outpatient treatment services are chemical dependency outpatient treatment services that provide ... Level I outpatient treatment services require program-specific certification by the department's division of behavioral health and recovery. An agency providing Level I outpatient ... (1) Develop an initial individualized service plan ... (4) Document progress ... occur, or documentation as to why this did not occur. Progress notes ... the name of the staff member ...

WAC 388-877B-0370 Chemical dependency ~~O~~outpatient treatment services requiring program-specific certification—Additional standards for eChemical dependency counseling required under RCW 46.61.5056. Chemical dependency ~~O~~outpatient treatment ... in this section, and requires program-specific certification by the department's division of behavioral health and recovery. (1)(d) Participation in ... substance dependence. Participation must be documented ... (2)(e) The balance ... (3) (2) ... (4) (3) ... of a substance ~~dependence or substance abuse~~ use disorder, a ...

Section Four—Chemical Dependency—Opiate Substitution Treatment Services

WAC 388-877B-0400 Chemical dependency ~~O~~opiate substitution treatment services—General. The rules in ... that provide chemical dependency opiate substitution treatment services. The definitions ... apply to chemical dependency opiate substitution treatment services. 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. (1) Opiate ... These services ~~provide~~ include detoxification treatment ... (4)(d)(ii) Urine analysis (UA) urinalysis ... (5) ... twelve-month period following admission to services. (7)(c) Ensure that before admission the youth has had two documented attempts at short-term detoxification or drug-free treatment within a twelve-month period, with a waiting period of no less than seven days between the first and second short-term detoxification treatment. (d) Ensure that when a youth is admitted for maintenance treatment, written consent by a parent or if applicable, legal guardian or responsible adult designated by the relevant state authority, is obtained. (8)(a) SAMHSA Substance Abuse and Mental Health Services Administration (SAMHSA) ... program sponsor (as defined in 42 C.F.R. Part 8), or medical director. (8)(c) The number of ... county, city, or tribal legislative authority in which ...

WAC 388-877B-0405 Chemical dependency ~~O~~opiate substitution treatment services—Additional standards for ~~e~~certification. An agency ... by the department's division of behavioral health and recovery to provide these services. (2)(c)(ii) ~~F~~federal (2)(c)(iii) ~~F~~federal CSAT SAMHSA Center for Substance Abuse Treatment (CSAT) of the Substance Abuse and Mental Health Services Administration (SAMHSA). (2)(c)(iv) Accreditation ~~by an accreditation body, approved as an opioid treatment program accreditation body by the Federal CSAT SAMHSA~~ from a federal CSAT/SAMHSA-approved opioid treatment program accreditation body. (2)(e) For new ... treatment programs in another state, copies of all survey reports written by their national and/or state certification or substitution programs accreditation body and state certification, if applicable, within the past six years. (3)(b) ~~42 C.F.R. 21 C.F.R.~~ (3)(c) ~~The Federal~~ federal ... (4) ~~42 C.F.R. 21 C.F.R.~~

WAC 388-877B-0410 Chemical dependency ~~O~~opiate substitution treatment services—Agency staff requirements. In addition to ... an agency providing chemical dependency opiate ... (1) Appoint a program sponsor, as defined in C.F.R. Part 8 ... Federal CSAT, SAMHSA, the Federal Drug Enforcement Administration federal Center for Substance Abuse Treatment (CSAT), Substance Abuse and Mental Health Services Administration (SAMHSA), the federal Drug Enforcement Administration (DEA), the department ... (2) (DOH) ... (4) Ensure all ... are provided by a DOH-credentialed chemical dependency professional (CDP), or a DOH-credentialed CDP trainee ... (5)(d) Has not committed, permitted, aided or abetted the commission of an illegal act or unprofessional conduct as defined under RCW 18.130.180. (6) Ensure an agency ... The An approved supervisor must decrease the number of individual contact hours of individual contact by twenty percent for each full-time CDPT under their supervision supervised.

WAC 388-877B-0420 Chemical dependency ~~O~~opiate substitution treatment services—Clinical record content and documentation requirements. In addition ... an agency providing chemical dependency opiate ... (1)(a) ~~42 C.F.R. 21 C.F.R.~~ (1)(h) Documentation of ... type occur, or documentation as to why this did not occur. (1)(i) Documentation when ... sample or refuses to initial the log ... (1)(n) When the agency

is serving youth: (i) Two documented attempts were made at short-term detoxification or drug-free treatment within a twelve-month period, with a waiting period no less than seven days between the first and second short-term detoxification treatment. (ii) When a youth is admitted for maintenance treatment, written consent by a parent or if applicable, legal guardian or responsible adult designated by the relevant state authority. (e) (n) Documentation of all ... (2)(b)(ii) Patient The individual's bio-psychosocial problems; (iii) The Treatment goals;

WAC 388-877B-0430 Chemical dependency Opiate substitution treatment services—Additional assessment standards. An individual ... receiving chemical dependency opiate ... The purpose ... to address the individual's ... In addition ... requirements of in WAC 388-877-0610. (1)(a)(i) The type of substances used, including tobacco; (3) (PPC) (5) The additional requirements for DUI driving under the influence (DUI) assessment providers in WAC 388-805-840 WAC 388-877B-0550 if the agency ... (6)(c) Past and ... including a history of running ...

WAC 388-877B-0440 Chemical dependency Opiate substitution treatment services—Program physician responsibility. An agency providing chemical dependency opiate ... (1)(a) Is responsible to ensure verify an individual ... (2) A physical evaluation must be ... consistent with the Diagnostic and Statistical Manual (DSM-5) criteria, and an assessment ... Information on the DSM-5 can be found on the American Psychiatric Association's public website at www.DSM5.org. (7)(b) An assessment for the appropriateness of ... as required by 42 C.F.R. part 8.12(i).

WAC 388-877B-0450 Chemical dependency Opiate substitution treatment services—Medication management. An agency providing chemical dependency opiate substitution treatment ... (1)(a) Must use only ... of opioid addition. (b) Providing opiate ... The following ... in the treatment of opiod addition addiction: (3)(a) Each opioid agonist treatment meditation medication used ... (3)(b)(ii) Medical practitioner under supervision of a program physician; or (iii) (ii) Medical practitioner ... (4) An agency ... all take-home mediations medications are: (4)(a) 42 CFR C.F.R. (4)(a)(i) Have received ... treatment meditation medication for minimum ... (5) All exceptions ... and SAMHSA Substance Abuse and Mental Health Services Administration (SAMHSA).

Section Five—Chemical Dependency—Assessment and Assessment Only Services

WAC 388-877B-0500 Chemical dependency Assessment only services—General. The rules ... that provide chemical dependency assessment only services. The definitions ... apply to chemical dependency assessment only services. 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. (2) Chemical dependency assessment services include: (a) Assessment only services; and (b) Driving under the influence (DUI) assessment services. (3) A behavioral health agency certified for assessment only services may choose to provide optional program-spe-

cific DUI assessment services (see WAC 388-877B-0550). Optional DUI assessment services require additional program-specific certification by the department's division of behavioral health and recovery. (4) An agency ... (3) (5) ... (5) (6) ... (6) (7) An agency providing ADATSA and DUI Alcoholism and Drug Addiction Treatment and Support Act (ADATSA) and driving under the influence (DUI) assessment services must meet the additional program-specific standards ...

WAC 388-877B-0510 Chemical dependency Assessment only services—Agency staff requirements. In addition to ... an agency providing chemical dependency assessment ... (1) All chemical dependency assessment only services ...

WAC 388-877B-0530 Chemical dependency Assessment only services—Additional assessment standards. An individual must have a chemical dependency treatment ... The purpose of ... determine if a substances substance use disorder ... (1)(c) The individual individual's self-assessment ... (5)(c) Past and present ... including a history of running ...

WAC 388-877B-0540 Chemical dependency Assessment only services—Noncompliance reporting requirements. An agency providing ... An agency that fails ... to penalties at as stated in ... An agency providing treatment to an individual court-mandated by a court to treatment, (2) Notifying the ... conditional release, or department of corrections (DOC) if the individual is under department of correction DOC supervision. (3)(b) An individual's departure reports ... drug related request arrests. (3)(d) An individual discharged for rule violation. (4) Reporting and recommending action for nonemergent, noncompliance to the court or other appropriate jurisdiction(s) within ten working days from the end of each reporting period, upon obtaining information on: (a) An individual's unexcused absences or failure to report, including failure to attend mandatory self-help groups. (b) An individual's failure to make acceptable progress in any part of the treatment plan. (5) Transmitting noncompliance or other significant changes as soon as possible, but not longer than ten working days from the date of the noncompliance, when the court does not wish to receive monthly reports. (6) (4) ... Reporting ...

WAC 388-877B-0550 Chemical dependency Assessment only services requiring program-specific certification—Additional standards for DUI assessment services. Driving under the ... assessments services are ... (1) A behavioral health agency certified for chemical dependency assessment only services may choose to provide optional program-specific DUI assessment services. Optional DUI assessment services require additional program-specific certification by the department's division of behavioral health and recovery. (1) (2) An agency ... must ensure: (1) (a) ... (2) (b) ... (a) (i) ... (b) (ii) ... (3)(c) The results of a urine analysis (UA) urinalysis ...

Section Six—Chemical Dependency—Information and Assistance Services

WAC 388-877B-0600 Chemical dependency Information and assistance services—General. The definitions ... information and assistance services. The department requires all agencies and providers affected by this rule to fully com-

ply 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.

(2) Information and assistance services require additional program-specific certified certification by the department's division of behavioral health and recovery and include:

(3)(c)(ii) ~~Program-s~~Specific applicable requirements ... (3)(d) (4) Chemical dependency ... (4) (5) An agency providing ...

WAC 388-877B-0610 Chemical dependency information and assistance services—Agency staff requirements. In addition to ... an agency providing chemical dependency information ... (2) Who provides ... has a copy of ~~an~~ their initial TB screen ...

WAC 388-877B-0630 Chemical dependency information and assistance services requiring program-specific certification—Alcohol and drug information school services. Alcohol and drug information school ~~is an~~ services are a chemical dependency information and assistance services education ... ~~This~~ These services is are for an individual ... require treatment. The services require program-specific certification by the department's division of behavioral health and recovery.

WAC 388-877B-0640 Chemical dependency information and assistance services requiring program-specific certification—Information and crisis services. Chemical dependency information and crisis ... Information and crisis services require program-specific certification by the department's division of behavioral health and recovery. (1) Have services available to any individual twenty-four-hours-a-day, ...

WAC 388-877B-0650 Chemical dependency information and assistance services requiring program-specific certification—Emergency service patrol services. Emergency service patrol services are chemical dependency information and assistance services that provides transport ... or other persons. An agency ... service patrol services must: (7) Call law enforcement for medical assistance ...

WAC 388-877B-0660 Chemical dependency information and assistance services requiring program-specific certification—Screening and brief intervention services. Screening and brief intervention ~~is~~ services are a combination of information and assistance services ... as needed. These services require program-specific certification by the department's division of behavioral health and recovery and may be ... (1) Ensure services ... (CDP), a chemical dependency professional trainee (CDPT) under the supervision of a CDP, or another ... (4)(c) 42 ~~CFR~~ C.F.R.

WAC 388-877C-0100 The rules in ... problem and pathological gambling services. The definitions ... services. 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. (2)(b) Meet the applicable ... health services administrative requirements; and ... (5)(b) ~~Screen for the prevention and control of tuberculosis (TB).~~ (e) (b) Limit the size ...

WAC 388-877C-0110 (1)(a) A certified Washington state ... is credentialed by the department of health (DOH)

under chapter 18.19, ~~18.225, or~~ 18.83, or 18.225 RCW; ~~and~~ or ... (1)(b) An individual ... under chapter 18.19, ~~18.225, or~~ 18.83, or 18.225 RCW, under ... (2)(a) At least one thousand five hundred hours of professionally ... (2)(b)(iii) ~~The~~ Department's division of ... (4)(b)(iii) ~~The~~ Department's division of ...

WAC 388-877C-0120(5) Documentation of ... that occurs in ~~time~~ a timely manner ...

WAC 388-877C-0130 ~~(1)(f)~~ (2) The assessment ...

A final cost-benefit analysis is available by contacting Kathy Sayre, 4500 10th Avenue S.E., Lacey, WA 98503, phone (360) 725-1342, fax (360) 725-2280, e-mail kathy.sayre@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 72, Amended 0, Repealed 129.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 72, Amended 0, Repealed 129.

Date Adopted: May 30, 2013.

Kevin Quigley
Secretary

Chapter 388-877A WAC

OUTPATIENT MENTAL HEALTH SERVICES

Section One—Outpatient Mental Health Services

NEW SECTION

WAC 388-877A-0100 Outpatient mental health services—General. The rules in this section apply to behavioral health agencies that provide outpatient mental health services. The definitions in WAC 388-877-0200 also apply to outpatient mental health services. 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.

(1) Outpatient mental health services are intended to improve and/or reduce symptoms, and resolve situational disturbances for individuals in the areas of relational, occupational and/or vocational concerns.

(2) Outpatient mental health services include:

(a) Brief intervention treatment services (see WAC 388-877A-0140);

(b) Group therapy services (see WAC 388-877A-0150);

(c) Family therapy services (see WAC 388-877A-0155);

(d) Case management services (see WAC 388-877A-0170);

(e) The optional mental health services described in (3) of this subsection; and

(f) The recovery support services described in (4) of this subsection.

(3) A behavioral health agency certified for outpatient mental health services may choose to provide optional outpatient mental health services. Optional outpatient mental health services require additional program-specific certification by the department's division of behavioral health and recovery and include the following:

(a) Psychiatric medication services (see WAC 388-877A-0180);

(b) Day support services (see WAC 388-877A-0190);

(c) Less restrictive alternative (LRA) support services (see WAC 388-877A-0195); and

(d) Services provided in a residential treatment facility (see WAC 388-877A-0197).

(4) A behavioral health agency certified for outpatient mental health services may also provide recovery support services. Recovery support services require program-specific certification and include the following:

(a) Employment services (see WAC 388-877A-0330);

(b) Peer support services (see WAC 388-877A-0340);

(c) Wraparound facilitation services (see WAC 388-877A-0350); and

(d) Medication support services (see WAC 388-877A-0360).

(5) An agency providing outpatient mental health services to individuals must:

(a) Be licensed by the department as a behavioral health agency.

(b) Meet the applicable behavioral health agency licensure, certification, administration, personnel, and clinical requirements in chapter 388-877 WAC.

(c) Have policies and procedures to support and implement the:

(i) General requirements in chapter 388-877 WAC;

(ii) Applicable program-specific requirements for each outpatient mental health service provided, and each optional and recovery support service requiring program-specific certification that the agency elects to provide; and

(iii) Department of Corrections Access to Confidential Mental Health Information requirements in WAC 388-865-600 through 388-865-0640.

(6) At the verbal or written request of the individual, the agency must, if applicable:

(a) Include the individual's family members, significant others, and other relevant treatment providers in the services provided by the agency; and

(b) Document the request in the individual's clinical record.

(7) If an individual has a crisis plan, the crisis plan must be:

(a) Placed in the individual's clinical record; and

(b) Made available to the following, subject to state and federal confidentiality rules and laws:

(i) Designated mental health professionals;

(ii) Crisis team members; and

(iii) Voluntary and involuntary inpatient evaluation and treatment facilities.

(8) An agency that provides services at an established off-site location(s) must:

(a) Maintain a list of each established off-site location where services are provided.

(b) Include, for each established off-site location:

(i) The name and address of the location the services are provided;

(ii) The primary purpose of the off-site location;

(iii) The service(s) provided; and

(iv) The date off-site services began at that location.

(9) An agency providing in-home services or services in a public setting must:

(a) Implement and maintain a written protocol of how services will be offered in a manner that promotes individual and staff member safety; and

(b) For the purpose of emergency communication, and as required by RCW 71.05.710, provide a wireless telephone, or comparable device, to any mental health professional who makes home visits to individuals.

(10) An agency must:

(a) Maintain an individual's confidentiality at the off-site location;

(b) Securely transport confidential information and individual records between the licensed agency and the off-site location, if applicable;

(c) Be certified to provide the type of mental health service offered at each off-site location; and

(d) Ensure the mental health services provided at off-site locations meet the requirements of all applicable local, state, and federal rules and laws.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 388-877A-0110 Outpatient mental health services—Agency staff requirements. In addition to meeting the agency administration and personnel requirements in WAC 388-877-0400 through 388-877-0530, an agency providing outpatient mental health services must ensure:

(1) All outpatient mental health services are provided by, or under the supervision of, a mental health professional;

(2) Each staff member working directly with an individual receiving mental health services receives:

(a) Clinical supervision from a mental health professional who has received fifteen hours of training in clinical supervision approved by department of health; and

(b) Annual violence prevention training on the safety and violence prevention topics described in RCW 49.19.030.

(3) Staff access to consultation with a psychiatrist or a physician who has at least one year's experience in the direct treatment of individuals who have a mental or emotional disorder.

NEW SECTION

WAC 388-877A-0120 Outpatient mental health services—Clinical record content and documentation. In addition to meeting the general clinical record content

requirements in WAC 388-877-0640, an agency providing any outpatient mental health service is responsible for an individual's clinical record. The clinical record must document:

(1) That the agency requested a copy of and placed in the record, if provided, the following:

(a) Discharge summaries and/or evaluations resulting from outpatient or inpatient mental health services received within the last five years, if available; and

(b) Any crisis plan that has been developed.

(2) Any previously accessed inpatient or outpatient services and/or medications to treat a mental health condition.

(3) That services were provided by, or under the clinical supervision of, a mental health professional.

(4) Any clinical consultation and/or evaluation provided.

(5) Progress notes in a timely manner and before any subsequent scheduled appointments of the same type of service session or group type, or documentation as to why this did not occur. Progress notes must include the date, time, duration, participant names, and a brief summary of the session and the name of the staff member who provided it.

(6) That the individual was provided with information and education about the individual's mental illness.

(7) Any referrals to other services and supports, including referrals to treatment for co-occurring disorders and health care.

(8) That with the individual's consent, the individual's self-identified family members and significant others were provided with information and education about the individual's mental illness.

(9) That the additional requirements for any optional outpatient services the agency providers are met.

(10) That staff members met with the individual at the time of discharge, unless the individual left without notice, to:

(a) Determine the appropriate recommendation for care and finalize a continuing care plan;

(b) Assist the individual in making contact with necessary agencies or services; and

(c) Provide and document the individual was provided with a copy of the plan.

(11) That a discharge summary was completed within seven working days of the individual's discharge. The discharge plan must include the date of discharge, continuing care plan, legal status, and if applicable, current prescribed medication.

NEW SECTION

WAC 388-877A-0130 Outpatient mental health services—Assessment standards. In addition to the assessment requirements in WAC 388-877-0610, an agency providing any outpatient mental health service must ensure the clinical mental health components of the assessment:

(1) Are provided by a mental health professional.

(2) Are initiated within ten working days from the date on which the individual or the individual's parent or legal representative requests services, and completed within thirty working days of the initial assessment.

(3) Gather sufficient information to determine if a mental illness exists, and if there are services available within the agency to address the individual's needs.

(4) Document presenting problem(s) as described by the individual. The agency may contact the person(s) who provide active support to the individual in order to validate and/or obtain further information regarding the individual's presenting problem:

(a) Only at the request of the individual, if the individual is thirteen years of age or older; or

(b) At the agency's discretion, if the individual is twelve years of age or younger.

(5) Contain sufficient clinical information, including a review of any documentation of a mental health condition provided by the individual, to justify the diagnosis using criteria in the:

(a) Diagnostic and Statistical Manual (DSM IV TR, 2000) as it existed on the effective date of this section; then

(b) DSM-5 as it exists when published and released in 2013, consistent with the purposes of this section. Information regarding the publication date and release of the DSM-5 is posted on the American Psychiatric Association's public website at www.DSM5.org.

(6) Contain a developmental history if the individual is a child.

(7) Are culturally and age relevant.

NEW SECTION

WAC 388-877A-0135 Outpatient mental health services—Individual service plan. In addition to the individual service plan requirements in WAC 388-877-0620, an agency providing any outpatient mental health service must ensure the following for an individual service plan. The individual service plan must:

(1) Be completed within thirty days from the date of the first session following the initial assessment.

(2) Be consumer-driven, strength-based, and meet the individual's unique mental health needs.

(3) Be initiated with at least one goal identified by the individual or if applicable, the individual's parent or legal representative, during the initial assessment or the first service session following the assessment.

(4) Document that the plan was updated to reflect any changes in the individual's treatment needs, or as requested by the individual or, if applicable, the individual's parent or legal representative.

(5) Document coordination with any systems or organizations the individual identifies as being relevant to treatment, with the individual's consent or if applicable, the consent of the individual's parent or legal representation. This includes coordination with any individualized family service plan (IFSP) when serving an individual three years of age or younger.

(6) Identify services mutually agreed upon by the individual and provider for this treatment episode.

NEW SECTION

WAC 388-877A-0140 Outpatient mental health services—Brief intervention treatment. Brief intervention

treatment services are solution-focused and outcome-oriented cognitive and behavioral interventions, intended to resolve situational disturbances. These services do not require long term treatment, and do not include ongoing care, maintenance, or monitoring of the individual's current level of function or assistance with self-care or life skills training.

(1) An agency providing brief intervention treatment services to individuals must meet the individual service plan requirements in WAC 388-877-0620 and ensure the individual service plan identifies a course of treatment to be completed in six months or less.

(2) The additional assessment and individual service plan requirements in WAC 388-877A-0130 and 388-877A-0135 do not apply to brief intervention treatment.

(3) An individual may move from brief intervention treatment to longer term outpatient mental health services at any time.

NEW SECTION

WAC 388-877A-0150 Outpatient mental health services—Group therapy services. Group therapy services are provided to an individual in a group setting to assist the individual in attaining the goals described in the individual service plan. An agency providing group therapy services must:

- (1) Have a written description of each group's purpose.
- (2) Ensure group services are provided with a staff ratio of one staff member for every twelve individuals.
- (3) Ensure a group does not contain more than twenty-four individuals.
- (4) Ensure any nonmental health professional facilitating a group receives supervision by a mental health professional.
- (5) Ensure any group containing more than twelve individuals has at least one facilitator or co-facilitator that is a mental health professional.
- (6) Ensure group notes are recorded in each individual's clinical record before the next group meeting. Group notes must include:
 - (a) The attendance of the individual;
 - (b) The participation of the individual;
 - (c) Progress towards goals stated in the individual's service plan;
 - (d) Any significant events shared by the individual; and
 - (e) If the group was facilitated by a nonmental health professional as described in (4) of this section, documentation the nonmental health professional was supervised by a mental health professional.

NEW SECTION

WAC 388-877A-0155 Outpatient mental health services—Family therapy services. Family therapy services are services provided for the direct benefit of an individual, with family members and/or other relevant persons in attendance. Interventions must identify and build competencies to strengthen family functioning in relationship to the individual's identified goals. The individual may or may not be present. An agency providing family therapy services must:

- (1) Ensure the services are provided by:
 - (a) A mental health professional who has documented coursework, continuing education and/or training that specif-

ically address family systems theories and techniques in family therapy; or

(b) A staff member under the supervision of a mental health professional. The staff member must have documented training in family therapy.

(2) With the individual's written consent, provide information and education about the individual's illness to family members or other relevant persons in order to assist the individual in managing the mental illness.

NEW SECTION

WAC 388-877A-0170 Outpatient mental health services—Case management services. Case management services are services that meet the ongoing assessment, facilitation, care coordination and advocacy for options and services to meet an individual's needs through communication and available resources, to promote quality and effective outcomes.

- (1) An agency must provide case management services that:
 - (a) Assist an individual to achieve the goals stated in the plan;
 - (b) Support consumer employment, education and/or participation in other daily activities appropriate to the individual's age, gender and culture; and
 - (c) Assist an individual to resolve crises in the least restrictive setting.
- (2) Rehabilitative case management services include specific rehabilitative services provided to:
 - (a) Assist in an individual's discharge from an inpatient facility; and
 - (b) Minimize the risk of readmission to an inpatient setting.

NEW SECTION

WAC 388-877A-0180 Optional outpatient mental health services requiring program-specific certification—Psychiatric medication services. Psychiatric medication services are a variety of activities related to prescribing and/or administering medication, including monitoring an individual for side effects and changes as needed. Psychiatric medication services are optional outpatient mental health services that require program-specific certification by the department's division of behavioral health and recovery. These services may only be provided with one of the outpatient mental health services in WAC 388-877A-0100(2). An agency providing psychiatric medication services:

- (1) Must ensure medical direction and responsibility are assigned to a physician who is licensed to practice under chapter 18.57 or 18.71 RCW, and is board-certified or board-eligible in psychiatry.
- (2) Must ensure that the services are provided by a prescriber licensed by department of health who is practicing within the scope of that practice.
- (3) Must ensure that all medications administered by staff practicing within the scope of their practice.
- (4) Must have a process by which the medication prescriber informs the individual, and/or the legally responsible

party, and, as appropriate, family members, of the potential benefits and side effects of the prescribed medication(s).

(5) Must review prescribed medications at least every three months.

(6) Must complete an inventory every three months of all medication stored.

(7) Must ensure that all medications maintained by the agency are safely and securely stored, including assurance that:

(a) Medications are kept in locked cabinets within a well-lit, locked and properly ventilated room;

(b) Medications kept for individuals on medication administration or self-administration programs are clearly labeled and stored separately from medication samples kept on site;

(c) Medications marked "for external use only" are stored separately from oral or injectable medications;

(d) Refrigerated food or beverages used in the administration of medications are kept separate from the refrigerated medications by the use of trays or other designated containers;

(e) Syringes and sharp objects are properly stored and disposed of;

(f) Refrigerated medications are maintained at the required temperature; and

(g) Outdated medications are disposed of in accordance with the regulations of the state board of pharmacy and no outdated medications are retained.

(8) Must ensure that the individual clinical record contains the following documentation:

(a) The individual was informed of the benefits and possible side effects of each prescribed medication.

(b) The effects, interactions, and side effects the staff observe or the individual reports spontaneously or as the result of questions from staff members.

(c) Clinical notes that include:

(i) The name and signature of the prescribing psychiatric advanced registered nurse practitioner (ARNP), board eligible psychiatrist, or physician;

(ii) The name and purpose of each medication prescribed;

(iii) The dosage, frequency, and method of giving each medication;

(iv) Identification of medications requiring laboratory monitoring and a frequency schedule for monitoring;

(v) The reasons for changing or stopping any medication; and

(vi) The dates the medication was prescribed, reviewed and renewed, as applicable.

(d) That any written orders to administer/discontinue a medication are generated by a licensed health care provider, within the scope of the provider's practice, and that:

(i) Written, dated orders are signed by the licensed prescriber within twenty-four hours; and

(ii) Telephone orders are reviewed and signed off on by the ordering licensed health care provider, within the scope of the provider's practice, within twenty-four hours and include:

(A) Documentation that clearly demonstrates emergency circumstances that required a phone order;

(B) The name and signature of the individual authorized by department of health whose scope of practice includes taking physician's orders over the telephone; and

(C) The time, date and exact details of the telephone order.

(9) May utilize a physician without board eligibility in psychiatry if unable to employ or contract with a psychiatrist. In this case, the agency must ensure that:

(a) Psychiatrist consultation is provided to the physician at least monthly; and

(b) A psychiatrist is accessible to the physician for emergency consultation.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 388-877A-0190 Optional outpatient mental health services requiring program-specific certification—Day support services. Day support services are optional outpatient mental health services that require program-specific certification by the department's division of behavioral health and recovery. These services provide a range of integrated and varied life skills training. Day support services are designed to assist an individual in the acquisition of skills, retention of current functioning, or improvement in the current level of functioning, appropriate socialization, and adaptive coping skills. Services include training in basic living and social skills, and educational, vocational, pre-vocational, and day activities. Day support services may include therapeutic treatment. An agency providing day support services must ensure:

(1) All day support services are provided by, or under the supervision of, a mental health professional.

(2) There is at least one staff member providing services for every twenty individuals;

(3) Staff is available five hours per day, five days per week to provide support services to individuals; and

(4) The services occur in an environment easily accessible to the individual.

NEW SECTION

WAC 388-877A-0195 Optional outpatient mental health services requiring program-specific certification—Less restrictive alternative (LRA) support services. Less restrictive alternative (LRA) support services are optional outpatient mental health services that require program-specific certification by the department's division of behavioral health and recovery. These services are provided to individuals on a less restrictive alternative court order. An agency agrees to provide or monitor the provision of court-ordered services, including psychiatric and medical components of community support services. An agency providing court-ordered LRA support services must:

(1) Ensure and document that the agency:

(a) Maintains written procedures for managing assaultive and/or self-destructive individual behavior; and

(b) Provides training to staff members on appropriate interventions.

(2) Have a written policy and procedure that allows for the referral of an individual to an involuntary treatment facility twenty-four-hours-a-day, seven-days-a-week.

(3) Have a written policy and procedure for an individual who requires involuntary detention that includes procedures for:

(a) Contacting the designated mental health professional (DMHP) regarding revocations or extension of an LRA; and

(b) The transportation of an individual, in a safe and timely manner, for the purpose of:

(i) Evaluation; or

(ii) Evaluation and detention.

(4) Ensure a committed individual is advised of their rights under chapter 71.05 or 71.34 RCW, as applicable, and that the individual has the right:

(a) To receive adequate care and individualized treatment;

(b) To make an informed decision regarding the use of antipsychotic medication and to refuse medication beginning twenty-four hours before any court proceeding that the individual has the right to attend;

(c) To maintain the right to be presumed competent and not lose any civil rights as a consequence of receiving evaluation and treatment for a mental disorder;

(d) Of access to attorneys, courts, and other legal redress;

(e) To have the right to be told statements the consumer makes may be used in the involuntary proceedings; and

(f) To have all information and records compiled, obtained, or maintained in the course of treatment kept confidential as described in chapters 70.02, 71.05, and 71.34 RCW.

(5) Include in the clinical record a copy of the less restrictive alternative court order and a copy of any subsequent modification.

(6) Ensure the development and implementation of an individual service plan which addresses the conditions of the less restrictive alternative court order and a plan for transition to voluntary treatment.

(7) Ensure that the individual receives psychiatric medication services for the assessment and prescription of psychotropic medications appropriate to the needs of the individual. These services must be provided:

(a) At least one time every seven days for the initial fourteen days following release from inpatient treatment for an individual on a ninety-day or one hundred eighty-day less restrictive alternative court order, unless the individual's attending physician determines another schedule is more appropriate and documents the new schedule and the reason(s) in the individual's clinical record.

(b) At least one time every thirty days for an individual on a ninety-day or one hundred eighty-day less restrictive alternative court order, unless the individual's attending physician determines another schedule is more appropriate and documents the new schedule and the reason(s) in the individual's clinical record.

(8) Keep a record of the periodic evaluation by a mental health professional of each committed individual for release from, or continuation of, an involuntary treatment order.

Evaluations must occur at least every thirty days for both ninety-day and one hundred eighty-day commitments and include documentation of assessment and rationale:

(a) For requesting a petition for an additional period of less restrictive treatment under an involuntary treatment order; or

(b) Allowing the less restrictive court order expire without an extension request.

NEW SECTION

WAC 388-877A-0197 Outpatient mental health services—Residential treatment facility (RTF). A residential treatment facility (RTF) may provide outpatient mental health treatment services to an individual with a mental disorder. An agency that operates an RTF that provides mental health treatment services must:

(1) Ensure that the facility is licensed by the department of health under chapter 246-337 WAC;

(2) Be certified for and provide the following:

(a) Case management services (see WAC 388-877A-0170);

(b) Optional outpatient mental health less restrictive alternative support services (see WAC 388-877A-0195); and

(c) Optional outpatient mental health medication support services (see WAC 388-877A-0360).

Section Two—Crisis Mental Health Services

NEW SECTION

WAC 388-877A-0200 Crisis mental health services—General. The rules in WAC 388-877A-0200 through 377A-0280 apply to behavioral health agencies that provide crisis mental health services. The definitions in WAC 388-877-0200 also apply to crisis mental health services. 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.

(1) Crisis mental health services are intended to stabilize an individual in crisis to:

(a) Prevent further deterioration;

(b) Provide immediate treatment and intervention in a location best suited to meet the needs of the individual; and

(c) Provide treatment services in the least restrictive environment available.

(2) Crisis mental health services include:

(a) Crisis telephone support (see WAC 388-877A-0230);

(b) Crisis outreach services (see WAC 388-877A-0240);

(c) Crisis stabilization services (see WAC 388-877A-0260);

(d) Crisis peer support services (see WAC 388-877A-0270); and

(e) Emergency involuntary detention services (see WAC 388-877A-0280).

(3) An agency providing any crisis mental health service to an individual must:

(a) Be licensed by the department as a behavioral health agency;

(b) Be certified by the department to provide crisis mental health services;

(c) Meet the applicable behavioral health agency licensure, administration, personnel, and clinical requirements in chapter 388-877 WAC, Behavioral health services administrative requirements; and

(d) Have policies and procedures to support and implement the:

(i) General requirements in chapter 388-877 WAC;

(ii) Program-specific requirements in WAC 388-877A-0230 through WAC 388-877A-0280 for each crisis mental health service provided; and

(iii) Department of Corrections Access to Confidential Mental Health Information requirements in WAC 388-865-600 through 388-865-0640.

(4) An agency providing crisis mental health services only is not required to meet the initial assessment, individual service plan, and clinical record requirements in WAC 388-877-0610, 388-877-0620, and 388-877-0640.

(5) An agency must ensure crisis mental health services:

(a) Are, with the exception of stabilization services, available twenty-four hours a day, seven days a week;

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

(c) Are provided in a setting that provides for the safety of the individual and agency staff members.

(6) An agency providing involuntary crisis mental health services must hold a contract with the county in which it is located, or the appropriate regional support network (RSN).

NEW SECTION

WAC 388-877A-0210 Crisis mental health services—Agency staff requirements. In addition to meeting the agency administrative and personnel requirements in WAC 388-877-0400 through 388-877-0530, an agency providing any crisis mental health service must ensure:

(1) All crisis mental health services are provided by, or under the supervision of, a mental health professional;

(2) Each staff member working directly with an individual receiving any crisis mental health service in WAC 388-877A-0230 through 388-877A-0270 receives:

(a) Clinical supervision from a mental health professional and/or an independent practitioner licensed by department of health; and

(b) Annual violence prevention training on the safety and violence prevention topics described in RCW 49.19.030. The staff member's personnel record must document the training.

(3) Staff access to consultation with one of the following professionals who has at least one year's experience in the direct treatment of individuals who have a mental or emotional disorder:

(a) A psychiatrist;

(b) A physician; or

(c) An advanced registered nurse practitioner (ARNP) who has prescriptive authority.

(4) Subsection (3) of this section does not apply to agencies that only provide crisis telephone services.

NEW SECTION

WAC 388-877A-0220 Crisis mental health services—Record content and documentation requirements.

An agency providing any crisis mental health service in WAC 388-877A-0230 through 388-877A-0280 must maintain a record that contains timely documentation. Documentation must include the following, as applicable to the crisis service provided:

(1) A brief summary of each crisis service encounter, including the date, time, and duration of the encounter;

(2) The names of the participants; and

(3) A follow-up plan, including any referrals for services, including emergency medical services.

NEW SECTION

WAC 388-877A-0230 Crisis mental health services—Telephone support services.

Telephone support services are services provided as a means of first contact to an individual in crisis. These services may include de-escalation and referral.

(1) An agency providing telephone support services must:

(a) Respond to crisis calls twenty-four-hours-a-day, seven-days-a week.

(b) Have a written protocol for the referral of an individual to a voluntary or involuntary treatment facility for admission on a seven-day-a-week, twenty-four-hour-a-day basis, including arrangements for contacting the designated mental health professional.

(c) Assure communication and coordination with the individual's mental health care provider, if indicated and appropriate.

(d) Post a copy of the statement of individual rights in a location visible to staff and agency volunteers.

(2) An agency must document each telephone crisis response contact made, including:

(a) The date, time, and duration of the telephone call;

(b) The relationship of the caller to the person in crisis, for example self, family member, or friend;

(c) Whether the individual in crisis has a crisis plan; and

(d) The outcome of the call, including:

(i) Any follow-up contacts made;

(ii) Any referrals made, including referrals to emergency or other medical services; and

(iii) The name of the staff person who took the crisis call.

NEW SECTION

WAC 388-877A-0240 Crisis mental health services—Outreach services.

Crisis outreach services are face-to-face intervention services provided to assist individuals in a community setting. A community setting can be an individual's home, an emergency room, a nursing facility, or other private or public location. An agency providing crisis outreach services must:

(1) Provide crisis telephone screening.

(2) Have staff available twenty-four-hours-a-day, seven-days-a-week to respond to a crisis.

(3) Ensure face-to-face outreach services are provided by a mental health professional, or a staff member under the supervision of a mental health professional with documented training in crisis response.

(4) Ensure services are provided in a setting that provides for the safety of the individual and agency staff members.

(5) Have a protocol for requesting a copy of an individual's crisis plan twenty-four-hours-a-day, seven-days-a-week.

(6) Require that staff member(s) remain with the individual in crisis in order to provide stabilization and support until the crisis is resolved or a referral to another service is accomplished.

(7) Resolve the crisis in the least restrictive manner possible.

(8) Have a written plan for training, staff back-up, information sharing, and communication for staff members who respond to a crisis in an individual's private home or in a non-public setting.

(9) Ensure that a staff member responding to a crisis is able to be accompanied by a second trained individual when services are provided in the individual's home or other non-public location.

(10) Ensure that any staff member who engages in home visits is provided by their employer with a wireless telephone, or comparable device for the purpose of emergency communication as described in RCW 71.05.710.

(11) Provide staff members who are sent to a private home or other private location to evaluate an individual in crisis, prompt access to information about any history of dangerousness or potential dangerousness on the individual they are being sent to evaluate that is documented in a crisis plan(s) or commitment record(s). This information must be made available without unduly delaying the crisis response.

(12) Have a written protocol that allows for the referral of an individual to a voluntary or involuntary treatment facility twenty-four-hours-a-day, seven-days-a-week.

(13) Have a written protocol for the transportation of an individual in a safe and timely manner, when necessary.

(14) Document all crisis response contacts, including:

(a) The date, time, and location of the initial contact.

(b) The source of referral or identity of caller.

(c) The nature of the crisis.

(d) Whether the individual has a crisis plan and any attempts to obtain a copy.

(e) The time elapsed from the initial contact to the face-to-face response.

(f) The outcome, including:

(i) The basis for a decision not to respond in person;

(ii) Any follow-up contacts made; and

(iii) Any referrals made, including referrals to emergency medical services.

(g) The name of the staff person(s) who responded to the crisis.

NEW SECTION

WAC 388-877A-0260 Crisis mental health services—Stabilization services. Crisis stabilization services

include short-term (less than two weeks per episode) face-to-face assistance with life skills training and understanding of medication effects on an individual. Stabilization services may be provided to an individual as a follow-up to crisis services provided or to any individual determined by a mental health professional to need additional stabilization services. An agency providing crisis stabilization services must:

(1) Ensure the services are provided by a mental health professional, or under the supervision of a mental health professional.

