

WSR 17-24-079
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Behavioral Health Administration)
 [Filed December 5, 2017, 11:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-16-156.

Title of Rule and Other Identifying Information: The department is proposing to create new rules and amend existing rules in chapter 388-877 WAC, repeal chapters 388-810, 388-877A, 388-877B, and 388-877C WAC; and repeal specific sections in chapters 388-865 and 388-877 WAC.

Hearing Location(s): On February 6, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than February 7, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., February 6, 2017 [2018].

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by January 23, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend existing rules and create new rules in chapter 388-877 WAC regarding behavioral health services to provide a single set of regulations for behavioral health agencies to follow in order to provide mental health, substance use disorder, co-occurring, and pathological and problem gambling services. The department is also proposing to repeal chapters 388-810, 388-877A, 388-877B and 388-877C WAC, and repeal specific sections of chapters 388-865 and 388-877 WAC. A crosswalk table of existing and new WAC sections is available upon request.

Reasons Supporting Proposal: The 2017 legislature passed E2SHB 1819 (RCW 71.24.870) which charges DSHS with providing a single set of regulations to follow for behavioral health agencies that provide mental health, substance use disorder, and co-occurring treatment services by April 1, 2018. The division of behavioral health and recovery (DBHR) is performing a review of its rules, policies [policies], and procedures related to the documentation requirements for behavioral health services in order to assess the comprehensive nature of this rule change.

Statutory Authority for Adoption: RCW 71.24.870, 70.02.290, 70.02.340, 71.05.560, 71.24.035, 71.34.380.

Statute Being Implemented: RCW 71.24.870.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Dennis Malmer, P.O. Box 45330, Olympia, WA 98504-5330, 360-725-3747.

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

A cost-benefit analysis is required under RCW 34.05-328. A preliminary cost-benefit analysis may be obtained by contacting Stephanie Vaughn, DBHR, P.O. Box 45330, Olympia, WA 98504-5330, phone 360-725-1342, fax 360-586-0341, TTY 1-800-833-6384, email stephanie.vaughn@dshs.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Our representative stakeholders have suggested that the implementation of these rules and the intent behind the 2017 bill E2SHB 1819 would result in overall reduced costs. Any costs were determined to be short term, or one-time minor costs.

Initial minor costs for providers were determined to be the following: Development of new policies and procedures, training, and data sets.

Initial minor costs for behavioral health organizations were determined to be the following: Contracting and data sets.

DBHR has plans to help mitigate and alleviate these minor costs by providing a number of services free of charge including training and technical assistance with policies and procedures. DBHR is analyzing the possibility of phasing in the date providers will be required to follow these new rules to further help agencies with the implementation of these rules.

A copy of the detailed cost calculations may be obtained by contacting Stephanie Vaughn, DBHR, P.O. Box 45330, Olympia, WA 98504-5330, phone 360-725-1342, fax 360-586-0341, TTY 1-800-833-6384, email Stephanie.vaughn@dshs.wa.gov.

November 30, 2017
 Katherine I. Vasquez
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-13-087, filed 6/15/16, effective 7/16/16)

WAC 388-877-0100 Behavioral health services—Purpose and scope. (1) The rules in chapter 388-877 WAC provide a single set of rules for agencies to follow that provide any one or more of the following behavioral health services:

~~((+))~~ (a) Mental health services;
 (b) Substance use disorder services;
 (c) Co-occurring services (services to individuals with co-existing mental health and substance use disorders); and
 (d) Problem and pathological gambling;

(2) These rules establish the following for agencies that provide behavioral health services:

(a) Licensure and certification requirements;
 (b) Agency administrative re388-87quirements;
 (c) Agency personnel requirements;
 (d) Agency clinical policies and procedures; and

(e) A grievance system that includes a grievance process, an appeal process, and access to administrative hearings for agencies that serve individuals whose services are covered by the federal medicaid program.

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

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

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 388-877-0110 Behavioral health services—Available certifications. A behavioral health agency licensed by the department may become certified to provide one or more of the mental health, substance use disorder, and problem and pathological gambling services listed below:

- (1) Outpatient:
 - (a) Individual mental health treatment services;
 - (b) Brief mental health intervention treatment services;
 - (c) Group mental health therapy services;
 - (d) Family therapy mental health services;
 - (e) Rehabilitative case management mental health services;
 - (f) Psychiatric medication mental health services and medication support services;
 - (g) Day support mental health services;
 - (h) Mental health outpatient services provided in a residential treatment facility (RTF);
 - (i) Recovery support: Supported employment mental health services;
 - (j) Recovery support: Supported employment substance use disorder services;
 - (k) Recovery support: Supportive housing mental health services;
 - (l) Recovery support: Supportive housing substance use disorder services;
 - (m) Recovery support: Peer support mental health services;
 - (n) Recovery support: Wraparound facilitation mental health services;
 - (o) Recovery support: Applied behavior analysis (ABA) mental health services;
 - (p) Consumer-run recovery support: Clubhouse mental health services;
 - (q) Substance use disorder level one outpatient services;
 - (r) Substance use disorder level two intensive outpatient services;
 - (s) Substance use disorder assessment only services;
 - (t) Substance use disorder alcohol and drug information school services;
 - (u) Substance use disorder information and crisis services;

(v) Substance use disorder emergency service patrol services;

(w) Substance use disorder screening and brief intervention services; and

(x) Problem and pathological gambling services.

(2) Involuntary and court-ordered outpatient services:

(a) Less restrictive alternative (LRA) or conditional release support mental health services;

(b) Emergency involuntary detention designated crisis responder (DCR) mental health and substance use disorder services;

(c) Substance use disorder counseling services subject to RCW 46.61.5056; and

(d) Driving under the influence (DUI) substance use disorder assessment services.

(3) Crisis mental health services:

(a) Crisis mental health telephone support services;

(b) Crisis mental health outreach services;

(c) Crisis mental health stabilization services; and

(d) Crisis mental health peer support services.

(4) Opioid treatment program (OTP) services.

(5) Withdrawal management, residential substance use disorder treatment, and mental health inpatient services:

(a) Withdrawal management facility services:

(i) Withdrawal management services-adult;

(ii) Withdrawal management services-youth;

(iii) Secure withdrawal management and stabilization services—adult; and

(iv) Secure withdrawal management and stabilization services—youth.

(b) Residential substance use disorder treatment services:

(i) Intensive substance use disorder inpatient services;

(ii) Recovery house services;

(iii) Long-term treatment services; and

(iv) Youth residential services.

(c) Mental health inpatient services:

(i) Evaluation and treatment services—adult;

(ii) Evaluation and treatment services-youth;

(iii) Child long-term inpatient program services;

(iv) Crisis stabilization unit services;

(v) Triage—involuntary services;

(vi) Triage—voluntary services; and

(vii) Competency evaluation and restoration treatment services.

AMENDATORY SECTION (Amending WSR 16-13-087, filed 6/15/16, effective 7/16/16)

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

and appeal system and administrative hearings, see WAC 388-877-0655.

"Absentee coverage" means the temporary replacement a clubhouse provides for the clubhouse member who is currently employed in a time-limited, part-time community job managed by the clubhouse.

"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 either the licensed treatment agency ((and/or)), or certified treatment service, or both.

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

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

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

"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.

"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.

"Behavioral health" means the prevention, treatment of, and recovery from any or all of the following disorders: substance use disorders, mental health disorders ((and/or)), or problem and pathological gambling disorders.

"Behavioral health agency" means the same as "agency."

"Behavioral health organization" or **"BHO"** means any county authority or group of county authorities or other entity recognized by the secretary in contract in a defined region.

"Behavioral health organization (BHO) managed care plan" is the entity that operates the prepaid inpatient health plan (PIHP) for medicaid behavioral health services.

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

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

"Change in ownership" means one of the following:

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

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

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

"Chemical dependency professional" or "CDP" means a person credentialed by the department of health as a chemical dependency professional (CDP) under chapter 246-811 WAC.

"Child," "minor," and "youth" mean:

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

(b) An individual age eighteen to twenty-one years who is eligible to receive and who elects to receive an early and periodic screening, diagnostic, and treatment (EPSDT) medicaid service. An individual age eighteen to twenty-one years who receives EPSDT services is not considered a "child" for any other purpose.

"Child mental health specialist" means a mental health professional with the following education and experience:

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

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

"Clinical record" means either a paper ((and/or)), or electronic file, or both 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.

"Clubhouse" means a community-based, recovery-focused program designed to support individuals living with the effects of mental illness, through employment, shared

contributions, and relationship building. A clubhouse operates under the fundamental principle that everyone has the potential to make productive contributions by focusing on the strengths, talents, and abilities of all members and fostering a sense of community and partnership.

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

"Community relations plan" means a plan to minimize the impact of an ~~((opiate substitution))~~ opioid treatment program as defined by the Center for Substance Abuse Guidelines for the Accreditation of Opioid Treatment Programs, section 2.C.(4).

"Community support services" means services authorized, planned, and coordinated through resource management services including, at a minimum:

(a) Assessment, diagnosis, emergency crisis intervention available twenty-four hours, seven days a week;

(b) Prescreening determinations for persons who are mentally ill being considered for placement in nursing homes as required by federal law;

(c) Screening for patients being considered for admission to residential services;

(d) Diagnosis and treatment for children who are mentally or severely emotionally disturbed discovered under screening through the federal Title XIX early and periodic screening, diagnosis, and treatment (EPSDT) program;

(e) Investigation, legal, and other nonresidential services under chapter 71.05 RCW;

(f) Case management services;

(g) Psychiatric treatment including medication supervision;

(h) Counseling; and

(i) Psychotherapy; assuring transfer of relevant patient information between service providers; recovery services; and other services determined by behavioral health organizations.

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

"Consent" means agreement given by an individual after the person is provided with a description of the nature, character, anticipated results of proposed treatments and the recognized serious possible risks, complications, and anticipated benefits, including alternatives and nontreatment(~~(-informed consent))~~, that 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.)~~

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

"Co-occurring disorder" means the co-existence of both a mental health and a substance use disorder. Co-occurring treatment is a unified treatment approach intended to treat both disorders within the context of a primary treatment relationship or treatment setting.

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

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

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

~~((2))~~ (b) 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))~~ (c) 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))~~ (d) A bomb threat;

~~((5))~~ (e) 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))~~ (f) Suicide attempt at the facility;

~~((7))~~ (g) 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))~~ (h) Any media event regarding an individual receiving services, or regarding a staff member or owner(s) of the agency.

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

(BHO) or by the county alcoholism and other drug addiction program coordinator designated by the BHO)) to perform ~~((the))~~ involuntary substance use disorder commitment duties ~~((described in RCW 70.96A.140 and qualified to do so by meeting standards adopted by the department))~~. The duties of a designated chemical dependency specialist and designated mental health professional are combined as of April 1, 2018, into the role of designated crisis responder.

"Designated crisis responder" or "DCR" means a mental health professional appointed by the county or the BHO who is authorized to conduct investigations, detain persons up to seventy-two hours at the proper facility, and carry out the other functions identified in chapters 71.05 and 71.34 RCW. To qualify as a designated crisis responder, a person must complete substance use disorder training specific to the duties of a designated crisis responder.

"Designated mental health professional ((DMHP))" or "DMHP" means a mental health professional designated ((by the behavioral health organization (BHO), county, or other authority authorized in rule)) to perform involuntary mental health commitment duties ((under the involuntary treatment act as described in RCW 10.77.010, 71.05.020, 71.24.025 and 71.34.020)). The duties of a designated chemical dependency specialist and designated mental health professional are combined April 1, 2018, into the role of designated crisis responder.

"Detoxification" has been replaced by the term "withdrawal management."

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

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

"Division of behavioral health and recovery ((DBHR))" or "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, and 71.34((, and 70.96A)) RCW.

"Early and periodic screening, diagnosis and treatment" or "EPSDT" means a comprehensive child health medicaid program that entitles individuals age twenty and younger to preventive care and treatment services. These services are outlined in chapter 182-534 WAC.

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

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

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

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

"Licensed" or "licensure" means the status given to behavioral health agencies by the department under its authority to license and certify mental health and substance use disorder programs chapters 71.05, 71.34, and 71.24 RCW and its authority to certify ((substance use disorder)) problem and pathological gambling treatment programs ((chapter 70.96A RCW)) under RCW 43.20A.890.

"Medical necessity" or "medically necessary" is a term for describing a required service that is reasonably calculated to prevent, diagnose, correct, cure, alleviate or prevent the worsening of conditions in the recipient that endanger life, or cause suffering or pain, or result in illness or infirmity, or threaten to cause or aggravate a handicap, or cause physical deformity or malfunction, and there is no other equally effective, more conservative or substantially less costly course of treatment available or suitable for the person requesting service. Course of treatment may include mere observation or, where appropriate, no treatment at all.

"Medical practitioner" means a physician, advance registered nurse practitioner (ARNP), or certified physician 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 disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on a person's cognitive or volitional functions.

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

~~((1))~~ (a) A psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner (ARNP), psychiatric nurse, or social worker as defined in chapters 71.05 and 71.34 RCW;

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

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

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

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

~~((6))~~ A person who has been granted a time-limited exception of the minimum requirements of a mental health profes-

sional by the division of behavioral health and recovery (DBHR)).

"**Minor**" means ~~((an individual who is not yet eighteen years of age.))~~ the same as "child."

"**Off-site**" means the provision of services by a provider from a licensed behavioral health agency at a location where the assessment ~~((and/or))~~ 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. A residential treatment facility (RTF) may become certified to provide outpatient services.

"**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)-))~~ or "PPC" has been replaced by the term "ASAM criteria."

"**Peace officer**" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment.

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

~~((1))~~ (a) Is a self-identified ~~((consumer))~~ recipient of mental health services(-);

~~((2))~~ (b) Is a counselor registered under chapter 18.19 RCW(-);

~~((3))~~ (c) Has completed specialized training provided by or contracted through DBHR. If the person was trained by trainers approved by the mental health division (now DBHR) before October 1, 2004, and has met the requirements in ~~((1))~~ (a), ~~((2))~~ (b), and ~~((4))~~ (d) of this subsection by January 31, 2005, the person is exempt from completing this specialized training(-);

~~((4))~~ (d) Has successfully passed an examination administered by DBHR or an authorized contractor(-); and

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

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

"**Problem and pathological gambling**" means one or more of the following disorders:

(a) "Pathological gambling" means a mental disorder characterized by loss of control over gambling, progression in preoccupation with gambling and in obtaining money to gamble, and continuation of gambling despite adverse consequences;

(b) "Problem gambling" is an earlier stage of pathological gambling that compromises, disrupts, or damages family or personal relationships or vocational pursuits.

"**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.

"**Quality assurance and quality improvement**" means a focus on compliance with minimum requirements in rules and contracts, and activities to perform above minimum standards and achieve reasonably expected levels of performance, quality, and practice.

"**Quality strategy**" means an overarching system or process whereby quality assurance and quality improvement activities are incorporated and infused into all aspects of a behavioral health organization's (BHO)'s operations.

"**Recovery**" means ~~((a))~~ the process ~~((of change through))~~ in which ~~((an individual improves their health and wellness, lives a self-directed life, and strives to reach their full potential))~~ people are able to live, work, learn, and participate fully in their communities.

"**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.

"**Service area**" means the geographic area covered by each behavioral health organization (BHO) for which it is responsible.

"**Short-term facility**" means a facility licensed by the department of health and certified by the department of social and health services under RCW 71.24.035 which has been designed to assess, diagnose, and treat individuals experiencing an acute crisis without the use of long-term hospitalization. Length of stay in a short-term facility is less than fourteen days from the day of admission.

"**State minimum standards**" means minimum requirements established by rules adopted by the secretary of the department and necessary to implement this chapter for delivery of behavioral health services.

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

"**Summary suspension**" means the immediate suspension of either a facility's license ~~((and/or))~~ or program-specific certification or both 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 of license or certification.

"**Triage facility**" means a short-term facility or a portion of a facility licensed by the department of health and cer-

tified by the department of social and health services under RCW 71.24.035 that is designed as a facility to assess and stabilize an individual or determine the need for involuntary commitment of an individual. A triage facility must meet department of health residential treatment facility standards and may be structured as either a voluntary or involuntary placement facility or both.

"Triage involuntary placement facility" means a triage facility that has elected to operate as an involuntary facility and may, at the direction of a peace officer, hold an individual for up to twelve hours. A peace officer or designated crisis responder may take or cause the person to be taken into custody and immediately delivered to the triage facility. The facility may ask for an involuntarily admitted individual to be assessed by a mental health professional for potential for voluntary admission. The individual has to agree in writing to the conditions of the voluntary admission.

"Triage voluntary placement facility" means a triage facility where the individual may elect to leave the facility of their own accord, at anytime. A triage voluntary placement facility may only accept voluntary admissions.

"Tribal authority" means, for the purposes of behavioral health organizations and RCW 71.24.300 only, the federally recognized Indian tribes and the major Indian organizations recognized by the secretary of the department as long as these organizations do not have a financial relationship with any behavioral health organization that would present a conflict of interest.

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

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

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

"Withdrawal management" means services provided during the initial period of care and treatment to an individual intoxicated or incapacitated by substance use.

"Work-ordered day" means a model used to organize clubhouse activities during the clubhouse's normal working hours. Members and staff are organized into one or more work units which provide meaningful and engaging work essential to running the clubhouse. Activities include unit meetings, planning, organizing the work of the day, and performing the work that needs to be accomplished to keep the clubhouse functioning. Members and staff work side-by-side as colleagues. Members participate as they feel ready and according to their individual interests. While intended to provide members with working experience, work in the clubhouse is not intended to be job-specific training, and members are neither paid for clubhouse work nor provided artificial rewards. Work-ordered day does not include medication clinics, day treatment, or other therapy programs.

"Youth" means ~~((an individual who is seventeen years of age or younger.))~~ the same as "child."

AMENDATORY SECTION (Amending WSR 16-13-087, filed 6/15/16, effective 7/16/16)

WAC 388-877-0300 Agency licensure and certification—General information. The department licenses agencies to provide behavioral health treatment services. To gain and maintain licensure, an ~~((agency))~~ applicant must meet the requirements of chapter 388-877 WAC, applicable local and state rules, and state and federal statutes. In addition, the ~~((agency))~~ applicant must meet the applicable specific program requirements ~~((of chapter 388-877A WAC for mental health, chapter 388-877B WAC for substance use disorders, and/or chapter 388-877C WAC for problem and pathological gambling))~~ for all behavioral health services certified by the department's division of behavioral health and recovery.

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

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

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

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

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

- (i) Submit the request in writing to the department;
- (ii) Assure the exemption request does not jeopardize the safety, health, or treatment of an individual; and
- (iii) Assure the exemption request does not impede fair competition of another service agency.

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

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

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

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

(b) Assistance with relocation; and

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

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

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 16-13-087, filed 6/15/16, effective 7/16/16)

WAC 388-877-0305 Agency licensure and certification—Application. To apply for licensure to provide any behavioral health service, an ~~((agency))~~ applicant must submit an initial application to the department that is signed by the agency's administrator. The applicant must also apply for and have the department certify any specific behavioral health program services the agency wishes to provide.

(1) The application must include the following:

(a) A copy of the ~~((agency's))~~ applicant'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))~~ applicant 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))~~ applicant meets Americans with Disabilities Act (ADA) standards and that the facility is:

(i) Suitable for the purposes intended;

(ii) Not a personal residence; and

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

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

~~((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))~~ applicant is providing substance use disorder residential treatment or mental health residential treatment; and

~~((h))~~ (h) 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).

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

WAC 388-877-0310 Agency licensure and certification—Deeming. (1) The department may deem an agency to be in compliance with state minimum standards for licensure and ~~((program specific))~~ certification of behavioral health services based on the agency being currently accredited by a national accreditation ~~((agency))~~ organization 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.

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

WAC 388-877-0315 Agency licensure and certification—Renewals. A department(~~(-)~~) issued license(~~(-)~~, ~~including program specific~~) and certification(~~(-)~~) of behavioral health services 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).

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

WAC 388-877-0320 Agency licensure and certification—On-site reviews and plans of correction. To obtain and maintain (~~licensure~~) a department-issued license and to continue to provide department-certified 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~~) plan, process, or both, 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(~~(-)~~); and

- (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.