(2) Ensure the services are provided in a setting that provides for the safety of the individual and agency staff.

(3) Have a written plan for training, staff back-up, information sharing, and communication for staff members who are providing stabilization services in an individual's private home or in a nonpublic setting.

(4) Have a protocol for requesting a copy of an individual's crisis plan.

(5) Ensure that a staff member responding to a crisis is able to be accompanied by a second trained individual when services are provided in the individual's home or other non-public location.

(6) Ensure that any staff member who engages in home visits is provided by their employer with a wireless telephone, or comparable device, for the purpose of emergency communication as described in RCW 71.05.710.

(7) Have a written protocol that allows for the referral of an individual to a voluntary or involuntary treatment facility.

(8) Have a written protocol for the transportation of an individual in a safe and timely manner, when necessary.

(9) Document all crisis stabilization response contacts, including identification of the staff person(s) who responded.

NEW SECTION

WAC 388-877A-0270 Crisis mental health services—Peer support services. Crisis peer support services assist an individual in exercising control over their own life and recovery process through the practice of peer counselors sharing their own life experiences related to mental illness to build alliances that enhance the individual's ability to function.

(1) Peer support services are intended to augment and not supplant other necessary mental health services.

(2) An agency providing crisis peer support services must:

(a) Ensure services are provided by a peer counselor, properly credentialed under WAC 388-865-0107, under the supervision of a mental health professional.

(b) Ensure services provided by a peer counselor are within the scope of the peer counselor's training and credential.

(c) Ensure that a peer counselor responding to a crisis is accompanied by a mental health professional.

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

(e) Ensure peer counselors receive annual training that is relevant to their unique working environment.

NEW SECTION

WAC 388-877A-0280 Crisis mental health services—Emergency involuntary detention services. Emergency involuntary detention services are services provided by a designated mental health professional (DMHP) to evaluate an individual in crisis and determine if involuntary services are required.

An agency providing emergency involuntary detention services must:

- (1) Ensure that services are provided by a DMHP.
- (2) Ensure staff members are available twenty-four-hours-a-day, seven-days-a-week.
- (3) Ensure staff members utilize the protocols for DMHPs required by RCW 71.05.214.
- (4) Have a written agreement with a certified inpatient evaluation and treatment facility to allow admission of an individual twenty-four-hours-a-day, seven-days-a week.
- (5) Have a plan for training, staff back-up, information sharing, and communication for a staff member who responds to a crisis in a private home or a nonpublic setting.
- (6) Ensure that a DMHP is able to be accompanied by a second trained individual when responding to a crisis in a private home or a nonpublic setting.
- (7) Ensure that a DMHP who engages in a home visit to a private home or a nonpublic setting is provided by their employer with a wireless telephone, or comparable device, for the purpose of emergency communication as described in RCW 71.05.710.
- (8) Provide staff members, who are sent to a private home or other private location to evaluate an individual in crisis, prompt access to information about any history of dangerousness or potential dangerousness on the individual they are being sent to evaluate that is documented in a crisis plan(s) or commitment record(s). This information must be made available without unduly delaying the crisis response.
- (9) Require that a mental health professional remain with the individual in crisis in order to provide stabilization and support until the crisis is resolved or referral to another service is accomplished.
- (10) Have a written protocol for the transportation of an individual, in a safe and timely manner, for the purpose of medical evaluation or detention.
- (11) Ensure that when a peace officer or DMHP escorts an individual to a facility, the DMHP takes reasonable precautions to safeguard the individual's property including:
 - (a) Safeguarding the individual's property in the immediate vicinity of the point of apprehension;
 - (b) Safeguarding belongings not in the immediate vicinity if there may be possible danger to those belongings; and
 - (c) Taking reasonable precautions to lock and otherwise secure the individual's home or other property as soon as possible after the individual's initial detention.
- (12) Document services provided to the individual, and other applicable information. At a minimum this must include:
 - (a) That the individual was advised of their rights in accordance with RCW 71.05.360.
 - (b) That if the evaluation was conducted in a hospital emergency department or inpatient unit, it occurred in accor-

dance with the timelines required by RCW 71.05.050, 71.05.153, and 71.34.710.

(c) If the individual was not detained:

(i) A description of the disposition and follow-up plan; and

(ii) Documentation that the minor's parent was informed of their right to request a court review of the DMHP's decision not to detain the minor under RCW 71.34.710, if the individual is a minor thirteen years of age or older.

(d) If the individual was detained, a petition for initial detention must include the following:

(i) The circumstances under which the person's condition was made known.

(ii) Evidence, as a result of the DMHP's personal observation or investigation, that the actions of the person for which application is made constitute a likelihood of serious harm, or that the individual is gravely disabled.

(iii) Evidence that the individual will not voluntarily seek appropriate treatment.

(iv) Consideration of all reasonably available information from credible witnesses, to include family members, landlords, neighbors, or others with significant contact and history of involvement with the individual, and records, as required by RCW 71.05.212.

(v) Consideration of the individual's history of judicially required, or administratively ordered, anti-psychotic medications while in confinement when conducting an evaluation of an offender under RCW 72.09.370.

(e) Documentation that the individual, or the individual's guardian or conservator, received a copy of the following:

- (i) Notice of detention;
- (ii) Notice of rights; and
- (iii) Initial petition.

Section Three—Recovery Support Services Requiring Program-Specific Certification

NEW SECTION

WAC 388-877A-0300 Recovery support services requiring program-specific certification—General. The rules in this section apply to behavioral health agencies that provide one or more recovery support services that require program-specific certification by the department's division of behavioral health and recovery. The definitions in WAC 388-877-0200 also apply to these services. 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.

(1) Recovery support services are intended to promote an individual's socialization, recovery, self-advocacy, development of natural support, and maintenance of community living skills.

(2) Recovery support services requiring program-specific certification include:

- (a) Employment services (see WAC 388-877A-0330);
- (b) Peer support services (see WAC 388-877A-0340);

(c) Wraparound facilitation services (see WAC 388-877A-0350); and

(d) Medication support services (see WAC 388-877A-0360).

(3) An agency providing any recovery support service requiring program-specific certification must:

(a) Be licensed by the department as a behavioral health agency.

(b) Meet the applicable behavioral health agency licensure, certification, administration, personnel, and clinical requirements in chapter 388-877 WAC.

(c) Have policies and procedures to support and implement the:

(i) General requirements in chapter 388-877 WAC; and

(ii) Applicable program-specific requirements.

(4) An agency that provides any recovery support service requiring program-specific certification may operate through an agreement with a behavioral health agency certified for an outpatient mental health service listed in WAC 388-877A-0100(2). The agreement must specify the responsibility for initial assessments, the determination of appropriate services, individual service planning, and the documentation of these requirements.

(5) When providing any recovery support service requiring program-specific certification, an agency must:

(a) Have an assessment process to determine the appropriateness of the agency's services, based on the individual's needs and goals.

(b) Refer an individual to a more intensive level of care when appropriate.

(c) With the consent of the individual, include the individual's family members, significant others, and other relevant treatment providers, as necessary to provide support to the individual.

NEW SECTION

WAC 388-877A-0310 Recovery support services requiring program-specific certification—Agency staff requirements. In addition to meeting the agency administrative and personnel requirements in WAC 388-877-0400 through 388-877-0530, an agency providing any recovery support service that requires program-specific certification must ensure:

(1) Each staff member working directly with an individual receiving any recovery support service in WAC 388-877A-0330 through 388-877A-0360 has annual violence prevention training on the safety and violence prevention topics described in RCW 49.19.939; and

(2) The staff member's personnel record documents the training.

NEW SECTION

WAC 388-877A-0320 Recovery support services requiring program-specific certification—Clinical record content and documentation. In addition to meeting the general clinical record content requirements in WAC 388-877-0640, an agency providing any recovery support service that requires program-specific certification must maintain an individual's clinical record that contains:

(1) Documentation of the following in a timely manner and before any subsequent scheduled appointments of the same type of service encounter occur:

(a) The name of the agency or other sources through which the individual was referred;

(b) A brief summary of each service encounter, including the date, time, and duration of the encounter; and

(c) Names of participant(s), including the name of the individual who provided the service.

(2) Any information or copies of documents shared by, or with, a behavioral health agency certified for outpatient mental health services.

NEW SECTION

WAC 388-877A-0330 Recovery support services requiring program-specific certification—Employment services. Employment services are a recovery support service that requires program-specific certification by the department's division of behavioral health and recovery. These services assist in training, job search, and placement services in order to help individuals find competitive jobs in their local communities.

(1) An agency providing employment services must have knowledge of and provide individuals access to employment and education opportunities by coordinating efforts with one or more entities that provide other rehabilitation and employment services, such as:

(a) The department's division of vocational rehabilitation;

(b) Community, trade, and technical colleges;

(c) The business community;

(d) WorkSource, Washington state's official site for online employment services;

(e) Washington state department of employment security; and

(f) Organizations providing job placement within the community.

(2) An agency providing employment services must:

(a) Ensure all staff members providing direct services for employment are knowledgeable and familiar with services provided by the department's division of vocational rehabilitation.

(b) Conduct and document a vocational assessment in partnership with the individual that includes work history, skills, training, education, and personal career goals.

(c) Assist the individual to create an individualized job and/or career development plan that focuses on the individual's strengths and skills.

(d) Assist the individual to locate employment opportunities that are consistent with the individual's skills, goals, and interests.

(e) Document any outreach, job coaching, and support at the individual's worksite, when requested by the individual and/or the individual's employer.

(f) If the employer makes a request, provide information regarding the requirements of reasonable accommodations, consistent with the Americans with Disabilities Act (ADA) of 1990, and the Washington state anti-discrimination law.

NEW SECTION

WAC 388-877A-0340 Recovery support services requiring program-specific certification—Peer support services. Peer support services are a recovery support service that requires program-specific certification by the department's division of behavioral health and recovery.

(1) Peer support services provide a wide range of activities to assist an individual in exercising control over their own life and recovery process through:

- (a) Developing self-advocacy and natural supports;
- (b) Maintenance of community living skills;
- (c) Promoting socialization; and

(d) The practice of peer counselors sharing their own life experiences related to mental illness to build alliances that enhance the individual's ability to function.

(2) An agency providing peer support services must ensure peer support counselors;

- (a) Meet the requirements of WAC 388-865-0107.
- (b) Provide peer support services:

(i) Under the supervision of a mental health professional; and

(ii) Within the scope of the peer counselor's training and department of health credential.

(c) Receive annual training relevant to their unique working environment.

(3) An agency providing peer support services must document the frequency, duration, and expected outcome of all peer support services in the individual service plan.

NEW SECTION

WAC 388-877A-0350 Recovery support services requiring program-specific certification—Wraparound facilitation services. Wraparound facilitation services are a recovery support service that requires program-specific certification by the department's division of behavioral health and recovery. These services address the complex emotional, behavior, and social issues of an identified individual twenty years of age or younger, and the individual's family.

(1) Wraparound facilitation services are:

(a) Provided to an individual who requires the services of a mental health provider and one or more child serving systems;

(b) Focused and driven by the needs of the identified family and the family's support community; and

(c) Provided in partnership with the individual, the individual's family, and the individual's mental health provider.

(2) An agency providing wraparound facilitation services must employ or contract with:

(a) A mental health professional (MHP) who is responsible for oversight of the wraparound facilitation services.

(b) A facilitator who has completed department-approved wraparound facilitation training and:

(i) Has a master's degree with at least one year of experience working in social services;

(ii) Has a bachelor's degree with at least two years of experience working in social services; or

(iii) Is an individual with lived experience. The experience must be documented in the personnel file.

(c) A staff member certified to provide a child and adolescent needs and strengths (CANS) assessment.

(3) In addition to the staff requirements in (2) of this subsection, an agency must ensure the following individuals are available to assist in the planning and provision of wraparound facilitation services, as needed:

(a) An employee or volunteer youth partner, actively involved in defining the agency's services.

(b) An employee or volunteer family partner, actively involved in defining the agency's services.

(4) All wraparound facilitation services:

(a) Must include the identified individual, the individual's family, and the individual's mental health provider; and

(b) May include additional support partners as team members, including but not limited to the following:

(i) **Natural supports.** Natural supports include community members, friends, and extended family members identified by the individual and/or the individual's family to be active participants in the individual's support network.

(ii) **System supports.** System supports are representatives from systems that currently offer support to the identified individual or that offer support services to the individual's adult care giver, which directly affects the individual.

(iii) **Peer supports.** Peer supports are individuals who have personally and actively participated in wraparound facilitation services and who offer support to families currently working with the wraparound teams.

(5) An agency must document the following:

(a) The development of a wraparound plan that:

(i) Includes:

(A) A complete list of participants and their contact information;

(B) A list of next steps or follow-up information from the initial meeting; and

(C) The schedule of child and family team (CFT) meetings.

(ii) Describes the individual's and the individual's family's vision for the future stated in their own language.

(iii) Reflects the family's prioritization of needs and goals and addresses the needs as identified in the CANS screen.

(iv) Is integrated with the person's individual service plan (see WAC 388-877-0620 and 388-877A-0135).

(v) Identifies the functional strengths of the individual and the individual's family that can be used to help meet the identified needs.

(vi) Assigns responsibility to CFT members for each strategy/intervention or task, and establishes timelines for implementation.

(vii) Identifies immediate safety needs and a safety/crisis plan.

(viii) Assists the individual and the individual's family in using their support network.

(ix) Is signed by all CFT members, including the individual and the individual's parent or if applicable, legal guardian.

(b) Coordination with any other involved systems and services and/or supports, including sharing the wraparound plan and any revisions with all members of the team.

(c) The result of the initial and subsequent CANS screenings and assessments.

(d) The review of the wraparound plan during each CFT meeting and any revisions made to the plan to address the changing needs and progress of the identified individual and the individual's family.

NEW SECTION

WAC 388-877A-0360 Recovery support services requiring program-specific certification—Medication support services. Medication support services are recovery support services that require program-specific certification. These services are performed for the purpose of facilitating individuals' medication adherence.

(1) Medication support services are certified by the department's division of behavioral health and recovery only when the agency:

(a) Is also certified to provide program-specific psychiatric medication services (see WAC 388-877A-0180); or

(b) Has an agreement with another behavioral health agency certified to provide psychiatric medication services. The agreement must specify the responsibility for medication support services, and the documentation of the requirements.

(2) Medication support services occur face-to-face and:

(a) Include one-on-one cueing, observing, and encouraging an individual to take medication as prescribed.

(b) Include reporting any pertinent information related to the individual's adherence to the medication back to the agency that is providing psychiatric medication services.

(c) May take place at any location and for as long as it is clinically necessary.

(d) Are provided to any individual who:

(i) Has a history of low medication adherence;

(ii) Is newly on medication; or

(iii) Is new to the specific medication prescribed.

(3) An agency providing medication support services must:

(a) Ensure services are provided by or under the supervision of a mental health professional.

(b) Ensure that the staff positions responsible for providing medication monitoring and/or delivery services are clearly identified in the agency's medication support services policy.

(c) Have appropriate policies and procedures in place when the agency providing medication support services maintains and/or delivers medication to the individual. The policies and procedures must address:

(i) The maintenance of a medication log documenting medications that are received, prescribed, and dispensed.

(ii) Reasonable precautions that need to be taken when transporting medications to the intended individual and to assure staff safety during the transportation.

(iii) The prevention of contamination of medication during delivery, if delivery is provided.

(d) Ensure that all medications kept by staff in the agency are safely and securely stored as follows:

(i) Medication must be maintained in locked cabinets within a well-illuminated, locked, and properly ventilated room.

(ii) Medication kept for individuals on medication administration or self-administration programs must be

clearly labeled and stored separately from medication samples kept on site.

(ii) Medication marked "for external use only" must be stored separately from oral or injectable medications.

(iv) Refrigerated food or beverages used in the administration of medications must be kept separate from the refrigerated medications by the use of trays or other designated containers.

(v) Syringes and sharp objects must be properly stored and disposed of safely.

(vi) Refrigerated medications must be maintained at the required temperatures.

(e) Ensure that outdated medications are disposed of in accordance with the rules of the state board of pharmacy, and ensure that no outdated medications are retained.

(f) Ensure that the individual's clinical record contains:

(i) The individual service plan, including documentation of medication support services.

(ii) Documentation of observations on the individual's behavior indicating the effects, interactions, and side effects of the prescribed medication, as necessary.

(iii) Documentation of regular reviews of the individual's adherence to the medication support plan as reflected in the individual service plan.

(iv) Documentation of reports to the prescriber about medication adherence and/or side effects.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-805-001	What is the purpose of this chapter?
WAC 388-805-005	What definitions are important throughout this chapter?
WAC 388-805-010	What chemical dependency services are certified by the department?
WAC 388-805-015	How do I apply for certification as a chemical dependency service provider?
WAC 388-805-020	How do I apply for certification of a branch agency or added service?
WAC 388-805-030	What are the requirements for opiate substitution treatment program certification?
WAC 388-805-035	What are the responsibilities for the department when an applicant applies for approval of an opiate substitution treatment program?
WAC 388-805-040	How does the department determine there is a need in the community for opiate substitution treatment?
WAC 388-805-060	How does the department conduct an examination of nonresidential facilities?

WAC 388-805-065	How does the department determine disqualification or denial of an application?	WAC 388-805-240	What are the requirements for student practice in treatment agencies?
WAC 388-805-070	What happens after I make application for certification?	WAC 388-805-250	What are the requirements to be an information school instructor?
WAC 388-805-075	How do I apply for an exemption?	WAC 388-805-260	What are the requirements for using volunteers in a treatment agency?
WAC 388-805-085	What are the fee requirements for chemical dependency treatment programs?	WAC 388-805-300	What must be included in the agency clinical manual?
WAC 388-805-095	How long are certificates effective?	WAC 388-805-305	What are patients' rights requirements in certified agencies?
WAC 388-805-100	What do I need to do to maintain agency certification?	WAC 388-805-310	What are the requirements for chemical dependency assessments?
WAC 388-805-105	What do I need to do for a change in ownership?	WAC 388-805-315	What are the requirements for treatment, continuing care, transfer, and discharge plans?
WAC 388-805-110	What do I do to relocate or remodel a facility?	WAC 388-805-320	What are the requirements for a patient record system?
WAC 388-805-115	How does the department deem national accreditation?	WAC 388-805-325	What are the requirements for patient record content?
WAC 388-805-120	How does the department assess penalties?	WAC 388-805-330	What are the requirements for reporting patient noncompliance?
WAC 388-805-125	How does the department cancel certification?	WAC 388-805-350	What are the requirements for outcomes evaluation?
WAC 388-805-130	How does the department suspend or revoke certification?	WAC 388-805-400	What are the requirements for detoxification providers?
WAC 388-805-135	What is the prehearing, hearing and appeals process?	WAC 388-805-410	What are the requirements for detox staffing and services?
WAC 388-805-140	What are the requirements for a provider's governing body?	WAC 388-805-500	What are the requirements for residential providers?
WAC 388-805-145	What are the key responsibilities required of an agency administrator?	WAC 388-805-510	What are the requirements for residential providers admitting youth?
WAC 388-805-150	What must be included in an agency administrative manual?	WAC 388-805-520	What are the requirements for youth behavior management?
WAC 388-805-155	What are the requirements for provider facilities?	WAC 388-805-530	What are the requirements for intensive inpatient services?
WAC 388-805-200	What must be included in an agency personnel manual?	WAC 388-805-540	What are the requirements for recovery house services?
WAC 388-805-205	What are agency personnel file requirements?	WAC 388-805-550	What are the requirements for long-term treatment services?
WAC 388-805-210	What are the requirements for approved supervisors of persons who are in training to become a chemical dependency professional?	WAC 388-805-600	What are the requirements for outpatient providers?
WAC 388-805-220	What are the requirements to be a probation assessment officer?	WAC 388-805-610	What are the requirements for intensive outpatient treatment services?
WAC 388-805-225	What are the requirements to be a probation assessment officer trainee?	WAC 388-805-620	What are the requirements for outpatient services?
WAC 388-805-230	What are the requirements for supervising probation assessment officer trainees?	WAC 388-805-625	What are the requirements for outpatient services for persons subject to RCW 46.61.5056?

- WAC 388-805-630 What are the requirements for outpatient services in a school setting?
- WAC 388-805-640 What are the requirements for providing offsite chemical dependency treatment services?
- WAC 388-805-700 What are the requirements for opiate substitution treatment program providers?
- WAC 388-805-710 What are the requirements for opiate substitution medical management?
- WAC 388-805-715 What are the requirements for opiate substitution medication management?
- WAC 388-805-720 What are the requirements for drug testing in opiate substitution treatment?
- WAC 388-805-730 What are the requirements for opiate substitution treatment dispensaries?
- WAC 388-805-740 What are the requirements for opiate substitution treatment counseling?
- WAC 388-805-750 What are the requirements for opiate substitution treatment take-home medications?
- WAC 388-805-800 What are the requirements for ADATSA assessment services?
- WAC 388-805-810 What are the requirements for DUI assessment providers?
- WAC 388-805-820 What are the requirements for alcohol and other drug information school?
- WAC 388-805-830 What are the requirements for information and crisis services?
- WAC 388-805-840 What are the requirements for emergency service patrol?
- WAC 388-805-855 What are the requirements for screening and brief intervention services?
- WAC 388-816-0025 What are the requirements for treatment program facilities?
- WAC 388-816-0030 How does the department conduct an examination of facilities?
- WAC 388-816-0035 How does the department determine disqualification or denial of an application?
- WAC 388-816-0040 What happens after I make application for certification?
- WAC 388-816-0045 How do I apply for an exemption?
- WAC 388-816-0070 What do I need to do to maintain program certification?
- WAC 388-816-0075 What do I need to do for a change in ownership?
- WAC 388-816-0080 What do I do to relocate or remodel a facility?
- WAC 388-816-0085 How does the department assess penalties?
- WAC 388-816-0090 How does the department cancel certification?
- WAC 388-816-0095 How does the department suspend or revoke certification?
- WAC 388-816-0100 What is the prehearing, hearing and appeal process?
- WAC 388-816-0105 What are the requirements for the governing body of the program?
- WAC 388-816-0110 What are the key responsibilities required of a program administrator?
- WAC 388-816-0115 What must be included in a program administrative manual?
- WAC 388-816-0120 What must be included in a treatment program personnel manual?
- WAC 388-816-0125 What are treatment program personnel file requirements?
- WAC 388-816-0130 What are the minimum qualifications for clinical staff members providing problem and pathological gambling treatment?

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-816-0001 What is the purpose of this chapter?
- WAC 388-816-0005 What definitions are important throughout this chapter?
- WAC 388-816-0010 What problem and pathological gambling treatment programs are certified by the department?
- WAC 388-816-0015 How do I apply for certification as a new problem and pathological gambling treatment program?
- WAC 388-816-0020 How do currently certified or licensed agencies apply for added service?
- WAC 388-816-0135 What must be included in the treatment program clinical manual?
- WAC 388-816-0140 What are clients' rights requirements in certified treatment programs?
- WAC 388-816-0145 What are the requirements for problem and pathological gambling assessments?
- WAC 388-816-0150 What are the requirements for treatment, continuing care, transfer, and discharge plans?

- WAC 388-816-0155 What are the requirements for a client record system?
- WAC 388-816-0160 What are the requirements for client record content?
- WAC 388-816-0165 What are the requirements for reporting client noncompliance?
- WAC 388-816-0170 What are the requirements for outcomes evaluation?
- WAC 388-816-0175 What are the requirements for outpatient services?
- WAC 388-816-0180 What are the requirements for providing off-site problem and pathological gambling treatment services?

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-865-0103 Fee requirements for mental health treatment programs.
- WAC 388-865-0410 Consumer rights.
- WAC 388-865-0415 Access to services.
- WAC 388-865-0430 Clinical record.
- WAC 388-865-0435 Consumer access to their clinical record.
- WAC 388-865-0436 Clinical record access procedures.
- WAC 388-865-0440 Availability of consumer information.
- WAC 388-865-0445 Establishment of procedures to bill for services.
- WAC 388-865-0450 Quality management process.
- WAC 388-865-0452 Emergency crisis intervention services—Additional standards.
- WAC 388-865-0453 Peer support services.
- WAC 388-865-0454 Provider of crisis telephone services only.
- WAC 388-865-0456 Case management services—Additional standards.
- WAC 388-865-0458 Psychiatric treatment, including medication supervision—Additional standards.
- WAC 388-865-0462 Day treatment services—Additional standards.
- WAC 388-865-0464 Consumer employment services—Additional standards.
- WAC 388-865-0465 Adult residential treatment facility certification—Additional standards.
- WAC 388-865-0466 Community support outpatient certification—Additional standards.

- WAC 388-865-0468 Emergency crisis intervention services certification—Additional standards.
- WAC 388-865-0470 The process for initial licensing of service providers.
- WAC 388-865-0472 Licensing categories.
- WAC 388-865-0476 Licensure based on deemed status.
- WAC 388-865-0478 Renewal of a community support service provider license.
- WAC 388-865-0480 Procedures to suspend, or revoke a license.
- WAC 388-865-0482 Procedures to contest a licensing decision.
- WAC 388-865-0484 Process to certify providers of involuntary services.

Chapter 388-877B WAC

CHEMICAL DEPENDENCY SERVICES

Section One—Chemical Dependency—Detoxification Services

NEW SECTION

WAC 388-877B-0100 Chemical dependency detoxification services—General. The rules in WAC 388-877B-0100 through 388-877B-0130 apply to behavioral health agencies that provide detoxification services. The definitions in WAC 388-877-0200 also apply to chemical dependency detoxification services. 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.

(1) Chemical dependency detoxification services are provided to an individual to assist in the process of withdrawal from psychoactive substances in a safe and effective manner, in accordance with patient placement criteria (PPC).

(2) A behavioral health agency certified for detoxification services may choose to provide optional chemical dependency youth detoxification services (see WAC 388-877B-0130). Optional youth detoxification services require additional program-specific certification by the department's division of behavioral health and recovery (DBHR).

(3) An agency providing detoxification services to an individual must:

(a) Be a facility licensed by department of health under one of the following department of health chapters:

(i) Hospital licensing regulations (chapter 246-320 WAC);

(ii) Private psychiatric and alcoholism hospitals (chapter 246-322 WAC);

(iii) Private alcohol and chemical dependency hospitals (chapter 246-324 WAC); or

(iv) Residential treatment facility (chapter 246-337 WAC);

(b) Be licensed by the department as a behavioral health agency;

(c) Meet the applicable behavioral health agency licensure, certification, administration, personnel, and clinical requirements in chapter 388-877 WAC, Behavioral health services administrative requirements; and

(d) Have policies and procedures to support and implement the:

(i) General requirements in chapter 388-877 WAC; and

(ii) Specific applicable requirements in WAC 388-877B-0100 through 388-877B-0130.

(4) An agency must:

(a) Use PPC for admission, continued services, and discharge planning and decisions.

(b) Provide counseling to each individual that addresses the individual's:

(i) Chemical dependency and motivation;

(ii) Continuing care needs and need for referral to other services.

(c) Maintain a list of resources and referral options that can be used by staff members to refer an individual to appropriate services.

(d) Post any rules and responsibilities for individuals receiving treatment, including information on potential use of increased motivation interventions or sanctions, in a public place in the facility.

(e) Provide tuberculosis screenings to individuals for the prevention and control of tuberculosis.

(f) Provide HIV/AIDS information and include a brief risk intervention and referral as indicated.

NEW SECTION

WAC 388-877B-0110 Chemical dependency detoxification services—Agency staff requirements. In addition to meeting the agency administrative and personnel requirements in WAC 388-877-0400 through 388-877-0530, an agency providing chemical dependency detoxification services must ensure:

(1) All chemical dependency assessment and counseling services are provided by a chemical dependency professional (CDP), or a CDP trainee (CDPT) under the supervision of an approved supervisor.

(2) There is a designated clinical supervisor who:

(a) Is a CDP;

(b) Has documented competency in clinical supervision;

(c) Is responsible for monitoring the continued competency of each CDP in assessment, treatment, continuing care, transfer, and discharge. The monitoring must include a semi-annual review of a sample of the clinical records kept by the CDP; and

(d) Has not committed, permitted, aided or abetted the commission of an illegal act or unprofessional conduct as defined under RCW 18.130.180.

(3) Each staff member providing detoxification services to an individual, with the exception of licensed staff members and CDPs, completes a minimum of forty hours of documented training before being assigned individual care duties. This personnel training must include the following topics:

(i) Chemical dependency;

(ii) Infectious diseases, to include hepatitis and tuberculosis (TB); and

(iii) Detoxification screening, admission, and signs of trauma.

(4) Each CDPT has at least one approved supervisor who meets the qualifications in WAC 246-811-049. An approved supervisor must decrease the hours of individual contact by twenty percent for each full-time CDPT supervised.

(5) Each staff member that provides individual care has a copy of an initial TB screen or test and any subsequent screenings or testing in their personnel file.

(6) All staff members are provided annual training on the prevention and control of communicable disease, blood borne pathogens, and TB. The training must be documented in the personnel file.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 388-877B-0120 Chemical dependency detoxification services—Clinical record content and documentation requirements. In addition to the general clinical record content requirements in WAC 388-877-0640, an agency providing chemical dependency detoxification services must maintain an individual's clinical record that contains:

(1) Documentation of a chemical dependency screening before admission.

(2) A voluntary consent to treatment form, or any release forms, signed and dated by the individual, or the individual's parent or legal guardian, except as authorized by law for protective custody and involuntary treatment.

(3) Documentation that the individual was informed of federal confidentiality requirements and received a copy of the individual notice required under 42 C.F.R., Part 2.

(4) Documentation that the individual received the HIV/AIDS brief risk intervention.

(5) Documentation of progress notes in a timely manner from each shift and as events occur, or documentation as to why this did not occur. Progress notes must include the date, time, duration, participant names, and a brief summary of the shift or event, and the name of the staff member who provided it.

(6) Documentation that a discharge summary, including a continuing care recommendation and a description of the individual's physical condition, was completed within seven working days of discharge.

NEW SECTION

WAC 388-877B-0130 Chemical dependency detoxification services requiring program-specific certification—Youth detoxification services. Youth detoxification services are chemical dependency treatment services provided to an individual seventeen years of age or younger. Youth detoxification services are optional detoxification services that require program-specific certification by the department's division of behavioral health and recovery. An agency providing youth detoxification services must:

(1) Admit youth only with the written permission of the youth's parent or, if applicable, the youth's legal guardian. If a youth meets the requirements of a child in need of services (CHINS), the youth may sign themselves into treatment.

(2) Assess the individual's need for referral to the department's child welfare services.

(3) Ensure the following for individuals who share a room:

(a) An individual fifteen years of age or younger must not room with an individual eighteen years of age or older.

(b) An individual sixteen or seventeen years of age must be evaluated for clinical appropriateness before being placed in a room with an individual eighteen years of age or older.

(4) Allow communication between the youth and the youth's parent or if applicable, a legal guardian, and facilitate the communication when clinically appropriate.

(5) Must notify the parent or legal guardian within two hours of any change in the status of the youth and document all notification and attempts of notification in the clinical record.

(6) Discharge the youth to the care of the parent or legal guardian. For emergency discharge and when the parent or legal guardian is not available, the agency must contact the appropriate authority.

(7) Ensure at least one adult staff member of each gender is present or available by phone at all times if co-educational treatment services are provided.

(8) Ensure a staff member who demonstrates knowledge of adolescent development and addiction is available at the facility or available by phone.

Section Two—Chemical Dependency—Residential Treatment Services

NEW SECTION

WAC 388-877B-0200 Chemical dependency residential treatment services—General. The rules in WAC 388-877B-0200 through 388-877B-0280 apply to behavioral health agencies that provide chemical dependency residential treatment services. The definitions in WAC 388-877-0200 also apply to chemical dependency residential treatment services. 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, chapter 388-877C WAC no later than September 1, 2013.

(1) Residential treatment services provide chemical dependency treatment for an individual and include room and board in a facility with twenty-four-hours-a-day supervision.

(2) Residential treatment services require additional program-specific certification by the department's division of behavioral health and recovery and include:

(a) Intensive inpatient services (see WAC 388-877B-0250);

(b) Recovery house treatment services (see WAC 388-877B-0260);

(c) Long-term residential treatment services (see WAC 388-877B-0270); and

(d) Youth residential services (see WAC 388-877B-0280).

(3) An agency providing residential treatment services must:

(a) Be a facility licensed by department of health (DOH) and meet the criteria under one of the following DOH chapters:

(i) Hospital licensing regulations (chapter 246-320 WAC);

(ii) Private psychiatric and alcoholism hospitals (chapter 246-322 WAC);

(iii) Private alcohol and chemical dependency hospitals (chapter 246-324 WAC); or

(iv) Residential treatment facility (chapter 246-337 WAC);

(b) Be licensed by the department as a behavioral health agency;

(c) Meet the applicable behavioral health agency licensure, certification, administration, personnel, and clinical requirements in chapter 388-877 WAC, Behavioral health services administrative requirements; and

(d) Have policies and procedures to support and implement the:

(i) General requirements in chapter 388-877 WAC; and

(ii) Specific applicable requirements in WAC 388-877B-0200 through 388-877B-0280.

(4) An agency must:

(a) Use patient placement criteria (PPC) for admission, continued services, and discharge planning and decisions.

(b) Provide education to each individual admitted to the treatment facility on:

(i) Alcohol, other drugs, and/or chemical dependency;

(ii) Relapse prevention;

(iii) Blood borne pathogens; and

(iv) Tuberculosis (TB).

(c) Provide education or information to each individual admitted on:

(i) Emotional, physical, and sexual abuse;

(ii) Nicotine addiction; and

(iii) The impact of chemical use during pregnancy, risks to the fetus, and the importance of informing medical practitioners of chemical use during pregnancy.

(d) Maintain a list or source of resources, including self-help groups, and referral options that can be used by staff to refer an individual to appropriate services.

(e) Screen for the prevention and control of tuberculosis.

(f) Limit the size of group counseling sessions to no more than twelve individuals.

(g) Have written procedures for:

(i) Urinalysis and drug testing, including laboratory testing; and

(ii) How agency staff members respond to medical and psychiatric emergencies.

(5) An agency that provides services to a pregnant woman must:

(a) Have a written procedure to address specific issues regarding the woman's pregnancy and prenatal care needs; and

(b) Provide referral information to applicable resources.

(6) An agency that provides an assessment to an individual under RCW 46.61.5056 must also meet the requirements for driving under the influence (DUI) assessment providers in WAC 388-877B-0550.

NEW SECTION

WAC 388-877B-0210 Chemical dependency residential treatment services—Agency staff requirements. In addition to meeting the agency administrative and personnel requirements in WAC 388-877-0400 through 388-877-0530, an agency providing chemical dependency residential treatment services must ensure all chemical dependency assessment and counseling services are provided by a chemical dependency professional (CDP), or a CDP trainee (CDPT) under the supervision of an approved supervisor.

The agency must ensure:

- (1) There is a designated clinical supervisor who:
 - (a) Is a CDP;
 - (b) Has documented competency in clinical supervision;
 - (c) Is responsible for monitoring the continued competency of each CDP in assessment, treatment, continuing care, transfer, and discharge. The monitoring must include a semi-annual review of a sample of the clinical records maintained by the CDP; and
 - (d) Has not committed, permitted, aided or abetted the commission of an illegal act or unprofessional conduct as defined under RCW 18.130.180.
- (2) Each CDPT has at least one approved supervisor who meets the qualifications in WAC 246-811-049. An approved supervisor must decrease the hours of individual contact by twenty percent for each full-time CDPT supervised.
- (3) All staff members are provided annual training on the prevention and control of communicable disease, blood borne pathogens and tuberculosis (TB) and the training is documented in each personnel file.
- (4) Each staff member that provides individual care has a copy of an initial TB screen or test and any subsequent screening or testing in their personnel file.

NEW SECTION

WAC 388-877B-0220 Chemical dependency residential treatment services—Clinical record content and documentation requirements. In addition to the general clinical record content requirements in WAC 388-877-0640, an agency providing chemical dependency residential treatment services must maintain an individual's clinical record.

- (1) The clinical record must contain:
 - (a) Documentation the individual was informed of the federal confidentiality requirements and received a copy of the individual notice required under 42 C.F.R. Part 2.
 - (b) Documentation that the individual received a copy of the rules and responsibilities for treatment participants, including the potential use of interventions or sanction.
 - (c) Justification for the change in the level of care when transferring an individual from one certified treatment service to another within the same agency, at the same location.
 - (d) Documentation of progress notes in a timely manner and before any subsequent scheduled appointments of the same type of service session or group type occur, or docu-

mentation as to why this did not occur. Progress notes must include the date, time, duration, participant names, and a brief summary of the session and the name of the staff member who provided it.

(e) When an individual is transferring to another service provider, documentation that copies of documents pertinent to the individual's course of treatment were forwarded to the new service provider to include:

- (i) The individual's demographic information; and
- (ii) The diagnostic assessment statement and other assessment information to include:
 - (A) Documentation of the HIV/AIDS intervention.
 - (B) Tuberculosis (TB) screen or test result.
 - (C) A record of the individual's detoxification and treatment history.
 - (D) The reason for the individual's transfer.
 - (E) Court mandated, department of correction supervision status or the agency's recommended follow-up treatment.
 - (F) A discharge summary and continuing care plan.
- (f) Documentation that a staff member(s) met with each individual at the time of discharge, unless the individual left without notice, to:
 - (i) Determine the appropriate recommendation for care and finalize a continuing care plan.
 - (ii) Assist the individual in making contact with necessary agencies or services.
 - (iii) Provide and document the individual was provided with a copy of the plan.
 - (g) Documentation that the discharge summary was completed within seven working days of the individual's discharge from the agency, which includes the date of discharge and a summary of the individual's progress toward each individual service plan goal.
- (2) In addition to the requirements in (1) of this section, an agency must ensure the following for each individual service plan. The individual service plan must:
 - (a) Be personalized to the individual's unique treatment needs.
 - (b) Be initiated with at least one goal identified by the individual during the initial assessment or at the first service session following the assessment.
 - (c) Include individual needs identified in the diagnostic and periodic reviews, addressing:
 - (i) All substance use needing treatment, including tobacco, if necessary;
 - (ii) Patient bio-psychosocial problems;
 - (iii) Treatment goals;
 - (iv) Estimated dates or conditions for completion of each treatment goal; and
 - (v) Approaches to resolve the problem.
 - (d) Document approval by a chemical dependency professional (CDP) if the staff member developing the plan is not a CDP.
 - (e) Document that the plan was updated to reflect any changes in the individual's treatment needs, or as requested by the individual, at least once per month for the first three months, and at least quarterly thereafter.
 - (f) Document that the plan has been reviewed with the individual.

NEW SECTION

WAC 388-877B-0230 Chemical dependency residential treatment services—Additional assessment standards. An individual must have a chemical dependency assessment before receiving chemical dependency residential treatment services. The purpose of the assessment is to gather information to determine if a substance use disorder exists and if there are services available to address the individual's needs. In addition to the assessment requirements in WAC 388-877-0610, the assessment must include:

(1) A face-to-face diagnostic interview with the individual in order to obtain, review, evaluate, and document the following:

(a) A history of the individual's involvement with alcohol and other drugs, including:

- (i) The type of substances used, including tobacco;
- (ii) The route of administration; and
- (iii) The amount, frequency, and duration of use.

(b) A history of alcohol or other drug treatment or education;

(c) The individual's self-assessment of use of alcohol and other drugs;

(d) A history of relapse;

(e) A history of self-harm;

(f) A history of legal involvement; and

(g) A statement regarding the provision of an HIV/AIDS brief risk intervention, and any referral made.

(2) A diagnostic assessment statement, including sufficient information to determine the individual's diagnosis using:

(a) Diagnostic and Statistical Manual (DMS IV TR, 2000) as it existed on the effective date of this section; then

(b) DSM-5 as it exists when published and released in 2013, consistent with the purposes of this section. Information regarding the publication date and release of the DSM-5 is posted on the American Psychiatric Association's public website at www.DSM5.org.

(3) A placement decision, using patient placement criteria (PPC) dimensions when the assessment indicates the individual is in need of services.

(4) Evidence the individual was notified of the assessment results and documentation of the treatment options provided and the individual's choice. If the individual was not notified of the results and advised of referral options, the reason must be documented.

(5) The additional requirements for DUI assessment providers in WAC 388-877B-0550 if the agency is providing services to an individual under RCW 46.61.5056.

(6) Documented attempts to obtain the following information when assessing youth:

(a) Parental and sibling use of alcohol and other drugs.

(b) A history of school assessments for learning disabilities or other problems which may affect ability to understand written materials.

(c) Past and present parent/guardian custodial status, including running away and out-of-home placements.

(d) A history of emotional or psychological problems.

(e) A history of child or adolescent developmental problems.

(f) Ability of the youth's parent(s) or if applicable, legal guardian, to participate in treatment.

NEW SECTION

WAC 388-877B-0240 Chemical dependency residential treatment services—Noncompliance reporting requirements. An agency providing chemical dependency residential treatment services must report noncompliance in all levels of care, for an individual ordered into chemical dependency treatment by a court of law or other appropriate jurisdictions. An agency that fails to report noncompliance for an individual under chapter 46.61 RCW is subject to penalties as stated in RCW 46.61.5056(4).

An agency providing treatment to a court-mandated individual, including deferred prosecution, must develop procedures addressing individual noncompliance and reporting requirements, including:

(1) Completing an authorization to release confidential information form that meets the requirements of 42 C.F.R. Part 2 and 45 C.F.R. Parts 160 and 164 or through a court order authorizing the disclosure under the requirements of 42 C.F.R. Part 2, Sections 2.63 through 2.67.

(2) Notifying the designated chemical dependency specialist within three working days from obtaining information of any violation of the terms of the court order for purposes of revoking the individual's conditional release, or department of corrections (DOC) if the individual is under DOC supervision.

(3) Reporting and recommending action for emergency noncompliance to the court or other appropriate jurisdiction(s) within three working days from obtaining information on:

(a) An individual's failure to maintain abstinence from alcohol and other nonprescribed drugs as verified by individual's self-report, identified third party report confirmed by the agency, or blood alcohol content or other laboratory test.

(b) An individual's report of subsequent alcohol and/or drug related arrests.

(c) An individual leaving the program against program advice.

(d) An individual discharged for rule violation.

(4) Reporting and recommending action for non-emergent, noncompliance to the court or other appropriate jurisdiction(s) within ten working days from the end of each reporting period, upon obtaining information on:

(a) An individual's unexcused absences or failure to report, including failure to attend mandatory self-help groups.

(b) An individual's failure to make acceptable progress in any part of the treatment plan.

(5) Transmitting noncompliance or other significant changes as soon as possible, but no longer than ten working days from the date of the noncompliance, when the court does not wish to receive monthly reports.

(6) Reporting compliance status of persons convicted under chapter 46.61 RCW to the department of licensing.

NEW SECTION

WAC 388-877B-0250 Chemical dependency residential treatment services requiring program-specific certification—Intensive inpatient services. Intensive inpatient services are chemical dependency residential treatment services that provide a concentrated program of individual and group counseling, education, and activities for a detoxified individual and the individual's family to address overall functioning and to demonstrate aspects of recovery lifestyle. Intensive inpatient services require program-specific certification by the department's division of behavioral health and recovery. An agency providing intensive inpatient services must:

(1) Complete the individual service plan within five days of admission.

(2) Conduct and document at least weekly, one face-to-face individual chemical dependency counseling session with the individual.

(3) Document progress notes in a timely manner and before any subsequent scheduled appointments of the same type of service session or group type occur, or documentation as to why this did not occur. Progress notes must include the date, time, duration, participant names, and a brief summary of the session and the name of the staff member who provided it.

(4) Document at least weekly, an individual service plan review which determines continued stay needs and progress towards goals.

(5) Provide a minimum of twenty hours of treatment services each week to each individual. At least ten hours of these services must be chemical dependency counseling. The agency may provide an individual up to ten hours of education each week to meet the minimum requirements.

NEW SECTION

WAC 388-877B-0260 Chemical dependency residential treatment services requiring program-specific certification—Recovery house. Recovery house services are chemical dependency residential treatment services that provide a program of care and treatment with social, vocational, and recreational activities to aid in individual adjustment to abstinence and to aid in job training, employment, or participating in other types of community services. Recovery house services require program-specific certification by the department's division of behavioral health and recovery.

An agency providing recovery house services must:

(1) Provide an individual a minimum of five hours of treatment each week consisting of individual or group counseling and education regarding drug-free and sober living, and general re-entry living skills.

(2) Document progress notes in a timely manner and before any subsequent scheduled appointments of the same type of service session or group type occur. Progress notes should include the date, time, duration, participant names, and a brief summary of the session and the name of the staff member who provided it.

(3) Conduct and document an individual service plan review at least monthly.

NEW SECTION

WAC 388-877B-0270 Chemical dependency residential treatment services requiring program-specific certification—Long-term treatment services. Long-term treatment services are chemical dependency residential treatment services that provide a program for an individual needing consistent structure over a longer period of time to develop and maintain abstinence, develop recovery skills, and to improve overall health. Long-term treatment services require program-specific certification by the department's division of behavioral health and recovery. An agency providing long-term treatment services must:

(1) Provide an individual a minimum of two hours each week of individual or group counseling.

(2) Provide an individual a minimum of two hours each week of education regarding alcohol, other drugs, and other addictions.

(3) Document progress notes in a timely manner and before any subsequent scheduled appointments of the same type of service session or group type occur, or documentation as to why this did not occur. Progress notes should include the date, time, duration, participant names, and a brief summary of the session and the names of the staff member who provided it.

(4) Provide an individual, during the course of services, with:

(a) Education on social and coping skills;

(b) Social and recreational activities;

(c) Assistance in seeking employment, when appropriate; and

(d) Assistance with re-entry living skills to include seeking and obtaining safe housing.

(5) Conduct and document an individual service plan review at least monthly.

NEW SECTION

WAC 388-877B-0280 Chemical dependency residential treatment services requiring program-specific certification—Youth residential services. Youth residential services are chemical dependency residential treatment services provided to an individual seventeen years of age or younger. Youth residential services require program-specific certification by the department's division of behavioral health and recovery. The agency must:

(1) Ensure at least one adult staff member of each gender is present or on call at all times if co-educational treatment services are provided.

(2) Ensure group counseling sessions with nine to twelve youths include a second adult staff member.

(3) Ensure staff members are trained in safe and therapeutic techniques for dealing with a youth's behavior and emotional crisis, including:

(a) Verbal de-escalation;

(b) Crisis intervention;

(c) Anger management;

(d) Suicide assessment and intervention;

(e) Conflict management and problem solving skills;

(f) Management of assaultive behavior;

(g) Proper use of therapeutic physical intervention techniques; and

(h) Emergency procedures.

(4) Provide group meetings to promote personal growth.

(5) Provide leisure, and other therapy or related activities.

(6) Provide seven or more hours of structured recreation each week, that is led or supervised by staff members.

(7) Provide each youth one or more hours per day, five days each week, of supervised academic tutoring or instruction by a certified teacher when the youth is unable to attend school for an estimated period of four weeks or more. The agency must:

(a) Document the individual's most recent academic placement and achievement level; and

(b) Obtain school work from the individual's school, or when applicable, provide school work and assignments consistent with the individual's academic level and functioning.

(8) Conduct random and regular room checks when an individual is in their room, and more often when clinically indicated.

(9) Only admit youth with the written permission of the youth's parent or if applicable, legal guardian. In cases where the youth meets the requirements of a child in need of services (CHINS), the youth may sign themselves into treatment.

(10) Assess the individual's need for referral to the department's child welfare services.

(11) Ensure the following for individuals who share a room:

(a) An individual fifteen years of age or younger must not room with an individual eighteen years of age or older.

(b) An individual sixteen or seventeen years of age must be evaluated for clinical appropriateness before being placed in a room with an individual eighteen years of age or older.

(12) Allow communication between the youth and the youth's parent or if applicable, a legal guardian, and facilitate the communication when clinically appropriate.

(13) Must notify the parent or legal guardian within two hours of any change in the status of the youth and document all notifications and attempts of notifications in the clinical record.

(14) Discharge the youth to the care of the youth's parent or if applicable, legal guardian. For emergency discharge and when the parent or legal guardian is not available, the agency must contact the appropriate authority.

(15) Ensure each individual's clinical record:

(a) Contains any consent or release forms signed by the youth and their parent or legal guardian.

(b) Contains the parent's or other referring person's agreement to participate in the treatment process, as appropriate and if possible.

(c) Documents any problems identified in specific youth assessment, including any referrals to school and community support services, on the individual service plan.

Section Three—Chemical Dependency—Outpatient Treatment Services

NEW SECTION

WAC 388-877B-0300 Chemical dependency outpatient treatment services—General. The rules in WAC 388-877B-0300 through 388-877B-0370 apply to behavioral health agencies that provide chemical dependency outpatient treatment services. The definitions in WAC 388-877-0200 also apply to chemical dependency outpatient treatment services. 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.

(1) Outpatient treatment services provide chemical dependency treatment to an individual and include essential education and counseling services in accordance with patient placement criteria (PPC).

(2) Chemical dependency outpatient treatment services require additional program-specific certification by the department's division of behavioral health and recovery and include:

(a) Level II intensive outpatient treatment services (see WAC 388-877B-0350); and

(b) Level I outpatient treatment services (see WAC 388-877B-0360).

(3) An agency providing outpatient treatment services to an individual must:

(a) Be licensed by the department as a behavioral health agency;

(b) Meet the applicable behavioral health agency licensure, certification, administration, personnel, and clinical requirements in chapter 388-877 WAC, Behavioral health services administrative requirements; and

(c) Have policies and procedures to support and implement the:

(i) General requirements in chapter 388-877 WAC; and

(ii) Specific applicable requirements in WAC 388-877B-0300 through 388-877B-0370.

(4) An agency must:

(a) Use the PPC for admission, continued services, and discharge planning and decisions.

(b) Have an outline of each lecture and education session included in the service, sufficient in detail for another trained staff member to deliver the session in the absence of the regular instructor.

(c) Maintain a list of resources, including self-help groups, and referral options that can be used by staff members to refer an individual to appropriate services.

(d) Provide tuberculosis screenings to individuals for the prevention and control of tuberculosis.

(5) An agency must:

(a) Provide education to each individual admitted to the treatment facility on:

(i) Alcohol, other drugs, and/or chemical dependency;

(ii) Relapse prevention;

(iii) Blood borne pathogens; and

(iv) Tuberculosis (TB).

(b) Provide education or information to each individual admitted on:

- (i) Emotional, physical, and sexual abuse;
- (ii) Nicotine addiction; and
- (iii) The impact of chemical use during pregnancy, risks to the fetus, and the importance of informing medical practitioners of chemical use during pregnancy.

(c) Limit the size of group counseling sessions to no more than twelve individuals.

(d) Have written procedures for:

- (i) Urinalysis and drug testing, including laboratory testing; and
- (ii) How agency staff members respond to medical and psychiatric emergencies.

(6) An agency that provides services to a pregnant woman must:

(a) Have a written procedure to address specific issues regarding a woman's pregnancy and prenatal care needs; and

(b) Provide referral information to applicable resources.

(7) An agency that provides youth outpatient treatment services must:

(a) Have a written procedure to assess and refer an individual to the department's child welfare services when applicable; and

(b) Ensure that counseling sessions with nine to twelve youths include a second adult staff member.

(8) An agency that provides a DUI assessment to an individual under RCW 46.61.5056 must also be certified by the department under WAC 388-877B-0550.

(9) An agency must ensure that when offering off-site treatment:

(a) The agency maintains a current list of all locations where off-site services are provided, including:

- (i) The name and address (except for an individual receiving in-home services);
 - (ii) The primary purpose of the off-site location;
 - (iii) The level of services provided; and
 - (iv) The date the off-site services began at that location.
- (b) The agency maintains a written procedure of:

(i) How confidentiality will be maintained at each off-site location, including how confidential information and individual records will be transported between the certified facility and the off-site location; and

(ii) How services will be offered in a manner that promotes individual and agency staff safety.

(c) The agency is certified to provide the type of service offered at its main location.

(d) Chemical dependency assessment or treatment is not the primary purpose of the location where the individual is served (such as in a school, hospital, or correctional facility).

(e) Services are provided in a private, confidential setting within the off-site location.

(10) Minimum treatment requirements for deferred prosecution are established in chapter 10.05 RCW.

NEW SECTION

WAC 388-877B-0310 Chemical dependency outpatient treatment services—Agency staff requirements. In addition to meeting the agency administrative and personnel

requirements in WAC 388-877-0400 through 388-877-0530, an agency providing chemical dependency outpatient treatment services must ensure:

(1) All chemical dependency assessment and counseling services are provided by a chemical dependency professional (CDP), or a department of health-credential CDP trainee (CDPT) under the supervision of an approved supervisor.

(2) There is a designated clinical supervisor who:

(a) Is a CDP;

(b) Has documented competency in clinical supervision;

(c) Is responsible for monitoring the continued competency of each CDP in assessment, treatment, continuing care, transfer, and discharge. The monitoring must include a semi-annual review of a sample of the clinical records kept by the CDP; and

(d) Has not committed, permitted, aided or abetted the commission of an illegal act or unprofessional conduct as defined under RCW 18.130.180.

(4) Each chemical dependency professional trainee has at least one approved supervisor who meets the qualifications in WAC 246-811-049. An approved supervisor must decrease the hours of individual contact by twenty percent for each full-time CDPT supervised.

(5) Each staff member that provides individual care has a copy of an initial TB screen or test and any subsequent screenings or testing in their personnel file.

(6) All staff members are provided annual training on the prevention and control of communicable disease, blood borne pathogens and TB, and document the training in the personnel file.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 388-877B-0320 Chemical dependency outpatient treatment services—Clinical record content and documentation. In addition to the general clinical record content requirements in WAC 388-877-0640, an agency providing chemical dependency outpatient treatment services must maintain an individual's clinical record.

(1) The clinical record must contain:

(a) Documentation the individual was informed of federal confidentiality requirements and received a copy of the individual notice required under 42 C.F.R. Part 2.

(b) Documentation that the initial individual service plan was completed before treatment services are received.

(c) Documentation of progress in a timely manner and before any subsequent scheduled appointments of the same type of service session or group type occur or documentation as to why this did not occur. Progress notes must include the date, time, duration, participant names, and a brief summary of the session and the name of the staff member who provided it.

(d) Justification for the change in the level of care when transferring an individual from one certified treatment service to another within the same agency, at the same location.

(e) Documentation that staff members met with each individual at the time of discharge, unless the individual left without notice, to:

(i) Determine the appropriate recommendation for care and finalize a continuing care plan.

(ii) Assist the individual in making contact with necessary agencies or services.

(iii) Provide and document the individual was provided with a copy of the plan.

(f) Documentation that a discharge summary was completed within seven days of the individual's discharge, including the date of discharge, a summary of the individual's progress towards each individual service plan goal, legal status, and if applicable, current prescribed medication.

(2) In addition to the requirements in (1) of this section, an agency must ensure the following for each individual service plan. The individual service plan must:

(a) Be personalized to the individual's unique treatment needs;

(b) Include individual needs identified in the diagnostic and periodic reviews, addressing:

(i) All substance use needing treatment, including tobacco, if necessary;

(ii) The individual's bio-psychosocial problems;

(iii) Treatment goals;

(iv) Estimated dates or conditions for completion of each treatment goal; and

(v) Approaches to resolve the problem.

(c) Document approval by a chemical dependency professional (CDP) if the staff member developing the plan is not a CDP.

(d) Document that the plan was updated to reflect any changes in the individual's treatment needs, or as requested by the individual, at least once per month for the first three months, and at least quarterly thereafter.

(e) Document that the plan has been reviewed with the individual.

NEW SECTION

WAC 388-877B-0330 Chemical dependency outpatient treatment services—Additional assessment standards. An individual must have a chemical dependency assessment before receiving outpatient treatment services. The purpose of the assessment is to gather information to determine if a substance use disorder exists and if there are services available to address the individual's needs. In addition to the assessment requirements in WAC 388-877-0610, the assessment must include:

(1) A face-to-face diagnostic interview with the individual in order to obtain, review, evaluate, and document a history of the individual's involvement with alcohol and other drugs, including:

(a) The type of substances used, including tobacco;

(b) The route of administration; and

(c) The amount, frequency, and duration of use.

(2) A history of alcohol or other drug treatment or education.

(3) The individual's self-assessment of use of alcohol and other drugs.

(4) A history of relapse.

(5) A history of self-harm.

(6) A history of legal involvement.

(7) A statement regarding the provision of an HIV/AIDS brief risk intervention, and any referral made.

(8) A diagnostic assessment statement, including sufficient information to determine the individual's diagnosis using:

(a) Diagnostic and Statistical Manual (DSM IV TR, 2000) as it existed on the effective date of this section; then

(b) DSM-5 as it exists when published and released in 2013, consistent with the purposes of this section. Information regarding the publication date and release of the DSM-5 is posted on the American Psychiatric Association's public website at www.DSM5.org.

(9) A placement decision, using PPC dimensions when the assessment indicates the individual is in need of services.

(10) Evidence the individual was notified of the assessment results and documentation of the treatment options provided and the individual's choice. If the individual was not notified of the results and advised of referral options, the reason must be documented.

(11) The additional requirements outlined under WAC 388-877B-0550 for driving under the influence (DUI) assessments, for an agency providing services to an individual under RCW 46.61.5056.

(12) Documented attempts to obtain the following information when assessing youth:

(a) Parental and sibling use of alcohol and other drugs.

(b) A history of school assessments for learning disabilities or other problems, which may affect ability to understand written materials.

(c) Past and present parent/guardian custodial status, including a history of running away and out-of-home placements.

(c) A history of emotional or psychological problems.

(e) A history of child or adolescent developmental problems.

(f) The ability of parents, or if applicable, a legal guardian to participate in treatment.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 388-877B-0340 Chemical dependency outpatient treatment services—Noncompliance reporting requirements. An agency providing chemical dependency outpatient treatment services must report noncompliance, in all levels of care, for an individual ordered into chemical dependency treatment by a court of law or other appropriate jurisdictions. An agency that fails to report noncompliance for an individual under chapter 46.61 RCW is subject to penalties as stated in RCW 46.61.5056(4). An agency providing treatment to a court-mandated individual, including deferred prosecution, must develop procedures addressing individual noncompliance and reporting requirements, including:

(1) Completing an authorization to release confidential information form that meets the requirements of 42 C.F.R.

Part 2 and 45 C.F.R. Parts 160 and 164 or through a court order authorizing the disclosure pursuant to 42 C.F.R. Part 2, Sections 2.63 through 2.67.

(2) Notifying the designated chemical dependency specialist within three working days from obtaining information of any violation of the terms of the court order for purposes of revocation of the individual's conditional release, or department of corrections (DOC) if the individual is under DOC supervision.

(3) Reporting and recommending action for emergency noncompliance to the court or other appropriate jurisdiction(s) within three working days from obtaining information on:

(a) An individual's failure to maintain abstinence from alcohol and other nonprescribed drugs as verified by individual's self-report, identified third party report confirmed by the agency, or blood alcohol content or other laboratory test.

(b) An individual's report of subsequent alcohol and/or drug related arrests.

(c) An individual leaving the program against program advice or an individual discharged for rule violation.

(4) Reporting and recommending action for nonemergent, noncompliance to the court or other appropriate jurisdiction(s) within ten working days from the end of each reporting period, upon obtaining information on:

(a) An individual's unexcused absences or failure to report, including failure to attend mandatory self-help groups.

(b) An individual's failure to make acceptable progress in any part of the treatment plan.

(5) Transmitting noncompliance or other significant changes as soon as possible, but no longer than ten working days from the date of the noncompliance, when the court does not wish to receive monthly reports.

(6) Reporting compliance status of persons convicted under chapter 46.61 RCW to the department of licensing.

NEW SECTION

WAC 388-877B-0350 Chemical dependency outpatient treatment services requiring program-specific certification—Level II intensive outpatient services. Level II intensive outpatient services are chemical dependency outpatient treatment services that provide a concentrated program of individual and group counseling, education, and activities, in accordance with patient placement criteria (PPC). Level II intensive outpatient services require program-specific certification by the department's division of behavioral health and recovery. An agency providing Level II intensive outpatient treatment services must:

(1) Develop an initial individual service plan prior to the individual's participation in treatment.

(2) Provide individual chemical dependency counseling sessions with each individual at least once a month or more if clinically indicated.

(3) Document progress notes in a timely manner and before any subsequent scheduled appointments of the same type of service session or group type occur, or documentation as to why this did not occur. Progress notes must include the date, time, duration, participant names, and a brief summary

of the session and the name of the staff member who provided it.

(4) Conduct and document a review of each individual's service plan in individual counseling sessions, at least once a month, to assess adequacy and attainment of goals.

(5) Refer for ongoing treatment or support upon completion of intensive outpatient treatment, as necessary.

(6) Ensure that individuals admitted under a deferred prosecution order, under chapter 10.05 RCW:

(a) Receive a minimum of seventy-two hours of treatment services within a maximum of twelve weeks, which consist of the following during the first four weeks of treatment:

(i) At least three sessions each week, with each session occurring on separate days of the week.

(ii) Group sessions must last at least one hour.

(b) Attend self-help groups in addition to the seventy-two hours of treatment services.

(c) Have approval, in writing, by the court having jurisdiction in the case, when there is any exception to the requirements in this subsection.

NEW SECTION

WAC 388-877B-0360 Chemical dependency outpatient treatment services requiring program-specific certification—Level I outpatient treatment services. Level I outpatient treatment services are chemical dependency outpatient treatment services that provide chemical dependency treatment to an individual less than twenty-four-hours-a-day, including individual and group treatment services of varying duration and intensity according to a prescribed plan. Level I outpatient treatment services require program-specific certification by the department's division of behavioral health and recovery.

An agency providing Level I outpatient treatment services must:

(1) Develop an initial individual service plan before the individual's participation in treatment.

(2) Conduct group or individual chemical dependency counseling sessions for each individual, each month, according to an individual service plan.

(3) Conduct and document an individual service plan review for each individual once a month for the first three months and quarterly thereafter or sooner if required by other laws.

(4) Document progress notes in a timely manner and before any subsequent scheduled appointments of the same type of service session or group type occur, or documentation as to why this did not occur. Progress notes must include the date, time, duration, participant names, and a brief summary of the session and the name of the staff member who provided it.

NEW SECTION

WAC 388-877B-0370 Chemical dependency outpatient treatment services requiring program-specific certification—Chemical dependency counseling required under RCW 46.61.5056. Chemical dependency outpatient treatment services provided to an individual convicted of

driving under the influence or physical control under RCW 46.61.5056 are subject to the requirements in this section, and require program-specific certification by the department's division of behavioral health and recovery. An agency providing outpatient treatment services subject to RCW 46.61.5056 must ensure treatment is completed as follows:

(1) Treatment during the first sixty days must include:

(a) Weekly group or individual chemical dependency counseling sessions according to the individual service plan.

(b) One individual chemical dependency counseling session of not less than thirty minutes duration, excluding the time taken for a chemical dependency assessment, for each individual, according to the individual service plan.

(c) Alcohol and drug basic education for each individual.

(d) Participation in self-help groups for an individual with a diagnosis of substance dependence. Participation must be documented in the individual's clinical record.

(e) The balance of the sixty-day time period for individuals who complete intensive inpatient chemical dependency treatment services must include, at a minimum, weekly outpatient counseling sessions according to the individual service plan.

(2) The next one hundred twenty days of treatment includes:

(a) Group or individual chemical dependency counseling sessions every two weeks according to the individual service plan.

(b) One individual chemical dependency counseling session of not less than thirty minutes duration, every sixty days according to the individual service plan.

(c) Referral of each individual for ongoing treatment or support, as necessary, using PPC, upon completion of one hundred eighty days of treatment.

(3) For an individual who is assessed with insufficient evidence of a substance use disorder, a chemical dependency professional (CDP) must refer the individual to alcohol/drug information school.

Section Four—Chemical Dependency—Opiate Substitution Treatment Services

NEW SECTION

WAC 388-877B-0400 Chemical dependency opiate substitution treatment services—General. The rules in WAC 388-877B-0400 through WAC 388-877B-0450 apply to behavioral health agencies that provide chemical dependency opiate substitution treatment services. The definitions in WAC 388-877-0200 also apply to chemical dependency opiate substitution treatment services. 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.

(1) Opiate substitution treatment services include the dispensing of an opioid agonist treatment medication, along with a comprehensive range of medical and rehabilitative services, when clinically necessary, to an individual to alleviate the adverse medical, psychological, or physical effects inci-

dent to opiate addiction. These services include detoxification treatment and maintenance treatment.

(2) An agency must meet all the certification requirements in WAC 388-877B-0405 in order to provide opiate substitution treatment services and:

(a) Be licensed by the department as a behavioral health agency;

(b) Meet the applicable behavioral health agency licensure, certification, administrative, personnel, and clinical requirements in chapter 388-877 WAC, Behavioral health services administrative requirements; and

(c) Have policies and procedures to support and implement the:

(i) General requirements in chapter 388-877 WAC; and

(ii) Program-specific requirements in WAC 388-877B-0400 through 388-877B-0450.

(3) An agency providing opiate substitution treatment services must ensure that the agency's individual record system complies with all federal and state reporting requirements relevant to opioid drugs approved for use in treatment of opioid addiction.

(4) An agency must:

(a) Use patient placement criteria (PPC) for admission, continued services, and discharge planning and decisions.

(b) Provide education to each individual admitted, totaling no more than fifty percent of treatment services, on:

(i) Alcohol, other drugs, and chemical dependency;

(ii) Relapse prevention;

(iii) Blood borne pathogens; and

(iv) Tuberculosis (TB).

(c) Provide education or information to each individual on:

(i) Emotional, physical, and sexual abuse;

(ii) Nicotine addiction;

(iii) The impact of chemical use during pregnancy, risks to the fetus, and the importance of informing medical practitioners of chemical use during pregnancy; and

(iv) Family planning.

(d) Have written procedures for:

(i) Diversion control that contains specific measures to reduce the possibility of the diversion of controlled substances from legitimate treatment use, and assign specific responsibility to the medical and administrative staff members for carrying out the described diversion control measures and functions.

(ii) Urinalysis and drug testing, to include obtaining:

(A) Specimen samples from each individual, at least eight times within twelve consecutive months.

(B) Random samples, without notice to the individual.

(C) Samples in a therapeutic manner that minimizes falsification.

(D) Observed samples, when clinically appropriate.

(E) Samples handled through proper chain of custody techniques.

(iii) Laboratory testing.

(iv) The response to medical and psychiatric emergencies.

(v) Verifying the identity of an individual receiving treatment services, including maintaining a file in the dispensary with a photograph of the individual and updating the

photographs when the individual's physical appearance changes significantly.

(5) An agency must ensure that an individual is not admitted to opiate substitution treatment detoxification services more than two times in a twelve-month period following admission to services.

(6) An agency providing services to a pregnant woman must have a written procedure to address specific issues regarding their pregnancy and prenatal care needs, and to provide referral information to applicable resources.

(7) An agency providing youth opiate substitution treatment services must:

(a) Have a written procedure to assess and refer the youth to the department's child welfare services, when applicable.

(b) Ensure that a group counseling session with nine to twelve youths include a second staff member.

(c) Ensure that before admission the youth has had two documented attempts at short-term detoxification or drug-free treatment within a twelve-month period, with a waiting period of no less than seven days between the first and second short-term detoxification treatment.

(d) Ensure that when a youth is admitted for maintenance treatment, written consent by a parent or if applicable, legal guardian or responsible adult designated by the relevant state authority, is obtained.

(8) An agency providing opiate substitution treatment services must ensure:

(a) That notification to the federal Substance Abuse and Mental Health Services Administration (SAMHSA) and the department is made within three weeks of any replacement or other change in the status of the program, program sponsor (as defined in 42 C.F.R. Part 8), or medical director.

(b) Treatment is provided to an individual in compliance with 42 C.F.R. Part 8.

(c) The number of individuals receiving treatment services does not exceed three hundred fifty unless authorized by the county, city, or tribal legislative authority in which the program is located.

(d) The individual record system complies with all federal and state reporting requirements relevant to opioid drugs approved for use in treatment of opioid addiction.

(e) The death of an individual enrolled in opiate substitution treatment is reported to the department within one business day.

NEW SECTION

WAC 388-877B-0405 Chemical dependency opiate substitution treatment services—Certification. An agency providing opiate substitution treatment services must be certified by the department's division of behavioral health and recovery to provide these services. An agency applying to provide opiate substitution treatment service must:

(1) Submit to the department documentation that the agency has communicated with the county legislative authority and if applicable, the city legislative authority or tribal legislative authority, in order to secure a location for the new opiate substitution treatment program that meets county, tribal or city land use ordinances.

(2) Ensure that a community relations plan developed and completed in consultation with the county, city, or tribal legislative authority or their designee, in order to minimize the impact of the opiate substitution treatment programs upon the business and residential neighborhoods in which the program is located. The plan must include:

(a) Documentation of the strategies used to:

(i) Obtain stakeholder input regarding the proposed location;

(ii) Address any concerns identified by stakeholders; and

(iii) Develop an ongoing community relations plan to address new concerns expressed by stakeholders.

(b) Documentation that transportation systems will provide reasonable opportunities to persons in need of treatment to access the services of the program.

(c) A copy of the application for:

(i) A registration certificate from the Washington state board of pharmacy.

(ii) Licensure to the federal Drug Enforcement Administration.

(iii) Certification to the federal Center for Substance Abuse Treatment (CSAT) of the Substance Abuse and Mental Health Services Administration (SAMHSA).

(iv) Accreditation from a federal CSAT/SAMHSA-approved opioid treatment program accreditation body.

(d) A declaration to limit the number of individual program participants to three hundred fifty as specified in RCW 70.96A.410 (1)(e).

(e) For new applicants who operate opiate substitution treatment programs in another state, copies of all survey reports written by their national accreditation body and state certification, if applicable, within the past six years.

(3) Have concurrent approval to provide opiate substitution treatment by:

(a) The Washington State department of health board of pharmacy;

(b) The Federal CSAT SAMHSA, as required by 42 C.F.R. Part 8 for certification as an opioid treatment program; and

(c) The federal Drug Enforcement Administration.

(4) An agency must ensure that opiate substitution treatment is provided to an individual in compliance with the applicable requirements in 42 C.F.R. Part 8 and 21 C.F.R. Part 1301.

(5) The department may deny an application for certification when:

(a) There is not a demonstrated need in the community where the applicant proposes to locate the program.

(b) There is sufficient availability, access, and capacity of other certified programs near the area where the applicant is proposing to locate the program.

(c) The applicant has not demonstrated in the past, the capability to provide the appropriate services to assist individuals using the program to meet goals established by the legislature.

NEW SECTION

WAC 388-877B-0410 Chemical dependency opiate substitution treatment services—Agency staff require-

ments. In addition to meeting the agency administrative and personnel requirements in WAC 388-877-0400 through 388-877-0530, an agency providing chemical dependency opiate substitution treatment services must:

(1) Appoint a program sponsor, as defined in 42 C.F.R. Part 8, who is responsible for notifying the federal Center for Substance Abuse Treatment (CSAT), Substance Abuse and Mental Health Services Administration (SAMHSA), the federal Drug Enforcement Administration (DEA), the department, and the Washington State board of pharmacy of any theft or significant loss of a controlled substance.

(2) Ensure there is an appointed medical director who:

(a) Is licensed by department of health (DOH) to practice medicine and practices within their scope of practice.

(b) Is responsible for all medical services performed. See the program physician responsibilities in WAC 388-877B-0440.

(c) Ensures all medical services provided are in compliance with applicable federal, state, and local rules and laws.

(3) Ensure all medical services provided are provided by an appropriate DOH-credentialed medical provider practicing within their scope of practice.

(4) Ensure all chemical dependency assessment and counseling services are provided by a DOH-credentialed chemical dependency professional (CDP), or a CDP trainee (CDPT) under the supervision of an approved supervisor.

(5) Ensure there is a designated and identified clinical supervisor who:

(a) Is a CDP.

(b) Has documented competency in clinical supervision.

(c) Is responsible for monitoring the continued competency of each CDP in assessment, treatment, continuing care, transfer, and discharge. This monitoring must include a semi-annual review of a sample of each CDP's clinical records.

(d) Has not committed, permitted, aided or abetted the commission of an illegal act or unprofessional conduct as defined under RCW 18.130.180.

(6) Ensure an agency using CDPTs has at least one approved supervisor that meets the qualification in WAC 246-811-049. An approved supervisor must decrease the hours of individual contact by twenty percent for each full-time CDPT supervised.

(7) Ensure at least one staff member has documented training in:

(a) Family planning;

(b) Prenatal health care; and

(c) Parenting skills.

(8) Ensure that at least one staff member is on duty at all times who has documented training in:

(a) Cardiopulmonary resuscitation (CPR); and

(b) Management of opiate overdose.

(9) Ensure that a personnel file for a staff member providing individual care includes a copy of an initial tuberculosis (TB) screen and subsequent screening as appropriate.

(10) Provide and ensure all staff members receive annual training on:

(a) The prevention and control of communicable disease, blood borne pathogens, and TB; and

(b) Opiate dependency clinical and medical best practice, specific to the staff member's scope of practice and job function.

NEW SECTION

WAC 388-877B-0420 Chemical dependency opiate substitution treatment services—Clinical record content and documentation requirements. In addition to the general clinical record content requirements in WAC 388-877-0640, an agency providing chemical dependency opiate substitution treatment services must maintain an individual's clinical record.

(1) The clinical record must contain:

(a) Documentation the individual was informed of the federal confidentiality requirements and received a copy of the individual notice required under 42 C.F.R. Part 2.

(b) Documentation that the agency made a good faith effort to review if the individual is enrolled in any other opiate substitution treatment and take appropriate action.

(c) Documentation that the agency:

(i) Referred the individual to self-help group(s).

(ii) Addressed the individual's vocational, educational, and employment needs; and

(iii) Encouraged family participation.

(d) Documentation that the individual received a copy of the rules and responsibilities for treatment participants, including the potential use of interventions or sanction.

(e) Documentation that the individual service plan was completed before the individual received treatment services.

(f) Documentation that the individual service plan was reviewed:

(i) Once every month, for the first ninety days in treatment;

(ii) Once every three months, for every two years of continued enrollment in treatment; and

(iii) Once every six months, after the second year of continued enrollment in treatment.

(g) Documentation that individual or group counseling sessions were provided:

(i) Once every week, for the first ninety days:

(A) For a new individual in treatment;

(B) For an individual readmitted more than ninety days since the most recent discharge from opiate substitution treatment.

(ii) Once every week, for the first month, for an individual readmitted within ninety days since the most recent discharge from opiate substitution treatment; and

(iii) Once every month, for an individual transferring from another opiate substitution treatment program, when the individual had received treatment for at least ninety days.

(h) Documentation of progress notes in a timely manner and before any subsequent scheduled appointments of the same type of service session or group type occur, or documentation as to why this did not occur. Progress notes must include the date, time, duration, participant names, and a brief summary of the session and the name of the staff member who provided it.

(i) Documentation when an individual refuses to provide a drug testing specimen sample or refuses to initial the log

containing the sample number. The refusal is considered a positive drug screen specimen.

(j) Documentation of the results and the discussion held with the individual regarding any positive drug screen specimens in the counseling session immediately following the notification of positive results.

(k) Justification for the change in the level of care when transferring an individual from one certified treatment service to another within the same agency, at the same location.

(l) Documentation that a staff member(s) met with the individual at the time of discharge from the agency, unless the individual left without notice, to:

(i) Determine the appropriate recommendation for care and finalize a continuing care plan.

(ii) Assist the individual in making contact with necessary agencies or services.

(iii) Provide and document the individual was provided a copy of the plan.

(m) Documentation that the discharge summary was completed within seven working days of the individual's discharge from the agency, which includes the date of discharge and a summary of the individual's progress towards each individual service plan goal.

(n) Documentation of all medical services. See WAC 388-877B-0440 and 388-877B-0450, regarding program physician responsibility and medication management.

(2) In addition to the requirements in (1) of this section, an agency must ensure the following for each individual service plan. The individual service plan must:

(a) Be personalized to the individual's unique treatment needs;

(b) Include individual needs identified in the diagnostic and periodic reviews, addressing:

(i) All substance use needing treatment, including tobacco, if necessary;

(ii) The individual's bio-psychosocial problems;

(iii) The treatment goals;

(iv) Estimated dates or conditions for completion of each treatment goal; and

(v) Approaches to resolve the problem.

(c) Document approval by a chemical dependency professional (CDP) if the staff member developing the plan is not a CDP.

(d) Document that the plan has been reviewed with the individual.

NEW SECTION

WAC 388-877B-0430 Chemical dependency opiate substitution treatment services—Additional assessment standards. An individual must have a chemical dependency assessment before receiving chemical dependency opiate substitution treatment services. The purpose of the assessment is to gather information to determine if a substance disorder exists and if there are services available to address the individual's needs. In addition to the assessment requirements in WAC 388-877-0610, the assessment must include:

(1) A face-to-face diagnostic interview with the individual in order to obtain, review, evaluate, and document the following:

(a) A history of the individual's involvement with alcohol and other drugs, to include:

(i) The type of substances used, including tobacco;

(ii) The route of administration; and

(iii) The amount, frequency, and duration of use.

(b) A history of alcohol or other drug treatment or education.

(c) The individual's self-assessment of use of alcohol and other drugs.

(d) A history of relapse.

(e) A history of self-harm.

(f) A history of legal involvement.

(g) A statement regarding the provision of an HIV/AIDS brief risk intervention, and any referral made.

(2) A diagnostic assessment statement, including sufficient information to determine the individual's diagnosis using the:

(a) Diagnostic and Statistical Manual (DMS IV TR, 2000) as it existed on the effective date of this section; then

(b) DSM-5 as it exists when published and released in 2013, consistent with the purposes of this section. Information regarding the publication date and release of the DSM-5 is posted on the American Psychiatric Association's public website at www.DSM5.org.

(3) A placement decision, using patient placement criteria dimensions when the assessment indicates the individual is in need of services.

(4) Evidence the individual was notified of the assessment results and documentation of the treatment options provided and the individual's choice. If the individual was not notified of the results and advised of referral options, the reason must be documented.