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

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

- (a) The application and agency policy and procedures submitted meet the requirements of WAC 388-877-0305(1);
- (b) An on-site review is conducted under WAC 388-877-0320 and the agency corrects any noted deficiencies within the agreed upon time frame; and
- (c) The department determines the agency is in compliance with the licensure and program-specific certification standards.

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

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

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

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

WAC 388-877-0330 Agency licensure and certification—Effective dates. An agency's license and any behavioral health services certification 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~~).

AMENDATORY SECTION (Amending WSR 16-13-087, filed 6/15/16, effective 7/16/16)

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

- (a) The agency fails to meet requirements in this chapter.
- (b) The agency fails to cooperate or disrupts department representatives during an on-site survey or complaint investigation.

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

- (d) The agency owner or agency administrator:
 - (i) Had a license or specific program certification issued by the department subsequently denied, suspended, or revoked;

(ii) Was convicted of child abuse or adjudicated as a perpetrator of ~~((substantiated))~~ a founded child ~~((abuse))~~ protective services report;

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

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

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

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

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

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

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

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

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

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

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

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

(xiv) Does not meet ~~((criminal))~~ background check requirements;

(xv) Fails to provide satisfactory application materials;

or

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

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

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

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

(a) The agency voluntarily cancels licensure or certification.

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

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

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

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

WAC 388-877-0340 Agency licensure and certification—Adding a branch site. To add a branch site, an existing licensed behavioral health agency must notify the department and submit an application that lists the behavioral health services to be provided and 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.

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 388-877-0342 Agency licensure and certification—Off-site locations. (1) A behavioral health agency that provides outpatient services at an established off-site location(s) must:

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

(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.

(2) 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, staff member, and community 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.

(3) 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) Ensure the type of behavioral health service offered at each off-site location is certified by the division of behavioral health and recovery (DBHR); and

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

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

WAC 388-877-0345 Agency licensure and (~~program specific~~) certification—Adding a new service. To add a new behavioral health service, a licensed behavioral health agency must request and submit an abbreviated application that lists the behavioral health service(s) it seeks to provide and 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~~) Certifies the new behavioral health service(s); and

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

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

WAC 388-877-0350 Agency licensure and certification—Change in ownership. (1) When a licensed behav-

ioral 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.

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

WAC 388-877-0355 Agency licensure and certification—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.

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

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

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

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

AMENDATORY SECTION (Amending WSR 16-13-087, filed 6/15/16, effective 7/16/16)

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

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

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

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

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

Application fees for agency certification for approved substance use disorder treatment programs	
New agency application	\$1,000
Branch agency application	\$500
Application to add one or more services	\$200
Application to change ownership	\$500
Initial and annual certification fees for ((Detoxification)) withdrawal management , residential, and nonresidential services	
((Detoxification)) Withdrawal management and residential services	\$100 per licensed bed, per year, for agencies not renewing certification through deeming
	\$50 per licensed bed, per year, for agencies renewing certification through deeming per WAC 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)) Complaint/critical incident investigation fees	
All agencies	\$1,000 per substantiated complaint investigation and \$1,000 per substantiated critical incident investigation that results in a requirement for corrective action

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

- (a) The number of licensed ~~((detoxification)) withdrawal management~~ and residential beds; and
 - (b) The agency provider's national accreditation status.
- (7) The department charges the following fees for approved mental health treatment programs:

Initial licensing application fee for mental health treatment programs	
Licensing application fee	\$1,000 initial licensing fee
Initial and annual licensing fees for agencies not deemed	

Annual service hours provided:	Initial and annual licensing fees:
0-3,999	\$728
4,000-14,999	\$1,055
15,000-29,999	\$1,405
30,000-49,999	\$2,105
50,000 or more	\$2,575
Annual licensing fees for deemed agencies	
Deemed agencies licensed by DBHR	\$500 annual licensing fee
((Complaint/Critical)) Complaint/critical incident investigation fee	
All residential and nonresidential agencies	\$1,000 per substantiated complaint investigation and \$1,000 per substantiated critical incident investigation that results in a requirement for corrective action

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

- (a) Existing licensed agencies must compute the annual services hours based on the most recent state fiscal year.
- (b) Newly licensed agencies must compute the annual service hours by projecting the service hours for the first twelve months of operation.

(9) ~~((For)) Agencies providing inpatient evaluation and treatment ((facility initial and annual certification bed fees charged by the department, see WAC 388-865-0511)) scr- vices and competency evaluation and restoration treatment services must pay the following certification fees:~~

- ~~(a) Ninety dollars initial certification fee, per bed; and~~
- ~~(b) Ninety dollars annual certification fee, per bed.~~

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

WAC 388-877-0370 Agency licensure and ~~((pro- gram specific)) certification—Appealing a department decision.~~ (1) To appeal a decision made by the department regarding agency licensure or certification of a behavioral health service, an agency must ~~((file)) submit~~ a written ~~((request)) application asking for ((a)) an administrative hearing:~~

- (a) Signed by the agency's administrator.
- (b) ~~((Within twenty-eight days of the date of the department's written decision.~~
- ~~((e)) Sent to the ((Board of Appeals, P.O. Box 2465, Olympia, WA 98504)) office of administrative hearings~~

(OAH), P.O. Box 42489, Olympia, WA 98504-2489, with a method that shows proof of receipt.

(c) Received by OAH within twenty-eight days of the date of the department's written decision.

(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((-); and

(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 of a behavioral health service pending completion of the appeal process when the preservation of public health, safety, or welfare requires emergency action.

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

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((-); and

(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.

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

WAC 388-877-0410 Agency administration—Administrator key responsibilities. (1) The agency administrator is responsible for the day-to-day operation of the agency's ~~((licensed or))~~ provision of 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((-); and

(g) Ensure that personnel records document that Washington state patrol background checks consistent with ~~((RCW 43.43.830 through 43.43.834))~~ chapter 43.43 RCW 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 and appeals.

AMENDATORY SECTION (Amending WSR 16-13-087, filed 6/15/16, effective 7/16/16)

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. This means:

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

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

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

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

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

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

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

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

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

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

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

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

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

(15) **Reporting critical incidents.** A description of how the agency directs staff to report to the department or BHO,

as applicable, within one business day any critical incident that occurs involving an individual, and actions taken as a result of the incident.

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

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

(a) Different types of disasters or emergencies;

(b) Placement of posters showing routes of exit;

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

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

(e) Evacuation of mobility impaired individuals; and

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

(18) **Individual rights.** A description of how the agency has individual participation rights and policies consistent with WAC 388-877-0600 and if applicable, WAC 388-877-0680.

(19) **Individual complaints and grievances.** A description of how the agency addresses an individual's:

~~(a) Complaint, consistent with WAC 388-877-0605((; and/or the grievance system)); and~~

~~(b) Grievance or appeal consistent with WAC ((388-877-0650)) 388-877-0654 through 388-877-0675.~~

NEW SECTION

WAC 388-877-0425 Agency administration—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;

(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; and

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

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

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

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

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

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)) (2) 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)) (3) 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)) (4) 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)) (5) 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)).~~

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

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

- (1) The personnel record must contain all of 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 all of the following:
 - (i) An overview of the ~~((administrative, personnel and clinical))~~ agency's 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))~~ and 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 388-877-0515 Personnel—Agency staff requirements. Each agency licensed by the department to provide one or more behavioral health service must ensure that all of the following staff requirements are met:

(1) An agency providing mental health services must ensure all of the following:

(a) Each mental health service is provided by qualified staff members who meet the following for their scope of practice and services provided:

- (i) Professional standards, including documented coursework, continuing education, and training;
- (ii) Clinical supervision requirements; and
- (iii) Licensure and credentialing requirements.

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

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

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

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

(2) An agency providing substance use disorder treatment services must ensure all of the following:

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

(b) There is a designated clinical supervisor who:

- (i) Is a CDP;
- (ii) Is an approved supervisor who meets the requirements of chapter 246-811 WAC; and
- (iii) Has not committed, permitted, aided, or abetted the commission of an illegal act or unprofessional conduct as defined under RCW 18.130.180.

(c) 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.

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

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

(3) An agency providing problem and pathological gambling services must ensure all of the following:

(a) All problem and pathological gambling treatment services are provided by:

(i) 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

(ii) 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.

(b) Before providing problem and pathological treatment services, an individual in training to become a certified problem gambling counselor must have a minimum of:

(i) At least one thousand five hundred hours of professionally supervised post-certification or post-registration experience providing mental health or substance use disorder treatment services; and

(ii) Thirty hours of unduplicated gambling specific training, including the basic training; one of the following state, national, or international organizations must approve the training:

(A) Washington state gambling counselor certification committee;

(B) National or international gambling counselor certification board; or

(C) The department's division of behavioral health and recovery.

(c) An individual who meets subsection (3)(b)(ii) 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.

(d) All staff members in training to become a certified problem gambling counselor must receive clinical supervision. The clinical supervisor must:

(i) 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

(ii) Complete training on gambling specific clinical supervision approved by a state, national, or international organization including, but not limited to, the:

(A) Washington state gambling counselor certification committee;

(B) National or international gambling counselor certification board; or

(C) The department's division of behavioral health and recovery.

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

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

(1) Each trainee, intern, volunteer, and student passes a background check;

(2) Each trainee ~~((and)), intern, volunteer, and student~~ 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; and

(3) The agency must obtain and retain a confidentiality statement signed by the trainee, intern, volunteer, and student and the person's academic supervisor, if applicable.

AMENDATORY SECTION (Amending WSR 16-13-087, filed 6/15/16, effective 7/16/16)

WAC 388-877-0600 Clinical—Individual rights. (1) Each agency licensed by the department to provide any behavioral health service must develop a statement of individual participant rights applicable to the service categories the agency is licensed for, to ensure an individual's rights are protected in compliance with chapters ~~((70-96A,))~~ 71.05, 71.12, and 71.34 RCW. In addition, the agency must develop a general statement of individual participant rights that incorporates at a minimum the following statements. "You have the right to:

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

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

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

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

(e) Be free of any sexual harassment;

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

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

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

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

(j) Lodge a complaint with the department when you feel the agency has violated a WAC requirement regulating ~~((behavior))~~ behavioral 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))~~ visually impaired;

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

(d) Posted in public areas; and

(e) Available to any participant upon request.

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

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

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

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.

AMENDATORY SECTION (Amending WSR 16-13-087, filed 6/15/16, effective 7/16/16)

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

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

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

~~(a) An issue with a behavioral health service or case management;~~

~~(b) A possible violation of a DSHS rule; and~~

~~(c) The individual believes their rights have been or are being violated.~~

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

(a) The name of the agency or agency provider involved;
 (b) The name of the person making the complaint and the person's contact information;

(c) The name of the individual receiving the service and the individual's contact information;

(d) A description of the complaint issue and the date or timeframe it occurred; and

(e) The final finding and/or resolution and the date of the decision if the individual previously discussed the concern with the behavioral health organization (BHO), the agency, or agency provider.

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

(a) Examine any part of the facility at reasonable times and as needed.

(b) Review and evaluate agency records, including but not limited to:

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

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

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

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

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

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

(i) Restricting access to a treatment program;

(ii) Restricting access to the individual involved with the complaint issue;

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

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

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

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

(b) Person representing the individual.

(c) A witness involved in the complaint issue.

(d) An employee of the agency.

~~((7))~~ (4) Under WAC 388-877-0365, DBHR may assess an agency a one thousand dollar fee for the cost of a complaint investigation. Reasons for assessing the fee include, but are not limited to:

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

(b) DBHR's finding that the individual, an individual's representative, a witness, (~~(and/or)~~) or employee of the agency experienced an act of retaliation by the agency as described in subsection (~~((6))~~) (3) of this section during or after a complaint investigation.

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 16-13-087, filed 6/15/16, effective 7/16/16)

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 one or more of the following services as determined by state and federal law: substance use disorder, mental health, (~~(and/or)~~) and 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)~~) An assessment of any risk of harm to self and others, including suicide (~~(and/or)~~), homicide, and a history of self-harm;

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

(k) Legal history, including information that a person is or is not court-ordered to treatment or under the supervision of the department of corrections; (~~(and)~~)

(l) Employment and housing status;

(m) Treatment recommendations or recommendations for additional program-specific assessment; and

(n) A diagnostic assessment statement, including sufficient data to determine a diagnosis supported by the current and applicable Diagnostic and Statistical Manual of Mental Disorders (DSM-5).

(3) Agencies providing substance use disorder services must ensure the assessment includes:

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

(b) A placement decision, using ASAM criteria dimensions when the assessment indicates the individual is in need of substance use disorder services.

(4) Behavioral health agencies can apply for an exemption from the assessment requirements in this section if the agency is following similar documentation requirements of an evidence-based, research-based, or state-mandated program that provides adequate protection for patient safety. See WAC 388-877-0300 for information about the exemption process.

AMENDATORY SECTION (Amending WSR 16-13-087, filed 6/15/16, effective 7/16/16)

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 one or more of the following services:

(i) Mental health((-);

(ii) Substance use disorder((-and/or)); and

(iii) 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))~~ made available 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((-), and interventions; and~~

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

(2) An agency that provides any behavioral health service must ensure the individual service plan:

(a) Is initiated during the first individual session following the assessment with at least one goal identified by the individual or if applicable, the individual's parent or legal representative; and

(b) Documents that the plan was reviewed and 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.

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

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

(4) Behavioral health agencies may apply for an exemption from the individual service plan requirements in this section if the agency is following similar documentation requirements of an evidence-based, research-based, or state-mandated program that provides adequate protection for patient safety. See WAC 388-877-0300 for information about the exemption process.

(5) Behavioral health agencies providing substance use disorder services must review the individual service plan to determine the need for continued services using ASAM criteria.

AMENDATORY SECTION (Amending WSR 16-13-087, filed 6/15/16, effective 7/16/16)

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

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

(2) Demographic information((-);

(3) An ~~((initial))~~ assessment((-);

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

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

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

(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(-)) is in compliance with RCW 71.05.445 regarding mental health services for individuals under department of corrections supervision;~~

~~(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))~~ (7) Documentation of confidential information that has been released without the consent of the individual under:

- (a) RCW 70.02.050;
- (b) The Health Insurance Portability and Accountability Act (HIPAA); and
- (c) RCW 70.02.230 and 70.02.240 if the individual received mental health treatment services~~(-)~~;

~~((9))~~ (8) Documentation that any mandatory reporting of abuse, neglect, or exploitation consistent with chapters 26.44 and 74.34 RCW has occurred~~(-)~~;

~~((10))~~ (9) If treatment is not court-ordered, documentation of informed consent to treatment by the individual or individual's parent, or other legal representative~~(-)~~;

~~((11))~~ (10) If treatment is court-ordered, a copy of the order~~(-)~~;

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

~~((13) Documentation of all service encounters.~~

~~((14))~~ (11) Medication records, if applicable~~(-)~~;

~~((15))~~ (12) Laboratory reports, if applicable~~(-)~~;

~~((16))~~ (13) Properly completed authorizations for release of information, if applicable~~(-)~~;

~~((17))~~ (14) Copies of applicable correspondence~~(-)~~;

~~((18))~~ (15) Discharge information~~(-)~~ as follows:

(a) A discharge statement if the individual left without notice;

(b) Discharge information for an individual who did not leave without notice, completed within seven working days of the individual's discharge, including:

(i) The date of discharge;

(ii) Continuing care plan;

(iii) Legal status, and if applicable; and

(iv) Current prescribed medication.

(c) 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 with the individual's permission;

~~((19))~~ (16) A copy of any report required by entities such as the courts, department of corrections, department of licensing, and the department of social and health services, and the date the report was submitted;

(17) Progress notes must include the date, time, duration, participant's name, response to interventions, and a brief summary of the session and the name of the staff member who provided it;

(18) Documentation of 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; and

(19) A crisis plan, if one has been developed.

AMENDATORY SECTION (Amending WSR 14-18-014, filed 8/22/14, effective 9/22/14)

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))~~ or legal representative, or both. The agency must:

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

~~((i)) Ensure that any material confidential to another person, agency, or provider~~(-)~~; and~~

~~((ii) Reports not originated by the agency)) is not redisclosed.~~

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

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

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

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

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

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

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

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

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

(4) When an individual receiving mental health services is under the supervision of the Department of Corrections (DOC), make information available to DOC, in accordance with RCW 71.05.445. The information released does not require the consent of the individual.

Chapter 388-700 WAC

SECTION SEVEN—OUTPATIENT SERVICES

NEW SECTION

WAC 388-877-0700 Outpatient services—General.

Outpatient behavioral health services are intended to improve or reduce symptoms and help facilitate resolution of situational disturbances for individuals in the areas of relationships, employment, and community integration.

(1) Outpatient services include the following:

(a) Individual mental health treatment services;

(b) Brief mental health intervention treatment services;

(c) Group mental health therapy services;

(d) Family therapy mental health services;

(e) Rehabilitative case management mental health services;

(f) Psychiatric medication mental health services and medication support;

(g) Day support mental health services;

(h) Mental health outpatient services provided in a residential treatment facility (RTF);

(i) Recovery support services including:

(i) Supported employment mental health and substance use disorder services;

(ii) Supportive housing mental health and substance use disorder services;

(iii) Peer support mental health services;

- (iv) Wraparound facilitation mental health services;
 - (v) Applied behavior analysis (ABA) mental health services; and
 - (vi) Consumer-run clubhouse mental health services.
 - (j) Level one outpatient substance use disorder services;
 - (k) Level two intensive outpatient substance use disorder services;
 - (l) Substance use disorder assessment only services;
 - (m) Alcohol and drug information school;
 - (n) Substance use disorder information and crisis services;
 - (o) Substance use disorder emergency service patrol services;
 - (p) Substance use disorder screening and brief intervention services; and
 - (q) Problem and pathological gambling services.
- (2) A behavioral health agency that provides certified outpatient services must:
- (a) Be licensed by the department as a behavioral health agency; and
 - (b) Meet the applicable program-specific requirements for each outpatient behavioral health services provided.

NEW SECTION

WAC 388-877-0702 Outpatient services—Individual mental health treatment services. (1) Individual mental health treatment services are services designed to assist an individual in attaining the goals identified in the individual service plan. The treatment services are conducted with the individual and any natural supports as identified by the individual.

(2) An agency certified to provide individual treatment services must meet the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680.

NEW SECTION

WAC 388-877-0704 Outpatient services—Brief mental health intervention treatment services. (1) Brief mental health 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, are generally completed in six months or less, 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.

(2) An agency certified to provide brief mental health intervention treatment services must meet the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680.

NEW SECTION

WAC 388-877-0706 Outpatient services—Group mental health therapy services. Group mental health 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. In addition to meeting the behavioral

health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680, an agency certified to provide group mental health services must:

- (a) Have a written description of each group's purpose;
- (b) Ensure group therapy services are provided with a staff ratio of one staff member for every fifteen individuals;
- (c) Ensure any group containing more than twelve individuals has at least one facilitator or co-facilitator that is an appropriately credentialed professional; and
- (d) Ensure group notes are recorded in each individual's clinical record and include the requirements of WAC 388-877-0640(14) for discharge information.

NEW SECTION

WAC 388-877-0708 Outpatient services—Family therapy mental health services. (1) Family therapy mental health services are services provided for the direct benefit of an individual, with either family members or other relevant persons in attendance, or both, with the consent of the individual.

(2) 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.

(3) An agency certified to provide family therapy mental health services must meet the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680.

NEW SECTION

WAC 388-877-0710 Outpatient services—Rehabilitative case management mental health services. Rehabilitative case management mental health 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 during and following a hospitalization.

(1) 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.

(2) An agency certified to provide rehabilitative case management services must meet the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680.

NEW SECTION

WAC 388-877-0712 Outpatient services—Psychiatric medication mental health services and medication support. Psychiatric medication mental health services are a variety of activities related to prescribing and administering medication, including monitoring an individual for side effects and changes as needed. These services may only be

provided with one of the outpatient mental health services in WAC 388-877-0700 (1)(a) through (e). An agency providing psychiatric medication services may also provide medication support services, described in subsections (2) and (3) of this section

(1) An agency providing psychiatric medication services must:

(a) Ensure that medical direction and responsibility are assigned to a:

(i) Physician who is licensed to practice under chapter 18.57 or 18.71 RCW, and is board-certified or board-eligible in psychiatry;

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

(iii) Physician assistant working with a supervising psychiatrist;

(b) Ensure that the services are provided by a prescriber licensed by department of health who is practicing within the scope of that practice;

(c) Ensure that all medications are administered by staff practicing within the scope of their practice; and

(d) Have a process by which the medication prescriber informs either the individual, the legally responsible party, or both, and, as appropriate, family members, of the potential benefits and side effects of the prescribed medication(s).

(2) An agency providing psychiatric medication services may utilize a physician or ARNP 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 or ARNP at least monthly; and

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

(3) 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; and

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

(4) An agency providing medication support services must:

(a) Ensure that the staff positions responsible for providing either medication monitoring, or delivery services, or both, are clearly identified in the agency's medication support services policy;

(b) Have appropriate policies and procedures in place when the agency providing medication support services maintains or delivers medication to the individual that 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; and

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

(c) Ensure that the individual's clinical record contains the individual service plan, including documentation of medication support services.

NEW SECTION

WAC 388-877-0714 Outpatient services—Day support mental health services. (1) Day support mental health 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.

(2) Services include training in basic living and social skills, and educational, vocational, pre-vocational, and day activities. Day support services may include therapeutic treatment.

(3) An agency certified to provide day support services must meet the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680.

NEW SECTION

WAC 388-877-0716 Outpatient services—Mental health outpatient services provided in a 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; and

(2) Be certified for and provide the following:

(a) Rehabilitative case management services (see WAC 388-877-0710);

(b) Less restrictive alternative (LRA) support services (see WAC 388-877-0805) if serving individuals on an LRA court order or conditional release; and

(c) Psychiatric medication services and medication support services (see WAC 388-877-0712).

NEW SECTION

WAC 388-877-0718 Outpatient services—Recovery support—General. Recovery support services are intended to promote an individual's socialization, recovery, self-advocacy, development of natural support, and maintenance of community living skills.

(1) Recovery support services include:

(a) Supported employment services;

(b) Supportive housing services;

(c) Peer support services;

(d) Wraparound facilitation services;

(e) Applied behavior analysis (ABA) services; and

(f) Consumer-run clubhouse services.

(2) An agency that provides any recovery support service may operate through an agreement with a licensed behavioral health agency that provides certified outpatient behavioral health services listed in WAC 388-877-0700. The agreement must specify the responsibility for initial assessments, the determination of appropriate services, individual service

planning, and the documentation of these requirements. Subsections (3) through (5) of this section list the abbreviated requirements for assessments, staff, and clinical records.

(3) When providing any recovery support service, a behavioral health 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; and

(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.

(4) An agency providing recovery support services must ensure:

(a) Each staff member working directly with an individual receiving any recovery support service has annual violence prevention training on the safety and violence prevention topics described in RCW 49.19.030; and

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

(5) An agency providing any recovery support service must maintain an individual's clinical record that contains:

(a) Documentation of the following:

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

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

(iii) Names of participant(s), including the name of the individual who provided the service; and

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

NEW SECTION

WAC 388-877-0720 Outpatient services—Recovery support—Supported employment mental health and substance use disorder services. Supported employment mental health and substance use disorder services assist in job search, placement services, and training to help individuals find competitive jobs in their local communities.

(1) An agency that provides certified supported employment services must meet the general requirements for recovery support services in WAC 388-877-0718.

(2) A behavioral health agency that provides supported 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 (DVR), which provides supported employment under WAC 388-891-0840 by community rehabilitation program contract as described in WAC 388-892-0100;

(b) The department's community services offices;

(c) Community, trade, and technical colleges;

(d) The business community;

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

(f) Washington state department of employment security; and

(g) Organizations that provide job placement within the community.

(3) A behavioral health agency that provides supported employment services must:

(a) Ensure all staff members who provide 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 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) Provide and document any outreach, job coaching, and support at the individual's worksite when requested by the individual or the individual's employer; and

(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 Washington state antidiscrimination law.

NEW SECTION

WAC 388-877-0722 Outpatient services—Recovery support—Supportive housing mental health and substance use disorder services. Supportive housing mental health and substance use disorder services support an individual's transition to community integrated housing and support the individual to be a successful tenant in a housing arrangement.

(1) An agency that provides certified supportive housing services must meet the general requirements for recovery support services in WAC 388-877-0718.

(2) A behavioral health agency that provides supportive housing services must have knowledge of and provide housing related collaborative activities to assist individuals in identifying, coordinating, and securing housing or housing resources with entities such as:

(a) Local homeless continuum of care groups or local homeless planning groups;

(b) Housing authorities that operate in a county or city in the behavioral health organization's (BHO) regional service area;

(c) Community action councils that operate in a county or region in the BHO's regional service area;

(d) Landlords of privately owned residential homes; and

(e) State agencies that provide housing resources.

(3) A behavioral health agency that provides supportive housing services must:

(a) Ensure all staff members who provide direct services for supportive housing are knowledgeable and familiar with fair housing laws;

(b) Conduct and document a housing assessment in partnership with the individual that includes housing preferences, affordability, and barriers to housing;

(c) Conduct and document a functional needs assessment in partnership with the individual that includes independent living skills and personal community integration goals;

(d) Assist the individual to create an individualized housing acquisition and maintenance plan that focuses on the individual's choice in housing;

(e) Assist the individual to locate housing opportunities that are consistent with the individual's preferences, goals, and interests;

(f) Provide any outreach, tenancy support, and independent living skill building supports at a location convenient to the individual;

(g) Provide the individual with information regarding the requirements of the Fair Housing Act, Americans with Disabilities Act (ADA) of 1990, and Washington state antidiscrimination law, and post this information in a public place in the agency; and

(h) Ensure the services are specific to each individual and meant to assist in obtaining and maintaining housing in scattered-site, clustered, integrated, or single-site housing as long as the individual holds a lease or sub-lease.

NEW SECTION

WAC 388-877-0724 Outpatient services—Recovery support—Peer support mental health services. (1) Peer support mental health 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 that provides certified peer support services must meet the general requirements for recovery support services in WAC 388-877-0718.

(3) An agency providing peer support services must ensure peer support counselors:

(a) Are recognized by the division of behavioral health and recovery (DBHR) as a "peer counselor" as defined in WAC 388-877-0200; and

(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.

(4) 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 388-877-0726 Outpatient services—Recovery support—Wraparound facilitation mental health services. Wraparound facilitation mental health 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) In addition to meeting the general requirements for recovery support services in WAC 388-877-0718, an agency providing certified 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 that is documented in the personnel file; and

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

(3) In addition to the staff requirements in subsection (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; and

(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 all of the following:

(i) Natural supports. Natural supports include community members, friends, and extended family members identified by either the individual, the individual's family, or both, 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);
- (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; and
- (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 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; and
- (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 388-877-0728 Outpatient services—Recovery support—Applied behavior analysis mental health services. Applied behavior analysis (ABA) mental health services assist children and their families to improve the core symptoms associated with autism spectrum disorders or other developmental disabilities for which ABA services have been determined to be medically necessary.

- (1) ABA services support learning, skill development, and assistance in any one or more of the following areas or domains:
 - (a) Social;
 - (b) Behavior;
 - (c) Adaptive;
 - (d) Motor;
 - (e) Vocational; or
 - (f) Cognitive.
- (2) An agency providing ABA services must meet the:
 - (a) General requirements in WAC 388-877-0718 for recovery support services;
 - (b) Specific agency staff requirements in WAC 388-877-0718(4); and
 - (c) Specific clinical record content and documentation requirements in WAC 388-877-0640 and 388-877-0718(5).
- (3) The health care authority (HCA) administers chapter 182-531A WAC for ABA services requirements. The rules in chapter 182-531A WAC include:
 - (a) Definitions that apply to ABA services;
 - (b) Program and clinical eligibility requirements;
 - (c) Prior authorization and recertification requirements;

- (d) Specific ABA provider requirements;
- (e) Covered and noncovered services;
- (f) Billing requirements; and
- (g) Requirements for:
 - (i) Referrals to and assessments by centers of excellence (COE) for evaluations and orders; and
 - (ii) ABA assessments and individualized ABA therapy treatment plans.
- (4) The ABA therapy treatment plan must:
 - (a) Be developed and maintained by a lead behavior analysis therapist (LBAT) (see subsection (5) of this section);
 - (b) Identify the services to be delivered by the LBAT and the therapy assistant, if the agency employs a therapy assistant (see subsections (6) and (7) of this section);
 - (c) Be comprehensive and document treatment being provided by other health care professionals; and
 - (d) Document how all treatment will be coordinated, as applicable, with other members of the health care team.
- (5) An agency certified to provide ABA services must employ a lead behavior analysis therapist (LBAT).
 - (a) To qualify as an LBAT, an individual must meet the professional requirements in chapter 182-531 WAC.
 - (b) The agency must ensure the LBAT meets other applicable requirements in chapter 182-531A WAC.
- (6) An agency may choose to employ a therapy assistant.
 - (a) To qualify as a therapy assistant, an individual must meet the professional requirements in chapter 182-531A WAC.
 - (b) The agency must ensure the therapy assistant meets other applicable requirements in chapter 182-531A WAC.
- (7) If the agency employs a therapy assistant(s), the agency must ensure the LBAT:
 - (a) Supervises the therapy assistant:
 - (i) For a minimum of five percent of the total direct care provided by the therapy assistant per week (for example, one hour of direct supervision per twenty hours of direct care); and
 - (ii) In accordance with agency policies and procedures;
 - (b) Meets the requirements in this section;
 - (c) Completes a review of an individual's ABA therapy treatment plan with the therapy assistant before services are provided;
 - (d) Assures the therapy assistant delivers services according to the individual's ABA therapy treatment plan; and
 - (e) Meets at least every two weeks with the therapy assistant and documents review of the individual's progress or response to the treatment, or both, and makes changes to the ABA therapy treatment plan as indicated by the individual's progress or response.
- (8) To maintain department program-specific certification to provide ABA services, an agency must continue to ensure the requirements in this section are met.

NEW SECTION

WAC 388-877-0730 Outpatient services—Consumer-run recovery support—Clubhouses—Required clubhouse components. The division of behavioral health and recovery certifies consumer-run clubhouses under the

provision of RCW 71.24.035. International center for clubhouse development certification is not a substitute for certification by the state of Washington.

(1) Required clubhouse components include all of the following:

(a) Voluntary member participation. Clubhouse members choose the way they use the clubhouse and the staff with whom they work. There are no agreements, contracts, schedules, or rules intended to enforce participation of members. All member participation is voluntary. Clubhouse policy and procedures must describe how members will have the opportunity to participate, based on their preferences, in the clubhouse.

(b) The work-ordered day.

(c) Activities, including:

(i) Personal advocacy;

(ii) Help with securing entitlements;

(iii) Information on safe, appropriate, and affordable housing;

(iv) Information related to accessing medical, psychological, pharmacological and substance use disorder services in the community;

(v) Outreach to members during periods of absence from the clubhouse and maintaining contact during periods of inpatient treatment;

(vi) In-house educational programs that use the teaching and tutoring skills of members;

(vii) Connecting members with adult education opportunities in the community;

(viii) An active employment program that assists members to gain and maintain employment in full- or part-time competitive jobs in integrated settings developed in partnership with the member, the clubhouse, and the employer and time-limited, part-time community jobs managed by the clubhouse with absentee coverage provided; and

(ix) An array of social and recreational opportunities.

(d) Operating at least thirty hours per week on a schedule that accommodates the needs of the members.

NEW SECTION

WAC 388-877-0732 Outpatient services—Consumer-run recovery support—Clubhouses—Management and operational requirements. The requirements for managing and operating a clubhouse include all of the following:

(1) Members, staff, and ultimately the clubhouse director, are responsible for the operation of the clubhouse. The director must ensure opportunities for members and staff to be included in all aspects of clubhouse operation, including setting the direction of the clubhouse.

(2) Location in an area, when possible, where there is access to local transportation and, when access to public transportation is limited, facilitate alternatives.

(3) A distinct identity, including its own name, mailing address, and phone number.

(4) A separate entrance and appropriate signage that make the clubhouse clearly distinct, when co-located with another community agency.

(5) An independent board of directors capable of fulfilling the responsibilities of a not-for-profit board of directors, when free-standing.

(6) An administrative structure with sufficient authority to protect the autonomy and integrity of the clubhouse, when under the auspice of another agency.

(7) Services are timely, appropriate, accessible, and sensitive to all members.

(8) Members are not discriminated against on the basis of any status or individual characteristic that is protected by federal, state, or local law.

(9) Written proof of a current fire/safety inspection:

(a) Conducted of all premises owned, leased or rented by the clubhouse; and

(b) Performed by all required external authorities (such as a state fire marshal and liability insurance carrier).

(10) All applicable state, county, and city business licenses.

(11) All required and current general liability, board and officers liability, and vehicle insurance.

(12) An identifiable clubhouse budget that includes:

(a) Tracking all income and expenditures for the clubhouse by revenue source;

(b) Quarterly reconciliation of accounts; and

(c) Compliance with all generally accepted accounting principles.

(13) Track member participation and daily attendance.

(14) Assist member in developing, documenting, and maintaining the member's recovery goals and providing monthly documentation of progress toward reaching them. Both member and staff must sign all such plans and documentation, or, if a member does not sign, staff must document the reason.

(15) A mechanism to identify and implement needed changes to the clubhouse operations, performance, and administration, and to document the involvement of members in all aspects of the operation of the clubhouse.

(16) Evaluate staff performance by:

(a) Ensuring that paid employees:

(i) Are qualified for the position they hold, including any licenses or certifications; and

(ii) Have the education, experience and skills to perform the job requirements;

(b) Maintaining documentation that paid clubhouse staff:

(i) Have a completed Washington state patrol background check on file; and

(ii) Receive regular supervision and an annual performance evaluation.

NEW SECTION

WAC 388-877-0734 Outpatient services—Consumer-run recovery support—Clubhouses—Certification process. The division of behavioral health and recovery (DBHR) grants certification based on compliance with the minimum standards in WAC 388-877-0738 through 388-877-0744.

(1) To be certified to provide clubhouse services, an organization must comply with all of the following:

(a) Meet all requirements for applicable city, county and state licenses and inspections.

(b) Complete and submit an application for certification to DBHR.

(c) Successfully complete an on-site certification review by DBHR to determine compliance with the minimum clubhouse standards, as set forth in this chapter.

(d) Initial applicants that can show that they have all organizational structures and written policies in place, but lack the performance history to demonstrate that they meet minimum standards, may be granted initial certification for up to one year. Successful completion of an on-site certification review is required prior to the expiration of initial certification.

(2) Upon certification, clubhouses will undergo periodic on-site certification reviews.

(a) The frequency of certification reviews is determined by the on-site review score as follows:

(i) A compliance score of ninety percent or above results in the next certification review occurring in three years;

(ii) A compliance score of eighty percent to eighty-nine percent results in the next certification review occurring in two years;

(iii) A compliance score of seventy percent to seventy-nine percent results in the next certification review occurring in one year; or

(iv) A compliance score below seventy percent results in a probationary certification.

(b) Any facet of an on-site review resulting in a compliance score below ninety percent requires a corrective action plan approved by DBHR.

(3) Probationary certification may be issued by DBHR if:

(a) A clubhouse fails to conform to applicable law, rules, regulations, or state minimum standards; or

(b) There is imminent risk to the individual's health and safety.

(4) DBHR may suspend or revoke a clubhouse's certification, or refuse to grant or renew a clubhouse's certification if a clubhouse fails to correct deficiencies as mutually agreed to in the corrective action plan with DBHR.

(5) A clubhouse may appeal a certification decision by DBHR.

(a) To appeal a decision, the clubhouse must follow the procedure outlined in WAC 388-877-0370 (1)(b) through (d) and include the name, signature, and address of the clubhouse director.

(b) The hearing decision will be made according to the provisions of chapter 34.05 RCW and chapter 388-02 WAC.

NEW SECTION

WAC 388-877-0736 Outpatient services—Consumer-run recovery support—Clubhouses—Employment-related services. The following employment support activities must be offered to clubhouse members:

(1) Collaboration on creating, revising, and meeting individualized job and career goals;

(2) Information about how employment will affect income and benefits;

(3) Information on other rehabilitation and employment services, including but not limited to:

(a) The division of vocational rehabilitation;

(b) The state employment services;

(c) The business community;

(d) Job placement services within the community; and

(e) Community mental health agency-sponsored supported employment services;

(4) Assistance in locating employment opportunities that are consistent with the member's skills, goals, and interests;

(5) Assistance in developing a resume, conducting a job search, and interviewing;

(6) Assistance in:

(a) Applying for school and financial aid; and

(b) Tutoring and completing course work; and

(7) Information regarding protections against employment discrimination provided by federal, state, and local laws and regulations, and assistance with asserting these rights, including securing professional advocacy.

NEW SECTION

WAC 388-877-0738 Outpatient services—Level one outpatient substance use disorder services. (1) ASAM level one outpatient substance use disorder services provide a program of individual and group counseling, education, and activities, in accordance with ASAM criteria.

(2) An agency certified to provide level one outpatient substance use disorder services must meet the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680.

NEW SECTION

WAC 388-877-0740 Outpatient services—Level two intensive outpatient substance use disorder services. ASAM level two intensive outpatient substance use disorder services provide a concentrated program of individual and group counseling, education, and activities, in accordance with ASAM criteria.

(1) An agency certified to provide level two intensive outpatient treatment services must meet the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680.

(2) An agency providing level two intensive outpatient treatment services for deferred prosecution must:

(a) Ensure that individuals admitted under a deferred prosecution order receive services that meet the requirements of RCW 10.05.150, including, that the individual receives 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 that must last at least one hour; and

(iii) Attendance at self-help groups in addition to the seventy-two hours of treatment services;

(b) There must be approval, in writing, by the court having jurisdiction in the case, when there is any exception to the requirements in this subsection; and

(c) The agency must refer for ongoing treatment or support upon completion of intensive outpatient treatment, as necessary.

NEW SECTION

WAC 388-877-0742 Outpatient services—Substance use disorder assessment only services. Substance use disorder assessment only 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.

(1) A behavioral health agency certified for assessment only services may choose to become certified to also provide driving under the influence (DUI) assessment services described in WAC 388-877-0820.

(2) An agency certified to provide assessment only services must meet the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680 except where specifically indicated.

(3) An agency providing assessment only 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.

(4) 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.

(5) An agency that offers off-site assessment services must meet the requirements in WAC 388-877-0342.

(6) An agency providing assessment only services must ensure all assessment only services are provided by a chemical dependency professional (CDP).

NEW SECTION

WAC 388-877-0744 Outpatient services—Information and assistance services—Substance use disorder services—General. Information and assistance services are considered nontreatment substance use disorder services provided to support an individual who has a need for interventions related to substance use.

(1) 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;

(b) Information and crisis services;

(c) Emergency service patrol; and

(d) Screening and brief intervention.

(2) Substance use disorder 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.

(3) 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 388-877-0746 Outpatient services—Substance use disorder information and assistance services—Alcohol and drug information school. Alcohol and drug information school services provide an educational program about substance use. 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. In addition to meeting requirements for substance use disorder information and assistance services in WAC 388-877-0744, 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) Advises each student there is no assumption the student has a substance use disorder and that the course is not a therapy session;

(b) Follows a department-approved curriculum;

(c) Ensures each course has no fewer than eight hours of classroom instruction; and

(d) 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 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; and

(3) Ensure each individual student record contains:

(a) An intake form, including demographics;

(b) The hours of attendance, including dates; and

(c) A copy of the scored post-test.

NEW SECTION

WAC 388-877-0748 Outpatient services—Substance use disorder information and assistance—Information and crisis services. Substance use disorder information and crisis services provide an individual assistance or guidance related to substance use disorders, twenty-four hours a day by telephone or in-person. In addition to meeting requirements for substance use disorder information and assistance services in WAC 388-877-0744, 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 substance use disorders before assigning the staff member unsupervised duties;

(3) Ensure a chemical dependency professional (CDP), or a chemical dependency professional trainee (CDPT) under supervision of a CDP, is available or on staff twenty-four hours a day;

(4) Maintain a current directory of all certified substance use disorder service providers in the state; and

(5) Maintain a current list of local resources for legal, employment, education, interpreter, and social and health services.