(5) The additional requirements for driving under the influence (DUI) assessment providers in WAC 388-877B-0550 if the agency is providing services to an individual under RCW 46.61.5056.

(6) When assessing youth, documented attempts to obtain the following information:

(a) Parental and sibling use of alcohol and other drugs.

(b) A history of school assessments for learning disabilities or other problems which may affect ability to understand written materials.

(c) Past and present parent/guardian custodial status, including a history of running away and out-of-home placements.

(d) A history of emotional or psychological problems.

(e) A history of child or adolescent developmental problems.

(f) Ability of the youth's parent(s) or if applicable, legal guardian, to participate in treatment.

NEW SECTION

WAC 388-877B-0440 Chemical dependency opiate substitution treatment services—Program physician responsibility. An agency providing chemical dependency opiate substitution treatment services must ensure the program physician, or the medical practitioner under supervision of the program physician, performs and meets the following:

(1) The program physician or medical practitioner under supervision of the program physician:

(a) Is responsible to verify an individual is currently addicted to an opioid drug and that the person became addicted at least twelve months before admission to treatment.

(b) May waive the twelve month requirement in (a) of this subsection upon receiving documentation that the individual:

(i) Was released from a penal institution, if the release was within the previous six months;

(ii) Is pregnant; or

(iii) Was previously treated within the previous twenty-four months.

(2) A physical evaluation must be completed on the individual before admission that includes the determination of opiate physical addiction consistent with the Diagnostic and Statistical Manual (DSM-5) criteria, and an assessment for appropriateness for Sunday and holiday take-home medication. Information on the DSM-5 can be found on the American Psychiatric Association's public website at www.DSM5.org.

(3) A review must be completed by the department of health prescription drug monitoring program data on the individual:

(a) At admission;

(b) Annually after the date of admission; and

(c) Subsequent to any incidents of concern.

(4) All relevant facts concerning the use of the opioid drug must be clearly and adequately explained to each individual.

(5) Current written and verbal information must be provided to pregnant individuals, before the initial prescribed dosage regarding:

(a) The concerns of possible addiction, health risks, and benefits the opiate substitution medication may have on the individual and the fetus.

(b) The risk of not initiating opiate substitution medication on the individual and the fetus.

(c) Referral options to address neonatal abstinence syndrome for the baby.

(6) Each individual voluntarily choosing to receive maintenance treatment must sign an informed consent to treatment.

(7) Within fourteen days of admission, a medical examination must be completed that includes:

(a) Documentation of the results of serology and other tests; and

(b) An assessment for the appropriateness of take-home medications as required by 42 C.F.R. part 8.12(i).

(8) When exceptional circumstances exist for an individual to be enrolled with more than one opiate substitution treatment agency, justification granting permission must be documented in the individual's clinical record at each agency.

(9) Each individual admitted to detoxification services must have an approved detoxification schedule that is medically appropriate.

(10) Each individual administratively discharged from services must have an approved detoxification schedule that is medically appropriate.

(11) An assessment for other forms of treatment must be completed for each individual who has two or more unsuccessful detoxification episodes within twelve consecutive months.

(12) An annual medical examination must be completed on each individual that includes the individual's overall physical condition and response to medication.

NEW SECTION

WAC 388-877B-0450 Chemical dependency opiate substitution treatment services—Medication management. An agency providing chemical dependency opiate substitution treatment services must ensure the medication management requirements in this section are met.

(1) An agency:

(a) Must use only those opioid agonist treatment medications that are approved the Food and Drug Administration under section 505 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) for use in the treatment of opioid addiction.

(b) Providing opiate substitution treatment that is fully compliant with the procedures of an investigational use of a drug and other conditions set forth in the application may administer a drug that has been authorized by the Food and Drug Administration under an investigational new drug application under section 505(i) of the federal Food, Drug, and Cosmetic Act for investigational use in the treatment of opioid addiction. The following opioid agonist treatment medications are approved by the Food and Drug Administration for use in the treatment of opioid addiction:

(i) Methadone; and

(ii) Buprenorphine.

(2) An agency providing opiate substitution treatment must ensure that initial dosing requirements are met as follows:

(a) Methadone must be administered or dispensed only in oral form and is formulated in such a way as to reduce its potential for parenteral abuse.

(b) The initial dose of methadone must not exceed thirty milligrams and the total dose for the first day must not exceed forty milligrams, unless the program physician documents in the individual's record that forty milligrams did not suppress opiate abstinence symptoms.

(c) The establishment of the initial dose must consider:

(i) Signs and symptoms of withdrawal;

(ii) Individual comfort; and

(iii) Side effects from over medication.

(3) An agency providing opiate substitution treatment must ensure that:

(a) Each opioid agonist treatment medication used by the program is administered and dispensed in accordance with its approved product labeling.

(b) All dosing and administration decisions are made by a:

(i) Program physician; or

(ii) Medical practitioner under supervision of a program physician familiar with the most up-to-date product labeling.

(c) Any significant deviations from the approved labeling, including deviations with regard to dose, frequency, or

the conditions of use described in the approved labeling, are specifically documented in the individual's record.

(4) An agency providing opiate substitution treatment must ensure that all take-home medications are:

(a) Consistent with 42 C.F.R. Part 8.12 (i)(1-5) and are authorized only to stable individuals who:

(i) Have received opiate substitution treatment medication for a minimum of ninety days; and

(ii) Have not had any positive drug screens in the last sixty days.

(b) Assessed and authorized, as appropriate, for a Sunday or legal holiday as identified in RCW 1.16.050.

(c) Assessed and authorized, as appropriate, when travel to the facility presents a safety risk for an individual or staff member due to inclement weather.

(d) Not allowed in short-term detoxification or interim maintenance treatment.

(5) All exceptions to take-home requirements must be submitted and approved by the state opioid treatment authority and Substance Abuse and Mental Health Services Administration (SAMHSA).

Section Five—Chemical Dependency—Assessment and Assessment Only Services

NEW SECTION

WAC 388-877B-0500 Chemical dependency assessment services—General. The rules in WAC 388-877B-0500 through 388-877B-0550 apply to behavioral health agencies that provide chemical dependency assessment services. The definitions in WAC 388-877-0200 also apply to chemical dependency assessment services. 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.

(1) Chemical dependency assessment services are provided to an individual to determine the individual's involvement with alcohol and other drugs and determine the appropriate course of care or referral.

(2) Chemical dependency assessment services include:

(a) Assessment only services; and

(b) Driving under the influence (DUI) assessment services.

(3) A behavioral health agency certified for assessment only services may choose to provide optional program-specific DUI assessment services (see WAC 388-877B-0550). Optional DUI assessment services require additional program-specific certification by the department's division of behavioral health and recovery.

(4) An agency providing assessment services to an individual must:

(a) Be licensed by the department as a behavioral health agency;

(b) Meet the applicable behavioral health agency licensure, certification, administrative, personnel, and clinical requirements in chapter 388-877 WAC, Behavioral health services administrative requirements; and

(c) Have policies and procedures to support and implement the:

(i) General requirements in chapter 388-877 WAC; and

(ii) Program-specific requirements in WAC 388-877B-0500 through 388-877B-0550.

(5) An agency providing assessment services:

(a) Must review, evaluate, and document information provided by the individual;

(b) May include information from external sources such as family, support individuals, legal entities, courts, and employers; and

(c) Is not required to meet the individual service plan requirements in WAC 388-877-0620.

(6) An agency must maintain and provide a list of resources, including self-help groups, and referral options that can be used by staff members to refer an individual to appropriate services.

(7) An agency providing Alcoholism and Drug Addiction Treatment and Support Act (ADATSA) and driving under the influence (DUI) assessment services must meet the additional program-specific standards in WAC 388-877B-0550.

NEW SECTION

WAC 388-877B-0510 Chemical dependency assessment only services—Agency staff requirements. In addition to meeting the agency administrative and personnel requirements in WAC 388-877-0400 through 388-877-0530, an agency providing chemical dependency assessment services must ensure:

(1) All chemical dependency assessment only services are provided by a chemical dependency professional (CDP).

(2) There is a designated clinical supervisor who:

(a) Is a CDP;

(b) Has documented competency in clinical supervision; and

(c) Is responsible for monitoring the continued competency of each CDP. The monitoring must include a semi-annual review of a sample of the clinical records kept by the CDP.

(3) Each staff member that provides individual care has a copy of an initial tuberculosis (TB) screen or test and any subsequent screening or testing in their personnel file.

(4) All staff members are provided annual training on the prevention and control of communicable disease, blood borne pathogens, and TB. The training must be documented in the personnel file.

NEW SECTION

WAC 388-877B-0530 Chemical dependency assessment only services—Additional assessment standards. An individual must have a chemical dependency assessment before receiving chemical dependency treatment services. The purpose of the assessment is to gather information to determine if a substance use disorder exists and if there are services available to address the individual's needs. In addition to the assessment requirements in WAC 388-877-0610, the assessment must include:

(1) A face-to-face diagnostic interview with the individual in order to obtain, review, evaluate, and document the following:

(a) A history of the individual's involvement with alcohol and other drugs, including:

- (i) The type of substances used, including tobacco;
- (ii) The route of administration;
- (iii) The amount, frequency, and duration of use.

(b) A history of alcohol or other drug treatment or education.

(c) The individual's self-assessment of use of alcohol and other drugs.

(d) A history of relapse.

(e) A history of self-harm.

(f) A history of legal involvement.

(g) A statement regarding the provision of an HIV/AIDS brief risk intervention, and any referral made.

(2) A diagnostic assessment statement, including sufficient information to determine the individual's diagnosis using the:

(a) Diagnostic and Statistical Manual (DSM IV TR, 2000), as it existed on the effective date of this section; then

(b) DSM-5 as it exists when published and released in 2013, consistent with the purposes of this section. Information regarding the publication date and release of the DSM-5 is posted on the American Psychiatric Association's public website at www.DSM5.org.

(3) A placement decision, using patient placement criteria dimensions when the assessment indicates the individual is in need of services.

(4) Evidence the individual was notified of the assessment results and documentation of the treatment options provided and the individual's choice. If the individual was not notified of the results and advised of referral options, the reason must be documented.

(5) Documented attempts to obtain the following information when assessing youth:

(a) Parental and sibling use of alcohol and other drugs.

(b) A history of school assessments for learning disabilities or other problems which may affect ability to understand written materials.

(c) Past and present parent/guardian custodial status, including a history of running away and out-of-home placements.

(d) A history of emotional or psychological problems.

(e) A history of child or adolescent developmental problems.

(f) Ability of the youth's parent(s) or if applicable, legal guardian, to participate in treatment.

NEW SECTION

WAC 388-877B-0540 Chemical dependency assessment services—Noncompliance reporting requirements.

An agency providing chemical dependency assessment services must report noncompliance in all levels of care for an individual ordered into chemical dependency treatment by a court or other appropriate jurisdiction(s). An agency that fails to report noncompliance for an individual under chapter 46.61 RCW is subject to penalties as stated in RCW 46.61.-

5056(4). An agency providing treatment to an individual court-mandated to treatment, including deferred prosecution, must develop procedures addressing individual noncompliance and reporting requirements, including:

(1) Completing an authorization to release confidential information form that meets the requirements of 42 C.F.R. Part 2 and 45 C.F.R. Parts 160 and 164 or through a court order authorizing the disclosure under the requirements of 42 C.F.R. Part 2, Section 2.63 through 2.67.

(2) Notifying the designated chemical dependency specialist within three working days from obtaining information of any violation of the terms of the court order for purposes of revoking the individual's conditional release, or department of corrections (DOC) if the individual is under DOC supervision.

(3) Reporting and recommending action for emergency noncompliance to the court or other appropriate jurisdiction(s) within three working days from obtaining information on:

(a) An individual's failure to maintain abstinence from alcohol and other nonprescribed drugs as verified by individual's self-report, identified third party report confirmed by the agency, or blood alcohol content or other laboratory test.

(b) An individual's report of subsequent alcohol and/or drug related arrests.

(4) Reporting compliance status of persons convicted under chapter 46.61 RCW to the department of licensing.

NEW SECTION

WAC 388-877B-0550 Chemical dependency assessment only services requiring program-specific certification—DUI assessment services. Driving under the influence (DUI) assessment services are diagnostic services requested by a court to determine an individual's involvement with alcohol and other drugs and to recommend a course of action.

(1) A behavioral health agency certified for chemical dependency assessment only services may choose to provide optional program-specific DUI assessment services. Optional DUI assessment services require additional program-specific certification by the department's division of behavioral health and recovery.

(2) An agency providing DUI assessment services, as defined in chapter 46.61 RCW, must ensure:

(a) The assessment is conducted in person.

(b) The individual has a summary included in the assessment that evaluates the individual's:

(i) Blood or breath alcohol level and other drug levels, or documentation of the individual's refusal at the time of the arrest, if available; and

(ii) Self-reported driving record and the abstract of the individual's legal driving record.

(3) That when the assessment findings do not result in a substance use disorder diagnosis, the assessment also includes:

(a) A copy of the police report;

(b) A copy of the court originated criminal case history; and

(c) The results of a urinalysis or drug testing obtained at the time of the assessment.

(4) That the assessment contains documentation of the attempts to obtain the information in (3) of this section if it is not readily available.

(5) The assessment includes a referral to alcohol and drug information school.

Section Six—Chemical Dependency—Information and Assistance Services

NEW SECTION

WAC 388-877B-0600 Chemical dependency information and assistance services—General. The rules in WAC 388-877B-0600 through 388-877B-0660 apply to behavioral health agencies that provide chemical dependency information and assistance services. The definitions in WAC 388-877-0200 also apply to chemical dependency information and assistance services. 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.

(1) Information and assistance services are considered nontreatment services provided to support an individual who has a need for interventions related to the use of alcohol and/or other drugs.

(2) Information and assistance services require additional program-specific certification by the department's division of behavioral health and recovery and include:

(a) Alcohol and drug information school (see WAC 388-877B-0630);

(b) Information and crisis services (see WAC 388-877B-0640);

(c) Emergency service patrol (see WAC 388-877B-0650); and

(d) Screening and brief intervention (see WAC 388-877B-0660).

(3) An agency providing information and assistance services to an individual must:

(a) Be licensed by the department as a behavioral health agency;

(b) Meet the applicable behavioral health agency licensure, certification, administrative, personnel, and clinical requirements in chapter 388-877 WAC, Behavioral health services administrative requirements; and

(c) Have policies and procedures to support and implement the:

(i) General requirements in chapter 388-877 WAC; and

(ii) Specific applicable requirements in WAC 388-877B-0600 through 388-877B-0660.

(4) Chemical dependency information and assistance services are available without an initial assessment or individual service plan and are not required to meet the requirements under WAC 388-877-0640.

(5) An agency providing information and assistance services must maintain and provide a list of resources, including self-help groups and referral options, that can be used by staff members to refer an individual to appropriate services.

NEW SECTION

WAC 388-877B-0610 Chemical dependency information and assistance services—Agency staff requirements. In addition to meeting the agency administrative and personnel requirements in WAC 388-877-0400 through 388-877-0530, an agency providing chemical dependency information and assistance services must ensure each staff member:

(1) Is provided annual training on the prevention and control of communicable disease, blood borne pathogens and tuberculosis (TB). The training must be documented in the personnel file.

(2) Who provides individual care has a copy of their initial TB screen or test and any subsequent screening or testing in their personnel file.

NEW SECTION

WAC 388-877B-0630 Chemical dependency information and assistance services requiring program-specific certification—Alcohol and drug information school services. Alcohol and drug information school services are a chemical dependency information and assistance services educational program about the use and abuse of alcohol and other drugs. These services are for an individual referred by a court or other jurisdiction(s) who may have been assessed and determined not to require treatment. The services require program-specific certification by the department's division of behavioral health and recovery. An agency providing alcohol and drug information school services must:

(1) Ensure courses are taught by a certified information school instructor or a chemical dependency professional (CDP) who:

(a) At the time of enrollment, informs each student of the course fees.

(b) Advises each student there is no assumption the student has a substance use disorder, and that the course is not a therapy session.

(c) Discusses the class rules.

(d) Reviews the course objectives.

(e) Follows a department-approved curriculum.

(f) Ensures each course has no fewer than eight and no more than fifteen hours of classroom instruction.

(g) Ensures adequate and comfortable seating in a well-lit and ventilated room.

(h) Administers each enrolled student the post-test for each course after the course is completed.

(2) Ensure a school instructor who is not a CDP:

(a) Has a certificate of completion of an alcohol and other drug information school instructor's training course approved by the department, and the personnel file contains documentation of the training.

(b) Maintains school instructor status by completing fifteen clock hours of continuing education. The fifteen hours of continuing education must:

(i) Occur during each two-year period beginning January of the year following the instructor's initial qualification; and

(ii) Be in subject areas that increase knowledge and skills in training, teaching techniques, curriculum planning and

development, presentation of educational material, laws and rules, and developments in the chemical dependency field.

(3) Ensure each individual student record contains:

- (a) An intake form, including demographics;
- (b) The hours of attendance, including dates;
- (c) The source of the student's referral;

(d) A copy of all reports, assessments, letters, certificates, and other correspondence to the courts and the department of licensing, including noncompliance reporting under chapter 46.61 RCW;

- (e) A record of any referrals made; and
- (f) A copy of the scored post-test.

NEW SECTION

WAC 388-877B-0640 Chemical dependency information and assistance services requiring program-specific certification—Information and crisis services. Chemical dependency information and crisis services provide an individual assistance or guidance related to the abuse of addictive substances, twenty-four-hours-a-day by telephone or in-person. Information and crisis services require program-specific certification by the department's division of behavioral health and recovery. An agency providing information and crisis services must:

(1) Have services available to any individual twenty-four-hours-a-day, seven-days-a-week.

(2) Ensure each staff member completes forty hours of training that covers the following areas before assigning the staff member unsupervised duties:

(a) Chemical dependency crisis intervention techniques; and

(b) Alcoholism and drug abuse.

(3) Ensure a chemical dependency professional (CDP), or a CDP trainee (CDPT) under supervision of a CDP, is available or on staff twenty-four-hours-a-day.

(4) Have a least one approved supervisor that meets the qualifications in WAC 246-811-049, if services are provided by a CDPT or other certified or licensed counselor in training to become a CDP. The supervisor must decrease the number of individual contact hours for each full-time CDPT under their supervision.

(5) Maintain a current directory of all certified chemical dependency service providers in the state.

(6) Maintain a current list of local resources for legal, employment, education, interpreter, and social and health services.

(7) Maintain records of each individual contact, including:

(a) The name, age, sex, and ethnic background of the individual.

(b) The presenting problem.

(c) The outcome.

(d) A record of any referral made.

(e) The signature of the person handling the case.

NEW SECTION

WAC 388-877B-0650 Chemical dependency information and assistance services requiring program-specific certification—Emergency service patrol services.

Emergency service patrol services are chemical dependency information and assistance services that provide transport assistance to an intoxicated individual in a public place when a request has been received from police, merchants, or other persons. An agency providing emergency service patrol services must:

(1) Ensure the staff member providing the service:

(a) Has proof of a valid Washington state driver's license.

(b) Possesses annually updated verification of first-aid and cardiopulmonary resuscitation training.

(c) Has completed forty hours of training in chemical dependency crisis intervention techniques and alcoholism and drug abuse, to improve skills in handling crisis situations.

(2) Respond to calls from police, merchants, and other persons for assistance with an intoxicated individual in a public place.

(3) Patrol assigned areas and give assistance to an individual intoxicated in a public place.

(4) Conduct a preliminary screening of an individual's condition related to the state of their impairment and presence of a physical condition needing medical attention.

(5) Transport the individual to their home or shelter, to a certified treatment provider, or a health care facility if the individual is intoxicated, but subdued and willing to be transported.

(6) Make reasonable efforts to take the individual into protective custody and transport the individual to an appropriate treatment or health care facility, when the individual is incapacitated, unconscious, or has threatened or inflicted harm on another person.

(7) Call law enforcement for assistance if the individual is unwilling to be taken into protective custody.

(8) Maintain a log, including:

(a) The date, time and origin of each call received for assistance.

(b) The time of arrival at the scene.

(c) The location of the individual at the time of the assist.

(d) The name and sex of the individual transported.

(e) The results of the preliminary screening.

(f) The destination and address of the transport and time of arrival.

(g) In case of nonpickup of a person, documentation of why the pickup did not occur.

NEW SECTION

WAC 388-877B-0660 Chemical dependency information and assistance services requiring program-specific certification—Screening and brief intervention services. Screening and brief intervention services are a combination of information and assistance services designed to screen an individual for risk factors that appear to be related to alcohol and other drug use disorders, provide interventions, and make appropriate referral as needed. These services require program-specific certification by the department's division of behavioral health and recovery and may be provided in a wide variety of settings. An agency providing screening and brief intervention services must:

(1) Ensure services are provided by a chemical dependency professional (CDP), a chemical dependency professional trainee (CDPT) under the supervision of a CDP, or another appropriately credentialed staff member.

(2) Ensure each staff member completes forty hours of training that covers the following areas before assigning the staff member unsupervised duties:

(a) Chemical dependency screening and brief intervention techniques;

(b) Motivational interviewing; and

(c) Referral.

(3) Maintain a current list of local resources for legal, employment, education, interpreter, and social and health services.

(4) Ensure each individual's record contains:

(a) A copy of a referral.

(b) Demographic information.

(c) Documentation the individual was informed and received a copy of the requirements under 42 C.F.R. Part 2.

(d) Documentation the individual received a copy of the counselor disclosure information.

(e) Documentation the individual received a copy of the individual rights.

(f) Authorization for the release of information.

(g) A copy of screening documents, including outcome and referrals.

(h) Documentation of progress notes in a timely manner summarizing any contact with the individual. Progress notes must include the date, time, duration, participant names, a brief summary of the screening and brief intervention, and the name of the staff member who provided it.

Chapter 388-877C WAC

PROBLEM AND PATHOLOGICAL GAMBLING SERVICES

NEW SECTION

WAC 388-877C-0100 Problem and pathological gambling services—General. The rules in WAC 388-877C-0100 through 388-877C-0130 apply to behavioral health agencies that provide problem and pathological gambling services. The definitions in WAC 388-877-0200 also apply to problem and pathological gambling services. 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.

(1) Problem and pathological gambling treatment services provide treatment to an individual that includes diagnostic screening and assessment, and individual, group, couples, and family counseling and case management.

(2) An agency providing problem and pathological gambling treatment services must:

(a) Be licensed by the department as a behavioral health agency;

(b) Meet the applicable behavioral health agency licensure, certification, administration, personnel, and clinical

requirements in chapter 388-877 WAC, Behavioral health services administrative requirements; and

(c) Have policies and procedures to support and implement the:

(i) General requirements in chapter 388-877 WAC; and

(ii) Program-specific requirements in WAC 388-877C-0100 through 388-877C-0130.

(3) An agency must use the following to make diagnosis, admission, and discharge planning decisions:

(a) Diagnostic and Statistical Manual (DMS IV TR, 2000) as it existed on the effective date of this section; then

(b) DSM-5 as it exists when published and released in 2013, consistent with the purposes of this section. Information regarding the publication date and release of the DSM-5 is posted on the American Psychiatric Association's public website at www.DSM5.org.

(4) An agency must have an outline of each education session included in the service that is sufficient in detail for another trained staff person to deliver the session in the absence of the regular instructor.

(5) The agency must:

(a) Maintain a list or source of resources, including self-help groups, and referral options that can be used by staff to refer an individual to appropriate services.

(b) Limit the size of group counseling sessions to no more than twelve individuals.

(c) Maintain a written procedure for the response to medical and psychiatric emergencies.

(6) An agency must ensure that when offering off-site treatment:

(a) The agency maintains a current list of all locations where off-site services are provided including the name, address (except individual in-home services), primary purpose of the off-site location, level of services provided, and date the off-site services began at the off-site location.

(b) The agency maintains a written procedure of:

(i) How confidentiality will be maintained at each off-site location, including how confidential information and individual records will be transported between the certified facility and the off-site location.

(ii) How services will be offered in a manner that promotes individual and staff member safety.

(c) The agency is certified to provide the type of services offered at its main location.

(d) The problem and pathological gambling assessment and treatment services are not the primary purpose of the location where the individual is served, such as in a school, a hospital, or a correctional facility.

(e) Services are provided in a private, confidential setting within the off-site location.

NEW SECTION

WAC 388-877C-0110 Problem and pathological gambling services—Agency staff requirements. In addition to meeting the agency administrative and personnel requirements in WAC 388-877-0400 through 388-877-0530, an agency providing problem and pathological gambling services must ensure:

(1) All problem and pathological gambling treatment services are provided by:

(a) A certified Washington state, national, or international gambling counselor who is credentialed by the department of health (DOH) under chapter 18.19, 18.83, or 18.225 RCW; or

(b) An individual credentialed by DOH under chapter 18.19, 18.83, or 18.225 RCW, under the supervision of a certified problem gambling counselor, in training to become a certified problem gambling counselor.

(2) Before providing problem and pathological treatment services, an individual in training to become a certified problem gambling counselor must have minimum of:

(a) At least one thousand five hundred hours of professionally supervised post-certification or post-registration experience providing mental health or chemical dependency treatment services; and

(b) Thirty hours of unduplicated gambling specific training, including the basic training. One of the following state, national, or international organizations must approve the training:

(i) Washington state gambling counselor certification committee;

(ii) National or international gambling counselor certification board; or

(iii) The department's division of behavioral health and recovery.

(3) An individual who meets (2)(b) of this section must complete training to become a certified problem and pathological gambling counselor within two years of beginning problem and pathological gambling clinical practice.

(4) All staff members in training to become a certified problem gambling counselor must receive clinical supervision. The clinical supervisor must:

(a) Hold a valid international gambling counselor certification board-approved clinical consultant credential, a valid Washington state certified gambling counselor II certification credential, or a valid national certified gambling counselor II certification credential; and

(b) Complete training on gambling specific clinical supervision approved by a state, national, or international organization including, but not limited to, the:

(i) Washington state gambling counselor certification committee;

(ii) National or international gambling counselor certification board; or

(iii) The department's division of behavioral health and recovery.

NEW SECTION

WAC 388-877C-0120 Problem and pathological gambling services—Clinical record content and documentation requirements. In addition to the general clinical record content requirements in WAC 388-877-0640, an agency providing problem and pathological gambling treatment services must maintain an individual's clinical record that contains:

(1) Evidence the individual was notified of the assessment results and documentation of the treatment options pro-

vided and the individual's choice. If the individual was not notified of the results and advised of referral options, the reason must be documented.

(2) Documentation that each individual received a copy of the rules and responsibilities for treatment participants, including the potential use of interventions or sanctions.

(3) Documentation that the individual service plan was completed before the individual received treatment services.

(4) Documentation that the individual service plan was reviewed monthly.

(5) Documentation of progress notes that occurs in a timely manner and before any subsequent scheduled appointments of the same type of service session or group type occur, or documentation as to why this did not occur. Progress notes must include the date, time, duration, participant names, a brief summary of the session, including the individual's response to treatment, and the name of the staff member who provided the treatment.

(6) Documentation of referrals made for specialized care or services.

(7) Documentation that staff members met with each individual at the time of discharge, unless the individual left without notice, to:

(a) Determine the appropriate recommendation for care and finalize a continuing care plan.

(b) Assist the individual in making contact with necessary agencies or services.

(c) Provide and document the individual was provided with a copy of the plan.

(8) Documentation that a discharge summary, including the date of discharge and a summary of the individual's progress towards each individual service plan goal, was completed within seven days of the individual's discharge.

NEW SECTION

WAC 388-877C-0130 Problem and pathological gambling services—Additional assessment standards. An individual must have an assessment before receiving problem and pathological gambling services. The purpose of the assessment is to gather information to determine if a gambling disorder exists and if there are services available to address the individual's needs.

(1) In addition to the assessment requirements in WAC 388-877-0610, the assessment must include:

(a) A face-to-face diagnostic interview with the individual in order to obtain, review, evaluate, and document the following:

(i) Legal history, including arrests and convictions.

(ii) Medical and health history.

(iii) Family history describing family composition and dynamics.

(iv) Relationships and interaction with persons and groups outside the home.

(v) Suicidal or homicidal assessment, including current and past history.

(iv) Substance use history including:

(A) The type of substances used, including tobacco;

(B) The route of administration;

(C) The amount, frequency, and duration of use; and

(D) History of alcohol or other drug treatment or education.

(b) Vocational or employment status and history describing skills or trades learned, jobs held, duration of employment, and reasons for leaving.

(c) A financial evaluation and information, including current financial status, gambling debts, any previous bankruptcy or repayment plans, and insurance coverage.

(d) Problem gambling screens.

(e) A diagnostic assessment, including sufficient data to determine a client diagnosis supported by the:

(i) Diagnostic and Statistical Manual (DSM IV TR, 2000) as it existed on the effective date of this section; then

(ii) DSM-5 as it exists when published and released in 2013, consistent with the purposes of this section. Information regarding the publication date and release of the DSM-5 is posted on the American Psychiatric Association's public website at www.DSM5.org.

(2) The assessment must also include a family assessment when the individual is someone other than the problem or pathological gambler.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 13-12-054

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Behavioral Health and Service Integration Administration)

[Filed May 31, 2013, 3:36 p.m., effective July 1, 2013]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The new rules in chapter 388-877 WAC allow for a single set of agency administrative, personnel, and clinical policies and procedures that address specific treatment populations and levels of care. The rules will provide standardization to all behavioral health services programs, provide an agency with a streamlined certification and/or licensure process for mental health, chemical dependency, and/or problem and pathological gambling treatment programs, and eliminate the need for multiple audits when the agency provides more than one behavioral health service. The rules support the program-specific rules the department is adopting, at the same time, for a new chapter 388-877A WAC for mental health, chapter 388-877B WAC for chemical dependency, and chapter 388-877C WAC for problem and pathological gambling. The department requires all agencies and providers affected by this rule to fully comply with the applicable requirements in chapters 388-877, 388-877A, 388-877B, and 388-877C WAC no later than September 1, 2013.

Statutory Authority for Adoption: Chapters 70.02, 70.96A, 71.05, 71.24, 71.34, 74.50 RCW; RCW 74.08.090, 43.20A.890.

Other Authority: 42 C.F.R. Part 8.

Adopted under notice filed as WSR 13-02-027 on December 20, 2012.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-877-0100 Added new subsection: (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, 2103 [2013].

WAC 388-877-0200 "Administrative (~~fair~~) hearing"

WAC 388-877-0200 Struck the definition of "case management."

WAC 388-877-0200 "Certified peer counselor" means a current or former qualified recipient ...

WAC 388-877-0200 "Certified" added "by the department."

WAC 388-877-0200 "~~Certified problem and pathological gambling treatment provider counselor~~" means a is an individual Washington state certified gambling counselor (WSCGC) or a nationally certified gambling counselor (NCGC), certified by the Washington State Gambling Counselor Certification Committee or ...

WAC 388-877-0200 "Critical incident" means ... of the following events that must be reported to the division:

WAC 388-877-0200 Struck the definition of "division."

WAC 388-877-0200 "Division of behavioral health and recovery (DBHR)" means ...

WAC 388-877-0200 Struck the definition of "essential requirement."

WAC 388-877-0200 "Grievance" means ... regional support network (RSN), as applicable, for resolution.

WAC 388-877-0200 Added definition: "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.

WAC 388-877-0200 Added hyphen: "Off-site" means

...

WAC 388-877-0200 "Vulnerable adult" means ... (2) An individual admitted ... by the division of behavioral health and recovery.

WAC 388-877-0300 The department licenses ... In addition the agency must meet the applicable specific program requirements of ...

WAC 388-877-0300(3) An agency must report ... that occur during following the initial ~~or renewal~~ licensing or ... The department may request ... since the original ~~or renewal~~ application was submitted.

WAC 388-877-0300(5) In the event ... must provide each individual currently being served:

WAC 388-877-0300 Added new subsection (6): If an agency certified to provide chemical dependency and/or problem and pathological gambling services closes, the agency must ensure all individual records are kept and managed 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 that the agency will do one of the following: (i) Continue to retain and manage all individual clinical records, provide the method of contact, such as a telephone number and/or electronic address, and provide the mailing and street address where records will be stored; or (ii)

Arrange for the continued storage and management of all individual clinical records. In this case, the agency must: (A) Enter into a specific qualified service organization agreement, authorized by 42 C.F.R. Part 2B, with a division of behavioral health and recovery licensed agency or entity; and (B) Notify the division of behavioral health and recovery in writing of 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 records will be stored. (b) When the 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.

WAC 388-877-0305 To apply for licensure to provide ... that is signed by the agency's ~~designated official administrator~~.

WAC 388-877-0305 (1)(g) A staff roster, including each staff member's ~~credentials~~ license under ...

WAC 388-877-0310(1) The department may deem ... 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>.

WAC 388-877-0310(2) To be considered ... by the agency's ~~designated official administrator~~.

WAC 388-877-0310(5) An agency operating ... or provisional program-specific certification ...

WAC 388-877-0310(6) ~~Any service added to an agency's existing services is~~ An agency: (a) Considered provisional until 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 are met and the department approves the service before adding any additional services(s); and (b) (c) Is Not eligible for ...

WAC 388-877-0315 A department-issued license, including program-specific certification, expires up to twelve months ...

WAC 388-877-0320 (1)(a)(iv) Facility accessibility ~~requirements~~; (v) The agency's internal quality management plan/process that ...

WAC 388-877-0325(2) The agency must post the department-issued license ~~or~~ and certification(s) in a conspicuous place ...

WAC 388-877-0335 Agency licensure and program-specific certification—Denials, suspensions, ~~restrictions~~, revocations, and penalties. (1) The department ~~may will~~ deny issuing or renewing ~~a~~ an agency's license or a specific program certification(s), ... or suspend, restrict, or revoke an agency's license or ... of the following reasons, ~~as applicable~~: (a) The agency fails to meet the requirements in this chapter, ~~or other applicable state minimum standards or state and federal laws~~. (b) The agency fails to cooperate or disrupts department or other applicable state minimum standards or state and federal representatives during an on-site survey or complaint investigation. (c) The agency fails to assist the department in conducting individual interviews with individuals or staff members. (b) (d) The agency owner ... (e) (e) The department determines ... (d) (f) The agency's licensure

or ... ~~(e)~~ (g) The agency voluntarily ... ~~(f)~~ (h) The agency fails ... ~~(g)~~ (i) The agency stops ... ~~(h)~~ (j) The agency changes ... ~~(i)~~ (k) The agency relocates ...

WAC 388-877-0335(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: (e) (a) ... (f) (b) ... (g) (c) ... (h) (d) The agency ~~changes ownership without notifying~~ fails to notify the department ~~before changing ownership~~ ... (i) (e) The agency ~~relocates without notifying~~ fails to notify the department ~~before relocating its licensed location~~. ~~(2) (3) ... (3) (4) ... (c) Notify the county alcohol and drug coordinator ... referrals, involuntary cancellation, suspensions, ...~~

WAC 388-877-0345(1) The application must include the following: ~~(1) (a) ... (2) (b) The physical address or addresses of the agency-operated facility or facilities where the new service(s) will be provided; (3) (c) A description of the agency's ... to the new service(s); 4) (d) The name and credentials of each staff member providing the new service(s); and (5) (e) ... (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).~~

WAC 388-877-0350(1) When a licensed ... requires: ~~(1) (a) ...; (2) (b) ...; and (3) (c) ... (2) The agency must receive a new license under the new ownership before providing any behavioral health service.~~

WAC 388-877-0350(2) The agency must ~~be issued~~ receive a new license under ...

WAC 388-877-0355(1) When a ...: ~~(1) (a) The agency ... of the new address at least thirty days before moving; (2) (b) ... (3) (c) ... (2) The agency: (a) Is subject to an on-site review under WAC 388-877-0320 when changing location. (b) Must receive a new license under the new location's address before providing any behavioral health service at that address.~~

WAC 388-877-0360(2) ~~Ensure the facility's remodel meets all city and county codes, and state accessibility requirements~~ Submit a floor plan documenting accessibility and maintenance of confidentiality during and after the remodel.

WAC 388-877-0365(5) Changes made to table: Complaint/Critical Incident Investigation Fees \$1,000 per substantiated critical incident investigation that results in a requirement for corrective action

WAC 388-877-0365(7) Changes made to table: Complaint/Critical Incident Investigation Fees \$1,000 per substantiated critical incident investigation that results in a requirement for corrective action

WAC 388-877-0400(3) Approve the mission statement and quality management plan/process for the services provided.

WAC 388-877-0410 (2)(c) Employ sufficient qualified personnel to provide adequate treatment services, ~~and~~ facility security, ~~the safety of each individual, and other identified needs of individuals receiving services.~~

WAC 388-877-0410 (3)(c) Continuously improves the ~~safety and~~ quality of care in ~~response to~~ all of the following: (i) Cultural competency; (ii) Use of evidence based and

promising practices; and (iii) In response to: (A) Critical incidents; ~~(ii)~~ (B) Complaints; and ~~(iii)~~ (C) ...

WAC 388-877-0420 (5)(a) Certified interpreters ... who have sensory disabilities ~~if required by agency certification or licensure or certification~~; or ...

WAC 388-877-0420(11) Reporting and documentation of suspected abuse, neglect, or exploitation. A description ... of a child ~~and~~ or vulnerable adult ...

WAC 388-877-0420(12) Protection of youth. Documentation of how the agency addresses compliance with program-specific rules and the protection of ...

WAC 388-877-0420(13) Reporting the death of an individual seeking or receiving services. A description of ... to the department or Regional Support Network (RSN), as applicable, within one business day ...

WAC 388-877-0420(14) Reporting critical incidents involving individuals. A description of ... to the department or RSN, as applicable, within ~~two~~ one business ~~days~~ day any critical incident ...

WAC 388-877-0430(1) Is suitable for the purposes intended. (2) Is not a personal residence. (3) Is accessible ... ~~(2)~~ (4) ... ~~(3)~~ (5) ... ~~(4)~~ (6) ... ~~(5)~~ (7) ...

WAC 388-877-0430(6) Has secure storage of ~~an individual's~~ active or closed confidential records.

WAC 388-877-0430(7) Has separate secure, locked storage of poisonous external ...

WAC 388-877-0500(3) (Bolded) **Excluded provider list.**

WAC 388-877-0500 (4)(a) ~~A philosophy of no tolerance of illegal drug-related activity;~~ (b) Agency program standards ...; and ~~(e)~~ (b) ...

WAC 388-877-0500 (6)(b) That includes a review of (i) Populations specific to the agency's geographic service area; and (ii) Applicable available community resources. (c) On ~~P~~rocedures for how to respond to individuals in crisis that includes a review of ~~(ii)~~ (i) Emergency procedures; ~~(iii)~~ (ii) Program policies and procedures; and ~~(iv)~~ (iii) Rights for individuals receiving services and supports; (v) Population-specific information; and (iv) An overview of applicable community resources. (d) ~~To meet~~ That addresses the requirements of this chapter.

WAC 388-877-0510 (1)(c)(ii) Taking reasonable precautions includes notifying law enforcement as required and allowed by law.

WAC 388-877-510 (1)(f) For contract staff, formal agreements or ~~personnel~~ contracts ... of patient care services; may be substituted for job descriptions.

WAC 388-877-0600 Reordered RCW citations: (1) Each agency ... are protected in compliance with chapters ~~71.12, 70.96A, 71.05, 71.12,~~ and 71.34 RCW.

WAC 388-877-0600 (1)(h)(i) Receive a copy of ... with the provider agency, or Regional Support Network (RSN), if applicable, if you believe ...

WAC 388-877-0610 (1)(b) Completed by a professional appropriately credentialed or qualified to provide ...

WAC 388-877-0610(2) The initial assessment must include and document the individual's: (a) ~~Individual i~~dentifying information; (b) ... (c) ~~Name of the individual's m~~edical ~~provider(s)~~ provider's name or medical providers' names; ... (i) ~~Any~~ The identification of any risk of harm to self and

others, including suicide and/or homicide. (j) A referral ...; ~~(j)~~ (k) Information that a person is or is not court-ordered to treatment or is under the ... ~~(k)~~ (l) Treatment recommendations or recommendations for additional program-specific assessment.

WAC 388-877-0610 (2)(f) Brief mental health, ~~substance use, and problem and pathological gambling histories~~ history; (g) Brief substance use history, including tobacco; (h) Brief problem and pathological gambling history; ~~(g)~~ (i) ... ~~(h)~~ (j) ... ~~(i)~~ (k) ...

WAC 388-877-0620 (1)(a) Be completed or approved by a professional appropriately credentialed or qualified to provide ...

WAC 388-877-0630(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 youth's or child's eighteenth birthday. (6) Meet the access to clinical records requirements in WAC 388-877-0650.

WAC 388-877-0640 (5)(c) ~~"(DMHP)."~~

WAC 388-877-0650 (1)(f) Meet the individual clinical record system criteria in WAC 388-877-0630.

WAC 388-877-0650(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.

A final cost-benefit analysis is available by contacting Kathy Sayre, 4500 10th Avenue S.E., Lacey, WA 98503, phone(360) 725-1342, fax (360) 725-2280, e-mail kathy.sayre@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 31, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 31, Amended 0, Repealed 0.

Date Adopted: May 30, 2013.

Kevin Quigley
Secretary

Chapter 388-877 WAC

BEHAVIORAL HEALTH SERVICES ADMINISTRATIVE REQUIREMENTS

Section One—Behavioral Health Services—Purpose and Scope

NEW SECTION

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; and
- (d) Agency clinical policies and procedures.

(2) Support the specific program rules in chapter 388-877A WAC for mental health, chapter 388-877B WAC for chemical dependency, 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.

Section Two—Behavioral Health Services—Definitions.

NEW SECTION

WAC 388-877-0200 Behavioral health services—

Definitions. The definitions in this section contain words and phrases used in 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, chemical dependency 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.

"Adult" means an individual eighteen years of age or older. For an individual eligible for 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 chemical dependency, mental health 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 peer counselor" means a current or former qualified recipient of behavioral health services, who has met the experience and training requirements of, satisfactorily passed the examination given by, and is recognized by the division of behavioral health and recovery as a certified peer counselor under WAC 388-865-0107.

"Certified" means the status given by the department to chemical dependency, 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 certified 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 antici-

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

"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 county alcoholism and/or other drug addiction program coordinator designated under RCW 70.96A.310 to perform the commitment duties described in chapters 70.96A and 70.96B RCW;

"Designated Mental Health Professional (DMHP)" means a mental health professional designated by the 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.

"Grievance" means an expression of dissatisfaction made by or on behalf of an individual and referred to the agency or regional support network (RSN), as applicable, for resolution.

"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 receiving treatment services from a licensed 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 chemical dependency treatment programs chapter 70.96A RCW.

"Medical practitioner" means a physician, advance registered nurse practitioner (ARNP), or certified physician's assistant. An ARNP and a midwife with prescriptive authority 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 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;

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

(4) A person who had an approved waiver to perform the duties of a mental health professional (MHP), that was requested by the regional support network (RSN) and granted by the mental health division prior to July 1, 2001; or

(5) A person who has been granted a time-limited exception of the minimum requirements of a mental health professional by the department consistent with WAC 388-865-0265.

"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).

"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.

Section Three—Behavioral Health Services—Agency Licensure and Certification

NEW SECTION

WAC 388-877-0300 Agency licensure—General information. The department licenses agencies to provide 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 chemical dependency, 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 <http://www.dshs.wa.gov/dbhr/daforms.shtml>. Completed application packets, forms, and requests for deeming or other services should be mailed to: Division of Behavioral Health and Recovery, P.O. Box 45320, Olympia, WA 98504 5320.

(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 chemical dependency and/or problem and pathological gambling services closes, the agency must ensure all individual records are kept and managed 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 that the agency will do one of the following:

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

(ii) Arrange for the continued storage and management of all individual clinical records. In this case, the agency must:

(A) Enter into a specific qualified service organization agreement, authorized by 42 C.F.R. Part 2B, with a division of behavioral health and recovery licensed agency or entity; and

(B) Notify the division of behavioral health and recovery in writing of 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.

(b) When the 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.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 388-877-0305 Agency licensure—Application. To apply for licensure to provide any behavioral health ser-

vice, 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 American Disability Act (ADA) standards and that the facility is appropriate for providing the proposed services;

(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 chemical dependency 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).

NEW SECTION

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.

NEW SECTION

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).

NEW SECTION

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.

NEW SECTION

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.

NEW SECTION

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.

NEW SECTION

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 individuals or staff members.

(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.

(g) The agency voluntarily cancels licensure or certification.

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

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

(j) The agency changes ownership without notifying the department.

(k) The agency relocates without notifying the department.

(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, regional support network (RSN) and/or local media of stopped referrals, suspensions, revocations, or nonrenewal of the agency's license or program-specific certification(s).

NEW SECTION

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.

NEW SECTION

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).

NEW SECTION

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
- (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.

NEW SECTION

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.

NEW SECTION

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.

NEW SECTION

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 chemical dependency treatment programs:

Application Fees for Agency Certification for Approved Chemical Dependency Treatment Programs	
New agency application	\$1,000
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	

Application Fees for Agency Certification for Approved Chemical Dependency Treatment Programs	
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 Certification Fees	
Evaluation and treatment (E&T) bed fees	\$90 initial certification fee, per bed
	\$90 annual certification fee, per bed
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 RSN's" and the "Consumer Infor-

mation System (CIS) Data Dictionary for RSN's". These publications are available at: <http://www.dshs.wa.gov/dbhr/mhpublications.shtml>.

(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.

NEW SECTION

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.

Section Four—Behavioral Health Services—Agency Administration

NEW SECTION

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.

NEW SECTION

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;

(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.

NEW SECTION

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) **Reporting the death of an individual seeking or receiving services.** A description of how the agency directs staff to report to the department or Regional Support Network (RSN), as applicable, within one business day the death

of any individual which occurs on the premises of a licensed agency.

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

(15) **A smoking policy.** Documentation that a smoking policy consistent with the Washington Clean Indoor Air Act, Chapter 70.160 RCW, is in place.

(16) **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.
- (17) **Individual rights.** A description of how the agency has individual participation rights and policies consistent with WAC 388-877-0600.

(18) **Individual complaints and grievances.** A description of how the agency addresses an individual's complaint and/or grievance.

NEW SECTION

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.

Section Five—Behavioral Health Services—Personnel

NEW SECTION

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 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 voluntarily 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.

NEW SECTION

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.

(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.

NEW SECTION

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.

NEW SECTION

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.

Section six—Behavioral health services—Clinical

NEW SECTION

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 complaint and grievance procedures upon request and to lodge a complaint or grievance with the agency, or Regional Support Network (RSN), if applicable, if you believe your rights have been violated; and

(j) File 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 enrolled as a medicare and/or medicaid provider 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.

NEW SECTION**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 chemical dependency, 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.

NEW SECTION

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

NEW SECTION

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.

NEW SECTION

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 established under RCW 18.19.060.

(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 chemical dependency 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 RCW 70.02.050, 71.05.390, and 71.05.630, and the Health Insurance Portability and Accountability Act (HIPAA).

(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 detention or involuntary treatment 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.

NEW SECTION

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) Charge for copying at a rate not higher than defined in RCW 70.02.010(12).

(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.

WSR 13-14-002

PERMANENT RULES

UNIVERSITY OF WASHINGTON

[Filed June 19, 2013, 3:32 p.m., effective July 20, 2013]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To make housekeeping amendments to WAC 478-120-020, 478-120-140 and 478-124-020, that clarify the language of these rules without changing their effect.

Citation of Existing Rules Affected by this Order: Amending WAC 478-120-020, 478-120-140, and 478-124-020.

Statutory Authority for Adoption: RCW 28B.20.130.

Other Authority: *Board of Regents Governance*, Standing Orders, Chapter 1, Section 2.

Adopted under notice filed as WSR 13-09-011 on April 8, 2013.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 19, 2013.

Rebecca Goodwin Deardorff
Director of Rules Coordination

AMENDATORY SECTION (Amending WSR 10-23-039, filed 11/10/10, effective 12/11/10)

WAC 478-120-020 Standards of conduct. (1) The university is a public institution having special responsibility for providing instruction in higher education, for advancing knowledge through scholarship and research, and for providing related services to the community. As a center of learning, the university also has the obligation to maintain conditions conducive to freedom of inquiry and expression to the maximum degree compatible with the orderly conduct of its functions. For these purposes, the university is governed by the rules, regulations, procedures, policies, and standards of conduct that safeguard its functions and protect the rights and freedoms of all members of the academic community.

(2) Admission to the university carries with it the presumption that students will conduct themselves as responsible members of the academic community. As a condition of enrollment, all students assume responsibility to observe standards of conduct that will contribute to the pursuit of academic goals and to the welfare of the academic community. That responsibility includes, but is not limited to:

- (a) Practicing high standards of academic and professional honesty and integrity;
- (b) Respecting the rights, privileges, and property of other members of the academic community and visitors to the campus, and refraining from any conduct that would interfere with university functions or endanger the health, welfare, or safety of other persons;
- (c) Complying with the rules, regulations, procedures, policies, standards of conduct, and orders of the university and its schools, colleges, and departments.

(3) Specific instances of misconduct include, but are not limited to:

- (a) Conduct that intentionally and substantially obstructs or disrupts teaching or freedom of movement or other lawful activities on university premises or in connection with any university-sponsored event or activity and is not constitutionally and/or legally protected;
- (b) Physical abuse of any person, or conduct intended to threaten imminent bodily harm or to endanger the health or safety of any person on university premises;
- (c) Conduct on university premises constituting a sexual offense, whether forcible or nonforcible, such as rape, sexual assault, or sexual harassment;
- (d) Malicious damage to or malicious misuse of university property, or the property of any person where such property is located on university premises;
- (e) Refusal to comply with any lawful order to leave university premises or any portion thereof;
- (f) Possession or use of firearms, explosives, dangerous chemicals or other dangerous weapons or instrumentalities

on university premises, except for authorized university purposes, unless prior written approval has been obtained from the university chief of police, or any other person designated by the president of the university (see WAC 478-124-020(2)(e)) (legal defense sprays are not covered by this section);

(g) ~~((Unlawful))~~ The possession, use, distribution, or ((manufacturer)) manufacture of ((alcohol or)) controlled substances (as defined in chapter 69.50 RCW or Title 21 U.S.C. Sec. 802), or of alcohol, on university premises or during university-sponsored activities, where such possession, use, distribution, or manufacture is illegal under federal, state, or local law;

(h) Intentionally inciting others to engage immediately in any unlawful activity, which incitement leads directly to such conduct on university premises;

(i) Hazing, or conspiracy to engage in hazing, which includes:

(i) Any method of initiation into a student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group, that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person attending the university; and

(ii) Conduct associated with initiation into a student organization or living group, or any pastime or amusement engaged in with respect to an organization or living group not amounting to a violation of (i)(i) of this subsection, but including such conduct as humiliation by ritual act and sleep deprivation. Consent is no defense to hazing. Hazing does not include customary athletic events or other similar contests or competitions;

(j) Falsely reporting a violation of the student conduct code.

(4) Disciplinary action may be taken in accord with this chapter regardless of whether that conduct also involves an alleged or proven violation of law.

(5) An instructor has the authority to exclude a student from any class session in which the student is disorderly or disruptive. If the student persists in the disorderly or disruptive conduct, the instructor should report the matter to the dean of the school or college, or, at the University of Washington Bothell and Tacoma campuses, to the dean or director of the program in which the student is enrolled. (See WAC 478-120-030(3).)

(6) Nothing herein shall be construed to deny students their legally and/or constitutionally protected rights.

AMENDATORY SECTION (Amending WSR 10-23-039, filed 11/10/10, effective 12/11/10)

WAC 478-120-140 Emergency authority of the president and chancellors of the university. If a student's conduct represents a threat to the health, safety, or welfare of the university or any member of the university community, the president ~~((or))~~ the president's delegate, ~~((or))~~ the vice-president and vice-provost for student life, the chancellors of the University of Washington Bothell and Tacoma campuses, or ~~((their))~~ the chancellors' delegates, may suspend that student from participation in any or all university functions or privileges.

(1) In such an emergency situation, the president (~~((or))~~), ~~the president's delegate, the vice-president and vice-provost for student life, the~~ chancellors, or ((their)) the chancellors' delegates, shall issue a written order to be served upon the student describing the terms of the emergency suspension and the reasons for imposing the suspension. The order shall be effective immediately.

(2) The ~~((president or delegate, or chancellors or their delegates, shall then refer the))~~ matter shall then be referred to ~~((the vice president and vice provost for student life at the University of Washington Seattle campus or))~~ the appropriate disciplinary campus official ~~((at the University of Washington Bothell or Tacoma campuses, whichever is appropriate,))~~ who shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

AMENDATORY SECTION (Amending WSR 07-03-069, filed 1/17/07, effective 2/17/07)

WAC 478-124-020 Conduct on campus code—Prohibited conduct. (1) In order to safeguard the right of every citizen to criticize and to seek meaningful change, each individual has an obligation to respect the rights of all members of the university community.

(2) In order to assure those rights to all members of the university community and to maintain a peaceful atmosphere in which the university may continue to make its special contribution to society, the following types of conduct are hereby prohibited on or in property either owned, controlled or operated by the university which is used or set aside for university purposes, hereinafter referred to as the university campus:

(a) Conduct which intentionally and substantially obstructs or disrupts teaching or freedom of movement or other lawful activities on the university campus;

(b) Physical abuse of any person or conduct which is intended unlawfully to threaten imminent bodily harm or to endanger the health or safety of any person on the university campus;

(c) Malicious damage to or malicious misuse of university property, or the property of any person where such property is located on the university campus;

(d) Refusal to comply with any lawful order to leave the university campus or any portion thereof;

(e) Possession or use of firearms, explosives, dangerous chemicals or other dangerous weapons or instrumentalities on the university campus, except for authorized university purposes, unless prior written approval has been obtained from the university chief of police, or any other person designated by the president of the university;

(f) ~~((Unlawful))~~ The possession, use, distribution, or manufacture of ((alcohol or)) controlled substances (as defined in chapter 69.50 RCW((or)) or Title 21 U.S.C. Sec. 802), or of alcohol, on the university campus or during university-sponsored activities, where such possession, use, distribution, or manufacture is illegal under federal, state, or local law;

(g) Intentionally inciting others to engage immediately in any of the conduct prohibited herein, which incitement leads directly to such conduct. (Inciting is that advocacy

which prepares the group addressed for imminent action and steels it to the conduct prohibited herein.)

WSR 13-14-016
PERMANENT RULES
HEALTH CARE AUTHORITY
(Medicaid Program)

[Filed June 21, 2013, 1:19 p.m., effective July 22, 2013]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Add coverage for clients eighteen through twenty years of age for laparoscopic adjustable gastric banding.

Citation of Existing Rules Affected by this Order: Amending WAC 182-531-1600.

Statutory Authority for Adoption: RCW 41.05.021.

Other Authority: RCW 41.05.021.

Adopted under notice filed as WSR 13-10-060 on April 29, 2013.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: June 21, 2013.

Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-531-1600 Bariatric surgery. (1) The ~~((department))~~ agency covers medically necessary bariatric surgery for eligible clients.

(2) Bariatric surgery must be performed in a hospital with a bariatric surgery program, and the hospital must be:

(a) Located in the state of Washington or approved border cities (see WAC ~~((388-501-0175))~~ 182-501-0175); and

(b) Meet the requirements of WAC ~~((388-550-2301))~~ 182-550-2301.

(3) If bariatric surgery is requested or prescribed under the EPSDT program, the ~~((department))~~ agency evaluates it as a covered service under EPSDT's standard of coverage that requires the service to be:

(a) Medically necessary;

(b) Safe and effective; and

(c) Not experimental.

(4) The ~~((department))~~ agency authorizes payment for bariatric surgery and bariatric surgery-related services in three stages:

- (a) Stage one~~((—))~~—Initial assessment of client;
- (b) Stage two~~((—))~~—Evaluations for bariatric surgery and successful completion of a weight loss regimen; and
- (c) Stage three~~((—))~~—Bariatric surgery.

Stage one~~((—))~~—Initial assessment

(5) Any ~~((department-enrolled))~~ agency-enrolled provider who is licensed to practice medicine in the state of Washington may examine a client requesting bariatric surgery to ascertain if the client meets the criteria listed in subsection (6) of this section.

(6) The client meets the preliminary conditions of stage one when:

- (a) The client is ~~((between))~~:
 - (i) Twenty-one ~~((and))~~ through fifty-nine years of age; or
 - (ii) Eighteen through twenty years old for laparoscopic-adjustable gastric banding (LAGB) only;
- (b) The client has a body mass index (BMI) of thirty-five or greater;
- (c) The client is not pregnant. (Pregnancy within the first two years following bariatric surgery is not recommended. When applicable, a family planning consultation is highly recommended prior to bariatric surgery);
- (d) The client is diagnosed with one of the following:
 - (i) Diabetes mellitus;
 - (ii) Degenerative joint disease of a major weight bearing joint(s) (the client must be a candidate for joint replacement surgery if weight loss is achieved); or
 - (iii) Other rare comorbid conditions (such as pseudo tumor cerebri) in which there is medical evidence that bariatric surgery is medically necessary and that the benefits of bariatric surgery outweigh the risk of surgical mortality; and
- (e) The client has an absence of other medical conditions such as multiple sclerosis (MS) that would increase the client's risk of surgical mortality or morbidity from bariatric surgery.

(7) If a client meets the criteria in subsection (6) of this section, the provider must request prior authorization from the ~~((department))~~ agency before referring the client to stage two of the bariatric surgery authorization process. The provider must attach a medical report to the request for prior authorization with supporting documentation that the client meets the stage one criteria in subsections (5) and (6) of this section.

(8) The ~~((department))~~ agency evaluates requests for covered services that are subject to limitations or other restrictions and approves such services beyond those limitations or restrictions when medically necessary, under the provisions of WAC ~~((388-501-0165))~~ 182-501-0165 and ~~((388-501-0169))~~ 182-501-0169.

Stage two~~((—))~~—Evaluations for bariatric surgery and successful completion of a weight loss regimen

(9) After receiving prior authorization from the ~~((department))~~ agency to begin stage two of the bariatric surgery authorization process, the client must:

(a) Undergo a comprehensive psychosocial evaluation performed by a psychiatrist, licensed psychiatric ARNP, or licensed independent social worker with a minimum of two

years postmasters' experience in a mental health setting. Upon completion, the results of the evaluation must be forwarded to the ~~((department))~~ agency. The comprehensive psychosocial evaluation must include:

(i) An assessment of the client's mental status or illness to:

(A) Evaluate the client for the presence of substance abuse problems or psychiatric illness which would preclude the client from participating in presurgical dietary requirements or postsurgical lifestyle changes; and

(B) If applicable, document that the client has been successfully treated for psychiatric illness and has been stabilized for at least six months and/or has been rehabilitated and is free from any drug and/or alcohol abuse and has been drug and/or alcohol free for a period of at least one year.

(ii) An assessment and certification of the client's ability to comply with the postoperative requirements such as life-long required dietary changes and regular follow-up.

(b) Undergo an internal medicine evaluation performed by an internist to assess the client's preoperative condition and mortality risk. Upon completion, the internist must forward the results of the evaluation to the ~~((department))~~ agency.

(c) Undergo a surgical evaluation by the surgeon who will perform the bariatric surgery (see subsection (13) of this section for surgeon requirements). Upon completion, the surgeon must forward the results of the surgical evaluation to the ~~((department))~~ agency and to the licensed medical provider who is supervising the client's weight loss regimen (refer to WAC ~~((388-531-1600))~~ 182-531-1600 (9)(d)(ii)).

(d) Under the supervision of a licensed medical provider, the client must participate in a weight loss regimen prior to surgery. The client must, within one hundred and eighty days from the date of the ~~((department's))~~ agency's stage one authorization, lose at least five percent of his or her initial body weight. If the client does not meet this weight loss requirement within one hundred and eighty days from the date of the ~~((department's))~~ agency's initial authorization, the ~~((department))~~ agency will cancel the authorization. The client or the client's provider must reapply for prior authorization from the ~~((department))~~ agency to restart stage two. For the purpose of this section, "initial body weight" means the client's weight at the first evaluation appointment.

(i) The purpose of the weight loss regimen is to help the client achieve the required five percent loss of initial body weight prior to surgery and to demonstrate the client's ability to adhere to the radical and lifelong behavior changes and strict diet that are required after bariatric surgery.

(ii) The weight loss regimen must:

(A) Be supervised by a licensed medical provider who has a core provider agreement with the ~~((department))~~ agency;

(B) Include monthly visits to the medical provider;

(C) Include counseling twice a month by a registered dietician referred to by the treating provider or surgeon; and

(D) Be at least six months in duration.

(ii) Documentation of the following requirements must be retained in the client's medical file. Copies of the documentation must be forwarded to the ~~((department))~~ agency upon completion of stage two. The ~~((department))~~ agency

will evaluate the documentation and authorize the client for bariatric surgery if the stage two requirements were successfully completed.

(A) The provider must document the client's compliance in keeping scheduled appointments and the client's progress toward weight loss by serial weight recordings. The client(s) must lose at least five percent (~~loss~~) of his or her initial body weight and must maintain the five percent weight loss until surgery;

(B) For diabetic clients, the provider must document the efforts in diabetic control or stabilization;

(C) The registered dietician must document the client's compliance (or noncompliance) in keeping scheduled appointments, and the client's weight loss progress;

(D) The client must keep a journal of active participation in the medically structured weight loss regimen including the activities under (d)(iii)(A), (d)(iii)(B) if appropriate, and (d)(iii)(C) of this subsection.

(10) If the client fails to complete all of the requirements of subsection (9) of this section, the ~~((department))~~ agency will not authorize stage three~~((—))~~—Bariatric surgery.

(11) If the client is unable to meet all of the stage two criteria, the client or the client's provider must reapply for prior authorization from the ~~((department))~~ agency to reenter stage two.

Stage three~~((—))~~—Bariatric surgery

(12) The ~~((department))~~ agency may withdraw authorization of payment for bariatric surgery at any time up to the actual surgery if the ~~((department))~~ agency determines that the client is not complying with the requirements of this section.

(13) A surgeon who performs bariatric surgery for medical assistance clients must:

(a) Have a signed core provider agreement with the ~~((department))~~ agency;

(b) Have a valid medical license in the state of Washington; and

(c) Be affiliated with a bariatric surgery program that meets the requirements of WAC ~~((388-550-2301))~~ 182-550-2301.

(14) For hospital requirements for stage three~~((—))~~—Bariatric surgery, see WAC ~~((388-530-2301))~~ 182-550-2301.

WSR 13-14-019

PERMANENT RULES

HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed June 24, 2013, 10:25 a.m., effective July 25, 2013]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The health care authority (HCA) is implementing new regulations under the federal Patient Protection and Affordable Care Act in preparation for healthcare reform in Washington state. This includes the establishment of stand-alone rules for medical assistance programs, which are required under 2E2SHB 1738, Laws of 2011, which creates the HCA as the single state agency responsible for the admin-

istration and supervision of Washington's medicaid program (Washington apple health).

Statutory Authority for Adoption: RCW 41.05.021.

Other Authority: Patient Protection and Affordable Care Act (Public Law 111-148); 42 C.F.R. § 431, 435, and 457; and 45 C.F.R. § 155

Adopted under notice filed as WSR 13-06-038 on March 1, 2013.

Changes Other than Editing from Proposed to Adopted Version: The following changes were made from the version filed as WSR 13-06-038 on March 1, 2013:

WAC 182-500-0120, revised the definition for Washington Healthplanfinder as follows:

"Washington Healthplanfinder" is ~~an online~~ a marketplace for individuals, families, and small businesses in Washington state to compare and enroll in health insurance coverage and gain access to premium tax credits, reduced cost sharing, and public programs such as Washington apple health. Washington Healthplanfinder is administered by the Washington health benefit exchange.

WAC 182-503-0530 Citizenship and alien status—Definitions. Made the following change to:

(3)(g) Deferred action, cancellation of removal, ~~deferred action of or~~ suspension of deportation granted; ~~(note: If a person is granted cancellation of removal or suspension of deportation based on having been abused or granted deferred action based on an approved self-petition as an abused alien they are a "qualified alien");~~

(i) Deferred Action Childhood Arrivals (DACA) are not eligible for federal Washington apple health programs with the exception of the Alien Emergency Medical program.

(ii) If a person is granted cancellation of removal or suspension of deportation based on having been abused or granted deferred action based on an approved self-petition as an abused alien they are a "qualified alien");

Made the following change to:

(3)(l) Order of ~~suspension~~ supervision granted;

Made the following change to:

(3)(o) Stay ~~or~~ of deportation granted;

WAC 182-510-0001(4), the word "additional" was inserted as follows:

(4) When an individual receives SSI, the agency accepts SSA's determination of medicaid entitlement. The individual is eligible for CN WAH without submitting an additional application as long as he or she:

(a) Remains entitled to an SSI cash payment;

(b) Is no longer entitled to an SSI cash payment, but SSA is in the process of determining eligibility under Section 1619(b) of the Social Security Act; or

(c) Currently has 1619(b) status as described in WAC 182-512-0880(3).

Number of Sections Adopted in Order to Comply with Federal Statute: New 7, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 7, Amended 0, Repealed 0.

Date Adopted: June 24, 2013.

Kevin M. Sullivan
Rules Coordinator

NEW SECTION

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

"Washington Healthplanfinder" is a marketplace for individuals, families, and small businesses in Washington state to compare and enroll in health insurance coverage and gain access to premium tax credits, reduced cost sharing, and public programs such as Washington apple health. Washington Healthplanfinder is administered by the Washington health benefit exchange.

NEW SECTION

WAC 182-503-0040 Washington apple health-Interview requirements. (1) An individual applying for Washington apple health (WAH) (as defined in WAC 182-500-0120) is not required to have an in-person interview to determine eligibility.

(2) The agency or its designee may contact an individual by phone or in writing to gather any additional information that is needed to make an eligibility determination.

(3) A phone or in-person interview is required to determine initial financial eligibility for WAH long-term care services.

(4) The interview requirement described in subsection (3) of this section may be waived if the applicant is unable to comply:

- (a) Due to his or her medical condition; or
- (b) Because the applicant does not have a family member or another individual that is able to conduct the interview on his or her behalf.

NEW SECTION

WAC 182-503-0090 Washington apple health—Exceptions to rule. (1) An individual may request an exception to a Washington apple health financial eligibility rule in Title 182 WAC. An individual must request an exception to rule (ETR) within ninety calendar days of the agency action with which the individual disagrees. The individual or the individual's representative may request an ETR orally or in writing. The request must:

- (a) Identify the rule for which an exception is being requested;

- (b) State what the individual is requesting; and
- (c) Describe how the request meets subsection (2) of this section.

(2) The agency director or designee has the discretion to grant an ETR if he or she determines that the individual's circumstances satisfy the conditions below:

- (a) The exception would not contradict a specific provision of federal or state law; and

- (b) The individual's situation differs from the majority; and

- (c) It is in the interest of the overall economy and the individual's welfare, and:

- (i) It increases opportunity for the individual to function effectively; or

- (ii) The individual has an impairment or limitation that significantly interferes with the usual procedures required to determine eligibility and payment.

(3) Individuals cannot appeal ETR decisions under chapter 182-526 WAC.

(4) An individual is mailed a decision in writing within ten calendar days when agency staff:

- (a) Approve or deny an ETR request; or

- (b) Request more information.

(5) If the ETR is approved, the notice includes information on the approval period.

(6) The agency designates staff at the aging and disability services administration (ADSA) to process all ETRs specifically relating to long-term care programs described in Title 182 WAC.

(7) This section does not apply to requests that the agency pay for noncovered medical or dental services or related equipment. WAC 182-501-0160 applies to such requests.

NEW SECTION

WAC 182-503-0530 Citizenship and alien status-Definitions. For the purposes of determining an individual's citizenship and alien status for health care coverage, the following definitions apply:

(1) **Lawfully present** are immigrants or noncitizens that have been inspected and admitted into the United States and not overstayed the period for which they were admitted, or have current permission from the U.S. Citizenship and Immigrant Services (CIS) to stay or live in the U.S.

(2) **Qualified aliens** are lawfully present immigrants defined in federal law as one of the following:

(a) Individuals lawfully admitted for permanent residence (LPRs).

(b) Individuals who are admitted to the U.S. as refugees under Immigration and Nationality Act (INA) Section 207. The following individuals are treated the same as refugees in their eligibility for public assistance:

(i) Hmong or Highland Lao are members of a Hmong or Highland Laotian tribe which rendered military assistance to the U.S. during the Vietnam era (August 5, 1964, to May 7, 1975), and are "lawfully present" in the U.S. This category also includes the spouse (including unremarried widow or widower) or unmarried dependent child of such tribal members.

(ii) Victims of trafficking, who according to federal law are:

(A) Individuals who have been certified or approved as victims of trafficking by the federal office of refugee resettlement.

(B) Immediate family members of trafficking victims. Immediate family members are the spouse or child of a victim of any age and the parent or minor sibling if the victim is under twenty-one years old.

(iii) Special immigrants from Iraq and Afghanistan are individuals granted special immigrant status under INA Section 101 (a)(27).

(c) Individuals who have been granted asylum under INA Section 208.

(d) Cuban/Haitian entrants. These are nationals of Cuba or Haiti who were paroled into the U.S. or given other special status.

(e) Abused spouses or children, parents of abused children, or children of abused spouses:

(i) When the alien no longer resides with the person who committed the abuse, and has one of the following:

(A) A pending or approved I-130 petition or application to immigrate as an immediate relative of a U.S. citizen or as the spouse of an unmarried child under age twenty-one of a lawful permanent resident (LPR);

(B) A notice of "prima facie" approval of a pending self-petition under the Violence Against Women Act (VAWA); or

(C) Proof of a pending application for suspension of deportation or cancellation of removal under VAWA.

(ii) Children of an abused spouse do not need their own separate pending or approved petition, but are included in their parent's petition if it was filed before they turned twenty-one years old. Children of abused persons who meet the conditions above retain their "qualified alien" status even after they turn twenty-one years old.

(f) Individuals who have been granted parole into the U.S. for at least a period of one year (or indefinitely) under INA Section 212 (d)(5), including "public interest" parolees.

(g) Individuals granted withholding of deportation or removal under INA Section 243(h) or 241 (b)(3).

(h) Individuals who were admitted into the U.S. as conditional entrants under INA Section 203 (a)(7) prior to April 1, 1980.

(i) Amerasians who were born to U.S. citizen armed services members in Southeast Asia during the Vietnam War.

(3) **Nonqualified aliens** are noncitizens who are lawfully present in the U.S. and who are not included in the definition of qualified aliens in subsection (2) of this section. Nonqualified aliens include, but are not limited to:

(a) Citizens of Marshall Islands, Micronesia or Palau;

(b) Immigrants paroled into the U.S. for a period of one year or less;

(c) Immigrants granted temporary protected status;

(d) Abused aliens who are a relative of a U.S. citizen with an approved I-130 petition but not meeting the other requirements of battered immigrants, as described in WAC 182-503-0530;

(e) Abused aliens who have self-petitioned under VAWA but not yet received "Notice of Prima Facie" eligibility as described in WAC 182-503-0530;

(f) Applicants for adjustment of status, asylum, cancellation of removal, suspension of deportation or withholding of deportation or removal;

(g) Deferred action, cancellation of removal, or suspension of deportation granted:

(i) Deferred Action Childhood Arrivals (DACA) are not eligible for federal Washington apple health programs with the exception of the Alien Emergency Medical program.

(ii) If a person is granted cancellation of removal or suspension of deportation based on having been abused or granted deferred action based on an approved self-petition as an abused alien they are a "qualified alien";

(h) Deferred enforced departure granted;

(i) Family Unity granted;

(j) K, S, U, or V statuses, designated on a person's visa, allow holders to work and eventually adjust to lawful permanent resident (LPR) status;

(k) Lawful temporary residents under the amnesty program of the Immigration Reform and Control Act (IRCA), including those admitted under INA Sections 210 (special agricultural workers) and 245(a);

(l) Order of supervision granted;

(m) Residing in the U.S. since prior to January 1, 1972;

(n) Eligible to petition as special immigrant juveniles. These are juveniles who have been declared a "dependent of the state" and eligible for long-term foster care due to abuse, neglect, or abandonment;

(o) Stay of deportation granted;

(p) Voluntary departure granted - Definite or indefinite time; or

(q) Nonimmigrants who are allowed entry into the U.S. for a specific purpose usually for a limited time are also non-qualified. Examples include:

(i) Business visitors;

(ii) Students; and

(iii) Tourists.

(4) **Undocumented aliens** are noncitizens without a lawful immigration status as defined in subsection (2) or (3) of this section, and who:

(a) Entered the U.S. illegally; or

(b) Were lawfully admitted but whose status expired or was revoked per United States Citizenship and Immigration Services (USCIS).

(5) **U.S. citizens** are one of the following:

(a) Individuals born in the United States or its territories (Guam, Puerto Rico, and the U.S. Virgin Islands; also residents of the Northern Mariana Islands who elected to become U.S. citizens).

(b) American Indians born outside the U.S. without regard to immigration status or date of entry if:

(i) They were born in Canada and are fifty percent American Indian blood (but need not belong to a federally recognized tribe); or

(ii) They are members of a federally recognized Indian tribe or Alaskan Native village or corporation.

(c) Individuals who have become naturalized U.S. citizens.

(d) Individuals born abroad to at least one U.S. citizen parent depending on conditions at the time of their birth, per Title 8, Subchapter III, Section 1401 of the United States Code.

(e) Individuals who turn eighteen years of age on or after February 27, 2001, automatically become U.S. citizens if the following conditions are met while the individual is under age eighteen per INA Section 320.

(i) The individual is granted lawful permanent resident (LPR) status;

(ii) At least one of the individual's parents is a U.S. citizen by birth or naturalization; and

(iii) The individual:

(A) Resides in the U.S. in the legal and physical custody of the citizen parent; or

(B) Was adopted according to the requirements of INA Section 101 and resides in the U.S. in the legal and physical custody of the citizen parent.

(f) Individuals who turned eighteen before February 27, 2001, would have automatically become a citizen if, while the individual was still under eighteen, he or she became a lawful permanent resident and both his or her parents naturalized. Such individuals also may have derived citizenship when only one parent naturalized, if the other parent was dead or a U.S. citizen by birth, or the individual's parents were separated and the naturalized parent had custody.

(6) **U.S. nationals** are persons who owe permanent allegiance to the U.S. and may enter and work in the U.S. without restriction. The following are the only persons classified as U.S. nationals:

(a) Persons born in American Samoa or Swain's Island after December 24, 1952; and

(b) Residents of the Northern Mariana Islands who did not elect to become U.S. citizens.

NEW SECTION

WAC 182-504-0005 Washington apple health—Retrospective certification period. (1) The medicaid agency approves a retroactive Washington apple health (WAH) certification period for the three months immediately before the month of application when an individual:

(a) Requests retroactive WAH on his or her application, within the certification period following the retroactive period, or before the determination of benefits and any appeal process is final;

(b) Would have been eligible for WAH for any or all of the three months if he or she had applied during the retroactive period; and

(c) The individual received covered medical services as described in WAC 182-501-0060 and 182-501-0065.

(2) When an individual is eligible only during the three-month retroactive certification period, that period is the only period of certification, except when:

(a) A pregnant woman is eligible in one of the three months immediately before the month of application, but no earlier than the month of conception. Eligibility continues as described in WAC 182-504-0015(3).

(b) A child is eligible for categorically needy (CN) WAH as described in WAC 182-505-0210 (1) through (5) and (7) in

at least one of the three months immediately before the month of application. Eligibility after the retroactive period continues as described in WAC 182-504-0015(11).

(3) An individual applying for the medically needy (MN) spenddown program may be eligible for a retroactive certification period as described in WAC 182-504-0020.

(4) An individual applying for a medicare savings program may be eligible for a retroactive certification period as described in WAC 182-504-0025.

NEW SECTION

WAC 182-510-0001 Washington apple health—Supplemental security income (SSI) and associated categorically needy (CN). (1) Supplemental security income (SSI) is a federal cash benefit administered by the Social Security Administration (SSA) under Title XVI of the Social Security Act. The SSI program replaces state programs for the aged, blind and disabled individuals beginning January 1974. An individual who received state assistance in December 1973 who became eligible for SSI in January 1974 is considered a grandfathered client by the medicaid agency, and a mandatory income level (MIL) client by SSI. The individual must continue to meet the definition of blind or disabled that was in effect under the state plan in December 1973. These definitions can be found in the SSA program operations manual system (POMS), see <https://secure.ssa.gov/apps10/poms.nsf/aboutpoms>. Other definitions related to SSI eligibility are described in WAC 182-500-0100.

(2) An essential person is an individual who is needed in the home to care for an SSI recipient. An essential person is eligible for categorically needy (CN) Washington apple health (WAH) as long as he or she has lived continuously with the eligible person since January 1974.

(3) An ineligible spouse is not eligible for SSI-related CN WAH. An ineligible spouse must have his or her eligibility for WAH determined separately in accordance with SSI-related medically needy (MN) rules in WAC 182-519-0100.

(4) When an individual receives SSI, the agency accepts SSA's determination of medicaid entitlement. The individual is eligible for CN WAH without submitting an additional application as long as he or she:

(a) Remains entitled to an SSI cash payment;

(b) Is no longer entitled to an SSI cash payment, but SSA is in the process of determining eligibility under Section 1619(b) of the Social Security Act; or

(c) Currently has 1619(b) status as described in WAC 182-512-0880(3).

(5) An SSI recipient may be terminated from CN WAH when he or she:

(a) Does not provide the agency with information necessary for the agency to determine if he or she has other medical insurance; or

(b) Does not assign the right to recover insurance funds to the agency as required in WAC 182-503-0540.

(6) When SSA stops an individual's SSI cash payment for one of the reasons listed in (a), (b), or (c) of this subsection, CN WAH eligibility continues.

(a) The individual's countable income exceeds the SSI income standard due solely to the annual cost-of-living adjustment (COLA) as described in WAC 182-512-0880(1);

(b) The individual is a "deemed" eligible SSI recipient on the basis of eligibility for a special income disregard described in WAC 182-512-0880; or

(c) The individual has an appeal of an SSA termination pending which has not yet resulted in a final determination.