NEW SECTION

WAC 388-877-0750 Outpatient services—Substance use disorder information and assistance—Emergency service patrol. Emergency service patrol services provide transport assistance to an intoxicated individual in a public place when a request has been received from police, merchants, or other persons. In addition to meeting requirements for substance use disorder information and assistance services in WAC 388-877-0744, 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; and
 - (c) Has completed forty hours of training in substance use disorder 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; and
- (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; and
 - (g) In case of nonpickup of a person, documentation of why the pickup did not occur.

NEW SECTION

WAC 388-877-0752 Outpatient services—Substance use disorder information and assistance—Screening and brief intervention. 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 substance use disorders, provide interventions, and make appropriate referral as needed. These services may be provided in a wide variety of settings. In addition to meeting requirements for substance use disorder information and assistance services in WAC 388-877-0744, 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) Substance use disorder 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; and
- (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; and
 - (g) A copy of screening documents, including outcome and referrals.

NEW SECTION

WAC 388-877-0754 Outpatient services—Problem and pathological gambling treatment services. 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. In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680 an agency that provides problem and pathological gambling treatment services must:

- (1) 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;
- (2) 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;
- (3) Limit the size of group counseling sessions to no more than twelve individuals; and
- (4) Maintain a written procedure for the response to medical and psychiatric emergencies.

Chapter 388-877 WAC

SECTION EIGHT—INVOLUNTARY AND COURT-ORDERED OUTPATIENT TREATMENT

NEW SECTION

WAC 388-877-0800 Involuntary and court-ordered—Noncompliance reporting for court-ordered substance use disorder treatment. An agency providing substance use disorder services must report noncompliance, in all levels of care, for an individual ordered into substance use disorder 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 crisis responder 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 or drug related arrests; or

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

(4) Reporting and recommending action for nonemergency, 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; or

(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 388-877-0805 Involuntary and court-ordered—Less restrictive alternative (LRA) or conditional

release support mental health services. Less restrictive alternative (LRA) support and conditional release mental health services are provided to individuals on a less restrictive alternative court order or conditional release. An agency agrees to provide or monitor the provision of court-ordered services, including psychiatric and medical components of community support services. In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680, an agency providing court-ordered LRA support and conditional release services must do all of the following:

(1) 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.

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

(a) Contacting the designated crisis responder (DCR) regarding revocations or extension of an LRA or conditional release; and

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

(i) Evaluation; or

(ii) Evaluation and detention.

(3) 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 be told statements the individual 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.

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

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

(6) Ensure that the individual receives psychiatric medication services for the assessment and prescription of psychotropic medications appropriate to the needs of the individual as follows:

(a) At least one time in 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 or conditional release, unless the individual's attending physician, physician assistant, or psychiatric

advanced registered nurse practitioner (ARNP) determines another schedule is more appropriate and documents the new schedule and the reason(s) in the individual's clinical record; and

(b) At least one time every thirty days for the duration of the less restrictive alternative court order or conditional release, unless the individual's attending physician or psychiatric ARNP determines another schedule is more appropriate and documents the new schedule and the reason(s) in the individual's clinical record.

(7) 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 the duration of the commitments and include documentation of assessment and rationale:

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

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

NEW SECTION

WAC 388-877-0810 Involuntary and court-ordered—Emergency individual detention mental health and substance use disorder services. Emergency involuntary detention services are services provided by a designated crisis responder (DCR) to evaluate an individual in crisis and determine if involuntary services are required. In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680, an agency certified to provide emergency involuntary detention services must do all of the following:

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

(2) Ensure staff members are available twenty-four hours a day, seven days a week.

(3) Ensure staff members utilize the protocols for DCRs required by RCW 71.05.214.

(4) Have a written agreement with a certified inpatient evaluation and treatment or secure withdrawal management and stabilization 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 DCR 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 DCR 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) Have a written protocol for the transportation of an individual, in a safe and timely manner, for the purpose of medical evaluation or detention.

(10) 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 accordance with the timelines required by RCW 71.05.050, 71.05.153, and 71.34.710;

(c) That the DCR conducting the evaluation considered both of the following when evaluating the individual:

(i) The imminent likelihood of serious harm or imminent danger because of being gravely disabled (see RCW 71.05.153); and

(ii) The likelihood of serious harm or grave disability that does not meet the imminent standard for the emergency detention (see RCW 71.05.150);

(d) That the DCR documented consultation with any examining emergency room physician as required by RCW 71.05.154;

(e) 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 DCR's decision not to detain the minor under RCW 71.34.710, if the individual is a minor thirteen years of age or older;

(f) 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 DCR'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; and

(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; and

(g) 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.

NEW SECTION

WAC 388-877-0815 Involuntary and court-ordered—Substance use disorder counseling for RCW 46.61-5056. In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680, an agency providing certified substance use disorder counseling services to an individual convicted of driving under the influence or physical control under 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 substance use disorder counseling sessions according to the individual service plan;
 - (b) One individual substance use disorder counseling session of not less than thirty minutes duration, excluding the time taken for a substance use disorder 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; and
 - (e) The balance of the sixty-day time period for individuals who complete intensive inpatient substance use disorder 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 substance use disorder counseling sessions every two weeks according to the individual service plan;
 - (b) One individual substance use disorder counseling session of not less than thirty minutes duration, every sixty days according to the individual service plan; and
 - (c) Referral of each individual for ongoing treatment or support, as necessary, using ASAM criteria, 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 substance use disorder professional (CDP) must refer the individual to alcohol/drug information school.

NEW SECTION

WAC 388-877-0820 Involuntary and court-ordered—Driving under the influence (DUI) substance use disorder assessment services. Driving under the influence (DUI) assessment services, as defined in chapter 46.61 RCW, 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.

- (1) In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680, an agency certified to provide DUI 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;

(c) Is not required to meet the individual service plan requirements in WAC 388-877-0620; and

(d) 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.

(2) An agency certified to provide DUI assessment services must also ensure:

- (a) The assessment is conducted in person; and
- (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) When the assessment findings do not result in a substance use disorder diagnosis, the assessment must also include:

- (a) A copy of the police report;
- (b) A copy of the court originated criminal case history;
- (c) The results of a urinalysis or drug testing obtained at the time of the assessment; and
- (d) A referral to alcohol and drug information school.

(4) If the information in subsections (3)(a) through (d) of this section is required and not readily available, the record must contain documentation of attempts to obtain the information.

(5) Upon completion of the DUI assessment, the individual must be:

- (a) Informed of the results of the assessment; and
- (b) Referred to the appropriate level of care according to ASAM criteria.

Chapter 388-877 WAC**SECTION NINE—CRISIS OUTPATIENT MENTAL HEALTH SERVICES**NEW SECTION

WAC 388-877-0900 Crisis mental health services—General. Crisis mental health services are intended to stabilize an individual in crisis to prevent further deterioration, provide immediate treatment and intervention in a location best suited to meet the needs of the individual, and provide treatment services in the least restrictive environment available. An agency certified to provide crisis mental health services must meet the general requirements in WAC 388-877-0300 through 388-877-0680 except the initial assessment, individual service plan, and clinical record requirements in WAC 388-877-0610, 388-877-0620, and 388-877-0640.

- (1) Crisis services include:
 - (a) Crisis telephone support;
 - (b) Crisis outreach services;
 - (c) Crisis stabilization services;
 - (d) Crisis peer support services; and
 - (e) Emergency involuntary detention services.

(2) An agency providing any crisis mental health service must ensure:

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

(b) Each staff member working directly with an individual receiving any crisis mental health service receives:

(i) Clinical supervision from a mental health professional; and

(ii) 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; and

(c) 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:

(i) A psychiatrist;

(ii) A physician;

(iii) A physician assistant; or

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

(3) Subsection (2)(c) of this section does not apply to agencies that only provide crisis telephone services.

(4) Documentation of a crisis service must include the following, as applicable to the crisis service provided:

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

(b) The names of the participants; and

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

(5) An agency must ensure crisis 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;

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

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

NEW SECTION

WAC 388-877-0905 Crisis mental health services—Telephone support services. Mental health 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) In addition to meeting the general requirements for crisis services in WAC 388-877-0900, an agency certified to provide 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 crisis responder;

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

(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 388-877-0910 Crisis mental health services—Outreach services. Crisis mental health 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. In addition to meeting the general requirements for crisis services in WAC 388-877-0900, an agency certified to provide crisis outreach services must do all of the following:

(1) Provide crisis telephone screening.

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

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

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

(5) 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.

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

(7) 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.

(8) 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.

(9) 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.

(10) 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.

(11) 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.

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

(13) 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; and

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

NEW SECTION

WAC 388-877-0915 Crisis mental health services—Stabilization services. Crisis mental health 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. In addition to meeting the general requirements for crisis services in WAC 388-877-0900, an agency certified to provide 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; and

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

NEW SECTION

WAC 388-877-0920 Crisis mental health services—Peer support services. Crisis mental health 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) In addition to meeting the general requirements for crisis services in WAC 388-877-0900, an agency certified to provide crisis peer support services must:

(a) Ensure services are provided by a person recognized by the division of behavioral health and recovery (DBHR) as a peer counselor, as defined in WAC 388-877-0200, 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; and

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

Chapter 388-877 WAC

SECTION TEN—OPIOID TREATMENT PROGRAMS (OTP)

NEW SECTION

WAC 388-877-1000 Opioid treatment programs (OTP)—General. (1) Opioid treatment program services include the dispensing of an opioid 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 incident to opioid use disorder. These services include withdrawal management treatment and maintenance treatment.

(2) An agency must meet all the certification requirements in WAC 388-877-1005 in order to provide opioid treatment program services and:

(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 WAC 388-877-0300 through 388-877-0680; and

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

(i) General requirements in WAC 388-877-0420; and

(ii) Program-specific requirements in WAC 388-877-1000 through 388-877-1025.

(3) An agency providing opioid treatment program 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 use disorder.

(4) An agency must:

(a) Use ASAM criteria 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 substance use disorder;

(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 use disorder;

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

(iv) Family planning; and

(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; and

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

(iii) Laboratory testing;

(iv) The response to medical and psychiatric emergencies; and

(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 opioid treatment withdrawal management 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 opioid treatment program 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 withdrawal management 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 withdrawal management treatment; and

(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 opioid treatment program 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 individual record system complies with all federal and state reporting requirements relevant to opioid drugs approved for use in treatment of opioid use disorder; and

(d) The death of an individual enrolled in an opioid treatment program is reported to the department within one business day.

NEW SECTION

WAC 388-877-1005 Opioid treatment programs (OTP)—Agency certification requirements. An agency applying to provide opioid treatment program services must do all of the following:

(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 authority, in order to secure a location for the new opioid 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 authority or their designee, in order to minimize the impact of the opioid 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; and

(b) For new applicants who operate opioid 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 an opioid treatment program by:

(a) The Washington state department of health board of pharmacy;

(b) The federal Center for Substance Abuse Treatment (CSAT), Substance Abuse and Mental Health Administration (SAMHSA), as required by 42 C.F.R. Part 8 for certification as an opioid treatment program; and

(c) The federal Drug Enforcement Administration (DEA).

(4) An agency must ensure that the opioid treatment program 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 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 388-877-1010 Opioid treatment programs (OTP)—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 substance use disorder opioid treatment program 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; and

(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 at least one staff member has documented training in:

(a) Family planning;

(b) Prenatal health care; and

(c) Parenting skills.

(5) 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 opioid overdose.

NEW SECTION

WAC 388-877-1015 Opioid treatment programs (OTP)—Clinical record content and documentation requirements. In addition to the general clinical record content requirements in WAC 388-877-0640, an agency providing substance use disorder opioid treatment program services

must maintain an individual's clinical record. The clinical record must contain:

(1) Documentation that the agency made a good faith effort to review if the individual is enrolled in any other opioid treatment program and take appropriate action;

(2) Documentation that the individual received a copy of the rules and responsibilities for treatment participants, including the potential use of interventions or sanction;

(3) Documentation that the individual service plan was reviewed quarterly and semi-annually after two years of continuous treatment;

(4) Documentation when an individual refuses to provide a drug testing specimen sample. The refusal is considered a positive drug screen specimen;

(5) 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; and

(6) Documentation of all medical services (see WAC 388-877-1020 and 388-877-1025 regarding program physician responsibility and medication management).

NEW SECTION

WAC 388-877-1020 Opioid treatment programs (OTP)—Program physician responsibility. An agency providing substance use disorder opioid treatment program 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; or

(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 opioid use disorder consistent with the current and applicable Diagnostic and Statistical Manual of Mental Disorders (DSM-5) criteria, and an assessment for appropriateness for Sunday and holiday take-home medication;

(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 substance use disorder, health risks, and benefits the opioid treatment medication may have on the individual and the fetus;

(b) The risk of not initiating opioid treatment medication on the individual and the fetus; and

(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 opioid treatment program agency, justification granting permission must be documented in the individual's clinical record at each agency;

(9) Each individual admitted to withdrawal management services must have an approved withdrawal management schedule that is medically appropriate;

(10) Each individual administratively discharged from services must have an approved withdrawal management 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 withdrawal management episodes within twelve consecutive months; and

(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 388-877-1025 Opioid treatment programs (OTP)—Medication management. An agency providing substance use disorder opioid treatment program services must ensure the medication management requirements in this section are met.

(1) An agency must use only those opioid treatment medications that are approved by 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 use disorder.

(2) An agency providing an opioid treatment program 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 treatment med-

ications are approved by the Food and Drug Administration for use in the treatment of opioid use disorder:

(a) Methadone; and

(b) Buprenorphine.

(3) An agency providing opioid treatment program services 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 opioid abstinence symptoms; and

(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.

(4) An agency providing an opioid treatment program services must ensure that:

(a) Each opioid 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; and

(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.

(5) An agency providing opioid treatment program services must ensure that all take-home medications are:

(a) Consistent with 42 C.F.R. Part 8.12 (i)(1) through (5) and are authorized only to stable individuals who:

(i) Have received opioid 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; and

(d) Not allowed in short-term withdrawal management or interim maintenance treatment.

(6) 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).

Chapter 388-877 WAC

SECTION ELEVEN—WITHDRAWAL MANAGEMENT, RESIDENTIAL SUBSTANCE USE DISORDER, AND MENTAL HEALTH INPATIENT SERVICES

NEW SECTION

WAC 388-877-1100 Withdrawal management services—Adults. Substance use disorder withdrawal management 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 ASAM criteria. For secure withdrawal management and stabilization services for individuals who have been involuntarily committed, see WAC 388-877-1104.

(1) A behavioral health agency certified for adult withdrawal management services may choose to also become certified to provide youth withdrawal management services (see WAC 388-877-1102).

(2) An agency providing withdrawal management 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 substance use disorder 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 WAC 388-877-0300 through 388-877-0680; and

(d) Have policies and procedures to support and implement the specific requirements in this section.

(3) An agency must:

(a) Use ASAM criteria for admission, continued services, and discharge planning and decisions;

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

(i) Substance use disorder and motivation; and

(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; and

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

(4) Ensure that each staff member providing withdrawal management services to an individual, with the exception of licensed staff members and chemical dependency professionals, completes a minimum of forty hours of documented training before being assigned individual care duties. This personnel training must include the following topics:

(a) Substance use disorders;

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

(c) Withdrawal screening, admission, and signs of trauma.

(5) In addition to the general clinical record content requirements in WAC 388-877-0640, an agency providing substance use disorder withdrawal management services must maintain an individual's clinical record that contains:

(a) Documentation of a substance use disorder screening before admission;

(b) 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;

(c) Documentation that the individual received HIV/AIDS information and a brief risk intervention and referral as indicated; and

(d) 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 388-877-1102 Withdrawal management services—Youth. Youth withdrawal management services are substance use disorder services provided to an individual seventeen years of age or younger. In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680 and the adult withdrawal management requirements in WAC 388-877-1100, an agency providing youth withdrawal management services must do all of the following:

(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; and

(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) 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 substance use disorders is available at the facility or available by phone.

NEW SECTION

WAC 388-877-1104 Secure withdrawal management and stabilization services—Adults. Secure withdrawal management and stabilization services are provided to an individual to assist in the process of withdrawal from psychoactive substances in a safe and effective manner, or medically stabilize an individual after acute intoxication, in accordance with ASAM criteria and chapters 71.05 and 71.34 RCW.

(1) In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680, an agency must:

(a) Meet the requirements for withdrawal management services in WAC 388-877-1100; and

(b) Designate a physician or chemical dependency professional as the professional person as defined in RCW 71.05.020 in charge of clinical services at that facility.

(2) An agency certified to provide secure withdrawal management and stabilization services must have the following policies and procedures:

(a) Policies to ensure that services are provided in a secure environment. "Secure" means having:

(i) All doors and windows leading to the outside locked at all times;

(ii) Visual monitoring, either by line of sight or camera as appropriate to the individual;

(iii) Adequate space to segregate violent or potentially violent persons from others;

(iv) The means to contact law enforcement immediately in the event of an elopement from the facility; and

(v) Adequate numbers of staff present at all times that are trained in facility security measures;

(b) Policies to ensure compliance with WAC 246-337-110 regarding seclusion and restraint;

(c) Procedures for admitting individuals needing secure withdrawal management and stabilization services seven days a week, twenty-four hours a day;

(d) Procedures to ensure that once an individual has been admitted, if a medical condition develops that is beyond the facility's ability to safely manage, the individual will be transported to the nearest hospital for emergency medical treatment;

(e) Procedures to assure access to necessary medical treatment, including emergency life-sustaining treatment and medication;

(f) Procedures to assure the protection of individual and family rights as described in WAC 388-877-1122, rights related to antipsychotic medication in WAC 388-877-1124, and rights as described in chapters 71.05 and 71.34 RCW;

(g) Procedures to inventory and safeguard the personal property of the individual being detained, including a process to limit inspection of the inventory list by responsible relatives or other persons designated by the detained individual;

(h) Procedures to assure that a chemical dependency professional and licensed physician are available for consultation and communication with the direct patient care staff twenty-four hours a day, seven days a week;

(i) Procedures to warn an identified person and law enforcement when an adult has made a threat against an identified victim as explained in RCW 70.02.050 and in compliance with 42 C.F.R. Part 2;

(j) Procedures to ensure that individuals detained for up to fourteen or ninety additional days of treatment are evaluated by the professional staff of the facility in order to be prepared to testify that the individual's condition is caused by a substance use disorder and either results in likelihood of serious harm or the individual being gravely disabled.

(3) An agency providing secure withdrawal management and stabilization services must document that each individual has received evaluations to determine the nature of the disorder and the treatment necessary, including:

(a) A telephone screening by a nurse, as defined in chapter 18.79 RCW, prior to admission that includes current level of intoxication, available medical history, and known medical risks;

(b) An evaluation by a chemical dependency professional within seventy-two hours of admission to the facility; and

(c) An assessment for substance use disorder and additional mental health disorders or conditions, using the global appraisal of individual needs - short screener (GAIN-SS) or its successor.

(4) For individuals admitted to the secure withdrawal management and stabilization facility, the clinical record must contain:

(a) A statement of the circumstances under which the person was brought to the unit;

(b) The admission date and time;

(c) The date and time when the involuntary detention period ends;

(d) A determination of whether to refer to a designated crisis responder to initiate civil commitment proceedings;

(e) If an individual is admitted voluntarily and appears to meet the criteria for initial detention, documentation that an evaluation was performed by a designated crisis responder within the time period required in RCW 71.05.050, the results of the evaluation, and the disposition;

(f) Review of the client's current crisis plan, if applicable and available; and

(g) Review of the admission diagnosis and what information the determination was based upon.

(5) An agency certified to provide secure withdrawal management and stabilization services must ensure the treatment plan includes all of the following:

(a) A protocol for safe and effective withdrawal management, including medications as appropriate;

(b) Discharge assistance provided by chemical dependency professionals, including facilitating transitions to appropriate voluntary or involuntary inpatient services or to less restrictive alternatives as appropriate for the individual.