(7) If an individual's SSI cash payment stops due to an SSA determination that the individual is no longer disabled, and any appeal of this determination has resulted in a final decision, the agency:

(a) Redetermines eligibility for all other WAH programs that are not based on receipt of SSI; and

(b) Continues CN WAH until the agency completes the redetermination process described in WAC 182-504-0125.

(8) If an individual's SSI cash payment stops for a reason not addressed elsewhere in this section, the agency considers the individual to meet disability requirements through the SSA's original disability review date. The agency:

(a) Redetermines eligibility for other WAH programs, which may or may not be based on disability; and

(b) Continues CN WAH until the agency completes the redetermination process described in WAC 182-504-0125.

NEW SECTION

WAC 182-511-1060 Washington apple health—Health care for workers with disabilities (HWD)—Income standard based on the federal poverty guidelines. (1) The federal poverty levels (FPL) amounts, also known as poverty guidelines, are issued by the federal Department of Health and Human Services each year in the Federal Register and are generally found at <http://aspe.hhs.gov/poverty/index.shtml>.

(2) If the FPL amounts change from one calendar year to the next, the net income standard for the Washington apple health for workers with disabilities (HWD) program changes on the first of April each year based on that calendar year's poverty guidelines.

(3) The net income standard for HWD is two hundred twenty percent of the poverty guideline.

(4) There is no test for resources for the HWD program.

WSR 13-14-026

PERMANENT RULES

PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed June 25, 2013, 8:47 a.m., effective July 26, 2013]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amends WAC 181-78A-500 and 181-78A-540 to remove reference to school social worker preparation. School social worker preparation programs were deregulated in 2011.

Citation of Existing Rules Affected by this Order: Amending x.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 13-09-024 on April 9, 2013.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 400, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: June 25, 2013.

David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 09-22-023, filed 10/26/09, effective 12/1/11)

WAC 181-78A-500 Professional certificate program approval. All professional certificate programs for principals/program administrators, and school counselors, and school psychologists, (~~and school social workers~~) shall be approved pursuant to the requirements in WAC 181-78A-520 through 181-78A-540. Only colleges/universities with professional educator standards board-approved residency certificate principals/program administrator, and school counselor, and school psychologist(~~, school social worker~~) preparation programs, and educational service districts are eligible to apply for approval to offer professional certificate programs. Educational service districts may partner with institutions of higher education, local school districts, or consortia of school districts to provide professional certificate programs.

AMENDATORY SECTION (Amending WSR 09-22-023, filed 10/26/09, effective 12/1/11)

WAC 181-78A-540 Approval standard—Knowledge and skills. (1) **Principal/program administrator.** A successful candidate for the principal/program administrator professional certificate shall demonstrate the knowledge and skills at the professional certificate benchmark levels for the six standards pursuant to WAC 181-78A-270 (2)(b).

(2) **Educational staff associate - School counselor(~~s~~) or school psychologist(~~, or school social worker~~).** A successful candidate for the ESA professional certificate shall demonstrate the knowledge and skills at the professional certificate benchmark levels for the standards in the specific ESA role pursuant to WAC 181-78A-270 (5), (7), or (9).

WSR 13-14-041
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-138—Filed June 27, 2013, 10:45 a.m., effective July 28, 2013]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amends WAC 220-95-100 and 220-95-110 for the commercial sea urchin and sea cucumber license reduction programs as follows:

(1) Changes the date from August 1 to December 1 for Washington department of fish and wildlife to begin accepting sales offers for commercial sea urchin and commercial sea cucumber licenses, and changes the purchase date from September 30 to January 31.

(2) Delegates authority to the director or his designee for setting the maximum purchase price of these licenses.

The anticipated effect of these changes is to optimize buy-back program participation and more efficiently use available funds.

Citation of Existing Rules Affected by this Order: Amending WAC 220-95-100 and 220-95-110.

Statutory Authority for Adoption: RCW 77.04.020, 77.12.047, 77.70.150, and 77.70.190.

Adopted under notice filed as WSR 13-10-074 on April 30, 2013.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 21, 2013.

Miranda Wecker, Chair
 Fish and Wildlife Commission

AMENDATORY SECTION (Amending WSR 12-15-019, filed 7/10/12, effective 8/10/12)

WAC 220-95-100 Sea urchin license reduction program. In order to provide for economic stability in the commercial sea urchin fishery, and in accordance with RCW 77.70.150, the department establishes the sea urchin license reduction program (program).

(1) Eligibility: All persons who currently hold a sea urchin commercial fishery license are eligible to offer their license(s) for purchase by the department.

(2) Offer process: The department will accept sales offers beginning ~~((August))~~ December 1st of each year and will purchase licenses based on the funds that are available on

~~((September 30th))~~ January 31st of ~~((that same))~~ the following year.

(3) Selection process: The department will rank sales offers from the lowest offer to the highest. It will purchase the lowest-cost licenses first, then the next lowest, and continue until there are insufficient funds to complete a purchase on an offer. If two or more licenses are offered at the same price, selection will be by random draw. To purchase licenses, the department will use the funds made available under RCW 77.70.150, with a maximum purchase price ~~((of twenty thousand dollars per license))~~ set by the director or his or her designee. The director or his or her designee must seek the advice of commercial sea urchin fishery license holders prior to setting or revising the maximum purchase price. Once the director or his or her designee establishes or revises the maximum bid price, he or she will convey the price via emergency rule by November 1st of each year.

(4) License reduction process: When the department purchases a license, it will issue a warrant (a check from the department) in the amount of the offer to the license holder. On the date that the department mails the warrant to the license holder's mailing address on file with the department, it will void the license. When the license holder receives the warrant, he or she must return his or her commercial sea urchin license cards to the department.

(5) No prohibition on reentry: License holders who sell a license under the program may reenter the sea urchin commercial fishery if they purchase a license.

(6) Program termination: This program terminates when the number of sea urchin commercial fishery licensees is reduced to twenty.

AMENDATORY SECTION (Amending WSR 12-15-019, filed 7/10/12, effective 8/10/12)

WAC 220-95-110 Sea cucumber license reduction program. In order to provide for economic stability in the commercial sea cucumber fishery, and in accordance with RCW 77.70.190, the department establishes the sea cucumber license reduction program (program).

(1) Eligibility: All persons who currently hold a sea cucumber commercial fishery license are eligible to offer their license(s) for purchase by the department.

(2) Offer process: The department will accept sales offers beginning ~~((August))~~ December 1st of each year and will purchase licenses based on the funds that are available on ~~((September 30th))~~ January 31st of ~~((that same))~~ the following year.

(3) Selection process: The department will rank sales offers from the lowest offer to the highest. It will purchase the lowest-cost licenses first, then the next lowest, and continue until there are insufficient funds to complete a purchase on an offer. If two or more licenses are offered at the same price, selection will be by random draw. To purchase licenses, the department will use the funds made available under RCW 77.70.190, with a maximum purchase price ~~((of sixty thousand dollars per license))~~ set by the director or his or her designee. The director or his or her designee must seek the advice of commercial sea cucumber fishery license holders prior to setting or revising the maximum purchase price.

Once the director or his or her designee establishes or revises the maximum bid price, he or she will convey the price via emergency rule by November 1st of each year.

(4) License reduction process: When the department purchases a license, it will issue a warrant (a check from the department) in the amount of the offer to the license holder. On the date that the department mails the warrant to the license holder's mailing address on file with the department, it will void the license. When the license holder receives the warrant, he or she must return his or her commercial sea cucumber license cards to the department.

(5) No prohibition on reentry: License holders who sell a license under the program may reenter the sea cucumber commercial fishery if they purchase a license.

(6) Program termination: This program terminates when the number of sea cucumber commercial fishery licensees is reduced to twenty.

WSR 13-14-052

PERMANENT RULES

HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed June 27, 2013, 4:05 p.m., effective July 28, 2013]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Clarify payment criteria for Medicare Part B deductible and coinsurance amounts and eliminate reference to Medicare Part D copay.

Citation of Existing Rules Affected by this Order: Amending WAC 182-530-7700.

Statutory Authority for Adoption: RCW 41.05.021, chapter 5, Laws of 2011 (ESHB 1086, 2010 2nd sp.s. c 1 s 208 (25)); and Section 1902 (n)(3)(B) of the Social Security Act, as modified by Section 4714 of the Balanced Budget Act of 1997.

Adopted under notice filed as WSR 13-11-148 on May 22, 2013.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: June 27, 2013.

Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-530-7700 Reimbursement—Dual eligible clients/medicare. For clients who are dually eligible for medical assistance and medicare benefits, the following applies:

(1) Medicare Part B, the ~~((department))~~ agency pays providers for:

(a) An amount up to the ~~((department's))~~ agency's maximum allowable fee for drugs medicare does not cover, but the ~~((department))~~ agency covers; or

(b) Deductible and/or coinsurance amounts up to medicare's or the ~~((department's))~~ agency's maximum allowable fee, whichever is less, for drugs medicare and the ~~((department))~~ agency cover(~~;~~ ~~or~~

~~(c) Deductible and/or coinsurance amounts for clients under the qualified medicare beneficiary (QMB) program for drugs medicare covers but the department does not cover).~~

(2) Medicare Part D:

(a) ~~((For payment of medicare Part D drugs:~~

~~(i)) Medicare is the ((primary)) payer for drugs covered under the medicare Part D ((drugs;~~

~~(ii)) benefit.~~

~~(b) The ((department)) agency does not pay((s only the copayment up to a maximum amount set by the Centers for Medicare and Medicaid Services (CMS); and~~

~~(iii) The client is responsible for copayments above the maximum amount)) for Part D drugs or Part D copayments.~~

~~((b)) (c) For drugs excluded from the basic medicare Part D benefit((s):~~

(i) The ~~((department))~~ agency offers the same drug benefit as a nondual eligible client has within those same classes;

(ii) If the client has another third party insurer, that insurer is the primary payer; and

(iii) The ~~((department))~~ agency is the payer of last resort.

WSR 13-14-056

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed June 28, 2013, 7:50 a.m., effective July 1, 2013]

Effective Date of Rule: July 1, 2013.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The stumpage value rule is also required by statute (RCW 84.33.091) to be effective on July 1, 2013.

Purpose: WAC 458-40-660 contains the stumpage values used by harvesters of timber to calculate the timber excise tax. This rule is being revised to provide the stumpage values to be used during the second half of 2013.

Citation of Existing Rules Affected by this Order: Amending WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments.

Statutory Authority for Adoption: RCW 82.01.060(2), 82.32.300, and 84.33.096.

Other Authority: RCW 84.33.091.

Adopted under notice filed as WSR 13-10-065 on April 30, 2013.

A final cost-benefit analysis is available by contacting Mark E. Bohe, P.O. Box 47453, Olympia, WA 98504-7453, phone (360) 534-1574, fax (360) 534-1606, e-mail markbohe@dor.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 28, 2013.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-02-034, filed 12/21/12, effective 1/1/13)

WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments. (1) **Introduction.** This rule provides stumpage value tables and stumpage value adjustments used to calculate the amount of a harvester's timber excise tax.

(2) **Stumpage value tables.** The following stumpage value tables are used to calculate the taxable value of stumpage harvested from ((January)) July 1 through ((June 30)) December 31, 2013:

**Washington State Department of Revenue
STUMPAGE VALUE TABLE**

((January)) July 1 through ((June 30)) December 31, 2013

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Starting July 1, 2012, there are no separate Quality Codes per Species Code.

((Species Name	Species-Code	SVA (Stumpage Value Area)	Haul Zone				
			1	2	3	4	5
Douglas-fir ⁽²⁾	DF	1	\$344	\$337	\$330	\$323	\$316
		2	389	382	375	368	361
		3	321	314	307	300	293
		4	389	382	375	368	361
		5	380	373	366	359	352
		6	210	203	196	189	182
Western Hemlock and	WH	1	290	283	276	269	262
		2	324	317	310	303	296
Other Conifer ⁽³⁾		3	249	242	235	228	221
		4	303	296	289	282	275
		5	343	336	329	322	315

((Species Name	Species-Code	SVA (Stumpage Value Area)	Haul Zone				
			1	2	3	4	5
Western Red-cedar ⁽⁴⁾	RC	6	199	192	185	178	171
		1-5	756	749	742	735	728
Ponderosa Pine ⁽⁵⁾	PP	6	509	502	495	488	481
		1-6	180	173	166	159	152
Red Alder	RA	1-5	509	502	495	488	481
Black Cottonwood	BC	1-5	105	98	91	84	77
Other Hardwood	OH	1-5	221	214	207	200	193
		6	59	52	45	38	31
Douglas-fir Poles & Piles	DFL	1-5	797	790	783	776	769
Western Red-cedar Poles	RCL	1-5	1358	1351	1344	1337	1330
		6	757	750	743	736	729
Chipwood ⁽⁶⁾	CHW	1-5	19	18	17	16	15
		6	7	6	5	4	3
Small Logs ⁽⁶⁾	SML	6	24	23	22	21	20
RC Shake & Shingle Blocks ⁽⁷⁾	RCS	1-5	164	157	150	143	136
Posts ⁽⁸⁾	LPP	1-5	0.35	0.35	0.35	0.35	0.35
DF Christmas Trees ⁽⁹⁾	DFX	1-5	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	TFX	1-5	0.50	0.50	0.50	0.50	0.50

Species Name	Species Code	SVA (Stumpage Value Area)	Haul Zone						
			1	2	3	4	5		
Douglas-fir ⁽²⁾	DF	1	\$392	\$385	\$378	\$371	\$364		
		2	388	381	374	367	360		
		3	308	301	294	287	280		
		4	442	435	428	421	414		
		5	424	417	410	403	396		
		6	224	217	210	203	196		
Western Hemlock and Other Conifer ⁽³⁾	WH	1	361	354	347	340	333		
		2	353	346	339	332	325		
		3	260	253	246	239	232		
		4	340	333	326	319	312		
		5	352	345	338	331	324		
Western Red-cedar ⁽⁴⁾	RC	6	211	204	197	190	183		
		1-5	808	801	794	787	780		
		6	483	476	469	462	455		
		Ponderosa Pine ⁽⁵⁾	PP	1-6	190	183	176	169	162
				Red Alder	RA	1-5	479	472	465
Black Cottonwood	BC	1-5	90	83	76	69	62		
		Other Hardwood	OH	1-5	229	222	215	208	201
6	23			16	9	2	1		
Douglas-fir Poles & Piles	DFL	1-5	789	782	775	768	761		

Species Name	Species Code	SVA (Stumpage Value Area)	Haul Zone				
			1	2	3	4	5
Western Redcedar Poles	RCL	1-5	1379	1372	1365	1358	1351
		6	854	847	840	833	826
Chipwood ⁽⁶⁾	CHW	1-5	10	9	8	7	6
		6	1	1	1	1	1
Small Logs ⁽⁶⁾	SML	6	27	26	25	24	23
RC Shake & Shingle Blocks ⁽⁷⁾	RCS	1-5	164	157	150	143	136
Posts ⁽⁸⁾	LPP	1-5	0.35	0.35	0.35	0.35	0.35
DF Christmas Trees ⁽⁹⁾	DFX	1-5	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	TFX	1-5	0.50	0.50	0.50	0.50	0.50

- (1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Western Larch.
- (3) Includes all Hemlock, Spruce and true Fir species, Lodgepole Pine, or any other conifer not listed on this page.
- (4) Includes Alaska-Cedar.
- (5) Includes Western White Pine.
- (6) Stumpage value per ton.
- (7) Stumpage value per cord.
- (8) Includes Lodgepole posts and other posts, Stumpage Value per 8 lineal feet or portion thereof.
- (9) Stumpage Value per lineal foot.

(3) **Harvest value adjustments.** The stumpage values in subsection (2) of this rule for the designated stumpage value areas are adjusted for various logging and harvest conditions, subject to the following:

- (a) No harvest adjustment is allowed for special forest products, chipwood, or small logs.
- (b) Conifer and hardwood stumpage value rates cannot be adjusted below one dollar per MBF.
- (c) Except for the timber yarded by helicopter, a single logging condition adjustment applies to the entire harvest unit. The taxpayer must use the logging condition adjustment class that applies to a majority (more than 50%) of the acreage in that harvest unit. If the harvest unit is reported over more than one quarter, all quarterly returns for that harvest unit must report the same logging condition adjustment. The helicopter adjustment applies only to the timber volume from the harvest unit that is yarded from stump to landing by helicopter.
- (d) The volume per acre adjustment is a single adjustment class for all quarterly returns reporting a harvest unit. A harvest unit is established by the harvester prior to harvesting. The volume per acre is determined by taking the volume logged from the unit excluding the volume reported as chipwood or small logs and dividing by the total acres logged. Total acres logged does not include leave tree areas (RMZ, UMZ, forested wetlands, etc.) over 2 acres in size.
- (e) A domestic market adjustment applies to timber which meet the following criteria:
 - (i) **Public timber** - Harvest of timber not sold by a competitive bidding process that is prohibited under the authority

of state or federal law from foreign export may be eligible for the domestic market adjustment. The adjustment may be applied only to those species of timber that must be processed domestically. According to type of sale, the adjustment may be applied to the following species:

Federal Timber Sales: All species except Alaska-cedar. (Stat. Ref. - 36 C.F.R. 223.10)

State, and Other Nonfederal, Public Timber Sales: Western Redcedar only. (Stat. Ref. - 50 U.S.C. appendix 2406.1)

(ii) **Private timber** - Harvest of private timber that is legally restricted from foreign export, under the authority of The Forest Resources Conservation and Shortage Relief Act (Public Law 101-382), (16 U.S.C. Sec. 620 et seq.); the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)); a Cooperative Sustained Yield Unit Agreement made pursuant to the act of March 29, 1944 (16 U.S.C. Sec. 583-583i); or Washington Administrative Code (WAC 240-15-015(2)) is also eligible for the Domestic Market Adjustment.

The following harvest adjustment tables apply from ((January)) July 1 through ((June 30)) December 31, 2013:

TABLE 9—Harvest Adjustment Table
Stumpage Value Areas 1, 2, 3, 4, and 5
 ((January)) July 1 through ((June 30)) December 31, 2013

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of 30 thousand board feet or more per acre.	\$0.00
Class 2	Harvest of 10 thousand board feet to but not including 30 thousand board feet per acre.	-\$15.00
Class 3	Harvest of less than 10 thousand board feet per acre.	-\$35.00
II. Logging conditions		
Class 1	Ground based logging a majority of the unit using tracked or wheeled vehicles or draft animals.	\$0.00
Class 2	Cable logging a majority of the unit using an overhead system of winch driven cables.	-\$50.00
Class 3	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$145.00
III. Remote island adjustment:		
	For timber harvested from a remote island	-\$50.00
IV. Thinning		
Class 1	A limited removal of timber described in WAC 458-40-610 (28)	-\$100.00

TABLE 10—Harvest Adjustment Table
Stumpage Value Area 6
 ((January)) July 1 through ((June 30)) December 31, 2013

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of more than 8 thousand board feet per acre.	\$0.00
Class 2	Harvest of 8 thousand board feet per acre and less.	-\$8.00
II. Logging conditions		
Class 1	The majority of the harvest unit has less than 40% slope. No significant rock outcrops or swamp barriers.	\$0.00
Class 2	The majority of the harvest unit has slopes between 40% and 60%. Some rock outcrops or swamp barriers.	-\$50.00
Class 3	The majority of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	-\$75.00
Class 4	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$145.00
Note:	A Class 2 adjustment may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department of revenue.	
III. Remote island adjustment:		
	For timber harvested from a remote island	-\$50.00

TABLE 11—Domestic Market Adjustment

Class	Area Adjustment Applies	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
	SVAs 1 through 5 only:	\$ ((11.00)) <u>9.00</u>

Note: This adjustment only applies to published MBF sawlog values.

(4) **Damaged timber.** Timber harvesters planning to remove timber from areas having damaged timber may apply to the department of revenue for an adjustment in stumpage values. The application must contain a map with the legal descriptions of the area, an accurate estimate of the volume of damaged timber to be removed, a description of the damage sustained by the timber with an evaluation of the extent to which the stumpage values have been materially reduced from the values shown in the applicable tables, and a list of estimated additional costs to be incurred resulting from the removal of the damaged timber. The application must be received and approved by the department of revenue before the harvest commences. Upon receipt of an application, the department of revenue will determine the amount of adjustment to be applied against the stumpage values. Timber that

has been damaged due to sudden and unforeseen causes may qualify.

(a) Sudden and unforeseen causes of damage that qualify for consideration of an adjustment include:

(i) Causes listed in RCW 84.33.091; fire, blow down, ice storm, flood.

(ii) Others not listed; volcanic activity, earthquake.

(b) Causes that do not qualify for adjustment include:

(i) Animal damage, root rot, mistletoe, prior logging, insect damage, normal decay from fungi, and pathogen caused diseases; and

(ii) Any damage that can be accounted for in the accepted normal scaling rules through volume or grade reductions.

(c) The department of revenue will not grant adjustments for applications involving timber that has already been harvested but will consider any remaining undisturbed damaged timber scheduled for removal if it is properly identified.

(d) The department of revenue will notify the harvester in writing of approval or denial. Instructions will be included for taking any adjustment amounts approved.

(5) **Forest-derived biomass**, has a \$0/ton stumpage value.

WSR 13-14-077

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed July 1, 2013, 8:08 a.m., effective August 1, 2013]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The amendments will clarify existing rules to assist education providers and licensees regarding education classes and scores, processes for transferring licenses, and use of company names. Clarify existing consumer protection rules regarding trust funds, maintenance of consumer transaction records, and notifications when closing a real estate firm. The language will be also updated to reflect language used in current practice. All proposed rule amendments are request [requested] by the real estate commission, industry or in response to legislation and meet exemption criteria outlined in Executive Order 10-06.

Statutory Authority for Adoption: RCW 18.85.041.

Adopted under notice filed as WSR 13-11-077 on May 16, 2013.

Changes Other than Editing from Proposed to Adopted Version: WAC 308-124A-726, correct the word "designation broker's" to "designated broker's." WAC 308-124H-970, corrects the word "Guest lectures" to "Guest lecturers."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 14, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 14, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 14, Repealed 0.

Date Adopted: July 1, 2013.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

WAC 308-124-300 Definitions. Words and terms used in this chapter shall have the same meaning as each has under chapter 18.85 RCW unless otherwise clearly provided in this chapter, or the context in which they are used in this chapter clearly indicates that they be given some other meaning.

(1) "Branch manager" is the natural person who holds a managing broker's license and has delegated authority by the designated broker to manage a single physical location of a branch office. The department shall issue an endorsement for "branch managers."

(2) "Affiliated licensees" are the natural persons licensed as brokers or managing brokers employed by a firm and who are licensed to represent the firm in the performance of any of the acts specified in chapter 18.85 RCW.

~~(3) ("Prospect procurement" is initiating contact with a prospective buyer, seller, landlord or tenant for the purpose of engaging in a sale, lease or rental of real estate or a business opportunity, and the contact is initiated under a promise of compensation.~~

~~(4))~~ "Brokerage service contracts" include, but are not limited to, purchase and sale agreements, lease or rental agreements, listings, options, agency agreements, or property management agreements.

~~((5))~~ (4) "Branch office" means:

- (a) A separate physical office of the real estate firm; and
- (b) Has a different mailing address of the main firm office; and
- (c) Uses the real estate firm's UBI (unified business identifier) number.

NEW SECTION

WAC 308-124A-726 Reversion from managing broker to broker license. A managing broker may apply to revert from a managing broker license to a broker license by completing the department form and paying all fees, if applicable. If the managing broker is in active status, the managing broker needs to secure the designated broker's signature acknowledging the reversion of managing broker license to a broker's license. The new broker license renewal date remains the same. To revert to a managing broker license the broker must meet all of the requirements listed in RCW 18.85.111 including taking the examination.

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

WAC 308-124A-760 Grading of examinations. (1) To pass the broker examination a minimum scaled score of 70 is required on each portion. The broker examination shall consist of two portions:

(a) The national portion consisting of questions that test general real estate practices; and

(b) The state portion consisting of questions that test on Washington laws and regulations related to real estate licensing.

(2) To pass the managing broker examination a minimum scaled score of 75 is required on each portion. The managing broker examination shall consist of two portions:

(a) The national portion consisting of simulation examination questions that test general real estate brokerage practices which include information gathering and decision-making aspects. A candidate must achieve a minimum scaled score of 75 on each aspect to pass the entire portion; and

(b) The state portion consisting of questions that test on Washington laws and regulations related to real estate licensing, and the closing/settlement process.

(3) A passing score for a portion of an examination is valid for a period of six months.

NEW SECTION

WAC 308-124A-788 License activation. (1) An inactive license may be placed on active status pursuant to RCW 18.85.265.

(2) A broker may use a thirty clock hour course from a curriculum approved by the director, in advanced real estate practices or real estate law for both activation of a license that has been inactive for three or more years and for first renewal of an active license as required in WAC 308-124A-785.

AMENDATORY SECTION (Amending WSR 11-09-009, filed 4/8/11, effective 5/9/11)

WAC 308-124A-790 Continuing education clock hour requirements. A licensee shall submit to the department evidence of satisfactory completion of clock hours, pursuant to RCW 18.85.211, in the manner and on forms prescribed by the department.

(1) A licensee applying for renewal of an active license shall submit evidence of completion of at least thirty clock hours of instruction in a course(s) approved by the real estate program and commenced within ~~((thirty-six))~~ forty-eight months of a licensee's renewal date. A minimum of fifteen clock hours must be completed within twenty-four months of the licensee's current renewal date, and a portion of that fifteen must include three hours of the prescribed core curriculum defined in WAC 308-124A-800. Up to fifteen clock hours of instruction beyond the thirty clock hours submitted for a previous renewal date may be carried forward to the following renewal date. Failure to report successful completion of the prescribed core curriculum clock hours shall result in denial of license renewal.

(2) The thirty clock hours shall be satisfied by evidence of completion of approved real estate courses as defined in

WAC 308-124H-820. A portion of the thirty clock hours of continuing education must include three clock hours of prescribed core curriculum defined in WAC 308-124A-800 and three clock hours of prescribed transition course pursuant to RCW 18.85.481(2).

(3) Courses for continuing education clock hour credit shall be commenced after issuance of a first license.

(4) A licensee shall not place a license on inactive status to avoid the continuing education requirement or the post-licensing requirements. A licensee shall submit evidence of completion of continuing education clock hours to activate a license if activation occurs within one year after the license had been placed on inactive status and the last renewal of the license had been as an inactive license. A licensee shall submit evidence of completing the post-licensing requirements if not previously satisfied upon returning to active status.

(5) Approved courses may be repeated for continuing education credit in subsequent renewal periods.

(6) Clock hour credit for continuing education shall not be accepted if:

(a) The course is not approved pursuant to chapter 308-124H WAC and chapter 18.85 RCW;

(b) Course(s) was taken to activate an inactive license pursuant to RCW 18.85.265(3);

(c) Course(s) submitted to satisfy the requirements of RCW 18.85.101 (1)(c), broker's license, RCW 18.85.211, 18.85.111, managing broker's license and WAC 308-124A-780, reinstatement.

(7) Instructors shall not receive clock hour credit for teaching or course development.

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

WAC 308-124A-815 ((Firm names—Name)) Prohibited firm and assumed names. (1) Department can deny, suspend, reject firm names or assumed names that are in the department's opinion: Derogatory, similar or the same as other licensed firm names, implies that it is a public agency or government, implies nonprofit or research organization.

(2) A real estate firm shall not be issued a license nor advertise in any manner using a name((s or trade styles)) which ((are)) is in the department's opinion similar to currently issued firm or assumed name licenses or imply that either the real estate firm is a nonprofit organization, research organization, public bureau or public group. A bona fide franchisee may be licensed using the name of the franchisor with the firm name of the franchisee.

NEW SECTION

WAC 308-124B-207 Real estate firm identification. Any firm or branch office of the real estate firm shall be identified by displaying the name, visible to the public, of the firm or the assumed name as licensed at the address appearing on the license.

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

WAC 308-124C-105 Required records. The designated broker is required to keep the following on behalf of the firm:

(1) Trust account records:

(a) Duplicate receipt book or cash receipts journal recording all receipts;

(b) Sequentially numbered, nonduplicative checks with check register, cash disbursements journal or check stubs;

(c) Validated duplicate bank deposit slips or daily verified bank deposit;

(d) Client's accounting ledger summarizing all moneys received and all moneys disbursed for each real estate or business opportunity transaction or each property management account, contract or mortgage collection account;

(e) In conjunction with (d) of this subsection, separate ledger sheets for each tenant (including security deposit), lessee, vendee or mortgagor; for automated systems, the ledger sheets may be a computer generated printout which contains required entries;

(f) Reconciled bank statements and canceled checks for all trust bank accounts.

(2) Other records:

(a) An accurate, up-to-date log of all agreements or contracts for brokerages services submitted by the firm's affiliated licensees.

(b) A legible copy of the transaction or contracts for brokerage services shall be retained in each participating real estate firm's files.

(c) A transaction folder containing all agreements, receipts, contracts, documents, leases, closing statements and material correspondence for each real estate or business opportunity transaction, and for each rental, lease, contract or mortgage collection account.

(d) All required records shall be maintained at one location where the firm is licensed. This location may be the main or any branch office.

AMENDATORY SECTION (Amending WSR 12-02-065, filed 1/3/12, effective 2/3/12)

WAC 308-124C-125 Designated broker responsibilities. Designated broker responsibilities include, but are not limited to:

(1) Assuring all real estate brokerage services in which he/she participated are in accordance with chapters 18.85, 18.86, 18.235 RCW and the rules promulgated thereunder.

(2) Cooperating with the department in an investigation, audit or licensing matter.

(3) Ensuring accessibility of the firm's offices and records to the director's authorized representatives, and ensure that copies of required records are made available upon demand.

(4) Ensuring monthly reconciliation of trust bank accounts are completed, up-to-date and accurate.

(5) Ensuring monthly trial balances are completed, accurate and up-to-date.

(6) Ensuring that the trial balance and the reconciliation show the account(s) are in balance.

(7) Ensuring policies or procedures are in place to account for safe handling of customer or client funds or property.

(8) Maintaining up-to-date written assignments of delegations of managing brokers and branch manager duties. The delegation agreement(s) must be signed by all parties to the agreement. Delegations must:

(a) Only be made to managing brokers licensed to the firm.

(b) Address duties of record maintenance, advertising, trust accounting, safe handling of customer/client funds and property, authority to bind, review of contracts, modify or terminate brokerage service contracts on behalf of the firm, supervision of brokers and managing brokers, and heighten supervision of brokers that are licensed for less than two years.

(c) Address hiring, transferring and releasing licensees to or from the firm.

(9) Maintaining, implementing and following a written policy that addresses:

(a) Procedures for referring a home inspector to buyers or sellers. The policy will address the consumer's right to freely pick a home inspector of the buyer's or seller's choice and prevent any collusion between the home inspector and a real estate licensee. If a licensee refers a home inspector to a buyer or seller with whom they have or have had a relationship including, but not limited to, a business or familial relationship, then full disclosure of the relationship must be provided in writing prior to the buyer or seller using the services of the home inspector.

(b) Levels of supervision of all brokers, managing brokers and branch managers of the firm.

(c) Review of all brokerage service contracts involving any broker of the firm licensed for less than two years. Review must be completed by the designated broker or their delegated managing broker within five business days of mutual acceptance. Documented proof of review shall be maintained at the firm's record locations.

(10) Ensuring that all persons performing real estate brokerage services on behalf of the firm and the firm itself are appropriately licensed.

(11) Ensuring affiliated licensees submit their transaction documents to the designated broker, branch manager or delegated managing broker within two business days of mutual acceptance.

(12) Being knowledgeable of chapters 18.85, 18.86, and 18.235 RCW and their related rules.

(13) Within five business days provide the department with a closing firm affidavit when closing the firm.

(14) Within five business days ensure that all brokerage services contracts are either terminated or transferred to another licensed real estate firm with the parties' written authorization.

(15) Within five business days notify all parties to pending brokerage service transaction(s) that the real estate firm is closing and that the firm will either:

(a) Transfer the pending transaction documents, with the parties' written authorization(s) to another real estate firm; or

(b) Ensure the transaction(s) are completed without any new licensable activity.

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

WAC 308-124D-200 Checks—Payee requirements.

All checks received as earnest money, security or damage deposits, rent, lease payments, contract or mortgage payments on real property or business opportunities owned by clients shall be made payable to the real estate firm as licensed, unless it is mutually agreed in writing by the principals that the deposit shall be paid to ~~((the lessor,))~~ the seller or an escrow agent named in the agreement. The ~~((designated broker))~~ real estate firm shall retain a copy of the written agreement.

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

WAC 308-124D-220 Office requirement for brokers actively licensed in another jurisdiction.

The term "office" in RCW ~~((18-85-180))~~ 18.85.231 for a ~~((broker))~~ firm actively licensed in another jurisdiction in which the broker's headquarter office is located shall mean the Washington location where trust account and transaction records are maintained. Such records are required to be maintained for three years. The trust account and transaction records shall be open and accessible to representatives of the department of licensing. The parties to the transaction shall have access to the transaction records prepared or retained for the requesting party.

~~A ((broker actively licensed in another jurisdiction seeking licensure in Washington, whose headquarter office is located in that other jurisdiction.)) firm whose headquarter office is actively licensed in another jurisdiction and is seeking licensure in Washington must obtain a firm license. The firm must also register a natural person who qualifies as a managing broker in Washington and has a controlling interest in the firm to be the firm's Washington designated broker. The firm shall notify the ((department)) real estate program of the location address where the records are maintained in the state of Washington and shall include this address with the headquarter's address on the license application.~~

The Washington license shall be posted at the licensed Washington location where the records are being maintained.

Within thirty days after mailing of the notice of audit, the broker shall come to the department's office, after making an appointment~~((;))~~ in ~~((the geographic location (Seattle or) Olympia((nearest to the location of the records)))~~ to sign the audit report.

~~((If a real estate licensee actively licensed in another jurisdiction, whose headquarter office is located in that other jurisdiction, has obtained a Washington real estate license through a license recognition agreement, that licensee may maintain required Washington real estate transaction records in their out-of-state jurisdiction and with the out-of-state broker to whom they are licensed, providing it is allowed for in the license recognition agreement.))~~

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

WAC 308-124D-225 Multiple business usage of office. A (~~(broker)~~) firm may conduct (~~(a)~~) real estate brokerage (~~(business)~~) services at an office location where the firm or designated broker concurrently conducts a separate, business activity. The real estate brokerage (~~(business)~~) service activities shall be carried out and business records shall be maintained separate and apart from any other business activities by the firm or designated broker.

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

WAC 308-124E-105 Administration of funds held in trust—General procedures. Any real estate broker who receives funds or moneys from any principal or any party to a real estate or business opportunity transaction, property management agreement, contract/mortgage collection agreement, or advance fees, shall hold the funds or moneys in trust for the purposes of the brokerage service contract or transaction, and shall not utilize such funds or moneys for the benefit of the broker, managing broker, real estate firm or any person not entitled to such benefit. Designated brokers are responsible for ensuring their affiliated licensees safeguard client funds by following these rules. Funds or moneys received in trust shall be deposited in a bank, savings association, or credit union insured by the Federal Deposit Insurance Corporation or the share insurance fund of the National Credit Union Administration, or any successor federal deposit insurer. The financial institution must be able to accept service in Washington state. The designated broker is responsible for the administration of trust funds and accounts to include, but not be limited to:

- Depositing;
 - Holding;
 - Disbursing;
 - Receipting;
 - Posting;
 - Recording;
 - Accounting to principals;
 - Notifying principals and cooperating licensees of material facts; and
 - Reconciling and properly setting up a trust account.
- The designated broker is responsible for handling trust funds as provided herein.

(1) Bank accounts shall be designated as trust accounts in the firm name or assumed name as licensed.

(2) Interest credited to a client's account must be recorded as a liability on client ledger. Interest assigned or credited by written assignment agreement to the firm may not be maintained in the trust account. The designated broker is responsible for making arrangements with the financial institution to credit this interest to the general account of the firm.

(3) The designated broker shall establish and maintain a system of records and procedures approved by the real estate program that provides for an audit trail accounting of all funds received and disbursed. All funds must be identified to the account of each individual client.

(4) Alternative systems of records or procedures proposed by a designated broker shall be approved in advance in writing by the real estate program.

(5) The designated broker shall be responsible for deposits, disbursements, or transfers of clients' funds received and held in trust.

(6) All funds or moneys received for any reason pertaining to the sale, renting, leasing, optioning of real estate or business opportunities, contract or mortgage collections or advance fees shall be deposited in the firm's real estate trust bank account not later than the (~~(first)~~) next banking day following receipt thereof; except:

(a) Cash must be deposited in the firm's trust account not later than the next banking day;

(b) Checks received as earnest money deposits when the earnest money agreement states that a check is to be held for a specified length of time or until the occurrence of a specific event; and

(c) For purposes of this section, Saturday, Sunday, or other legal holidays as defined in RCW 1.16.050 shall not be considered a banking day.

(7) All checks, funds or moneys received shall be identified by the date received and by the amount, source and purpose on either a cash receipts journal or duplicate receipt retained as a permanent record.

(8) All deposits to the trust bank account shall be identified by the source of funds and transaction to which it applies.

(9) An individual client's ledger sheet shall be established and maintained for each client for whom funds are received in trust, which shows all receipts and disbursements. The firm will maintain the minimum amount required by the financial institution in the trust account to prevent the trust account from being closed. A ledger sheet identified as "opening account" will be required for funds that are used to open the account or to keep the trust account from being closed. The credit entries must show the date of deposit, amount of deposit, and item covered including, but not limited to "earnest money deposit," "down payment," "rent," "damage deposit," "rent deposit," "interest," or "advance fee." The debit entries must show the date of the check, check number, amount of the check, name of payee and item covered. The "item covered" entry may indicate a code number per chart of accounts, or may be documented by entry in a cash receipts journal, cash disbursements journal, or check voucher.

(10) The reconciled real estate trust bank account balance must be equal at all times to the outstanding trust liability to clients and the funds in the "open account" ledger. The balance shown in the check register or bank control account must equal the total liability to clients and the "open account" ledger.

(11) The designated broker shall be responsible for preparation of a monthly trial balance of the client's ledger, reconciling the ledger with both the trust account bank statement and the trust account check register or bank control account. The checkbook balance, the bank reconciliation and the client ledgers (including the "open account" ledger) must be in agreement at all times. A trial balance is a listing of all client ledgers, including the "open account" ledger, showing

the owner name or control number, date of last entry to the ledger and the ledger balance.

(12) All disbursements of trust funds shall be made by check, or electronic transfer, drawn on the real estate trust bank account and identified thereon to a specific real estate or business opportunity transaction, or collection/management agreement. The number of each check, amount, date, payee, items covered and the specific client's ledger sheet debited must be shown on the check stub or check register and all data must agree exactly with the check as written. No check numbers on any single trust account can be duplicated.

(a) No disbursement from the trust account shall be made based upon wire transfer receipts until the deposit has been verified.

(b) The designated broker must provide a follow-up "hard-copy" debit memo when funds are disbursed via wire transfer.

(c) The designated broker shall retain in the transaction file a copy of instructions signed by the owner of funds to be wire-transferred which identifies the receiving entity and account number.

(13) Voided checks written on the trust bank account shall be permanently defaced and shall be retained.

(14) Commissions owed to another firm may be paid from the real estate trust bank account. Those commissions shall be paid promptly upon receipt of funds. Commissions shared with another firm are a reduction of the gross commissions received.

(15) No deposits to the real estate trust bank account shall be made of funds:

(a) That belong to the designated broker or the real estate firm, except that a designated broker may deposit a minimal amount to open the trust bank account or maintain a minimal amount to keep the account from being closed; or

(b) That do not pertain to a client's real estate or business opportunity sales transaction or are not received in connection with a client's rental, contract or mortgage collection account.

(16) No disbursements from the real estate trust bank account shall be made:

(a) For items not pertaining to a specific real estate or business opportunity transaction or a rental, contract or mortgage collection account;

(b) Pertaining to a specific real estate or business opportunity transaction or a rental, contract or mortgage collection account in excess of the actual amount held in the real estate trust bank account in connection with that transaction or collection account;

(c) In payment of a commission owed to any person licensed to the firm or in payment of any business expense of the firm. Payment of commissions to persons licensed to the firm or of any business expense of the designated broker or firm shall be paid from the regular business bank account of the firm.

(d) For bank charges of any nature, including bank services, checks or other items, except as specified in WAC 308-124E-110 (1)(a) and (d). Bank charges are business overhead expenses of the real estate firm. Arrangements must be made with the bank to have any such charges applicable to the real estate trust bank account charged to the regular business bank

account, or to provide a separate monthly statement of bank charges so that they may be paid from the firm's business bank account.

(17) The provisions of this chapter are applicable to manual or computerized accounting systems. For clarity, the following is addressed for computer systems:

(a) The system must provide for a capability to back up all data files.

(b) Receipt, check or disbursement registers or journals, bank reconciliations, and monthly trial balances will be maintained (~~in printed or electronic formats~~) and available for immediate retrieval or printing upon demand of the department.

(c) The designated broker will maintain a (~~printed~~) dated source document file or index file to support any changes to existing accounting records.

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

WAC 308-124E-110 Administration of funds held in trust—Real estate and business opportunity transactions.

The procedures in this section are applicable to funds received by the firm in connection with real estate sales, business opportunity transactions or options. These procedures are in addition to the requirements of the general trust account procedures contained in WAC 308-124E-105.

(1) Bank accounts, deposit slips, checks and signature cards shall be designated as trust accounts in the firm or assumed name as licensed. Trust bank accounts for real estate sales or business opportunity transactions shall be interest bearing demand deposit accounts. These accounts shall be established as described in RCW 18.85.285 and this section.

(a) The firm shall maintain a pooled interest-bearing trust account identified as housing trust fund account for deposit of trust funds which are ten thousand dollars or less.

Interest income from this account will be paid to the department by the depository institution in accordance with RCW 18.85.285(8) after deduction of reasonable bank service charges and fees, which shall not include check printing fees or fees for bookkeeping systems.

(b) The licensee shall disclose in writing to the party depositing more than ten thousand dollars that the party has an option between (b)(i) and (ii) of this subsection:

(i) All trust funds not required to be deposited in the account specified in (a) of this subsection shall be deposited in a separate interest-bearing trust account for the particular party or party's matter on which the interest will be paid to the party(ies); or

(ii) In the pooled interest-bearing account specified in (a) of this subsection if the parties to the transaction agree in writing.

(c)(i) For accounts established as specified in (a) of this subsection, the designated broker will maintain an additional ledger (~~card~~) with the heading identified as "Housing trust account interest." As the monthly bank statements are received, indicating interest credited, the designated broker will post the amount to the pooled interest ledger (~~card~~). When the bank statement indicates that the interest was paid

to the state or bank fees were charged, the designated broker will debit the ledger (~~(earn)~~) accordingly.

(ii) For accounts established as specified in (b)(i) of this subsection, the interest earned or bank fees charged will be posted to the individual ledger (~~(earn)~~).

(d) When the bank charges/fees exceed the interest earned, causing the balance to be less than trust account liability, the designated broker shall within one banking day after receipt of such notice, deposit funds from the firm's business account or other nontrust account to bring the trust account into balance with outstanding liability. The designated broker may be reimbursed by the party depositing the funds for these charges for accounts established as specified in (b)(i) of this subsection if the reimbursement is authorized in writing by the party depositing the funds. For accounts established under (a) of this subsection, the designated broker will absorb the excess bank charges/fees as a business expense.

(2) A separate check shall be drawn on the real estate trust bank account, payable to the firm as licensed, for each commission earned, after the final closing of the real estate or business opportunity transaction. Each commission check shall be identified to the transaction to which it applies.

(3) No disbursements from the real estate trust bank account shall be made in advance of closing of a real estate or business opportunity transaction or before the happening of a condition set forth in the purchase and sale agreement, to any person or for any reason, without a written release from both the purchaser and seller; except that:

(a) If the agreement terminates according to its own terms prior to closing, disbursement of funds shall be made as provided by the agreement without a written release; and

(b) Funds may be disbursed to the escrow agent designated in writing by the purchaser and seller to close the transaction, reasonably prior to the date of closing in order to permit checks to clear.

(4) When a transaction provides for the earnest money deposit/note or other instrument to be held by a party other than the firm, a (~~(broker)~~) licensee shall deliver the earnest money deposit to the party designated by the terms of the purchase and sale agreement to hold the funds. The licensee shall obtain a dated receipt from the party holding the earnest money funds. The licensee shall deliver the receipt to the designated broker or responsible managing broker. The dated receipt shall be placed in and retained in all participating firm's transaction files. The designated broker (~~((will have))~~) has the ultimate responsibility ((to deliver)) for delivery of the funds. ((A dated receipt from the party receiving the funds will be obtained and placed in the transaction file.))

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

WAC 308-124H-845 Distance education delivery methods certified by the Association of Real Estate License Law Officials (ARELLO). An applicant who provides evidence of certification of the distance education delivery method for his or her course by the Association of Real Estate License Law Officials (ARELLO) need not submit an application for approval of the same distance educa-

tion delivery method when delivering the same course within the state of Washington provided a clock hour enforcement mechanism is in place.

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

WAC 308-124H-895 Administrator responsibilities.

Each school administrator shall be responsible for performing the following:

(1) Ensure that the school, course(s), and instructor(s) are all currently approved before offering clock hour courses;

(2) Ensure that all instructors are approved to teach in the appropriate topic area(s);

(3) Sign and verify all course completion certificates;

(4) Maintain all required records for five years, including attendance records, required publications, and course evaluations;

(5) Safeguard comprehensive examinations;

(6) Ensure the supervision and demonstrate responsibility for the conduct of employees and individuals affiliated with the school;

(7) Periodically review courses and advise department of content currency as required;

(8) Ensure each student is provided a course curriculum; and

(9) Ensure each student is provided a course evaluation form.

(10) Ensure that all broker candidates' completion dates are entered into the testing center's data base promptly.

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

WAC 308-124H-970 Guest lecturer(s)—Defined. A topic area expert(s) may be utilized as a guest lecturer to assist an approved instructor to teach an approved course. The approved instructor is responsible for supervision of the approved course. Guest lecturer(s) shall not be utilized to circumvent the instructor approval requirements of this chapter. Guest lecturers shall be limited to no more than fifteen minutes per clock hour. Guest lecturers can only be used when the approved instructor is present.

WSR 13-14-092

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed July 1, 2013, 3:54 p.m., effective August 1, 2013]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 246-08-400 How much can a health care provider charge for searching and duplicating health care records?, the adopted rule adjusts the maximum amounts that health care providers may charge for searching and duplicating health care records. RCW 70.020.010(15) requires the adjustment to occur every two years based on the change in the consumer price index for the Seattle-Tacoma area. The amounts per page will increase by 4.9 percent.

Citation of Existing Rules Affected by this Order:
Amending WAC 246-08-400.

Statutory Authority for Adoption: RCW 70.02.010(15)
and 43.70.040.

Adopted under notice filed as WSR 13-09-042 on April
12, 2013.

Number of Sections Adopted in Order to Comply with
Federal Statute: New 0, Amended 0, Repealed 0; Federal
Rules or Standards: New 0, Amended 0, Repealed 0; or
Recently Enacted State Statutes: New 0, Amended 0,
Repealed 0.

Number of Sections Adopted at Request of a Nongov-
ernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Ini-
tiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify,
Streamline, or Reform Agency Procedures: New 0, Amended
0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule
Making: New 0, Amended 0, Repealed 0; Pilot Rule Making:
New 0, Amended 0, Repealed 0; or Other Alternative Rule
Making: New 0, Amended 1, Repealed 0.

Date Adopted: July 1, 2013.

John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 11-12-027,
filed 5/24/11, effective 7/1/11)

**WAC 246-08-400 How much can a ~~((medical))~~ health
care provider charge for searching and duplicating
~~((medical))~~ health care records?** RCW 70.02.010(15)
allows ~~((medical))~~ health care providers to charge fees for
searching and duplicating ~~((medical))~~ health care records.
The fees a provider may charge cannot exceed the fees listed
below:

(1) Copying charge per page:

(a) No more than one dollar and ~~((four))~~ nine cents per
page for the first thirty pages;

(b) No more than ~~((seventy-nine))~~ eighty-two cents per
page for all other pages.

(2) Additional charges:

(a) The provider can charge a ~~((twenty-three))~~ twenty-
four dollar clerical fee for searching and handling records;

(b) If the provider personally edits confidential informa-
tion from the record, as required by statute, the provider can
charge the usual fee for a basic office visit.

(3) This section is effective July 1, ~~((2011))~~ 2013,
through June 30, ~~((2013))~~ 2015.

(4) HIPAA covered entities ~~((See))~~ shall refer to HIPAA
regulation ((Section)) 45 C.F.R. 164.524 (c)(4) ((to deter-
mine applicability of this rule)).

WSR 13-14-099
PERMANENT RULES
OFFICE OF
INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2013-07—Filed July 2, 2013, 10:09
a.m., effective August 2, 2013]

Effective Date of Rule: Thirty-one days after filing.

Purpose: These new rules remove obsolete WAC sec-
tions in chapter 284-17A WAC that resulted from recently
amended statutes and make a technical correction to WAC
284-24-080.

Citation of Existing Rules Affected by this Order:
Repealing WAC 284-17A-010, 284-17A-020, 284-17A-030,
284-17A-040, 284-17A-050, 284-17A-060, 284-17A-070,
284-17A-080, 284-17A-090 and 284-17A-100; and amend-
ing WAC 284-17-001 and 284-24-080.

Statutory Authority for Adoption: RCW 48.02.060 and
48.120.050.

Adopted under notice filed as WSR 13-11-151 on May
22, 2013.

Number of Sections Adopted in Order to Comply with
Federal Statute: New 0, Amended 0, Repealed 0; Federal
Rules or Standards: New 0, Amended 0, Repealed 0; or
Recently Enacted State Statutes: New 0, Amended 0,
Repealed 0.

Number of Sections Adopted at Request of a Nongov-
ernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Ini-
tiative: New 2, Amended 2, Repealed 10.

Number of Sections Adopted in Order to Clarify,
Streamline, or Reform Agency Procedures: New 0, Amended
0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule
Making: New 0, Amended 0, Repealed 0; Pilot Rule Making:
New 0, Amended 0, Repealed 0; or Other Alternative Rule
Making: New 2, Amended 2, Repealed 10.

Date Adopted: July 2, 2013.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 13-06-023,
filed 2/27/13, effective 7/1/13)

WAC 284-17-001 Definitions. For purposes of this
chapter, unless the context requires otherwise:

(1) "Affiliation" is a type of appointment whereby a
business entity authorizes an individual insurance producer
or surplus line broker to represent it when conducting insur-
ance business.

(2) "Business entity" has the meaning set forth in RCW
48.17.010(2) and includes a sole proprietorship having asso-
ciated licensees authorized to act on its behalf in the business
or trade name of the sole proprietorship.

(3) "Days" means calendar days including Saturday and
Sunday and holidays, unless otherwise specified.

(4) "Electronic submission" or "submitted electroni-
cally" means submission of a licensing process by an appli-
cant, licensee, insurer, or education provider by means of the

commissioner's web site or a third-party licensing provider or other state agency.

(5) "File" means a record in any retrievable format, and unless otherwise specified, includes paper and electronic formats.

(6) "Home state" has the meaning set forth in RCW 48.17.010(4).

(7) "Insurer" has the meaning set forth in RCW 48.17.010(7).

(8) "Licensee" means a person licensed by the commissioner under Title 48 RCW to sell, solicit or negotiate insurance and includes adjusters and surplus line brokers.

(9) "Line of authority" means a license issued in one or more lines of insurance listed in RCW 48.17.170.

(10) "NAIC" means the National Association of Insurance Commissioners.

(11) "Third-party licensing provider" is designated on the commissioner's web site at: www.insurance.wa.gov.

(12) "Reinstatement" means the reissuance by the commissioner of a license that was not renewed more than sixty days but fewer than twelve months after its expiration date.

(13) "Resident" means a person who has elected to make Washington his or her home state, or, in the case of a business entity, has a place of business in this state.

(14) "Sending written notice" or "sending a copy of the written notice" means transmitting the required information in writing and, where required, on forms designated by the commissioner for that purpose, via first class mail, commercial parcel delivery company, telefacsimile, or electronic transmission, unless a specific method of transmission is specified.

(15) "Specialty producer license—Portable electronics" means a license issued under RCW 48.120.010 that authorizes a vendor to offer or sell insurance as provided in RCW 48.120.015.

(16) "Surety" means that limited line of authority of insurance or bond that covers obligations to pay the debts of, or answer for the default of another, including faithlessness in a position of public or private trust.

~~((16))~~ (17) "Travel insurance" means insurance coverage for personal risks incident to planned travel including, but not limited to:

- (a) Interruption or cancellation of trip or event;
- (b) Loss of baggage or personal effects;
- (c) Damages to accommodations or rental vehicles; or
- (d) Sickness, accident, disability, or death occurring during limited duration travel.

Travel insurance does not include major medical plans, which provide comprehensive medical protection for travelers with trips lasting six months or longer, including those working overseas as an expatriate or military personnel being deployed.

~~((17))~~ (18) "Travel insurance producer" means a licensed limited lines producer of travel insurance.

~~((18))~~ (19) "Travel retailer" means a business entity that offers and disseminates travel insurance on behalf of and under the direction and supervision of a licensed travel insurance producer.

~~((19))~~ (20) "Written" or "in writing" means any retrievable method of recording an agreement or document, and,

unless otherwise specified, includes paper and electronic formats.

NEW SECTION

WAC 284-17-035 Specialty producer license—Portable electronics. Forms and instructions may be obtained from the licensing section of the office of insurance commissioner.

To apply for a specialty producer license—Portable electronics, the following items must be submitted to the licensing section of the office of the insurance commissioner:

(1) An application signed by the applicant, or an officer of the applicant, including the following:

- (a) Applicant's name;
- (b) If an entity, the type of entity and the name of the supervising person, as defined in RCW 48.120.005(9);
- (c) Address for its principal place of business;
- (d) A copy of its articles of incorporation; and
- (e) A certificate of good standing from the secretary of state.

(2) An appointment as a licensed insurance producer completed by each authorized insurer(s) authorizing the applicant to represent the insurer.

(3) An affiliation completed by the applicant authorizing the supervising person to represent the applicant. The supervising person must be a licensed insurer or a licensed insurance producer under RCW 48.17.060.

(4) Fees:

- | | |
|-------------------|-----------|
| • License fee | \$500 |
| • Appointment fee | \$20 each |
| • Affiliation fee | \$20 |

NEW SECTION

WAC 284-17-046 Specialty producer license—Portable electronics renewal process. (1) A renewal notice will be mailed to each licensed specialty producer in May for renewal by July 1st of each year.

(2) The completed renewal notice and two hundred fifty dollar renewal fee must be received by the office of the insurance commissioner by July 1st.

(3) If the completed renewal notice and the two hundred and fifty dollar fee is not received by the commissioner prior to July 1st, the applicant must pay, in addition to the renewal fee, a surcharge as follows:

(a) One to thirty days late, the surcharge is fifty percent of the renewal fee;

(b) Thirty-one to sixty days late, the surcharge is one hundred percent of the renewal fee;

(c) Sixty-one days after the expiration date of the license but prior to twelve months, the license must be reinstated and the applicant must pay the renewal fee plus a surcharge of two hundred percent of the renewal fee.

AMENDATORY SECTION (Amending WSR 08-21-091, filed 10/15/08, effective 2/1/09)

WAC 284-24-080 Rate filings rule for inland marine risks. Under RCW 48.19.030 and 48.19.070, insurers are not required to file rates with the commissioner for certain inland marine risks that are not written according to manual rates or rating plans. The following inland marine classes of risks, which are characterized by large numbers of insureds and homogeneous loss exposure, are written according to manual rates or rating plans and must be filed under chapter 48.19 RCW. Manual rates, classification or rating plans that apply to the following types of risks must be filed with the commissioner:

- (1) Accounts receivable coverage;
- (2) Agricultural machinery, farm equipment and live-stock coverage;
- (3) Bicycle floater;
- (4) Boatowners' insurance or coverage for pleasure boats twenty-six feet and under in length;
- (5) Camera floater;
- (6) Camera and musical instrument dealers;
- (7) Commercial articles coverage (photographic equipment and musical instruments);
- ~~(8) ((Communications equipment, including cell phones, pagers, and portable personal computers;~~
- ~~(9))~~ (9) Equipment dealers coverage;
- ~~((10))~~ (10) Film coverage form;
- ~~((11))~~ (11) Fine arts private collections;
- ~~((12))~~ (12) Floor plan merchandise coverage;
- ~~((13))~~ (13) Fur dealers;
- ~~((14))~~ (14) Hardware dealers;
- ~~((15))~~ (15) Implement dealers;
- ~~((16))~~ (16) Garment contractors;
- ~~((17))~~ (17) Golfer's equipment floater;
- ~~((18))~~ (18) Jewelry dealers;
- ~~((19))~~ (19) Mail coverage;
- ~~((20))~~ (20) Personal articles floater;
- ~~((21))~~ (21) Personal effects floater;
- ~~((22))~~ (22) Personal furs or fur floater;
- ~~((23))~~ (23) Personal jewelry or jewelry floater;
- ~~((24))~~ (24) Personal property floater;
- ~~((25))~~ (25) Physicians' and surgeons' equipment coverage;
- (26) Portable electronics as defined in RCW 48.120.005;
- (27) Signs coverage;
- (28) Silverware floater;
- (29) Stamp and coin collection floater;
- (30) Travel coverage other than accident and sickness;
- (31) Valuable papers and records; and
- (32) Wedding presents.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 284-17A-010 Do I need to be licensed as a specialty producer?

- WAC 284-17A-020 What definitions are important throughout the chapter?
- WAC 284-17A-030 How do I apply for specialty producer license?
- WAC 284-17A-040 How do I renew the license?
- WAC 284-17A-050 What information must I provide to prospective customers?
- WAC 284-17A-060 What is included in the written material?
- WAC 284-17A-070 Do I need to provide training to my employees?
- WAC 284-17A-080 What are the requirements for the accounting of premiums?
- WAC 284-17A-090 Does the commissioner have authority to suspend, fine, or revoke my license or refuse to license me?
- WAC 284-17A-100 What is the effective date of this rule?

WSR 13-14-121

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed July 3, 2013, 10:20 a.m., effective August 3, 2013]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is amending WAC 458-20-179 and 458-20-180 for general updating and reorganization of the information in the rules. WAC 458-20-17901 is being repealed as no longer needed, as relevant deduction information has been incorporated into Rule 179. Information pertaining to legislation SSB 6614 (chapter 295, Laws of 2010) has been added to Rule 179. Log hauling examples have been removed from Rule 179, as they are now included in WAC 458-20-13501. Deduction information specific to motor carriers has been moved from Rule 179 to Rule 180.

Citation of Existing Rules Affected by this Order: Repealing WAC 458-20-17901 Public utility tax—Energy conservation and cogeneration deductions; and amending WAC 458-20-179 Public utility tax and 458-20-180 Motor ~~transportation, urban transportation~~ carriers.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Other Authority: Chapter 82.16 RCW.

Adopted under notice filed as WSR 13-09-066 on April 17, 2013.

Changes Other than Editing from Proposed to Adopted Version: In proposed Rule 179: In subsection (202)(f), "This deduction applies only when the services are performed for a customer of the taxpayer, not when the services are performed for the taxpayer." was removed.

Subsection (303), "Income for moving or enhancing facilities." has been removed.

The following language from Rule 17901 has been added to subsection (306)(c)(ii), "(E) Production expenses, eligible fuel costs and book depreciation of capital costs. Eli-

gible fuel costs are all fuels if used for cogeneration or non-fossil fuel costs if not a cogeneration facility."

In proposed Rule 180: Under subsection (4), "Renting or leasing trucks, trailers, busses [buses], automobiles and similar motor vehicles to others for use in the conveyance of persons or property when as an incident of the rental contract such motor vehicles are operated by the lessor or by an employee of the lessor." was added as subsection (4)(b).

Under subsection (6)(b), "This deduction does not apply to services performed for the taxpayer. Instead, the services must be performed for a customer of the taxpayer, and must be furnished jointly by both the taxpayer and another person taxable under the PUT." was removed as confusing.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 3, 2013.

Alan R. Lynn
Assistant Director

AMENDATORY SECTION (Amending WSR 94-13-034, filed 6/6/94, effective 7/7/94)

WAC 458-20-179 Public utility tax. ~~((1) Introduction. Persons engaged in certain public service businesses are taxable under the public utility tax. (See chapter 82.16 RCW.) These businesses are exempt from the business and occupation tax on the gross receipts which are subject to the public utility tax. (See RCW 82.04.310.) However, many persons taxable under the public utility tax are also engaged in some other business activity which is taxable under the business and occupation (B&O) tax. For example, a gas distribution company engaged in operating a plant or system for distribution of natural gas for sale, may also be engaged in selling at retail various gas appliances. Such a company would be taxable under the public utility tax with respect to its distribution of natural gas to consumers, and also taxable under the business and occupation tax with respect to its sale of gas appliances. It should also be noted that some services which generally are taxable under the public utility tax are taxable under the B&O tax if the service is performed for a new customer, prior to receipt of regular utility services by the customer.~~

(2) Definitions. The following definitions apply to this section:

(a) The term "gross income" means the value proceeding or accruing from the performance of the particular public ser-

vice or transportation businesses involved. It includes operations incidental to the public utility activity, but without any deduction on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

~~(b) The term "service charge" means those specific charges made to a customer for providing a specific service. The term includes the actual charge to a customer for the sale or distribution of water, gas, or electricity. This term does not include utility local improvement district assessments (ULID) or local improvement district assessments (LID).~~

~~(c) The term "subject to control by the state" means control by the utilities and transportation commission or any other state department required by law to exercise control of a business of a public service nature as to rates charged or services rendered.~~

~~(3) **Persons taxable under the public utility tax.** The term "public service businesses" includes any of the businesses defined in RCW 82.16.010(1) through (9), and (11). It also includes any business subject to control by the state, or having the powers of eminent domain, or any business declared by the legislature to be of a public service nature, irrespective of whether the business has the powers of eminent domain or the state exercises its control over the business. It includes, among others, without limiting the scope thereof: Railroad, express, railroad car, water distribution, sewerage collection, light and power, telegraph, gas distribution, urban transportation and common carrier vessels under sixty-five feet in length, motor transportation, tugboat businesses, certain airplane transportation, boom, dock, ferry, pipe line, toll bridge, toll logging road, and wharf businesses. (See WAC 458-20-251 for sewerage collection.) Persons engaged in these business activities are subject to the public utility tax even if they are not publicly recognized as providing that type of service or the amount of income from these activities is not substantial.~~

~~(a) "Light and power business" includes charges made for the "wheeling" of electricity for others. "Wheeling" is the activity of delivering or distributing electricity owned by others using power lines and equipment of the person doing the wheeling.~~

~~(b) Persons engaged in hauling for hire by motor vehicle should also refer to WAC 458-20-180.~~

~~(c) Persons hauling property, other than U.S. mail, by air transportation equipment are taxable under the other public service public utility tax. Income from the hauling of U.S. mail or passengers is not subject to the public utility tax because of specific federal law. (See 49 U.S.C. section 1301 and section 1513(a).)~~

~~(d) Persons engaged in hauling persons or property for hire by watercraft between points in Washington are taxable under the public utility tax. Income from operating tugboats of any size and income from the sale of transportation services by vessels over sixty-five feet is taxable under the public service utility tax classification. Income from the sale of transportation services using vessels under sixty-five feet, other than tugboats, is taxable under "vessels under sixty-five feet" public utility tax classification. These classifications~~

include businesses engaged in chartering or transporting persons by water from one location in Washington to another location within this state. This does not include sightseeing tours or activities which are in the nature of guided tours where the tour may include some water transportation. Persons engaged in providing tours should refer to WAC 458-20-258.

(c) Income from activities which are incidental to a public utility activity are generally taxable under the public utility tax when performed for an existing customer. This includes charges for line extensions, connection fees, line drop charges, start up fees, pole replacements, testing, replacing meters, line repairs, line raisings, pole contact charges, load factor charges, meter reading fees, etc. However, if any of these services are performed for a customer prior to sale of a public utility service to the customer, the income is taxable under the business and occupation tax. (See subsection (4) of this section.)

(4) **Business and occupation tax.** As indicated above, services which are incidental to a public utility activity are generally subject to the public utility tax. However, these types of charges are taxable under the service and other business activities B&O tax classification if performed for a customer prior to receipt of the utility services (gas, water, electricity) by a new customer. A "new customer" is a customer who previously has not received utility services, such as water, gas, or electricity, at the location where the charge for a specific service was provided. For example, a customer of a water supplier who currently receives water at a residence constructs a new residence a short distance from the first location. This customer will be considered a "new customer" with respect to any charges for services performed at the new location until the customer actually receives water at the new location, even though this customer may be receiving services at a different location. The charge for installing a meter or a connection charge for this customer at the new location would be taxable under the service and other activities B&O tax classification.

Amounts charged to customers as interest or penalties are generally taxable under the service and other business activities B&O tax classification. This includes interest charged for failure to timely pay for utility services or for special services which were performed prior to the customer receiving services, such as connection charges. However, any interest and/or penalty charged because of the failure to timely pay a LID or ULID assessment will not be taxable for the public utility tax or the B&O tax.

(5) **Tax rates.** The rates of tax for each business activity are imposed under RCW 82.16.020 and set forth on appropriate lines of the combined excise tax return forms.

(6) **Uniform system of accounts.** In distinguishing gross income taxable under the public utility tax from gross income taxable under the business and occupation tax, the department of revenue will be guided by the uniform system of accounts established for the specific type of utility concerned. However, because of differences in the uniform systems of accounts established for various types of utility businesses, such guides will not be deemed controlling for the purposes of classifying revenue under the Revenue Act.

(7) **Volume exemption.** Persons subject to the public utility tax are exempt from the payment of this tax if the taxable income from utility activities does not meet a minimum threshold. Prior to July 1, 1994, there was a similar exemption for the business and occupation tax with different threshold amounts. Beginning July 1, 1994, the law provides for a B&O tax credit for taxpayers who have a minimal B&O tax liability. (See WAC 458-20-104.) The volume exemption for the public utility tax applies independently of the business and occupation tax credit or exemption. The volume exemption for the public utility tax applies for any reporting period in which taxable income reported under the combined total of all public utility tax classifications does not equal or exceed the minimum taxable amount for the reporting periods assigned to such persons according to the following schedule:

Monthly reporting basis	\$500 per month
Quarterly reporting basis	\$1500 per quarter
Annual reporting basis	\$6000 per annum

(8) **Exemption of amounts or value paid or contributed to any county, city, town, political subdivision, or municipal corporation for capital facilities.** RCW 82.04.417 previously provided an exemption from the public utility tax and the business and occupation tax for amounts received by cities, counties, towns, political subdivisions, or municipal corporations representing contributions for capital facilities. These contributions are often referred to as "contributions in aid of construction." This law was repealed effective July 1, 1993, and this exemption is no longer available after that date. (See chapter 25, Laws of 1993 sp.s.) However, contributions in the form of equipment or facilities will not be considered as taxable income. For example, if an industrial customer purchases and installs transformers which it donates to a public utility district as a condition of receiving future service, the public utility district will not be subject to the public utility tax or B&O tax on the receipt of the donated transformers. For a water or sewerage collection business, the value of pipe, valves, pumps, or similar items donated by a developer to the utility business would not be taxable income to the utility business. Monetary payments are considered to be payments for installation of facilities so that a customer may receive the public utility commodity or service. When the facilities are installed or constructed by the customer and subsequently given to the utility business, there is no payment for installation of the facilities.

(9) **Specific deductions.** Amounts derived from the following sources may be deducted from the gross income under the public utility tax if included in the gross amounts reported:

(a) Amounts derived by municipally owned or operated public services businesses directly from taxes levied for the support thereof, but not including service charges which are spread on the property tax rolls and collected as taxes. LID and ULID assessments, including interest and penalties on such assessments, will not be considered part of the taxable income because they are exercises of the jurisdiction's taxing authority. These assessments may be composed of a share of the costs of capital facilities, installation labor, connection

fees, etc. A deduction may be taken for these amounts if they are included in the LID or ULID assessments.

(b) Amounts derived from the sale of commodities to persons in the same public service business as the seller, for resale as such within this state. This deduction is allowed only with respect to water distribution, light and power, gas distribution or other public service businesses which furnish water, electrical energy, gas or any other commodity in the performance of a public service business.

(c) Amounts actually paid by a taxpayer to another person taxable under chapter 82.16 RCW as the latter's portion of the consideration due for services jointly furnished by both. This includes the amount paid to a ferry company for the transportation of a vehicle and its contents (but not amounts paid to state-owned or operated ferries) when such vehicle is carrying freight or passengers for hire and is being operated by a person engaged in the business of urban transportation or motor transportation. It does not include amounts paid for the privilege of moving such vehicles over toll bridges. However, this deduction applies only to the purchases of services and does not include the purchase of commodities. The following examples show how this deduction and the deduction for sales of commodities would apply:

(i) CITY Water Department purchases water from Neighboring City Water Department. CITY sells the water to its customers. Neighboring City Water Department may take a deduction for its sales of water to CITY since this is a sale of water (commodities) to a person in the same public service business. CITY may not take a deduction for its payment to Neighboring City Water as "services jointly furnished." The service or sale of water to the end consumers was made solely by CITY and was not a jointly furnished service.

(ii) Customer A hires ABC Transport to haul goods from Tacoma, Washington to a manufacturing facility at Bellingham. ABC Transport subcontracts part of the haul to XYZ Transport and has XYZ haul the goods from Tacoma to Everett where the goods are loaded into ABC's truck. ABC may deduct the payments it makes to XYZ as a "jointly furnished service."

(d) Amounts derived from the distribution of water through an irrigation system, solely for irrigation purposes.

(e) Amounts derived from the transportation of commodities from points of origin in this state to final destination outside this state, or from points of origin outside this state to final destination in this state with respect to which the carrier grants to the shipper the privilege of stopping the shipment in transit at some point in this state for the purpose of storing, manufacturing, milling, or other processing, and thereafter forwards the same commodity, or its equivalent, in the same or converted form, under a through freight rate from point of origin to final destination.

(f) Amounts derived from the transportation of commodities from points of origin in the state to an export elevator, wharf, dock or shipside on tidewater or navigable tributaries thereto from which such commodities are forwarded, without intervening transportation, by vessel, in their original form, to an interstate or foreign destination: Provided, That no deduction will be allowed when the point of origin and the point of delivery to such export elevator, wharf, dock, or shipside are

located within the corporate limits of the same city or town. The following examples show how this deduction applies:

(i) ABC Trucking delivers logs to a storage area which is adjacent to the dock from where shipments are made by vessel to a foreign country. The logs go through a peeling process at the storage area prior to being placed on the vessel. The peeling process changes the form of the original log. Because the form of the log is changed, ABC Trucking may not take a deduction for the haul to the storage area. It is immaterial that the trucker may be paid based on an "export" rate.

(ii) ABC Trucking hauls logs from the woods to a log storage area which is adjacent to the dock. The logs will be sorted prior to being placed in the hold of the vessel, but no further processing will be performed. The storage area is quite large and the logs will be moved by log stacker and will be placed alongside the ship. The logs are loaded using the ship's tackle and then transported to a foreign country. ABC Trucking may take a deduction for the amounts received for transporting the logs from the woods to the log storage area. The movement of the logs within the log storage area is not considered to be "intervening transportation," but is part of the stevedoring activity.

(iii) ABC Trucking hauls logs from the woods to a "staging area" where the logs are sorted. After sorting, XY Hauling will transport some of the logs from the staging area to local mills for lumber manufacturing and other logs to the dock which is located approximately five miles from the staging area where the logs immediately are loaded on a vessel for shipment to Japan. The dock and staging area are not within the corporate city limits of the same city. ABC Trucking may not take a deduction for amounts received for hauling logs to the staging area. Even though some of these logs ultimately will be exported, ABC Trucking is not delivering the logs directly to the dock where the logs will be loaded on a vessel.

However, XY Hauling may take a deduction for the income from hauls to the dock. Its haul was the final transportation prior to the logs being placed on the vessel for shipment to Japan. The logs remained in their original form with no additional processing. The haul also did not originate or terminate within the corporate city limits of the same city or town. All the conditions were met for XY Hauling to claim the deduction.

(g) Amounts derived from the distribution of water by a nonprofit water association which are used for capital improvements by that association.

(h) Amounts received from sales of power which is delivered by the seller out-of-state. A deduction may also be taken for the sale of power to a person who will resell the power outside Washington where the power is delivered in Washington. These sales of power are also not subject to the manufacturing B&O tax.

(i) Amounts received for providing commuter share riding or ride sharing for the elderly and the handicapped in accordance with RCW 46.74.010.

(j) Amounts expended to improve consumers' efficiency of energy end use or to otherwise reduce the use of electrical energy or gas by the consumer. (For details see WAC 458-20-17901.)

(k) Income from transporting persons or property by air, rail, water, or by motor transportation equipment where either the origin or destination of the haul is outside the state of Washington.

(10) ~~Other deductions.~~ In addition to the deductions discussed above there also may be deducted from the reported gross income (if included within the gross), the following:

(a) The amount of cash discount actually taken by the purchaser or customer.

(b) The amount of credit losses actually sustained.

(c) Amounts received from insurance companies in payment of losses.

(d) Amounts received from individuals and others in payment of damages caused by them to the utility's plant or equipment.

(11) ~~Exchanges by light and power businesses.~~ There is no specific exemption which applies to an "exchange" of electrical energy or the rights thereto. However, exchanges of electrical energy between light and power businesses do qualify for deduction in computing the public utility tax as being sales of power to another light and power business for resale. An exchange is a transaction which is considered to be a sale and involves a delivery or transfer of energy or the rights thereto by one party to another for which the second party agrees, subject to the terms and conditions of the agreement, to deliver electrical energy at the same or another time. Examples of deductible exchange transactions include, but are not limited to, the following:

(a) The exchange of electric power for electric power between one light and power business and another light and power business;

(b) The transmission or transfer of electric power by one light and power business to another light and power business pursuant to the agreement for coordination of operations among power systems of the Pacific Northwest executed as of September 15, 1964;

(c) The Bonneville Power Administration's acquisition of electric power for resale to its Washington customers in the light and power business;

(d) The residential exchange of electric power entered into between a light and power business and the administrator of the Bonneville Power Administration (BPA) pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, P.L. 96-501, Sec. 5(e), 16 U.S.C. 839(e) (Supp. 1982). In some cases, power is not physically transferred, but the purpose of the residential exchange is for BPA to pay a "subsidy" to the exchanging utilities. For public utility tax reporting purposes, these subsidies will be treated as a non-taxable adjustment (rebate or discount) for purchases of power from BPA.

(12) ~~Customer billing information.~~ RCW 82.16.090 requires that customer billings issued by light or power businesses or gas distribution businesses serving more than twenty thousand customers shall include the following information:

(a) The rates and amounts of taxes paid directly by the customer upon products or services rendered by such businesses; and

(b) The rate, origin and approximate amount of each tax levied upon the revenue of such businesses which has been added as a component of the amount charged to the customer. This does not include taxes levied by the federal government or taxes levied under chapters 54.28, 80.24, or 82.04 RCW.

(13) ~~Motor or urban transportation.~~ For specific rules pertaining to the classifications of "urban transportation" and "motor transportation," see WAC 458-20-180.)) **Introduction.** This rule explains the public utility tax (PUT) imposed by chapter 82.16 RCW. The PUT is a tax for engaging in certain public service and transportation businesses within this state.

The department of revenue (department) adopted other rules that relate to the application of PUT. Readers may want to refer to the following rules:

(1) WAC 458-20-104, Small business tax relief based on income of business;

(2) WAC 458-20-121, Sales of heat or steam—Including production by cogeneration;

(3) WAC 458-20-175, Persons engaged in the business of operating as a private or common carrier by air, rail or water in interstate or foreign commerce;

(4) WAC 458-20-180, Motor carriers;

(5) WAC 458-20-192, Indians—Indian country;

(6) WAC 458-20-193D, Transportation, communication, public utility activities, or other services in interstate or foreign commerce; and

(7) WAC 458-20-251, Sewerage collection and other related activities.

This rule contains examples which identify a number of facts and then state a conclusion. The examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

Part I - General Information

(101) **Persons subject to the public utility tax.** The PUT is imposed by RCW 82.16.020 on certain public service and transportation businesses including railroad, express, railroad car, water distribution, sewerage collection, light and power, telegraph, gas distribution, motor transportation, urban transportation, vessels under sixty-five feet in length operating upon the waters within the state of Washington, and tugboat businesses.

(a) **Hauling by watercraft.** Income from hauling persons or property for hire by watercraft between points in Washington is subject to one of two PUT classifications, depending on the nature of the service. Income from:

• Operating tugboats of any size, and the sale of transportation services by vessels sixty-five feet and over, is subject to tax under the "other public service business" PUT classification.

• The sale of transportation services using vessels under sixty-five feet, other than tugboats, is subject to tax under the "vessels under sixty-five feet" public utility tax classification.

These classifications do not include sightseeing tours, fishing charters, or activities which are in the nature of guided tours where the tour may include some water transportation. Persons engaged in providing tours should refer to WAC 458-20-258, Travel agents and tour operators.

(b) Other businesses subject to the public utility tax.

The PUT also applies to any other public service business subject to control by the state, or having the powers of eminent domain, or any business declared by the legislature to be of a public service nature, unless the activity is subject to tax under chapter 82.04 RCW, Business and occupation (B&O) tax.

(i) The phrase "subject to control by the state" means control by the utilities and transportation commission or any other state agency required by law to exercise control of a business of a public service nature regarding rates charged or services rendered. Examples of other public service businesses include, but are not limited to: Airplane transportation, boom, dock, ferry, pipeline, toll bridge, water transportation, and wharf businesses. RCW 82.16.010.