(6) An agency certified to provide secure withdrawal management and stabilization services must ensure that each staff member providing withdrawal management 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:

- (a) Substance use disorders;
- (b) Infectious diseases, to include hepatitis and tuberculosis (TB); and
- (c) Withdrawal screening, admission, and signs of trauma.

NEW SECTION

WAC 388-877-1106 Secure withdrawal management and stabilization services—Youth. In addition to the requirements for secure withdrawal and stabilization services in WAC 388-877-1100, an agency certified to provide secure withdrawal management and stabilization services to youth must meet the following requirements:

- (1) Requirements for withdrawal management services for youth in WAC 388-877-1102;
- (2) Requirements for the posting of individual rights for minors in WAC 388-877-1120; and
- (3) Requirements for inpatient services for minors found in WAC 388-877-1128, 388-877-1130, and 388-877-1132.

NEW SECTION

WAC 388-877-1108 Residential substance use disorder treatment services—General. Residential treatment services provide substance use disorder treatment for an individual in a facility with twenty-four hours a day supervision.

- (1) Residential treatment services include:
 - (a) Intensive inpatient services, ASAM level 3.5;
 - (b) Recovery house treatment services, ASAM level 3.1;
 - (c) Long-term residential treatment services, ASAM level 3.1; and
 - (d) Youth residential services, ASAM levels 3.1, 3.5, and 3.7.

(2) An agency certified to provide 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 substance use disorder 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 WAC 388-877-0300 through 388-877-0680;

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

- (i) General requirements in WAC 388-877-0420; and
- (ii) Specific applicable requirements in WAC 388-877-1110 through 388-877-1116;

(e) Use ASAM criteria for admission, continued services, and discharge planning and decisions;

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

- (i) Substance use disorders;
- (ii) Relapse prevention;
- (iii) Blood borne pathogens; and
- (iv) Tuberculosis (TB);

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

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

(h) 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;

- (i) Screen for the prevention and control of tuberculosis;
- (j) Limit the size of group counseling sessions to no more than twelve individuals;

(k) Have written procedures for:

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

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

(l) The individual service plan is initiated with at least one goal identified by the individual during the initial assessment or at the first service session following the assessment.

(3) 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.

(4) 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 388-877-0820.

NEW SECTION

WAC 388-877-1110 Residential substance use disorder treatment services—Intensive inpatient services. (1) Intensive inpatient services are substance use disorder residential treatment services that provide a concentrated program of individual and group counseling, education, and activities for an individual who has completed withdrawal management and the individual's family to address overall functioning and to demonstrate aspects of recovery lifestyle.

(2) In addition to meeting the applicable behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680 and the residential treatment services requirements in WAC 388-877-1108, an agency certified to provide intensive inpatient services must:

- (a) Complete the individual service plan within five days of admission;
- (b) Conduct and document at least weekly, one face-to-face individual substance use disorder counseling session with the individual;
- (c) 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) Document at least weekly, an individual service plan review which determines continued stay needs and progress towards goals; and
- (e) Provide treatment services in line with ASAM 3.5 components appropriate to youth or adults.

NEW SECTION

WAC 388-877-1112 Residential substance use disorder treatment services—Recovery house. (1) Recovery house services are substance use disorder residential treatment services that provide a program of care and treatment with social, vocational, and recreational activities to aid in individual adjustment to abstinence, relapse prevention, recovery skills development, and to aid in job training, employment, or participating in other types of community services.

(2) In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680 and the residential treatment services requirements in WAC 388-877-1108, an agency certified to provide recovery house services must:

- (a) Provide no less than five hours per week of treatment services in line with ASAM level 3.1;
- (b) 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; and
- (c) Conduct and document an individual service plan review at least monthly.

NEW SECTION

WAC 388-877-1114 Residential substance use disorder treatment services—Long-term treatment services. (1) Long-term treatment services are substance use disorder 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.

(2) In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680 and the residential treatment services requirements in WAC 388-877-1108 an agency certified to provide long-term treatment services must:

- (a) Provide an individual a minimum of two hours each week of individual or group counseling;
- (b) Provide no less than five hours per week of treatment services in line with ASAM 3.1 components;
- (c) 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;
- (d) Provide an individual, during the course of services, with:
 - (i) Education on social and coping skills, relapse prevention, and recovery skills development;
 - (ii) Social and recreational activities;
 - (iii) Assistance in seeking employment, when appropriate; and
 - (iv) Assistance with re-entry living skills to include seeking and obtaining safe housing; and
- (e) Conduct and document an individual service plan review at least monthly.

NEW SECTION

WAC 388-877-1116 Residential substance use disorder treatment services—Youth residential services. Youth residential services are substance use disorder residential treatment services provided to an individual seventeen years of age or younger in accordance with ASAM criteria. In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0300 through 388-877-0680 and the residential treatment services requirements in WAC 388-877-1108 an agency certified to provide youth residential services must do all of the following:

- (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; and

(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) 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; and

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

NEW SECTION

WAC 388-877-1118 Mental health inpatient services—General. (1) Inpatient services include the following types of behavioral health services certified by the division of behavioral health and recovery:

- (a) Evaluation and treatment services;
- (b) Child long term inpatient program (CLIP);
- (c) Crisis stabilization units;
- (d) Triage services; and
- (e) Competency evaluation and treatment services;

(2) An agency providing inpatient 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 substance use disorder 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 WAC 388-877-0100 through 388-877-0680;

(d) Meet the applicable inpatient services requirements in WAC 388-877-1118 through 388-877-1132;

(e) Have policies and procedures to support and implement the specific applicable program-specific requirements; and

(f) If applicable, have policies to ensure compliance with WAC 246-337-110 regarding seclusion and restraint.

(3) The behavioral health agency providing inpatient services must document the development of an individualized annual training plan, to include at least:

(a) Least restrictive alternative options available in the community and how to access them;

(b) Methods of individual care;

(c) De-escalation training and management of assaultive and self-destructive behaviors, including proper and safe use of seclusion and restraint procedures; and

(d) The requirements of chapter 71.05 and 71.34 RCW, this chapter, and protocols developed by the division of behavioral health and recovery.

(4) If contract staff are providing direct services, the facility must ensure compliance with the training requirements outlined in subsection (4) of this section.

NEW SECTION

WAC 388-877-1120 Mental health inpatient services—Posting of individual rights for minors. A behavioral health agency providing inpatient services to minors must ensure that the rights listed in RCW 71.34.355 are prominently posted in the facility and provided in writing to the individual in a language or format that the individual can understand.

NEW SECTION

WAC 388-877-1122 Mental health inpatient services—Rights of individuals receiving inpatient services. The behavioral health agency providing inpatient services must ensure that the rights listed in RCW 71.05.360 and 71.05.217 are prominently posted in the facility and provided in writing to the individual in a language or format that the individual can understand.

NEW SECTION

WAC 388-877-1124 Mental health inpatient services—Rights related to antipsychotic medication. All individuals have a right to make an informed decision regard-

ing the use of antipsychotic medication consistent with the provisions of RCW 71.05.215 and 71.05.217. The provider must develop and maintain a written protocol for the involuntary administration of antipsychotic medications, including all of the following requirements:

(1) The clinical record must document all of the following:

(a) An attempt to obtain informed consent.

(b) The individual was asked if they wish to decline treatment during the twenty-four hour period prior to any court proceeding wherein the individual has the right to attend and is related to their continued treatment. The answer must be in writing and signed when possible. In the case of a child under the age of eighteen, the psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority must be able to explain to the court the probable effects of the medication.

(c) The reasons why any antipsychotic medication is administered over the individual's objection or lack of consent.

(2) The psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority may administer antipsychotic medications over an individual's objections or lack of consent only when:

(a) An emergency exists, provided there is a review of this decision by a second psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority within twenty-four hours. An emergency exists if all of the following are true:

(i) The individual presents an imminent likelihood of serious harm to self or others;

(ii) Medically acceptable alternatives to administration of antipsychotic medications are not available or are unlikely to be successful; and

(iii) In the opinion of the psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority, the individual's condition constitutes an emergency requiring that treatment be instituted before obtaining an additional concurring opinion by a second psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority.

(b) There is an additional concurring opinion by a second psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority, for treatment up to thirty days.

(c) For continued treatment beyond thirty days through the hearing on any one hundred eighty-day petition filed

under RCW 71.05.217, provided the facility medical director or director's medical designee reviews the decision to medicate an individual. Thereafter, antipsychotic medication may be administered involuntarily only upon order of the court. The review must occur at least every sixty days.

(3) The examining psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority must sign all one hundred eighty-day petitions for antipsychotic medications filed under the authority of RCW 71.05.217.

(4) Individuals committed for one hundred eighty days who refuse or lack the capacity to consent to antipsychotic medications have the right to a court hearing under RCW 71.05.217 prior to the involuntary administration of antipsychotic medications.

(5) In an emergency, antipsychotic medications may be administered prior to the court hearing provided that an examining psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority files a petition for an antipsychotic medication order the next judicial day.

(6) All involuntary medication orders must be consistent with the provisions of RCW 71.05.217, whether ordered by a psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority or the court.

NEW SECTION

WAC 388-877-1126 Mental health inpatient services—Policies and procedures—Adult. In addition to meeting the agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0100 through 388-877-0680, and the applicable inpatient service requirements in WAC 388-877-1118 through 388-877-1132, an inpatient facility must implement all of the following administrative requirements:

(1) Policies to ensure that services are provided in a secure environment. "Secure" means having:

(a) All doors and windows leading to the outside locked at all times;

(b) Visual monitoring, either by line of sight or camera as appropriate to the individual;

(c) Adequate space to segregate violent or potentially violent persons from others;

(d) The means to contact law enforcement immediately in the event of an elopement from the facility; and

(e) Adequate numbers of staff present at all times that are trained in facility security measures.

(2) Designation of a professional person as defined in RCW 71.05.020 in charge of clinical services at that facility, as appropriate to the type of inpatient services.

(3) Policies to ensure compliance with WAC 246-337-110 regarding seclusion and restraint.

(4) A policy management structure that establishes:

(a) Procedures for admitting individuals needing treatment seven days a week, twenty-four hours a day, except that child long-term inpatient treatment facilities are exempted from this requirement;

(b) Procedures to assure access to necessary medical treatment, including emergency life-sustaining treatment and medication;

(c) Procedures to assure the protection of individual and family rights as described in this chapter and chapters 71.05 and 71.34 RCW;

(d) Procedures to inventory and safeguard the personal property of the individual being detained according to RCW 71.05.220;

(e) Procedures to assure that a mental health professional, chemical dependency professional, if appropriate, and physician are available for consultation and communication with the direct patient care staff twenty-four hours a day, seven days a week;

(f) Procedures to warn an identified person and law enforcement when an adult has made a threat against an identified victim as explained in RCW 70.02.050 and in compliance with 42 C.F.R. Part 2; and

(g) Procedures to ensure that individuals detained for up to fourteen or ninety additional days of treatment are evaluated by the professional staff of the facility in order to be prepared to testify that the individual's condition is caused by a mental disorder or substance use disorder and either results in likelihood of serious harm or the individual being gravely disabled.

(5) For individuals who have been involuntarily detained, the facility must obtain a copy of the petition for initial detention stating the evidence under which the individual was detained.

(6) The facility must document that each individual has received evaluations to determine the nature of the disorder and the treatment necessary, including:

(a) A health assessment of the individual's physical condition to determine if the individual needs to be transferred to an appropriate hospital for treatment;

(b) Examination and medical evaluation within twenty-four hours of admission by a licensed physician, advanced registered nurse practitioner, or physician assistant;

(c) Development of an initial treatment plan while in the facility;

(d) Consideration of less restrictive alternative treatment at the time of admission; and

(e) The admission diagnosis and what information the determination was based upon.

(7) An individual who has been delivered to the facility by a peace officer for evaluation must be evaluated by a mental health professional within the following time frames:

(a) Three hours of an adult individual's arrival;

(b) Twelve hours of arrival for a child in an inpatient evaluation and treatment facility; or

(c) At any time for a child who has eloped from a child long-term inpatient treatment facility and is being returned to the facility.

(8) If the mental health professional or chemical dependency professional and physician, physician assistant, or psy-

chiatric advanced registered nurse practitioner determine that the needs of an adult individual would be better served by placement in a another type of service facility then the individual must be referred to an more appropriate placement in accordance with RCW 71.05.210.

(9) The treatment plan must contain documentation of:

(a) Diagnostic and therapeutic services prescribed by the attending clinical staff;

(b) An individual service plan that meets the requirements of WAC 388-877-0620;

(c) Copies of advance directives, powers of attorney or letters of guardianship provided by the individual;

(d) A plan for discharge including a plan for follow-up where appropriate;

(e) Documentation of the course of treatment; and

(f) That a mental health professional or chemical dependency professional, as appropriate, has contact with each involuntary individual at least daily for the purpose of determining the need for continued involuntary treatment.

NEW SECTION

WAC 388-877-1128 Mental health inpatient services—Policies and procedures—Minors. In addition to meeting the agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0100 through 388-877-0680 and the applicable inpatient services requirements in WAC 388-877-1118 through 388-877-1132, inpatient facilities serving minor children seventeen years of age and younger must develop and implement policies and procedures to address special considerations for serving children. These special considerations must include all of the following:

(1) Procedures to ensure that adults are separated from minors who are not yet thirteen years of age.

(2) Procedures to ensure that a minor who is at least age thirteen but not yet age eighteen is served with adults only if the minor's clinical record contains:

(a) Documentation that justifies such placement; and

(b) A professional judgment that placement in an inpatient facility that serves adults will not harm the minor.

(3) Procedures to ensure examination and evaluation of a minor by a children's mental health specialist occurs within twenty-four hours of admission.

(4) Procedures to ensure a facility that provides inpatient services for minors and is licensed by the department of health under chapter 71.12 RCW, meets the following notification requirements if a minor's parent(s) brings the child to the facility for the purpose of behavioral health treatment or evaluation:

(a) Provide a written and oral notice to the minor's parent(s) or legal representative(s) of:

(i) All current statutorily available treatment options available to the minor including, but not limited to, those provided in chapter 71.34 RCW; and

(ii) A description of the procedures the facility will follow to utilize the treatment options; and

(b) Obtain and place in the clinical file, a signed acknowledgment from the minor's parent(s) that the notice required under (a) of this subsection was received.

(5) Procedures that address provisions for evaluating a minor brought to the facility for evaluation by a parent(s).

(6) Procedures to notify child protective services any time the facility has reasonable cause to believe that abuse, neglect, financial exploitation or abandonment of a minor has occurred.

(7) Procedures to ensure a minor thirteen years or older who is brought to an inpatient facility or hospital for immediate behavioral health services is evaluated by the professional person in charge of the facility. The professional person must evaluate the minor's condition and determine the need for behavioral health inpatient treatment, and the minor's willingness to obtain voluntary treatment. The facility may detain or arrange for the detention of the minor up to twelve hours for evaluation by a designated crisis responder to commence detention proceedings.

(8) Procedures to ensure that the admission of a minor thirteen years of age or older admitted without parental consent has the concurrence of the professional person in charge of the facility and written review and documentation no less than every one hundred eighty days.

(9) Procedures to ensure that notice is provided to the parent(s) when a minor child is voluntarily admitted to inpatient treatment without parental consent within twenty-four hours of admission in accordance with the requirements of RCW 71.34.510 and within the confidentiality requirements of 42 C.F.R. Sec. 2.14.

(10) Procedures to ensure a minor who has been admitted on the basis of a designated crisis responder petition for detention is evaluated by the facility providing seventy-two hour inpatient services to determine the minor's condition and either admit or release the minor. If the minor is not approved for admission, the facility must make recommendations and referral for further care and treatment as necessary.

(11) Procedures for the examination and evaluation of a minor approved for inpatient admission to include:

(a) The needs to be served by placement in a secure withdrawal management or evaluation and treatment facility;

(b) Restricting the right to associate or communicate with a parent(s); and

(c) Advising the minor of rights in accordance with chapter 71.34 RCW.

(12) Procedures to petition for fourteen-day commitment that are in accordance with RCW 71.34.730.

(13) Procedures for commitment hearing requirements and release from further inpatient treatment that may be subject to reasonable conditions, if appropriate, and are in accordance with RCW 71.34.740.

(14) Procedures for discharge and conditional release of a minor in accordance with RCW 71.34.770, provided that the professional person in charge gives the court written notice of the release within three days of the release. If the minor is on a one hundred eighty-day commitment, the children's long-term inpatient program (CLIP) administrator must also be notified.

(15) Procedures to ensure rights of a minor undergoing treatment and posting of such rights are in accordance with RCW 71.34.355, 71.34.620, and 71.34.370.

(16) Procedures for the release of a minor who is not accepted for admission or who is released by an inpatient facility that are in accordance with RCW 71.34.365.

(17) Procedures to ensure treatment of a minor and all information obtained through treatment under this chapter are disclosed only in accordance with applicable state and federal law.

(18) Procedures to make court records and files available that are in accordance with RCW 71.34.335.

(19) Procedures to release behavioral health services information only in accordance with applicable state and federal statutes.

NEW SECTION

WAC 388-877-1130 Mental health inpatient services—Treatment of a minor without consent of parent.

An inpatient evaluation and treatment, approved inpatient substance use disorder facility, or secure withdrawal management and stabilization facility may admit a minor child who is at least thirteen years of age and not older than seventeen years of age without the consent of the minor's parent(s) if the requirements of RCW 71.34.500 through 71.34.530 are met.

NEW SECTION

WAC 388-877-1132 Mental health inpatient services—Treatment of a minor without consent of minor.

An inpatient evaluation and treatment facility, approved inpatient substance use disorder facility, or secure withdrawal management and stabilization facility may admit, evaluate, and treat a minor child seventeen years of age or younger without the consent of the minor if the minor's parent(s) brings the minor to the facility, if the requirements of RCW 71.34.600 through 71.34.660 are met.

NEW SECTION

WAC 388-877-1134 Mental health inpatient services—Evaluation and treatment services.

In addition to meeting the agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0100 through 388-877-0680, and the applicable inpatient services requirements in WAC 388-877-1118 through 388-877-1132 an agency providing evaluation and treatment services must ensure:

(1) Designation of a physician or other mental health professional as the professional person as defined in RCW 71.05.020 in charge of clinical services at that facility; and

(2) A policy management structure that establishes:

(a) Procedures to assure appropriate and safe transportation for persons who are not approved for admission to his or her residence or other appropriate place;

(b) Procedures to detain arrested persons who are not approved for admission for up to eight hours so that reasonable attempts can be made to notify law enforcement to return to the facility and take the person back into custody;

(c) Procedures to assure the rights of individuals to make mental health advance directives, and facility protocols for responding to individual and agent requests consistent with RCW 71.32.150;

(d) Procedures to ensure that if the facility releases the individual to the community, the facility informs the peace officer of the release within a reasonable period of time after the release if the peace officer has specifically requested notification and has provided contact information to the facility;

(e) Procedures to document that each individual has received evaluations to determine the nature of the disorder and the treatment necessary, including a psychosocial evaluation by a mental health professional; and

(f) For individuals who are being evaluated as dangerous mentally ill offenders under RCW 72.09.370(7), the professional person in charge of the evaluation and treatment facility must consider filing a petition for a ninety day less restrictive alternative in lieu of a petition for a fourteen-day commitment.

NEW SECTION

WAC 388-877-1136 Mental health inpatient services—Exception—Long-term certification. (1) For adults: At the discretion of the division of behavioral health and recovery (DBHR), a facility may be granted an exception in order to allow the facility to be certified to provide treatment to adults on a ninety or one hundred eighty-day inpatient involuntary commitment orders.

(2) For children: At the discretion of DBHR, a facility that is certified as a 'mental health inpatient evaluation and treatment facility' may be granted an exception to provide treatment to a child on a one hundred and eighty-day inpatient involuntary treatment order only until the child is discharged from his/her order to the community, or until a bed is available for that child in a child long-term inpatient treatment facility (CLIP). The child cannot be assigned by the CLIP placement team in accordance with RCW 71.34.100 to any facility other than a CLIP facility.

(3) The exception certification may be requested by the facility, the director of DBHR or their designee, or the behavioral health organization for the facility's geographic area.

(4) The facility receiving the long-term exception certification for ninety or one hundred eighty-day patients must meet all requirements found in WAC 388-877-1134.

(5) The exception certification must be signed by the director of DBHR. The exception certification may impose additional requirements, such as types of consumers allowed and not allowed at the facility, reporting requirements, requirements that the facility immediately report suspected or alleged incidents of abuse, or any other requirements that the director of DBHR determines are necessary for the best interests of residents.

(6) DBHR may make unannounced site visits at any time to verify that the terms of the exception certification are being met. Failure to comply with any term of the exception certification may result in corrective action. If DBHR determines that the violation places residents in imminent jeopardy, immediate revocation of the certification can occur.

(7) Neither individuals nor facilities have fair hearing rights as defined under chapter 388-02 WAC regarding the decision to grant or not to grant exception certification.

NEW SECTION

WAC 388-877-1138 Mental health inpatient services—Child long-term inpatient program (CLIP). In addition to meeting the agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0100 through 388-877-0680, the applicable inpatient services requirements in WAC 388-877-1118 through 388-877-1132, and the evaluation and treatment service requirements of 388-877-1134, child long-term inpatient treatment facilities must develop a written plan for assuring that services provided are appropriate to the developmental needs of children, including all of the following:

(1) If there is not a child psychiatrist on the staff, there must be a child psychiatrist available for consultation.

(2) There must be a psychologist with documented evidence of skill and experience in working with children available either on the clinical staff or by consultation, responsible for planning and reviewing psychological services and for developing a written set of guidelines for psychological services.

(3) There must be a registered nurse, with training and experience in working with psychiatrically impaired children, on staff as a full-time or part-time employee who must be responsible for all nursing functions.

(4) There must be a social worker with experience in working with children on staff as a full-time or part-time employee who must be responsible for social work functions and the integration of these functions into the individual treatment plan.

(5) There must be an educational/vocational assessment of each resident with appropriate educational/vocational programs developed and implemented or assured on the basis of that assessment.

(6) There must be an occupational therapist available who has experience in working with psychiatrically impaired children responsible for occupational therapy functions and the integration of these functions into treatment.

(7) There must be a recreational therapist available who has had experience in working with psychiatrically impaired children responsible for the recreational therapy functions and the integration of these functions into treatment.

(8) Disciplinary policies and practices must be stated in writing and all of the following must be true:

(a) Discipline must be fair, reasonable, consistent and related to the behavior of the resident. Discipline, when needed, must be consistent with the individual treatment plan.

(b) Abusive, cruel, hazardous, frightening or humiliating disciplinary practices must not be used. Seclusion and restraints must not be used as punitive measures. Corporal punishment must not be used.

(c) Disciplinary measures must be documented in the medical record.

(9) Residents must be protected from assault, abuse and neglect. Suspected or alleged incidents of nonaccidental injury, sexual abuse, assault, cruelty or neglect to a child must be reported to a law enforcement agency or to the department of social and health services and comply with chapter 26.44 RCW.

(10) Orientation material must be made available to any facility personnel, clinical staff or consultants informing practitioners of their reporting responsibilities and requirements. Appropriate local police and department phone numbers must be available to personnel and staff.

(11) When suspected or alleged abuse is reported, the medical record must reflect the fact that an oral or written report has been made to the child protective services of DSHS or to a law enforcement agency. This note must include the date and time that the report was made, the agency to which it was made and the signature of the person making the report. Contents of the report need not be included in the medical record.

NEW SECTION

WAC 388-877-1140 Mental health inpatient services—Crisis stabilization unit—Agency facility and administrative standards. In addition to meeting the agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0100 through 388-877-0680 and the applicable inpatient services requirements in WAC 388-877-1118 through 388-877-1132, an agency certified to provide crisis stabilization unit services must meet all of the following criteria:

- (1) Be licensed by the department of health.
- (2) If a crisis stabilization unit is part of a jail, the unit must be located in an area of the building that is physically separate from the general population. "Physically separate" means:
 - (a) Out of sight and sound of the general population at all times;
 - (b) Located in an area with no foot traffic between other areas of the building, except in the case of emergency evacuation; and
 - (c) Has a secured entrance and exit between the unit and the rest of the facility.
- (3) The professional person in charge of administration of the unit must be a mental health professional.
- (4) Have a policy management structure that establishes:
 - (a) Procedures to ensure that for persons who have been brought to the unit involuntarily by police, the stay is limited to twelve hours unless the individual has signed voluntarily into treatment;
 - (b) Procedures to ensure that within twelve hours of the time of arrival to the crisis stabilization unit, individuals who have been detained by a designated crisis responder under chapter 71.05 or 70.96B RCW are transferred to a certified evaluation and treatment facility;
 - (c) Procedures to assure appropriate and safe transportation of persons who are not approved for admission or detained for transfer to an evaluation and treatment facility, and if not in police custody, to their respective residence or other appropriate place;
 - (d) Procedures to detain arrested persons who are not approved for admission for up to eight hours so that reasonable attempts can be made to notify law enforcement to return to the facility and take the person back into custody;
 - (e) Procedures to ensure that a mental health professional is on-site twenty-four hours a day, seven days a week;

(f) Procedures to ensure that a licensed physician is available for consultation to direct care staff twenty-four hours a day, seven days a week;

(g) Procedures to ensure that the following requirements are met when an individual is brought to the facility by a peace officer under RCW 71.05.153:

(i) Within twelve hours of arrival, a designated crisis responder (DCR) must determine if the individual meets detention criteria under chapter 71.05 RCW; and

(ii) If the facility releases the individual to the community, the facility must inform the peace officer of the release within a reasonable period of time after the release if the peace officer has specifically requested notification and has provided contact information to the facility;

(h) Procedures to ensure the rights of persons to make mental health advance directives;

(i) Procedures to establish unit protocols for responding to the provisions of the advanced directives consistent with RCW 71.32.150; and

(j) Procedures to assure that restraint and seclusion are utilized only to the extent necessary to ensure the safety of patients and others, and in accordance with WAC 246-337-110, 246-322-180, and 246-320-745(6).

(5) Prominently post within the crisis stabilization unit the rights stated in WAC 388-877-1122, Mental health inpatient services—Rights of individuals receiving inpatient services, and provide them in writing to the individual in a language or format that the individual can understand.

NEW SECTION

WAC 388-877-1142 Mental health inpatient services—Crisis stabilization unit—Admission, assessment, and records. (1) For persons who have been brought to the unit involuntarily by police:

- (a) The clinical record must contain:
 - (i) A statement of the circumstances under which the person was brought to the unit;
 - (ii) The admission date and time; and
 - (iii) The date and time when the twelve hour involuntary detention period ends; and
- (b) The evaluation required in subsection (2)(b) of this section must be performed within three hours of arrival at the facility.
- (2) For all persons, the clinical record must contain:
 - (a) An assessment for substance use disorder and co-occurring mental health and substance abuse disorder, utilizing the global appraisal of individual needs - short screener (GAIN-SS) or its successor;
 - (b) An evaluation by a mental health professional to include at a minimum:
 - (i) Mental status examination;
 - (ii) Assessment of risk of harm to self, others, or property; and
 - (iii) Determination of whether to refer to a designated crisis responder (DCR) to initiate civil commitment proceedings;
 - (c) Documentation that an evaluation by a DCR was performed within the required time period, the results of the evaluation, and the disposition of the person;

(d) Review of the person's current crisis plan, if applicable and available;

(e) The admission diagnosis and what information the determination was based upon;

(f) Assessment and stabilization services provided by the appropriate staff;

(g) Coordination with the person's current treatment provider, if applicable; and

(h) A plan for discharge, including a plan for follow up that includes:

(i) The name, address, and telephone number of the provider of follow-up services; and

(ii) The follow up appointment date and time, if known.

(3) For persons admitted to the crisis stabilization unit on a voluntary basis, the clinical record must contain a crisis stabilization plan developed collaboratively with the person within twenty-four hours of admission that includes:

(a) Strategies and interventions to resolve the crisis in the least restrictive manner possible;

(b) Language that is understandable to the person and members of the person's support system; and

(c) Measurable goals for progress toward resolving the crisis and returning to an optimal level of functioning.

(4) If antipsychotic medications are administered, the clinical record must document:

(a) The physician's attempt to obtain informed consent for antipsychotic medication; and

(b) The reasons why any antipsychotic medication is administered over the person's objection or lack of consent.

NEW SECTION

WAC 388-877-1144 Mental health inpatient services—Triage—Agency facility and administrative requirements. Under chapter 71.05 RCW, the department certifies facilities to provide triage services that assess and stabilize an individual, or determine the need for involuntary commitment. The department does not require a facility licensed by the department of health (DOH) that was providing assessment and stabilization services under chapter 71.05 RCW as of April, 22, 2011, to relicense or recertify under these rules. A request for an exemption must be made to DOH and the department.

(1) In addition to meeting the agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0100 through 388-877-0680 and the applicable inpatient services requirements in WAC 388-877-1118 through 388-877-1132, an agency certified to provide triage services must:

(a) Be licensed by the department of health (DOH) as a residential treatment facility;

(b) Meet the requirements for voluntary admissions under this chapter;

(c) Meet the requirements for involuntary admissions under this chapter if it elects to operate and be certified as a triage involuntary placement facility;

(d) Ensure that the facility and its services are accessible to individuals with disabilities, as required by applicable federal, state, and local laws; and

(e) Admit only individuals who are eighteen years of age and older.

(2) If a triage facility is collocated in another facility, there must be a physical separation. Physically separate means the triage facility is located in an area with no resident foot traffic between the triage facility and other areas of the building, except in case of emergencies.

(3) A triage facility must have, at a minimum, all of the following:

(a) A designated person in charge of administration of the triage unit.

(b) A mental health professional (MHP) on-site twenty-four hours a day, seven days a week.

(c) A written program description that includes:

(i) Program goals;

(ii) Identification of service categories to be provided;

(iii) Length of stay criteria;

(iv) Identification of the ages or range of ages of individual populations to be served;

(v) A statement that only an individual eighteen years of age or older may be admitted to the triage facility; and

(vi) Any limitation or inability to serve or provide program services to an individual who:

(A) Requires acute medical services;

(B) Has limited mobility;

(C) Has limited physical capacity for self-care; or

(D) Exhibits physical violence.

(d) Written procedures to ensure a secure and safe environment. Examples of these procedures are:

(i) Visual monitoring of the population environment by line of sight, mirrors or electronic means;

(ii) Having sufficient staff available twenty-four hours a day, seven days a week to meet the behavioral management needs of the current facility population; and

(iii) Having staff trained in facility security and behavioral management techniques.

(e) Written procedures to ensure that an individual is examined by an MHP within three hours of the individual's arrival at the facility.

(f) Written procedures to ensure that a designated crisis responder (DCR) evaluates a voluntarily admitted individual for involuntary commitment when the individual's behavior warrants an evaluation.

(g) A written declaration of intent and written procedures that are in accordance with WAC 246-337-110 if the triage facility declares intent to provide either seclusion or restraint or both.

(i) The seclusion or restraint may only be used to the extent necessary for the safety of the individual or others and only used when all less restrictive measures have failed; and

(ii) The facility must clearly document in the clinical record:

(A) The threat of imminent danger;

(B) All less restrictive measures that were tried and found to be ineffective; and

(C) A summary of each seclusion and restraint event, including a debriefing with staff members and the individual regarding how to prevent the occurrence of similar incidents in the future.

(h) Written procedures to facilitate appropriate and safe transportation, if necessary, for an individual who is:

- (i) Not being held for either police custody, or police pick up, or both;
- (ii) Denied admission to the triage facility; or
- (iii) Detained for transfer to a certified evaluation and treatment facility.

(4) The triage facility must document that each staff member has the following:

(a) Adequate training regarding the least restrictive alternative options available in the community and how to access them;

(b) Training that meets the requirements of RCW 71.05.720 on safety and violence;

(c) Training that meets the requirements of RCW 71.05.705 if the triage facility is performing outreach services;

(d) Adequate training regarding methods of health care as defined in WAC 246-337-005(19); and

(e) Adequate training regarding the proper and safe use of seclusion and restraint procedures if the triage facility employs these techniques.

(5) The triage facility must ensure:

(a) Each clinical supervisor and each clinical staff member meets the qualifications of a mental health professional;

(b) A clinical staff member who does not meet the qualifications for an MHP is supervised by an MHP if the staff member provides direct services to individuals; and

(c) A contracted staff member who provides direct services to individuals meets the requirements of this section.

NEW SECTION

WAC 388-877-1146 Mental health inpatient services—Triage—Admission, assessment, and records. An agency certified to provide triage services must ensure the requirements in this section are met for each voluntary and involuntary admission. See WAC 388-877-1152(2) for additional requirements for an individual brought to a triage involuntary placement facility by a peace officer. See WAC 388-877-1152(3) for additional requirements for an individual involuntarily admitted to a triage involuntary placement facility based on a peace officer-initiated twelve-hour hold.

(1) Each individual must be assessed for substance use disorder and co-occurring mental health and substance abuse disorder as measured by the global appraisal on individual need-short screen (GAIN-SS) as it existed on the effective date of this section, or such subsequent date consistent with the purposes of this section. The clinical record must contain the results of the assessment.

(2) Each individual must be assessed by a mental health professional (MHP) within three hours of the individual's arrival at the facility.

(a) The assessment must include, at a minimum:

(i) A brief history of mental health or substance abuse treatment; and

(ii) An assessment of risk of harm to self, others, or grave disability.

(b) The MHP must request:

(i) The names of treatment providers and the treatment provided; and

(ii) Emergency contact information.

(c) The MHP must document all of the following in the individual's clinical record:

(i) All the information obtained in (a) and (b) of this subsection.

(ii) Sufficient information to demonstrate medical necessity. Medical necessity is defined in the state plan as "A term for describing a requested service which is reasonably calculated to prevent, diagnose, correct, cure, alleviate or prevent the worsening of conditions in the recipient that endanger life, or cause suffering or pain, or result in illness or infirmity, or threaten to cause or aggravate a handicap, or cause physical deformity or malfunction, and there is no other equally effective, more conservative or substantially less costly course of treatment available or suitable for the person requesting service. For the purpose of this chapter "course of treatment" may include mere observation, or where appropriate, no treatment at all."

(iii) Sufficient clinical information to justify a provisional diagnosis using criteria in the current and applicable Diagnostic and Statistical Manual of Mental Disorders (DSM-5).

(3) Each individual must receive a health care screening to determine the individual's health care needs.

(a) The health care screening instrument must be provided by a licensed health care provider defined in WAC 246-337-005(22). A licensed health care provider must be available to staff for staff consultation twenty-four hours a day, seven days a week.

(b) The individual's clinical record must contain the results of the health care screening.

(4) A qualified staff member according to WAC 388-877-1144(4) must coordinate with the individual's current treatment provider, if applicable, to assure continuity of care during admission and upon discharge.

(5) Each individual's clinical record must:

(a) Contain a statement regarding the individual circumstances and events that led to the individual's admission to the facility;

(b) Document the admission date and time;

(c) Contain the results of the health care screening required in subsection (3) of this section;

(d) Document the date and time of a referral to a designated crisis responder (DCR), if a referral was made;

(e) Document the date and time of release, or date and time the twelve-hour hold ended; and

(f) Document any use of seclusion or restraint and include:

(i) Documentation that the use of either seclusion, or restraint, or both, occurred only due to the individual being an imminent danger to self or others; and

(ii) A description of the less restrictive measures that were tried and found to be ineffective.

(6) A triage facility that declares any intent to provide seclusion, or restraint, or both, to an individual may do so only to the extent necessary for the safety of others and in accordance with WAC 246-322-180, 246-337-110, and 246-320-271. See also WAC 388-877-1144 (3)(g).

(7) A triage facility must document the efforts and services provided to meet the individual's triage stabilization plan.

(8) A triage facility must document the date, time, and reason an individual's admission status changed from involuntary to voluntary.

NEW SECTION

WAC 388-877-1148 Mental health inpatient services—Triage—Stabilization plan. A triage stabilization plan must be developed for each individual voluntarily or involuntarily admitted to a triage facility for longer than twenty-four hours. For an individual admitted twenty-four hours or less, the facility must document the results of the assessment performed by a mental health professional (MHP) required under WAC 388-877-1146.

(1) The triage stabilization plan must:

(a) Be developed collaboratively with the individual within twenty-four hours of admission;

(b) Either improve or resolve the individual's crisis, or both in the least restrictive manner possible;

(c) Be written in a language that is understandable to the individual or the individual's support system, or both, if applicable;

(d) Be mindful of the individual's culture, life style, economic situation, and current mental and physical limitation;

(e) Have goals that are relevant to the presenting crisis and demonstrate how they impact the crisis by improving the individual's ability to function;

(f) Include any recommendation for treatment from the mental health professional (MHP) assessment provided with three hours of the individual's arrival at the facility; and

(g) Include:

(i) The date and time the designated crisis responder (DCR) evaluated the individual in accordance with the detention criteria under chapter 71.05 RCW; and

(ii) The DCR's determination of whether the individual should be detained.

(2) The individual's clinical record must:

(a) Contain a copy of the triage stabilization plan;

(b) Contain charting that demonstrates how requirements of the individual's triage stabilization were met; and

(c) Document the services provided to the individual.

NEW SECTION

WAC 388-877-1150 Mental health inpatient services—Triage—Discharge. A triage facility must:

(1) Provide discharge services for each individual:

(a) Voluntarily admitted to the facility; or

(b) Involuntarily admitted to the facility if the individual is not transferred to another facility;

(2) Coordinate with the individual's current treatment provider, if applicable, to transition the individual back to the provider; and

(3) Develop a discharge plan and follow-up services from the triage facility that includes:

(a) The name, address, and telephone number of the provider;

(b) The designated contact person; and

(c) The appointment date and time for the follow-up services, if appropriate.

NEW SECTION

WAC 388-877-1152 Mental health inpatient services—Triage—Involuntary. An agency that elects to provide triage involuntary services must meet all of the following requirements:

(1) The agency must have a memo of understanding developed in consultation with local law enforcement agencies, which details the population that the facility has capacity to serve. The memo of understanding must include, at a minimum, a description of the facility's:

(a) Capacity to serve individuals with any medication, medical, or accommodation needs;

(b) Capacity to serve individuals with behavioral management needs;

(c) Ability to provide either seclusion, or restraint, or both, to individuals;

(d) Notification procedures for discharge of individuals; and

(e) Procedures for notifying the appropriate law enforcement agency of an individual's release, transfer, or hold for up to twelve hours to allow the peace officer to reclaim the individual.

(2) Agencies must have written procedures to ensure all of the following for individuals brought to a triage involuntary placement facility by a peace officer:

(a) An individual detained by the designated crisis responder (DCR) under chapter 71.05 RCW with a confirmed admission date to an evaluation and treatment facility, may remain at the triage facility until admitted to the evaluation and treatment facility.

(i) The individual may not be detained to the triage facility; and

(ii) An individual who agrees to a voluntary stay must provide a signature that documents the agreement.

(b) The individual is examined by a mental health professional (MHP) within three hours of the individual's arrival at the facility, and the examination includes an assessment to determine if a DCR evaluation is also required.

(c) If it is determined a DCR evaluation is required, the DCR must evaluate the individual within twelve hours of arrival. The DCR determines whether the individual:

(i) Meets detention criteria under chapter 71.05 RCW; or

(ii) Agrees to accept voluntary admission by providing their signature agreeing to voluntary treatment.

(3) Agencies must ensure the clinical record includes all of the following for individuals involuntarily admitted to a triage involuntary placement facility based on a peace officer-initiated twelve-hour hold:

(a) The date and time the individual arrived at the facility and the date and time the examination by the mental health professional (MHP) occurred. The examination must occur within three hours of the individual's arrival to the facility.

(b) The peace officer's:

(i) Determination for cause to have the individual transported to the facility;

(ii) Request to be notified if the individual leaves the facility and how the peace officer is to be contacted, or documentation of other person(s) permitted to be contacted, such as the shift supervisor of the law enforcement agency or dispatcher; and

(iii) Request that the individual be held for the duration of the twelve hours to allow the peace officer sufficient time to return and make a determination as to whether or not to take the individual into custody.