(ii) Persons engaged in the same business activities as the businesses described above are subject to the PUT even if they are not publicly recognized as providing that type of service or the amount of income from these activities is not substantial. For example, an industrial manufacturing company that owns and operates a well, and that sells a relatively small amount of water to its wholly owned subsidiary, is subject to the PUT as a water distribution business on its sales of water.

(c) Are amounts derived from interest and penalties taxable? Amounts charged to customers as interest or penalties are generally subject to the service and other activities B&O tax. This includes interest charged for failure to timely pay for utility services or for incidental services. Incidental services include for example meter installation or other activities which are performed prior to the customer receiving utility services. Any interest or penalty resulting from the failure to timely pay a local improvement district or utility local improvement district assessment is not subject to public utility or B&O taxes.

(102) Tax rates and measure of tax. The rates of tax for each business activity subject to the PUT are imposed under RCW 82.16.020 and set forth on appropriate lines of the state public utility tax addendum for the excise tax return. The measure of the PUT is the gross income of the business. The term "gross income" means the value proceeding or accruing from the performance of the particular public service or transportation business involved, including operations incidental to that business. No deduction may be taken on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discounts, delivery costs, taxes, or any other expense whatsoever paid or accrued, nor on account of losses. RCW 82.16.010(3).

(103) Persons subject to public utility tax may also be subject to B&O tax. The B&O tax does not apply to any business activities for which PUT is specifically imposed, including amounts derived from activities for which a deduction from the PUT is available under RCW 82.16.050. RCW 82.04.310(1). However, many persons engaged in business activities subject to the PUT are also engaged in other business activities subject to B&O tax.

For example, a gas distribution company operating a system for the distribution of natural gas for sale may also make retail sales of gas appliances. The gas distribution company is subject to the PUT on its distribution of natural gas to consumers. However, it is also subject to retailing B&O tax and

must collect and remit retail sales tax on its retail sales of gas appliances. Repairs of customer owned appliances would also be considered a retailing activity and subject to retail sales tax.

In distinguishing gross income taxable under the PUT from gross income taxable under the B&O tax, the department is guided by the uniform system of accounts established for the specific type of utility concerned. Because of differences in the uniform systems of accounts established for various types of utility businesses, such guides are not controlling for the purposes of classifying revenue under the Revenue Act.

(104) Charges for service connections, line extensions, and other similar services.

(a) For existing customers, amounts derived from services that are incidental to a public utility activity are subject to PUT. Thus, amounts received for the following are subject to PUT:

(i) Service connection, start-up, and testing fees;

(ii) Charges for line extensions, repairs, raisings, and/or drops;

(iii) Meter or pole replacement;

(iv) Meter reading or load factor charges; and

(v) Connecting or disconnecting.

(b) For new customers, amounts received for any of the services noted above in Part (104)(a) of this rule are subject to service and other activities B&O tax.

A "new customer" is a customer who previously has not received the utility service at the location. For example, a customer of a water distribution company who currently receives water at a residence and constructs a new residence at a different location is considered a "new customer" with respect to any meter installation services performed at the new residence, until the customer actually receives water at that location. It is immaterial that this customer may be receiving water at the old residence. The charge for installing the meter for this customer at the new location is subject to service and other activities B&O tax.

(105) Contributions of equipment or facilities. Contributions to a utility business in the form of equipment or facilities are not considered income to the utility business, if the contribution is a condition of receiving service.

(a) Example 1. An industrial customer purchases and pays sales tax on transformers it installs. The customer then provides the transformers to a public utility district as a condition of receiving future service. The public utility district is not subject to the PUT or B&O tax on the receipt of the transformers. Use tax is not owed by the utility district as the customer paid sales tax at the time of purchase.

(b) Example 2. For a water or sewerage collection business, the value of pipe, valves, pumps, or similar items provided by a developer for purposes of servicing the developed area is likewise not subject to PUT or B&O tax.

Part II - Exemptions, Deductions, and Nontaxable Receipts

(201) Exemptions. This subsection describes PUT exemptions. Also see subsections in this rule that discuss specific utilities.

(a) **Income exemption.** Persons subject to the PUT are exempt from the payment of the tax if their taxable income from utility activities does not meet a minimum threshold. RCW 82.16.040. For detailed information about this exemption, refer to WAC 458-20-104, Small business tax relief based on income of business.

(b) **Ride sharing.** RCW 82.16.047 exempts amounts received in the course of commuter ride sharing or ride sharing for persons with special transportation needs in accordance with RCW 46.74.010. For detailed information about this exemption, refer to WAC 458-20-261, Commute trip reduction incentives.

(c) **State route number 16.** RCW 82.16.046 exempts amounts received from operating state route number 16 corridor transportation systems and facilities constructed and operated under chapter 47.46 RCW.

(202) **Deductions.** In general, costs of doing business are not deductible under the PUT. However, RCW 82.16.050 does provide for limited deductions. This subsection describes a number of PUT deductions. The deductible amounts should be included in the gross income reported on the state public utility tax addendum for the excise tax return and then deducted on the deduction detail page to determine the amount of taxable income. Deductions taken but not identified on the appropriate deduction detail page may be disallowed. Also see Parts III and IV of this rule, which identify additional deductions available to power and light, gas distribution, and water distribution businesses.

(a) **Cash discounts.** The amount of cash discount actually taken by the purchaser or customer is deductible under RCW 82.16.050(4).

(b) **Credit losses.** The amount of credit losses actually sustained by taxpayers whose regular books of account are kept on an accrual basis is deductible under RCW 82.16.050(5). For additional information regarding credit losses see WAC 458-20-196, Bad debts.

(c) **Taxes.** Amounts derived by municipally owned or operated public service businesses directly from taxes levied for their support are deductible under RCW 82.16.050(1). However, service charges that are spread on the property tax rolls and collected as taxes are not deductible.

Local improvement district and utility local improvement district assessments, including interest and penalties on such assessments, are not income because they are exercises of the jurisdiction's taxing authority. These assessments may be composed of a share of the costs of capital facilities, installation labor, connection fees, etc.

(d) **Prohibitions imposed by federal law or the state or federal constitutions.** Amounts derived from business that the state is prohibited from taxing under federal law or the state or federal constitutions are deductible under RCW 82.16.050(6).

(e) **Sales of commodities for resale.** Amounts derived from the sale of commodities to persons in the same public service business as the seller for resale within this state are deductible under RCW 82.16.050(2). This deduction is allowed only with respect to water distribution, gas distribution, or other public service businesses that furnish water, gas, or any other commodity in the performance of a public service business. For example, income from the sale of natu-

ral gas by a gas distributing company to natural gas companies located in Washington, who resell the gas to their customers, is deductible from the gas distributing company's gross income.

(f) **Services furnished jointly.** In general, costs of doing business are not deductible under the PUT. However, RCW 82.16.050(3) allows a deduction for amounts actually paid by a taxpayer to another person taxable under the PUT as the latter's portion of the consideration due for services furnished jointly by both, provided the full amount paid by the customer for the service is received by the taxpayer and reported as gross income subject to the PUT. The services must be furnished jointly by both the taxpayer and another person taxable under the PUT.

Example 1. Manufacturing Company hires ABC Transport (ABC) to haul goods from Tacoma to a manufacturing facility in Bellingham. ABC subcontracts part of the haul to XYZ Freight (XYZ) and has XYZ haul the goods from Tacoma to Everett, where the goods are loaded into ABC's truck and transported to Bellingham. Assuming all other requirements of the deduction are met, ABC may deduct the payments it makes to XYZ from its gross income as XYZ's portion of the consideration paid by Manufacturing Company for transportation services furnished jointly by both ABC and XYZ. See WAC 458-20-180 for additional information on motor carriers.

Example 2. Dakota Electricity Generator (DEG) sells electricity to Mod Industrial Firm (MIF). DEG hires Wheeler #1 to transmit the electricity from DEG to MIF. Wheeler #1 subcontracts a portion of the transmission service to Wheeler #2.

- Wheeler #1 and Wheeler #2 are jointly furnishing transmission services to DEG. Assuming all other requirements of the deduction are met, Wheeler #1 may claim a "services jointly provided" deduction in the amount paid to Wheeler #2.

- DEG may not claim a "services jointly provided" deduction for the amount DEG paid Wheeler #1. DEG and Wheeler #1 are *not* jointly furnishing a service to MIF. DEG is selling electricity to MIF, and Wheeler #1 is selling transmission services to DEG.

Example 3. City A's water department purchases water from City B's water department. City A sells the water to its customers. City A may not take a deduction for its payment to City B's water department as "services jointly provided." The sale of water by City A to its customers is not a service jointly provided to City A's customers by both City A and City B.

City B, however, may take a deduction under RCW 82.16.050(2) for its sales of water to City A since this is a sale of commodities to a person in the same public service business, for resale within this state.

(203) **Nontaxable amounts.** The following amounts are not considered taxable income.

(a) **Insurance claim amounts.** Amounts received from insurance companies in payment of losses, which are distinguishable from amounts received to settle contract payment disagreements.

(b) Payment of damages. Amounts received from individuals and others in payment of damages caused by them to the utility's plant or equipment.

(c) Amounts from eminent domain proceedings or governmental action. Amounts received as compensation for compensatory or involuntary taking of facilities of a public utility, by the exercise of eminent domain or governmental action, are considered liquidated damages.

Part III - Light and Power Business

(301) Light and power business. Public utility tax is imposed by RCW 82.16.020 on gross income from providing light and power services. Light and power business means the business of operating a plant or system for the generation, production or distribution of electrical energy for hire or sale. RCW 82.16.010.

(302) Requirements for light and power businesses. RCW 82.16.090 requires that customer billings issued by light and power businesses serving more than twenty thousand customers include the following information:

(a) The rates and amounts of taxes paid directly by the customer upon products or services rendered by such business; and

(b) The rate, origin, and approximate amount of each tax levied upon the revenue of such business which has been added as a component of the amount charged to the customer. This does not include taxes levied by the federal government or taxes levied under chapters 54.28, 80.24, or 82.04 RCW.

(303) Wheeling of electricity. "Wheeling of electricity" is the activity of delivering or distributing electricity owned by others using power lines and equipment of the person doing the wheeling. Income from wheeling electricity is subject to the PUT.

(304) Exchanges of electricity by light and power businesses. There is no specific exemption that applies to an "exchange" of electrical energy or its rights. However, exchanges of electrical energy between light and power businesses do qualify for deduction in computing the PUT as being sales of power to another light and power business for resale. RCW 82.16.050(11). An exchange is a transaction that is considered to be a sale and involves a delivery or transfer of energy or its rights by one party to another for which the second party agrees, subject to the terms and conditions of the agreement, to deliver electrical energy at the same or another time. Examples of deductible exchange transactions include, but are not limited to, the following:

(a) The exchange of electric power for electric power between one light and power business and another light and power business;

(b) The transmission of electric power by one light and power business to another light and power business pursuant to the agreement for coordination of operations among power systems of the Pacific Northwest executed as of September 15, 1964;

(c) The acquisition of electric power by the Bonneville Power Administration (BPA) for resale to its Washington customers in the light and power business;

(d) The residential exchange of electric power entered into between a light and power business and the administrator of the BPA pursuant to the Pacific Northwest Electric Power

Planning and Conservation Act, P.L. 96-501, Sec. 5(c), 16 U.S.C. Sec. 839c. In some cases, power is not physically transferred, but the purpose of the residential exchange is for BPA to pay a "subsidy" to the exchanging utilities. These subsidies are considered a nontaxable adjustment (rebate or discount) for purchases of power from BPA.

(305) Exemptions. The following exemptions are available for sales of electricity, and are in addition to the general exemptions found in Part II of this rule.

(a) Sales of electricity to an electrolytic processor. RCW 82.16.0421 provides an exemption for sales of electricity made by light and power businesses to chlor-alkali electrolytic processing businesses or sodium chlorate electrolytic processing businesses for the electrolytic process. This exemption, which is scheduled to expire June 30, 2019, applies to sales of electricity made by December 31, 2018.

The exemption does not apply to amounts received from the remarketing or resale of electricity originally obtained by contract for the electrolytic process.

(i) Exemption certificate required. In order to claim the exemption, the chlor-alkali electrolytic processing business or the sodium chlorate electrolytic processing business must provide the light and power business with an exemption certificate. RCW 82.16.0421. A certificate can be obtained from the department's internet site at <http://dor.wa.gov>.

(ii) Annual report requirement. RCW 82.16.0421 requires taxpayers receiving the benefit of this tax preference to file an annual report by April 30th of the year following any calendar year in which a taxpayer becomes eligible to claim the tax preference. RCW 82.32.534.

(iii) Qualification requirements. To qualify all the following requirements must be met:

(A) The electricity used in the electrolytic process must be separately metered from the electricity used for the general operations of the business;

(B) The price charged for the electricity used in the electrolytic process must be reduced by an amount equal to the tax exemption available to the light and power business; and

(C) Disallowance of all or part of the exemption is a breach of contract and the damages to be paid by the chlor-alkali electrolytic processing business or the sodium chlorate electrolytic processing business is the amount of the tax exemption disallowed.

(b) Sales of electricity to aluminum smelters. RCW 82.16.0498 provides an exemption to be taken in the form of a credit. The credit is allowed if the contract for sale of electricity to an aluminum smelter specifies that the price charged for the electricity will be reduced by an amount equal to the credit. The exemption does not apply to amounts received from the remarketing or resale of electricity originally obtained by contract for the smelting process. The credit allowed is the same amount as the utility tax that would otherwise have been due under RCW 82.16.020.

(c) BPA credits or funds. Effective June 10, 2010, RCW 82.04.310 exempts from the B&O tax credits or payments received by persons from the BPA, for the purpose of implementing energy conservation programs or demand-side management programs. This exemption is scheduled to expire June 30, 2015.

(306) Deductions. The following deductions are available for sales of electricity, and are in addition to the general deductions found in Part II of this rule.

(a) Sales of electricity for resale or for consumption outside Washington. Amounts derived from the production, sale, or transfer of electrical energy for resale within or outside the state of Washington or for consumption outside the state are deductible under RCW 82.16.050(11). These sales of electricity are also not subject to the manufacturing B&O tax. RCW 82.04.310.

(b) Low density light and power businesses. RCW 82.16.053 provides a deduction for light and power businesses having seventeen or fewer customers per mile of distribution power lines with retail power rates that exceed the state average power rate. The statute requires the department to determine the state average electric power rate each year and make this rate available to these businesses. This rate and additional information regarding this deduction can be found via the department's internet site at <http://dor.wa.gov>.

(c) Conservation - Electrical energy and gas. RCW 82.16.055 provides deductions relating to the production or generation of energy from cogeneration or renewable resources, and for measures to improve the efficiency of energy end-use.

(i) Restrictions. The below mentioned deductions are subject to the following restrictions:

(A) They apply only to new facilities for the production or generation of energy from cogeneration or renewable energy resources or measures to improve the efficiency of energy end-use on which construction or installation was begun after June 12, 1980, and before January 1, 1990;

(B) The measures or projects must be, at the time they are placed in service, reasonably expected to save, produce, or generate energy at a total incremental system cost per unit of energy delivered to end-use which is less than or equal to the incremental system cost per unit of energy delivered to end-use from similarly available conventional energy resources that utilize nuclear energy or fossil fuels and that the gas or electric utility could acquire to meet energy demand in the same time period; and

(C) They may be taken for a period not exceeding thirty years after the project is placed in operation. Any recurring costs determined to be eligible for deduction under this rule will cease to be eligible in whole or part at the time of termination of any energy conservation measure or project that originally authorized the deduction under RCW 82.16.055.

(ii) What can be deducted. The following may be deducted from a taxpayer's gross income:

(A) Amounts equal to the cost of production at the plant for consumption within the state of Washington of electrical energy produced or generated from cogeneration as defined in RCW 82.08.02565;

(B) Amounts equal to the cost of production at the plant for consumption within the state of Washington of electrical energy or gas produced or generated from renewable energy resources such as solar energy, wind energy, hydroelectric energy, geothermal energy, wood, wood wastes, municipal wastes, agricultural products and wastes, and end-use waste heat;

(C) Amounts expended to improve consumers' efficiency of energy end-use or to otherwise reduce the use of electrical energy or gas by the consumer;

(D) Amounts received by a utility as a contribution for the installation of service, and later refunded to the customer, are deductible from gross income at the time the amounts are refunded;

(E) Production expenses, eligible fuel costs and book depreciation of capital costs. Eligible fuel costs are all fuels if used for cogeneration or nonfossil fuel costs if not a cogeneration facility.

(307) Credits. Credit is available to light and power businesses that make contributions to an electric utility rural economic development revolving fund. The credit is equal to fifty percent of contributions made during a fiscal year to an electric utility rural economic development revolving fund.

(a) Light and power businesses may take a credit up to twenty-five thousand dollars, not to exceed the PUT that would normally be due, against their public utility tax liability each fiscal year for contributions made.

(b) Expenditures from the electric utility rural economic development revolving fund must be made solely on qualifying projects, in a designated qualifying rural area. For additional information see RCW 82.16.0491.

(c) The total amount of credits available statewide on a fiscal year basis for all qualified businesses is three hundred fifty thousand dollars. The department will allow earned credits on a first-come, first-served basis. The right to earn these tax credits expired June 30, 2011. Unused earned credits may be carried forward to subsequent years provided the department has given prior approval.

Part IV - Gas and Water Distribution Businesses

(401) Gas distribution. Gross income received for the distribution of gas is taxable under PUT as provided by RCW 82.16.020. Gas distribution business means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural. RCW 82.16.010. See Part II for general exemptions and deductions that may apply to gas distribution.

(402) Requirements for gas distribution businesses. RCW 82.16.090 requires that customer billings issued by gas distribution businesses serving more than twenty thousand customers include the following information:

(a) The rates and amounts of taxes paid directly by the customer upon products or services rendered by such business; and

(b) The rate, origin, and approximate amount of each tax levied upon the revenue of such business which has been added as a component of the amount charged to the customer. This does not include taxes levied by the federal government or taxes levied under chapters 54.28, 80.24, or 82.04 RCW.

(c) In addition to the general exemptions and deductions noted in Part II of this rule, the law provides the following:

(i) Sales of natural or manufactured gas to aluminum smelters. RCW 82.16.0498 provides an exemption to be taken in the form of a credit for sales of natural or manufactured gas to aluminum smelters. The credit is allowed if the contract for sale of gas to an aluminum smelter specifies that the price charged for the gas will be reduced by an amount

equal to the credit. The credit allowed is the same amount as the utility tax that would otherwise have been due under RCW 82.16.020.

(ii) **Conservation - Energy from gas.** RCW 82.16.055 provides deductions for the production or generation of energy from cogeneration or renewable resources and for measures to improve the efficiency of energy end-use. See subsection (306)(c) of this rule.

(403) **Water distribution.** PUT is imposed on amounts derived from the distribution of water under RCW 82.16.020. Water distribution business means the business of operating a plant or system for the distribution of water for hire or sale. RCW 82.16.010. In addition to the general exemptions and deductions noted in Part II of this rule, the law provides the following:

(a) **Water distribution by a nonprofit water association.** Amounts derived from the distribution of water by a nonprofit water association and used for capital improvements, related to the water distribution service, by that association are deductible under RCW 82.16.050(12).

(b) **Distribution of irrigation water.** Amounts derived from the distribution of water through an irrigation system, for irrigation purposes, are deductible under RCW 82.16.050(7). The phrase "for irrigation purposes" means water that is used solely for nourishing plant life. Thus, when a water distribution business supplies potable water and some of the water is segregated and separately supplied solely for the nourishing of plant life as opposed to water supplied for domestic, municipal, or industrial uses, charges for such separately supplied irrigation water may be deducted from gross income subject to PUT.

In order to meet the "irrigation system" requirement, a water distribution business must demonstrate that its distribution system has turnouts or similar connections for irrigation purposes that are separate from service hookups or similar connections for domestic, industrial, or municipal uses. Under the appropriate circumstances, the use of separate meters and cross-connection or back flow devices may be evidence of such separate connections.

AMENDATORY SECTION (Amending WSR 83-07-033, filed 5/29/70 [3/15/83], effective 7/1/70 [4/15/83])

WAC 458-20-180 Motor ((~~transportation, urban transportation~~) carriers. ((The term "motor transportation business" means the business (except urban transportation business) of operating any motor propelled vehicle by which persons or property of others are conveyed for hire, and includes, but is not limited to the operation of any motor propelled vehicle as an auto transportation company (except urban transportation business), common carrier or contract carrier as defined by RCW 81.68.010 and 81.80.010.

It includes the business of hauling for hire any extracted or manufactured material, over the highways of the state and over private roads but does not include the transportation of logs or other forest products exclusively upon private roads.

It does not include the hauling of any earth or other substance excavated or extracted from or taken to the right of way of a publicly owned street, place, road or highway, by a person taxable under the classification of public road con-

struction of the business and occupation tax. (See WAC 458-20-171.)

The term "urban transportation business" means the business of operating any vehicle for public use in the conveyance of persons or property for hire, insofar as (A) operating entirely within the corporate limits of any city or town, or within five miles of the corporate limits thereof, or (B) operating entirely within and between cities and towns whose corporate limits are not more than five miles apart or within five miles of the corporate limits of either thereof. Included herein, but without limiting the scope thereof, is the business of operating passenger vehicles of every type and also the business of operating cartage, pickup or delivery services, including in such services the collection and distribution of property arriving from or destined to a point within or without the state, whether or not such collection or distribution be made by the person performing a local or interstate line-haul of such property.

It does not include the business of operating any vehicle for the conveyance of persons or property for hire when such operating extends more than five miles beyond the corporate limits of any city (or contiguous cities) through which it passes. Thus an operation extending from a city to a point which is more than five miles beyond its corporate limits does not constitute urban transportation, even though the route be through intermediate cities which enables the vehicle, at all times to be within five miles of the corporate limits of some city.

The terms "motor transportation" and "urban transportation" include the business of renting or leasing trucks, trailers, busses, automobiles and similar motor vehicles to others for use in the conveyance of persons or property when as an incident of the rental contract such motor vehicles are operated by the lessor or by an employee of the lessor. These terms include the business of operating taxicabs, armored cars, and contract mail delivery vehicles, but do not include the businesses of operating auto wreckers or towing vehicles (taxable as sales at retail or wholesale under RCW 82.04.050), school busses, ambulances, nor the collection and disposal of refuse and garbage (taxable under the business and occupation tax classification, service and other activities). Amounts received for providing commuter share riding or ride sharing for the elderly and the handicapped in accordance with RCW 46.74.010 are not subject to tax.

Retail Sales Tax

Persons engaged in the business of motor transportation or urban transportation are required to collect the retail sales tax upon gross retail sales of tangible personal property sold by them. The retail sales tax must also be collected upon retail sales of services defined as "sales" in RCW 82.04.040 and "sales at retail" in RCW 82.04.050, including charges for the rental of motor vehicles or other equipment without an operator.

Persons engaged in the business of motor transportation or urban transportation must pay the retail sales tax to their vendors when purchasing motor vehicles, trailers, equipment, tools, supplies and other tangible personal property for use in the conduct of such businesses. (See WAC 458-20-174 for limited exemptions allowed in the act for motor carriers oper-

ating in interstate or foreign commerce.) Persons buying motor vehicles, trailers and similar equipment solely for the purpose of renting or leasing the same without an operator are making purchases for resale and are not required to pay the retail sales tax to their vendors.

Business and Occupation Tax

Retailing. Persons engaged in either of said businesses are taxable under the retailing classification upon gross retail sales of tangible personal property sold by them and upon retail sales of services defined as "sales" in RCW 82.04.040 or "sales at retail" in RCW 82.04.050.

Service and other business activities. Persons engaged in either of said businesses are taxable under the service and other activities classification upon gross income received from checking service, packing and crating, the mere loading or unloading for others, commissions on sales of tickets for other lines, travelers' checks and insurance, etc. and the transportation of logs and other forest products exclusively over private roads.

Public Utility Tax

Persons engaged in the business of urban transportation are taxable under the urban transportation classification upon the gross income from such business.

Persons engaged in the business of motor transportation are taxable under the motor transportation classification upon the gross income from such business.

Persons engaged in the business of both urban and motor transportation are taxable under the motor transportation classification upon gross income, unless a proper segregation of such revenue is shown by the books of account of such persons. (See WAC 458-20-193 for interstate and foreign commerce.)

(1) **Introduction.** This rule explains the tax reporting responsibilities of persons engaged in the business of transporting by motor vehicle persons or property for hire. It explains transportation business and the application of public utility tax (PUT), business and occupation (B&O), and retail sales taxes to persons engaged in the business.

(a) **Examples.** This rule contains examples which identify a number of facts and then state a conclusion. The examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(b) **References to related rules.** The department of revenue (department) has adopted other rules that relate to the application of the PUT. Readers may want to refer to the following rules:

(i) WAC 458-20-104, Small business tax relief based on income of business;

(ii) WAC 458-20-13501, Timber harvest operations, which provides guidance regarding hauling of logs;

(iii) WAC 458-20-171, Building, repairing or improving streets, roads, etc., which are owned by a municipal corporation or political subdivision of the state or by the United States and which are used primarily for foot or vehicular traffic;

(iv) WAC 458-20-174, Sales of motor vehicles, trailers, and parts to motor carriers operating in interstate or foreign commerce;

(v) WAC 458-20-175, Persons engaged in the business of operating as a private or common carrier by air, rail or water in interstate or foreign commerce;

(vi) WAC 458-20-178, Use tax;

(vii) WAC 458-20-179, Public utility tax;

(viii) WAC 458-20-193D, Transportation, communication, public utility activities, or other services in interstate or foreign commerce.

(2) **What is a motor transportation business?** A "motor transportation business" is a business operating any motor propelled vehicle transporting persons or property of others for hire and includes, but is not limited to, the operation of any motor propelled vehicle as an auto transportation company, common carrier, or contract carrier as defined by RCW 81.68.010 and 81.80.010. (See RCW 82.16.010.) The term "motor transportation business" does not include any "urban transportation business" as described in subsection (3) of this rule.

(a) It includes hauling for hire any extracted or manufactured material, over the state's highways and over private roads but does not include:

(i) The transportation of logs or other forest products exclusively upon private roads or private highways (which is subject to the service B&O tax, e.g., see WAC 458-20-13501, Timber harvest operations); and

(ii) Effective July 1, 2009, a log transportation business, see RCW 82.16.010(6).

(b) It does not include the hauling of any earth or other substance excavated or extracted from or taken to the right of way of a publicly owned street, place, road, or highway, by a person taxable under the public road construction B&O tax classification, regardless of whether or not the earth moving portion is separately stated. (See WAC 458-20-171.)

(3) **What is an urban transportation business?** An "urban transportation business" is a business operating any vehicle for public use in the transportation of persons or property for hire, when:

- Operating entirely within the corporate limits of any city or town, or within five miles of the corporate limits thereof; or

- Operating entirely within and between cities and towns whose corporate limits are not more than five miles apart or within five miles of the corporate limits of either thereof.

(a) **The five mile standard.** "Operating entirely within five miles of the corporate limits thereof" means the five-mile standard is applied on a straight line from the corporate limits and not based on road mileage. It is immaterial how many miles the carrier travels from the origin to the termination of the haul as long as the origin and the termination of the haul are within five miles of the corporate limits. (See RCW 82.16.010.)

(b) **What is included in urban transportation?** Urban transportation includes, but is not limited to, the business of operating passenger vehicles of every type and also the business of operating cartage, pickup or delivery services, including the collection and distribution of property arriving from or destined to a point within or without the state, whether or

not such collection or distribution be made by the person performing a local or interstate line-haul of such property. See subsection (6)(d) of this rule for deduction information for interstate transportation of persons or property.

(c) What is not urban transportation? Urban transportation does not include the business of operating any vehicle for transporting persons or property for hire when the origin or termination is more than five miles beyond the corporate limits of any city (or contiguous cities) through which it passes. Thus an operation extending from a city to a point which is more than five miles beyond its corporate limits does not constitute urban transportation. This is true even if the route is through intermediate cities which enable the vehicle to always be within five miles of a city's corporate limits. See subsection (2) of this rule for "What is a motor transportation business?"

(4) What does "motor transportation" and "urban transportation" include? Motor and urban transportation include the business of operating motor-driven vehicles, upon public roads, used in transporting persons or property belonging to others, on a for-hire basis. These terms include the business of:

(a) Operating taxicabs, armored cars, and contract mail delivery vehicles, but do not include the businesses of operating auto wreckers or towing vehicles (taxable as sales at retail under RCW 82.04.050), school buses, ambulances, nor the collection and disposal of solid waste (taxable under the service and other activities B&O tax classification); and

(b) Renting or leasing trucks, trailers, buses, automobiles, and similar motor vehicles to others for use in the conveyance of persons or property when as an incident of the rental contract such motor vehicles are operated by the lessor or by an employee of the lessor.

(5) Why is the distinction between the motor and urban transportation classifications important? These tax classifications have different tax rates and it is important to segregate the gross income of each activity. Persons engaged in the business of motor transportation have their gross income taxed under the motor transportation PUT classification. Persons engaged in the business of urban transportation have their gross income taxed under the urban transportation PUT classification. Persons engaged in both urban and motor transportation have their gross income taxed under the motor transportation classification, unless the revenue is segregated as shown by their records.

(6) Are deductions available? Income, as described below, can be deducted from the taxable amounts reported, provided the amounts were originally included in the gross income. See WAC 458-20-179 for generally applicable deductions for PUT, such as bad debt and cash discount.

(a) Fees and charges for public transportation services. RCW 82.16.050(14) provides a deduction for amounts derived from fees or charges imposed on persons for transit services provided by a public transportation agency. Public transportation agencies must spend an amount equal to the tax reduction provided by this deduction solely to:

- Adjust routes to improve access for citizens using food banks and senior citizen services; or
- To extend or add new routes to assist low-income citizens and seniors.

(b) Services furnished jointly. In general, costs of doing business are not deductible under the public utility tax (PUT). However, RCW 82.16.050(3) does allow a deduction for amounts actually paid by a taxpayer to another person taxable under the PUT as the latter's portion of the consideration due for services furnished jointly by both, provided the full amount paid by the customer for the service is received by the taxpayer and reported as gross income subject to the PUT.

This includes the amount paid to a ferry company for the transportation of a vehicle and its contents (but not amounts paid to state owned or operated ferries) when the vehicle is carrying freight or passengers for hire and is being operated by a person engaged in the business of motor or urban transportation. This does not include amounts paid for transporting such vehicles over toll bridges.

Example: A customer hires ABC Transport (ABC) to haul goods from Tacoma to a manufacturing facility in Bellingham. ABC subcontracts part of the haul to XYZ Freight (XYZ) and has XYZ haul the goods from Tacoma to Everett where the goods are loaded into ABC's truck and transported to Bellingham. Assuming all other requirements of the deduction are met, ABC may deduct the payments it makes to XYZ from its gross income as XYZ's portion of the consideration paid by the customer for transportation services furnished jointly by ABC and XYZ.

(c) Transportation of commodities to export facilities. Income received from transporting commodities from points of origin in this state to an export elevator, wharf, dock, or ship side on tidewater or its navigable tributaries is deductible under RCW 82.16.050(9). The deduction is only available when the commodities are forwarded, without intervening transportation, by vessel, in their original form, to interstate or foreign destinations. However, this deduction is not available when the point of origin and the point of delivery to the export elevator, wharf, dock, or ship side are located within the corporate limits of the same city or town.

(i) Example 1: AB Transport moves freight by tug and barge from points in Washington to terminal facilities at tidewater ports in Washington. The freight is subsequently shipped from the ports by vessel to interstate and foreign destinations. AB Transport may deduct the gross income from these shipments under RCW 82.16.050(9).

(ii) Example 2: ABC Trucking hauls widgets from the manufacturing plant to a storage area which is adjacent to the dock. The storage area is quite large and the widgets are moved from the storage area to alongside the ship in time for loading. The widgets are loaded on the ship and then transported to a foreign country. ABC Trucking may take a deduction for the amounts received for transporting the widgets from the manufacturer to the storage area. The movement of the widgets within the storage area is not considered to be "intervening transportation," but is part of the stevedoring activity.

(iii) Example 3: ABC Trucking hauls several types of widgets from the manufacturing plant to a "staging area" where the widgets are sorted. After sorting, XY Hauling transports some of the widgets from the staging area to local buyers and other widgets to the dock which is located approximately five miles from the staging area where the widgets are immediately loaded on a vessel for shipment to

Japan. The dock and staging area are not within the corporate city limits of the same city. ABC Trucking may not take a deduction for amounts received for hauling widgets to the staging area. Even though some of the widgets ultimately were exported, ABC Trucking did not deliver the widgets to the dock where the widgets were loaded on a vessel.

However, XY Hauling may take a deduction for the gross income for hauls from the staging area to the dock. The widgets were loaded on the vessel in their original form with no additional processing. The haul also did not originate or terminate within the corporate city limits of the same city or town. All the conditions were met for XY Hauling to claim the deduction.

(d) **Interstate transportation of persons or property.** Income received from transporting persons or property by motor transportation equipment where either the origin or destination of the haul is outside the state of Washington is deductible. The interstate movement originates or terminates at the point where the transport obligation of the interstate carrier begins or ends. See WAC 458-20-193D for additional information on interstate activities. Transportation provided within the state prior to the point of origin of the interstate movement or subsequent to the point of destination within this state is wholly intrastate and not deductible.

Example: Airport B Shuttle provides transportation to and from the airport for persons departing or arriving from destinations which may or may not be out of state. This service is not incidental to any interstate movement and thus gross income is taxable under either motor or urban transportation.

(e) **Interstate transportation of commodities.** Income received from the transportation of commodities from points of origin in this state to final destination outside this state, or from points of origin outside this state to final destination in this state are deductible under RCW 82.16.050(8) where the carrier grants to the shipper the privilege of stopping the shipment in transit at some point in this state for the purpose of storing, manufacturing, milling, or other processing, and thereafter forwards the same commodity, or its equivalent, in the same or converted form, under a through freight rate from point of origin to final destination.

(f) **Transportation of agricultural commodities.** Certain income received from the transportation of agricultural commodities can be deducted when the commodities do not include manufactured substances or articles. For the income to be deducted, the commodities must be transported from points of origin in the state to interim storage facilities in this state for transshipment, without intervening transportation, to an export elevator, wharf, dock, or ship side on tidewater or its navigable tributaries to be forwarded, without intervening transportation, by vessel, in their original form, to interstate or foreign destinations. If agricultural commodities are transshipped from interim storage facilities in this state to storage facilities at a port on tidewater or its navigable tributaries, the same agricultural commodity dealer must operate both the interim storage facilities and the storage facilities at the port. RCW 82.16.050(10).

(i) The deduction under this subsection is available only when the person claiming the deduction obtains a completed "Certificate of Agricultural Commodity Shipped to Interstate

and Foreign Destinations" from the agricultural commodity dealer operating the interim storage facilities.

(ii) A blank certificate can be found via the department's Internet site at <http://dor.wa.gov>. The form may also be obtained by contacting the department's telephone information center at 1-800-647-7706, or by writing the department at:

Taxpayer Information and Education
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478

(7) **Exemption for income from persons with special transportation needs.** RCW 82.16.047 provides an exemption from PUT for amounts received for providing commuter share riding or ride sharing for persons with special transportation needs in accordance with RCW 46.74.010. Transportation must be provided by a public social service agency or a private, nonprofit transportation provider as defined in RCW 81.66.010.

(8) **Business activities other than hauling.** Persons engaged in the business of motor or urban transportation may also receive income from other business activities. The tax consequences of this income is generally based on whether or not these services are performed as a part of or are incidental to the hauling activity, or are services where the taxpayer does not haul the shipment.

(a) **Handling and other services that are a part of or incidental to the hauling activity.** When a person performs activities such as packing, crating, loading or unloading of goods that the person is hauling for the customer, those services are considered to be performed as a part of the hauling activity, or are services incidental to the haul itself. The gross income from those services is taxed in the same manner as the hauling activity, e.g., motor or urban transportation.

Example: Mary hires Luke's Packing & Hauling Co. (Luke's) to load, haul, and unload her belongings at a local storage facility just a couple of miles down the street from the city apartment she is vacating. Luke's will report the gross income from Mary under the urban transportation PUT classification.

(b) **Handling and other services that are not a part of or incidental to the hauling activity.**

(i) If a person engaged in hauling activities packs, crates, loads, or unloads goods that the person is not also hauling for the customer, the gross income from these activities will generally be subject to service and other activities B&O tax.

Example: James hires Luke's Packing & Hauling (Luke's) to wrap, pack, and crate his belongings in preparation for long-term storage. Luke's will not be hauling James' belongings as Haul and Storage Inc. has been hired to pick up the belongings and put them in their storage facility. Luke's will report the gross income for wrapping, packing, and crating James' belongings under the service and other activities B&O tax classification.

(ii) A person engaged in hauling activities may also perform services that are not a part of or are separate from the hauling activity. The gross income from these activities is not subject to the motor or urban transportation PUT, but is

instead subject to tax based on the nature of the activity and other provisions of the law.

Example: Affordable Hauling and Storage (Affordable) hauls products for hire and also operates a warehouse. Big Manufacturing Company (Big) hires Affordable to pick-up and deliver products to and from Affordable's warehouse for long-term storage. Affordable charges Big for the hauling services as they occur and also separately invoices Big a monthly fee for storing the products. The income from the hauling services is subject to the motor transportation or urban transportation PUT classification, as the case may be. The monthly storage charges are subject to the warehousing B&O tax classification. (See WAC 458-20-182 for an explanation of the tax-reporting responsibilities of warehouse businesses.)

(c) Sales, leases, or rentals of tangible personal property by motor carriers. Persons engaged in either motor or urban transportation may also sell, lease, or rent tangible personal property, such as forklifts or trailers. Gross income from the sale, lease, or rental of tangible personal property without an operator to a consumer, is subject to retailing B&O and retail sales taxes, unless a specific exemption applies. If the sale is a sale for resale, the sale is subject to the wholesaling B&O tax classification. (See WAC 458-20-211 for more information regarding the tax reporting responsibilities of persons that lease or rent tangible personal property.)

If the sale, lease, or rental of the property qualifies for one of the retail sales tax exemptions for equipment used in interstate commerce provided by RCW 82.08.0262 or 82.08.-0263 (e.g., as may be the case with a trailer used in interstate commerce), the retailing of interstate transportation equipment B&O tax classification applies. (See WAC 458-20-174 for limited exemptions for motor carriers operating in interstate or foreign commerce.)

(9) Purchases of tangible personal property. Persons engaged in the business of motor or urban transportation must pay retail sales tax to their vendors when purchasing motor vehicles, trailers, parts, equipment, tools, supplies, and other tangible personal property for use in conducting their business. (See WAC 458-20-174 for limited exemptions for motor carriers operating in interstate or foreign commerce.)

(10) Purchases made for rental or lease to others. Persons buying motor vehicles, trailers and similar equipment solely for the purpose of renting or leasing the same without an operator are making purchases for resale. For sales made on or after January 1, 2010, the seller must obtain a reseller permit from the buyer to document the wholesale nature of any sale as provided in WAC 458-20-102 (Reseller permits). Resale certificates used prior to January 1, 2010, must be kept on file by the seller for five years from the date of last use or until December 31, 2014.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 458-20-17901 Public utility tax—Energy conservation and cogeneration deductions.