(c) A copy of the evaluation if the individual is determined by a DCR to meet detention criteria under chapter 71.05 RCW.

NEW SECTION

WAC 388-877-1154 Mental health inpatient services—Competency evaluation and restoration. A behavioral health agency may provide competency evaluation and restoration treatment services to individuals under chapter 10.77 RCW when the department's division of behavioral health and recovery (DBHR) certifies the services.

(1) In addition to meeting the agency licensure, certification, administration, personnel, and clinical requirements in WAC 388-877-0100 through 388-877-0680 and the inpatient services requirements in WAC 388-877-1118 through 388-877-1132, an agency providing competency evaluation and restoration services must be licensed by the department of health as:

(a) A residential treatment facility consistent with chapter 246-337 WAC;

(b) A general hospital consistent with chapter 246-320 WAC;

(c) A private psychiatric hospital consistent with chapter 246-322 WAC; or

(d) An inpatient evaluation and treatment facility as provided in WAC 388-877-1134 and consistent with chapter 246-337 WAC.

(2) The administrative policies and procedures must include:

(a) Designation of a psychiatrist as the professional person in charge of clinical services at the agency;

(b) Procedures to assure the protection of individual participant rights in WAC 388-877-1156; and

(c) Procedures to assure that seclusion and restraint are used only to the extent necessary to ensure the safety of the individual see WAC 388-877-1158.

(3) The clinical record must include all of the following:

(a) A copy of the court order and charging documents. If the order is for competency restoration treatment and the competency evaluation was provided by a qualified expert or professional person who was not designated by the secretary, a copy of all previous court orders related to competency or criminal insanity provided by the state and a copy of any evaluation reports must be included.

(b) A copy of the discovery materials, including, at a minimum, a statement of the individual's criminal history.

(c) A copy of the individual's medical clearance information.

(d) All diagnostic and therapeutic services prescribed by the attending clinical staff members.

(e) Specific targets and strategies for restoring competency to include periodic assessments of gains on these targets.

(f) Participation of a multidisciplinary team that includes at a minimum:

(i) A physician, advanced registered nurse practitioner (ARNP), or physician assistant certified (PA-C);

(ii) A nurse, if the person in (f)(i) of this subsection is not an ARNP; and

(iii) A mental health professional.

(g) Participation of other multidisciplinary team members, which may include a psychologist and chemical dependency professional.

(h) All assessments and justification for the use of seclusion or restraint.

(4) The initial assessment must include:

(a) The individual's:

(i) Identifying information;

(ii) Specific barriers to competence;

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

(iv) Medical concerns;

(v) Medications currently taken;

(vi) Brief mental health history; and

(vii) Brief substance use history, including tobacco use;

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

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

(5) To determine the nature of the disorder and the treatment necessary, the agency must ensure that the individual receives the following assessments and document in the client's record the date provided:

(a) A health assessment of the individual's physical condition to determine if the individual needs to be transferred to an appropriate hospital for treatment;

(b) An examination and medical evaluation within twenty-four hours by a physician, advanced registered nurse practitioner, or physician assistant;

(c) A psychosocial evaluation by a mental health professional; and

(d) A competency to stand trial evaluation conducted by a licensed psychologist, or a copy of a competency to stand trial evaluation using the most recent competency evaluation, if an evaluation has already been conducted.

(6) If a state hospital transfers an individual to an agency for competency restoration treatment, the agency must review the individual's completed admission assessment from the state hospital to assure it meets the requirements of subsection (3) of this section for initial assessments. The agency must update the assessment as needed. If the state hospital has not completed or has only partially completed an assessment for the individual, the agency must complete the assessment according to the requirements in subsections (2) and (3) of this section.

(7) The agency must ensure the individual service plan is completed within seven days of admission and is updated every ninety days.

NEW SECTION**WAC 388-877-1156 Mental health inpatient services—Competency evaluation and restoration—Rights.**

(1) An agency providing competency evaluation and restoration treatment services must develop a statement of individual participant rights to ensure an individual's rights are protected. The statement must incorporate at a minimum all of the following. 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 services and, as an individual participant, the right to refuse participation in any religious practice;

(c) Reasonable accommodation in case of sensory or physical disability, limited ability to communicate, limited English proficiency, or cultural differences;

(d) Respect, dignity and privacy, except that agency staff members may conduct reasonable searches to detect and prevent possession or use of contraband on the premises;

(e) Be free of 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 rules and laws;

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

(i) Receive a copy of the agency complaint and grievance procedures upon request and to lodge a complaint or grievance with the agency if you believe your rights have been violated; and

(j) File a complaint with the department when you believe the agency has violated a Washington Administrative Code (WAC) requirement that regulates facilities.

(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) Posted in public areas;

(c) Available in alternative formats for an individual who is visually impaired;

(d) Translated to a primary or preferred language identified by an individual who does not speak English as the primary language, and who has a limited ability to read, speak, write, or understand English; and

(e) Available to any individual 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, the 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 either a medicare or medicaid provider, or both, must ensure an individual seeking or participating in competency evaluation or restoration treatment services, or the person legally responsible for the individual is informed of the medicaid rights at time of admission in a manner that is

understandable to the individual or legally responsible person.

NEW SECTION**WAC 388-877-1158 Mental health inpatient services—Competency evaluation and restoration—Seclusion and restraint.**

(1) An individual receiving either competency evaluation or restoration treatment services, or both has the right to be free from seclusion and restraint, including chemical restraint except as otherwise provided in this section or otherwise provided by law. The agency must do all of the following:

(a) Develop, implement, and maintain policies and procedures to ensure that seclusion and restraint procedures are used only to the extent necessary to ensure the safety of an individual and in accordance with WAC 246-322-180 or 246-337-110, whichever is applicable.

(b) Ensure that the use of seclusion or restraint occurs only when there is imminent danger to self or others and less restrictive measures have been determined to be ineffective to protect the individual or other from harm and the reasons for the determination are clearly documented in the individual's clinical record.

(c) Ensure staff members notify and receive authorization by a physician, physician assistant (PA) or advanced registered nurse practitioner (ARNP) within one hour of initiating an individual's seclusion or restraint.

(d) Ensure the individual is informed of the reasons for use of seclusion or restraint and the specific behaviors which must be exhibited in order to gain release from a seclusion or restraint procedure.

(e) Ensure that an appropriate clinical staff member observes the individual at least every fifteen minutes and the observation is recorded in the individual's clinical record.

(f) If the use of seclusion or restraint exceeds twenty-four hours, ensure that a physician has assessed the individual and has written a new order if the intervention will be continued. This procedure must be repeated for each twenty-four hour period that seclusion or restraint is used.

(2) The agency must ensure all assessments and justification for the use of either seclusion or restraint, or both, are documented in the individual's clinical record.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-810-005	What is the purpose of this chapter?
WAC 388-810-010	What definitions apply to this chapter?
WAC 388-810-020	What are the qualifications to be a county chemical dependency program coordinator?
WAC 388-810-030	What are the qualifications to be a county-designated chemical dependency specialist?

WAC 388-810-040	Who determines the service priorities for the county chemical dependency prevention, treatment, and support program?	WAC 388-865-0578	Minor children seventeen years of age and younger—Admission, evaluation, and treatment without the minor's consent—Evaluation and treatment facility.
WAC 388-810-050	How are available funds allocated for the county chemical dependency program?	WAC 388-865-0580	Child long-term inpatient treatment facilities.
WAC 388-810-060	How much money can a county claim for the administration of its chemical dependency prevention, treatment, and support program?	WAC 388-865-0585	Petition for the right to possess a firearm.
WAC 388-810-070	How will funds be made available to the county?	WAC 388-865-0700	Clubhouse certification.
WAC 388-810-080	May a county subcontract for chemical dependency prevention, treatment, and support services?	WAC 388-865-0705	Definitions.
WAC 388-810-090	How does a county request an exemption?	WAC 388-865-0710	Required clubhouse components.
WAC 388-865-0500	Inpatient evaluation and treatment facilities.	WAC 388-865-0715	Management and operational requirements.
WAC 388-865-0511	Evaluation and treatment facility certification and fee requirements.	WAC 388-865-0720	Certification process.
WAC 388-865-0520	Certification based on deemed status.	WAC 388-865-0725	Employment-related services—Requirements.
WAC 388-865-0531	Exception to rule—Long-term certification.	WAC 388-865-0750	Crisis stabilization unit certification.
WAC 388-865-0536	Standards for administration—Inpatient evaluation and treatment facilities.	WAC 388-865-0755	Standards for administration—Crisis stabilization units.
WAC 388-865-0541	Admission and intake evaluation.	WAC 388-865-0760	Admission and intake evaluation.
WAC 388-865-0545	Use of seclusion and restraint procedures—Adults.	WAC 388-865-0765	Use of seclusion and restraint procedures within the crisis stabilization unit.
WAC 388-865-0546	Use of seclusion and restraint procedures—Children.	WAC 388-865-0770	Assessment and stabilization services—Documentation requirements.
WAC 388-865-0547	Plan of care/treatment.	WAC 388-865-0775	Qualification requirements for staff.
WAC 388-865-0551	Qualification requirements for staff.	WAC 388-865-0780	Posting of rights.
WAC 388-865-0561	Posting of consumer rights.	WAC 388-865-0785	Rights related to antipsychotic medications.
WAC 388-865-0566	Rights of consumers receiving involuntary services.	WAC 388-865-0800	Triage facility—Definitions.
WAC 388-865-0570	Rights related to antipsychotic medication.	WAC 388-865-0810	Triage facility—General requirements for certification.
WAC 388-865-0575	Special considerations for serving minor children.	WAC 388-865-0820	Triage facility—Memo of understanding and other requirements.
WAC 388-865-0576	Minor children ages thirteen through seventeen—Admission, treatment, and discharge without parental consent—Evaluation and treatment facility.	WAC 388-865-0830	Triage facility—Seclusion and restraint.
		WAC 388-865-0840	Triage facility—Admission, assessment, and clinical record requirements for voluntary and involuntary admissions.
		WAC 388-865-0850	Triage facility—Triage stabilization plan.
		WAC 388-865-0860	Triage facility—Discharge services for voluntary and involuntary admissions.
		WAC 388-865-0870	Triage facility—Staff requirements.

WAC 388-865-0880	Triage facility—Posting of individual rights.	WAC 388-877A-0170	Outpatient mental health services—Case management services.
WAC 388-865-0900	Competency evaluation and restoration treatment services—General.	WAC 388-877A-0180	Optional outpatient mental health services requiring program-specific certification—Psychiatric medication services.
WAC 388-865-0910	Competency evaluation and restoration treatment services—Certification and fee requirements.	WAC 388-877A-0190	Optional outpatient mental health services requiring program-specific certification—Day support services.
WAC 388-865-0920	Competency evaluation and restoration treatment services—Administrative policies and procedures.	WAC 388-877A-0195	Optional outpatient mental health services requiring program-specific certification—Less restrictive alternative (LRA) support services.
WAC 388-865-0930	Competency evaluation and restoration treatment services—Agency staff requirements.	WAC 388-877A-0197	Outpatient mental health services—Residential treatment facility (RTF).
WAC 388-865-0940	Competency evaluation and restoration treatment services—Individual participant rights.	WAC 388-877A-0200	Crisis mental health services—General.
WAC 388-865-0950	Competency evaluation and restoration treatment services—Admission and initial assessment.	WAC 388-877A-0210	Crisis mental health services—Agency staff requirements.
WAC 388-865-0960	Competency evaluation and restoration treatment services—Individual service plan.	WAC 388-877A-0220	Crisis mental health services—Record content and documentation requirements.
WAC 388-865-0970	Competency evaluation and restoration treatment services—Seclusion and restraint.	WAC 388-877A-0230	Crisis mental health services—Telephone support services.
WAC 388-877-0530	Personnel—Agency requirements for volunteers and student practicum.	WAC 388-877A-0240	Crisis mental health services—Outreach services.
WAC 388-877-0630	Clinical—Individual clinical record system.	WAC 388-877A-0260	Crisis mental health services—Stabilization services.
WAC 388-877A-0100	Outpatient mental health services—General.	WAC 388-877A-0270	Crisis mental health services—Peer support services.
WAC 388-877A-0110	Outpatient mental health services—Agency staff requirements.	WAC 388-877A-0280	Crisis mental health services—Emergency involuntary detention services.
WAC 388-877A-0120	Outpatient mental health services—Clinical record content and documentation.	WAC 388-877A-0300	Recovery support services that require program-specific certification—General.
WAC 388-877A-0130	Outpatient mental health services—Assessment standards.	WAC 388-877A-0310	Recovery support services requiring program-specific certification—Agency staff requirements.
WAC 388-877A-0135	Outpatient mental health services—Individual service plan.	WAC 388-877A-0320	Recovery support services requiring program-specific certification—Clinical record content and documentation.
WAC 388-877A-0138	Outpatient mental health services—Individual treatment services.	WAC 388-877A-0330	Recovery support services that require program-specific certification—Supported employment services.
WAC 388-877A-0140	Outpatient mental health services—Brief intervention treatment.	WAC 388-877A-0335	Recovery support services that require program-specific certification—Supportive housing services.
WAC 388-877A-0150	Outpatient mental health services—Group therapy services.		
WAC 388-877A-0155	Outpatient mental health services—Family therapy services.		

WAC 388-877A-0340	Recovery support services requiring program-specific certification—Peer support services.	WAC 388-877B-0270	Substance use disorder residential treatment services requiring program-specific certification—Long-term treatment services.
WAC 388-877A-0350	Recovery support services requiring program-specific certification—Wraparound facilitation services.	WAC 388-877B-0280	Substance use disorder residential treatment services requiring program-specific certification—Youth residential services.
WAC 388-877A-0360	Recovery support services requiring program-specific certification—Medication support services.	WAC 388-877B-0300	Substance use disorder outpatient treatment services—General.
WAC 388-877A-0370	Recovery support services requiring program-specific certification—Applied behavior analysis (ABA) services.	WAC 388-877B-0310	Substance use disorder outpatient treatment services—Agency staff requirements.
WAC 388-877B-0100	Substance use disorder detoxification services—General.	WAC 388-877B-0320	Substance use disorder outpatient treatment services—Clinical record content and documentation.
WAC 388-877B-0110	Substance use disorder detoxification services—Agency staff requirements.	WAC 388-877B-0330	Substance use disorder outpatient treatment services—Additional assessment standards.
WAC 388-877B-0120	Substance use disorder detoxification services—Clinical record content and documentation requirements.	WAC 388-877B-0340	Substance use disorder outpatient treatment services—Noncompliance reporting requirements.
WAC 388-877B-0130	Substance use disorder detoxification services requiring program-specific certification—Youth detoxification services.	WAC 388-877B-0350	Substance use disorder outpatient treatment services requiring program-specific certification—Level II intensive outpatient services.
WAC 388-877B-0200	Substance use disorder residential treatment services—General.	WAC 388-877B-0360	Substance use disorder outpatient treatment services requiring program-specific certification—Level I outpatient treatment services.
WAC 388-877B-0210	Substance use disorder residential treatment services—Agency staff requirements.	WAC 388-877B-0370	Substance use disorder outpatient treatment services—Substance use disorder counseling subject to RCW 46.61.5056.
WAC 388-877B-0220	Substance use disorder residential treatment services—Clinical record content and documentation requirements.	WAC 388-877B-0400	Substance use disorder opiate substitution treatment services—General.
WAC 388-877B-0230	Substance use disorder residential treatment services—Additional assessment standards.	WAC 388-877B-0405	Substance use disorder opiate substitution treatment services—Certification.
WAC 388-877B-0240	Substance use disorder residential treatment services—Noncompliance reporting requirements.	WAC 388-877B-0410	Substance use disorder opiate substitution treatment services—Agency staff requirements.
WAC 388-877B-0250	Substance use disorder residential treatment services requiring program-specific certification—Intensive inpatient services.	WAC 388-877B-0420	Substance use disorder opiate substitution treatment services—Clinical record content and documentation requirements.
WAC 388-877B-0260	Substance use disorder residential treatment services requiring program-specific certification—Recovery house.	WAC 388-877B-0430	Substance use disorder opiate substitution treatment services—Additional assessment standards.

- WAC 388-877B-0440 Substance use disorder opiate substitution treatment services—Program physician responsibility.
- WAC 388-877B-0450 Substance use disorder opiate substitution treatment services—Medication management.
- WAC 388-877B-0500 Substance use disorder assessment services—General.
- WAC 388-877B-0510 Substance use disorder assessment only services—Agency staff requirements.
- WAC 388-877B-0530 Substance use disorder assessment only services—Additional assessment standards.
- WAC 388-877B-0540 Substance use disorder assessment services—Noncompliance reporting requirements.
- WAC 388-877B-0550 Substance use disorder assessment only services requiring program-specific certification—DUI assessment services.
- WAC 388-877B-0600 Substance use disorder information and assistance services—General.
- WAC 388-877B-0610 Substance use disorder information and assistance services—Agency staff requirements.
- WAC 388-877B-0630 Substance use disorder information and assistance services requiring program-specific certification—Alcohol and drug information school services.
- WAC 388-877B-0640 Substance use disorder information and assistance services requiring program-specific certification—Information and crisis services.
- WAC 388-877B-0650 Substance use disorder information and assistance services requiring program-specific certification—Emergency service patrol services.
- WAC 388-877B-0660 Substance use disorder information and assistance services requiring program-specific certification—Screening and brief intervention services.
- WAC 388-877B-0700 Substance use disorder recovery support services that require program-specific certification—General.
- WAC 388-877B-0710 Substance use disorder recovery support services that require program-specific certification—Agency staff requirements.
- WAC 388-877B-0720 Substance use disorder recovery support services that require program-specific certification—Clinical record content and documentation.
- WAC 388-877B-0730 Substance use disorder recovery support services that require program-specific certification—Supported employment services.
- WAC 388-877B-0740 Substance use disorder recovery support services that require program-specific certification—Supportive housing services.
- WAC 388-877C-0100 Problem and pathological gambling services—General.
- WAC 388-877C-0110 Problem and pathological gambling services—Agency staff requirements.
- WAC 388-877C-0120 Problem and pathological gambling services—Clinical record content and documentation requirements.
- WAC 388-877C-0130 Problem and pathological gambling services—Additional assessment standards.

WSR 17-24-105**PROPOSED RULES****COLUMBIA RIVER****GORGE COMMISSION**

[Filed December 6, 2017, 7:43 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: Amendments to land use ordinance to be consistent with recent revisions to the National Scenic Area (NSA) management plan.

Hearing Location(s): On February 13, 2018, at 9:00 a.m., at the Best Western Hood River Inn, 1108 East Marina Way, Hood River, Oregon. 9:00 a.m. is the beginning of the commission meeting. The precise time of this rule-making hearing will be available when the agenda is finalized approximately one week before the meeting.

Date of Intended Adoption: February 13, 2018.

Submit Written Comments to: Jeffrey Litwak, Counsel, Columbia River Gorge Commission, P.O. Box 730, White Salmon, WA 98672, email jeff.litwak@gorgecommission.org, by January 29, 2017 [2018].

Assistance for Persons with Disabilities: Contact Nancy Andring, phone 509-493-3323 x0, email nancy.andring@gorgecommission.org, by January 29, 2017 [2018].

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These amendments to the Gorge Commission's National Scenic Area Land Use Ordinance for Klickitat County make the ordinance consistent with recent amendments to the NSA management plan. The amendments add two definitions and specify when new development proposals must be reviewed for cumulative effects to scenic, cultural, natural, and recreational resources in NSA. The amendments codify language already adopted into the management plan and largely codify the commission staff's existing practice.

Reasons Supporting Proposal: The amendments are necessary to comply with Columbia River Gorge National Scenic Area Act, 16 U.S.C. §§ 544 to 544p. The National Scenic Area Act requires that when the commission revises the management plan, all land use ordinances implementing the management plan must be revised to be consistent with the management plan.

Statutory Authority for Adoption: 16 U.S.C. §§ 544e(c), 544f(1); RCW 43.97.015; ORS 196.150.

Statute Being Implemented: 16 U.S.C. §§ 544e(c), 544f(1); RCW 43.97.015; ORS 196.150.

Rule is necessary because of federal law, federal court decision and state court decision, 16 U.S.C. §§ 544e(c), 544f(1); *Friends of the Columbia Gorge v. Schafer*, 624 F. Supp. 2d 1253 (D. Or. 2008); *Friends of the Columbia Gorge v. Columbia River Gorge Commission*, 248 Or. App. 301 (2012).

Name of Proponent: Columbia River Gorge Commission, governmental.

Name of Agency Personnel Responsible for Drafting: Jeffrey Litwak, P.O. Box 730, White Salmon, WA 98672, 509-493-3323; Implementation and Enforcement: Krystyna Wolniakowski, P.O. Box 730, White Salmon, WA 98672, 509-493-3323.

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

A cost-benefit analysis is not required under RCW 34.05.328. Exempt under RCW 34.05.328 [(5)(b)(iii)].

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: 16 U.S.C. § 544 to 544p. Noncompliance would result in a violation of the Columbia River Gorge Compact with Oregon, litigation and a court order to enact these rules.

Explanation of exemptions: The amendments are being made solely to comply with 16 U.S.C. §§ 544e(c) and 544f(1), and two court decisions: *Friends of the Columbia Gorge v. Schafer*, 624 F. Supp. 2d 1253 (D. Or. 2008); *Friends of the Columbia Gorge v. Columbia River Gorge Commission*, 248

Or. App. 301 (2012). The amendments codify language already contained in the management plan for NSA.

December 6, 2017
Nancy A. Andring
Rules Coordinator

AMENDATORY SECTION (Amending WSR 105-11-054 [05-11-054], filed May 16, 2005)

350-81-020. Definitions

As used in Commission Rule 350-81, unless otherwise noted, the following words and their derivations shall have the following meanings:

(1) **Accepted agricultural practice:** A mode of operation that is common to farms or ranches of similar nature, necessary for the operation of such farms or ranches to obtain a profit in money and customarily utilized in conjunction with agricultural use.

(2) **Accessory structure/building:** A structure or detached building whose use is incidental and subordinate to that of the main use of the property, and that is located on the same parcel as the main building or use. The term "detached" means that the main building and accessory building do not share a common wall. An accessory building connected to the main building by a breezeway is a detached building.

(3) **Active wildlife site:** A wildlife site that has been used within the past 5 years by a sensitive wildlife species.

(4) **Addition:** An extension or increase in the area or height of an existing building.

(5) Adversely affect or Adversely affecting: A reasonable likelihood of more than moderate adverse consequences for the scenic, cultural, recreation or natural resources of the scenic area, the determination of which is based on—

(a) the context of a proposed action;

(b) the intensity of a proposed action, including the magnitude and duration of an impact and the likelihood of its occurrence;

(c) the relationship between a proposed action and other similar actions which are individually insignificant but which may have cumulatively significant impacts; and

(d) proven mitigation measures which the proponent of an action will implement as part of the proposal to reduce otherwise significant effects to an insignificant level.

(56) **Agency official:** The federal, state, or local agency head or designee who has authority over a proposed project.

(67) **Agricultural specialist (SMA):** A person such as a county extension agent with a demonstrated knowledge of farming operations, and a demonstrated ability to interpret and recommend methods to implement regulations pertaining to agriculture. Such abilities are usually obtained through a combination of higher education and experience.

(78) **Agricultural structure/building:** A structure or building located on a farm or ranch and used in the operation for the storage, repair, and maintenance of farm equipment and supplies or for the raising and/or storage of crops and livestock. These include, but are not limited to: barns, silos, workshops, equipment sheds, greenhouses, wind machines (orchards), processing facilities, storage bins and structures.

(89) **Agricultural use:** The current employment of land for the primary purpose of obtaining a profit in money by

raising, harvesting, and selling crops; or by the feeding, breeding, management, and sale of, or production of, live-stock, poultry, fur-bearing animals or honeybees; or for dairying and the sale of dairy products; or any other agricultural or horticultural use, including Christmas trees. Current employment of land for agricultural use includes:

(a) The operation or use of farmland subject to any agriculture-related government program.

(b) Land lying fallow for 1 year as a normal and regular requirement of good agricultural husbandry.

(c) Land planted in orchards or other perennials prior to maturity.

(d) Land under buildings supporting accepted agricultural practices.

Agricultural use does not include livestock feedlots.

(10) Air: The mixture of gases comprising the Earth's atmosphere.

(911) Anadromous fish: Species of fish that migrate upstream to freshwater after spending part of their life in the ocean (saltwater).

(1012) Anaerobic: A condition in which molecular oxygen is absent (or effectively so) from the environment.

(1113) Aquaculture: The cultivation, maintenance, and harvesting of aquatic species.

(1214) Aquatic area: The water area of a stream, pond, or lake measured at the ordinary high water mark.

(1315) Archaeological resources: See cultural resource.

(1416) Archival research: Research in primary documents that is likely to yield information regarding human occupation of the area in question, including but not limited to deed, census, cartographic, and judicial records.

(1517) Bed and breakfast inn: An establishment located in a structure designed as a single-family dwelling where more than two rooms but fewer than six rooms are rented on a daily basis. Bed and breakfast inns are clearly incidental to the use of a structure as a single-family dwelling and are owner occupied and operated. Bed and breakfast inns operate as transient accommodations, not as rooming or boarding houses.

(1618) Best management practices: Conservation techniques and management measures that (1) control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins, and sediment; (2) minimize adverse affects to groundwater and surface-water flow and circulation patterns; and (3) maintain the chemical, biological, and physical characteristics of wetlands, ponds, streams, and riparian areas.

(1719) Biodiversity (SMA): A diversity of biological organisms at the genetic, species, ecosystem, and landscape levels.

(1820) Boat landing: Cleared area or developed structure used to facilitate launching or retrieving watercraft.

(1921) Buffer zone: An area adjacent to a wetland, stream, pond, or other sensitive area that is established and managed to protect sensitive natural resources from human disturbance. In instances that involve a wetland, stream, or pond, the buffer zone includes all or a portion of the riparian area.

(2022) Building: Any structure used or intended for supporting or sheltering any use or occupancy. Buildings have a roof supported by columns or walls. They include, but are not limited to, dwellings, garages, barns, sheds and shop buildings.

(2123) Camping or recreational vehicle: A vacation trailer, camper, self-propelled vehicle, or structure equipped with wheels for highway use that is intended for recreational purposes, but not for residential purposes, and is equipped with plumbing, sink, or toilet. A camping or recreational vehicle shall be considered a dwelling unit if it is connected to a sewer system (including septic tank), water, and electrical lines or is occupied on the same parcel for more than 60 days in any consecutive 12-month period.

(2224) Campsite: Single camping unit, that usually consists of a cleared, level area for a tent, and may include a parking spur, fire ring, table, and other amenities.

(2325) Capability: The ability of land to produce forest or agricultural products due to characteristics of the land itself, such as soil, slope, exposure, or other natural factors.

(2426) Canopy closure (SMA): For forest practices, the percentage measuring the degree to which one layer of a tree canopy blocks sunlight or obscures the sky as measured from below.

(2527) Cascadian architecture (SMA): Architectural style using native rock work, large timber, and steeply pitched roofs in a rustic manner.

(2628) Catastrophic situations (SMA): Forces such as fire, insect and disease infestations, and earth movements.

(2729) Childcare center: A facility providing daycare to three or more children, but not including:

(a) The provision of care that is primarily educational, unless provided to a preschool child for more than 4 hours a day.

(b) The provision of care that is primarily supervised training in a specific subject, including but not limited to dancing, gymnastics, drama, music or religion.

(c) The provision of short-term care related to or associated with group athletic or social activities.

(d) The provision of daycare in the provider's home in the family living quarters for less than 13 children.

(2830) Columbia River Gorge National Scenic Area Graphic Signing System: Sign design standards developed for the Scenic Area for public signs in and adjacent to public road rights-of-way.

(2931) Commercial development/use: Any facility or use of land or water whose function is primarily retail buying or selling of goods or services or both. This does not include fruit or produce stands.

(3032) Commercial forest products: These include timber for lumber, pulp, and firewood for commercial purposes.

(3133) Commercial recreation: Any private (non-governmental) recreational activity or facility on privately owned land, excluding nonprofit facilities. This does not include operation of a public recreation facility by a private vendor.

(3234) Community facility: Basic utilities and services necessary to support public service needs, including but not limited to water and power utilities, sanitation facilities, pub-

lic microwave stations and communication facilities, schools, roads and highways. This does not include sanitary landfills.

(3335) Consulting parties (cultural resources): Organizations or individuals who submit substantive written comments to a local government in a timely manner because they are concerned with the effects of a proposed use on cultural resources.

(3436) Contiguous land: Parcels or other lands that are under the same ownership and have a common boundary, regardless of whether or not portions of the parcels have separate tax lot numbers, lie in different counties, lie in different sections or government lots, lie in different land use or zoning designations, or are separated by public or private roads. Contiguous land does not include parcels that meet only at a single point.

(3537) Counties: The six counties within the Scenic Area: Hood River, Multnomah, and Wasco in Oregon, and Clark, Skamania, and Klickitat in Washington.

(3638) Created opening (SMA): A created forest opening with less than 40 percent average canopy closure of overstorey trees and less than 60 percent average canopy closure of understorey trees averaging less than 5 inches diameter at breast height for coniferous forests and less than 25 percent total canopy cover for oak woodlands. This definition does not include agricultural fields.

(3739) Creation (wetlands): A human activity that converts an upland into a wetland. This definition presumes that the area to be converted has not been a wetland in recent times (100 to 200 years).

(3840) Cultivation: Any activity that prepares land for raising crops by turning, breaking, or loosening the soil. Cultivation includes plowing, harrowing, leveling, and tilling.

(3941) Cultural resource: Evidence of human occupation or activity that is important in the history, architecture, archaeology or culture of a community or region. Cultural resources include, but are not limited to, the following:

(a) Archaeological resources. Physical evidence or ruins of human occupation or activity that are located on or below the surface of the ground and are at least 50 years old.

Archaeological resources include, but are not limited to, the remains of houses, villages, camp and fishing sites, and cave shelters; rock art such as petroglyphs and pictographs; artifacts such as arrowheads, utensils, tools, fragments of tools and utensils, obsidian flakes or other material byproducts from tool and utensil-making activities; and graves, human remains, and associated artifacts.

(b) Historic buildings and structures. Standing or above-ground buildings and structures that are at least 50 years old.

Historic buildings and structures include, but are not limited to, log cabins, barns, canals, flumes, pipelines, highways, and tunnels.

(c) Traditional cultural properties. Locations, buildings, structures, and objects that are associated with cultural beliefs, customs, or practices of a living community that are rooted in that community's history and are important in maintaining the continuing cultural identity of the community.

Traditional cultural properties include, but are not limited to, a location associated with the traditional beliefs of a Native American group about its origins or its cultural history; a location where a community has traditionally carried

out artistic or other cultural practices important in maintaining its historical identity; and a location where Native American religious practitioners have historically gone, and go today, to perform ceremonial activities. Objects may include petroglyphs, pictographs, rock cairns or other rock structures, trees, and rock outcrops.

(4042) Cumulative effects: The combined effects of two or more activities. The effects may be related to the number of individual activities, or to the number of repeated activities on the same piece of ground. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.

(4143) Cut: An area where soil or earth is excavated or removed in conjunction with development activities.

(4244) Dedicated site: An area actively devoted to the current use and as delineated on the site plan.

(4345) Deer and elk winter range: Areas normally used, or capable of being used, by deer and elk from December through April.

(4446) Destruction of wetlands: Loss of the wetlands or any of its component parts, including the filling, draining, or other adverse effect to the sustainable functioning of the wetland.

(4547) Developed recreation: Recreational opportunities characterized by high-density use on specific sites and requiring facilities installation. Density of use, amount of site development, and type of recreation site can vary widely across the spectrum of recreation activities.

(4648) Developed road prism (SMA): The area of the ground associated with a particular road and containing the road surface, ditch, shoulder, retaining walls, or other developed features. Does not include the natural appearing portions of cut and fill slopes.

(4749) Development: Any land division or structure, including but not limited to new construction of buildings and structures, and mining, dredging, filling, grading, paving, and excavation.

(4850) Diameter at breast height (dbh): The diameter of a tree as measured at breast height.

(4951) Duplex: A building containing two dwelling units and designed for occupancy by two families.

(5052) Dwelling, single-family: A detached building containing one dwelling unit and designed for occupancy by one family only.

(5153) Dwelling unit: A single unit designed for occupancy by one family and having not more than one cooking area or kitchen.

(5254) Earth materials: Any rock, natural soil or any combination thereof. Earth materials do not include non-earth or processed materials, including, but not limited to, construction debris (e.g., concrete, asphalt, wood), organic waste (e.g., cull fruit, food waste) and industrial byproducts (e.g., slag, wood waste).

(5355) Effect on treaty rights: To bring about a change in, to influence, to modify, or to have a consequence to Indian treaty or treaty-related rights in the Treaties of 1855 with the Nez Perce, Umatilla, Warm Springs and Yakima tribes executed between the individual Indian tribes and the Congress of the United States and as adjudicated by the Federal courts.

(5456) **Emergency/disaster:** A sudden unexpected occurrence, either the result of human or natural forces, necessitating immediate action to prevent or mitigate significant loss or damage to life, health, property, essential public services, or the environment.

(5557) **Emergency/disaster response:** Actions involving any development (such as new structures, grading, or excavation) or vegetation removal that must be taken immediately in response to an emergency/disaster event (as defined above). Emergency/disaster response actions not involving any structural development or ground-disturbance (such as use of emergency transport vehicles, communications activities or traffic control measures) are not included in this definition and are not affected by these provisions.

(5658) **Endemic:** Plant and animal species that are found only in the vicinity of the Columbia River Gorge area.

(5759) **Enhancement (natural resources):** A human activity that increases one or more functions of an existing wetland, stream, lake, riparian area, or other sensitive area. Enhancement is generally limited to a wetland, stream, lake, riparian area, or other sensitive area that is degraded. Enhancing an area that is in good or excellent condition may reduce biological diversity and eliminate other natural functions and may not be desirable.

(5860) **Ephemeral streams (SMA):** streams that contain flowing water only during, and for a short duration after, precipitation events.

(5961) **Ethnography:** The descriptive and analytic study of the culture of particular groups. An ethnographer seeks to understand a group through interviews with its members and often through living in and observing it.

(6062) **Existing use or structure:** Any use or structure that was legally established. "Legally established" means: (1) the landowner or developer obtained applicable land use and building permits and complied with land use regulations and other laws that were in effect at the time the use or structure was established, or that were in effect at the time the landowner or developer corrected an improperly established use or structure; (2) the use or structure was initially operated or constructed according to those applicable permits, land use regulations and other laws, or has been operated or constructed according to permits obtained to correct an improperly established use or structure; and (3) any changes to the original use or structure must comply with all applicable permit requirements, land use regulations and other laws that were in effect at the time the change was established.

(6463) **Exploration, development (extraction and excavation), and production of mineral resources:** Includes all or any part of the process of surface, underground, or submerged mining of mineral resources. Minerals include soil, coal, clay, stone, sand, gravel, metallic ore, oil and gases and any other material or substance excavated for commercial, industrial or construction use. For the Management Plan, this definition includes all exploration and mining, regardless of area disturbed or volume mined. Production of mineral resources means the use of portable crushing, onsite stockpiling, washing, milling, screening, or sorting equipment or other similar methods of initial treatment of a mineral resource to transport to another site for use or further

processing. Secondary processing such as concrete or asphalt batch plants are considered industrial uses.

(6264) **Fill:** The placement, deposition, or stockpiling of sand, sediment, or other earth materials to create new uplands or create an elevation above the existing surface.

(6365) **Finished grade:** The final elevation of the ground level of a property after construction is completed.

(6466) **Fire break:** A break in ground cover fuels, adjacent to and surrounding buildings.

(6567) **Footprint:** The area that falls directly beneath and shares the same perimeter as a structure.

(6668) **Forbs:** Broad-leaved herbs, in contrast to ferns, fern allies, and grasses and grasslike plants.

(6769) **Foreground (SMA):** One-half mile on either side of a traveled road or trail.

(6870) **Forest health (SMA):** A measure of the robustness of forest ecosystems. Forests are deemed healthy when they have capacity across the landscape for renewal, for the maintenance of wildlife habitats, for recovery from a wide range of disturbances, and for retention of their resilience.

(6971) **Forest practice (SMA):** Any activity conducted on or directly pertaining to forested land and relating to forest ecosystem management including but not limited to growing, thinning, or removing live or dead forest tree or shrub species, road and trail construction, reforestation, fertilizing, brush control, prevention of wildfire, and suppression of diseases and insects. The removal of hazardous trees is excluded. Uses that include establishment, management or harvest of Christmas trees, nursery stock, or fiber producing tree species requiring intensive cultivation (irrigation, fertilization, etc.) and a harvest rotation of 12 years or less are considered agricultural uses.

(7072) **Forest practice (GMA):** Those activities related to the growing and harvesting of forest tree species, as defined by the Oregon Forest Practices Act or the Washington Forest Practices Act.

(7173) **Forest products:** Commodities produced from a forest, including, but not limited to, timber products, boughs, mushrooms, pine cones, and huckleberries.

(7274) **Forest stand structure (SMA):** The number, types and spacing of tree species, tree sizes, and canopy layers contained in a stand of trees.

(7375) **Forest use:** The growing, propagation, and harvesting of forest tree species and other forest products.

(7476) **Fully screened:** A description of the relative visibility of a structure where that structure is not visible as viewed from a specified vantage point (generally a key viewing area, for the purpose of the Management Plan).

(7577) **Grade (ground level):** The average elevation of the finished ground elevation as defined by the Uniform Building Code.

(7678) **Grading:** Any excavating or filling of earth materials or any combination thereof, including the land in its excavated or filled condition.

(7779) **Hazard tree (SMA):** A tree with a structural defect that will predictably result in whole or partial failure within 1.5 tree lengths of a road or maintained development. A defective tree is hazardous only when its failure could result in danger to people or damage to structures, vehicles, or other property.

(7880) **Height of building:** The greatest vertical distance between the point of lowest finished grade adjoining any exterior wall of a building and the highest point of the roof, such as the highest coping or parapet of a flat roof, the highest deck line of a mansard roof, or the highest ridge of a hip, gable, gambrel, shed or other pitched roof.

(7981) **Herbaceous:** A plant with no persistent woody stem above the ground, with characteristics of an herb.

(8082) **Herbs:** Nonwoody (herbaceous) plants, including grasses and grasslike plants, forbs, ferns, fern allies, and nonwoody vines. (Note: Seedlings of woody plants that are less than 3 feet tall shall be considered part of the herbaceous layer.)

(8183) **Historic buildings and structures:** See cultural resource.

(8284) **Historic survey:** Actions that document the form, style, integrity, and physical condition of historic buildings and structures. Historic surveys may include archival research, architectural drawings, and photographs.

(8385) **Horses, boarding of (GMA):** The stabling, feeding, and grooming, or the use of stalls for and the care of horses not belonging to the owner of the property, and related facilities, such as training arenas, corrals, and exercise tracks. These facilities are either operated for a fee or by a nonprofit organization.

(8486) **Hydric soil:** A soil that is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part.

(8587) **In-lieu sites:** Sites acquired by the Army Corps of Engineers and transferred to the Bureau of Indian Affairs for treaty fishing, in lieu of those usual and accustomed fishing areas lost by inundation from reservoir construction. These sites were acquired under the provisions of Public Law 14 and Public Law 100-581, Section 401. Additional in-lieu sites will be provided for.

(8688) **Indian tribal government:** The governing bodies of the Nez Perce Tribe (Nez Perce Tribal Executive Committee), the Confederated Tribes of the Umatilla Indian Reservation (Board of Trustees), the Confederated Tribes of the Warm Springs Reservation of Oregon (Tribal Council), and the Confederated Tribes and Bands of the Yakama Indian Nation (Tribal Council).

(8789) **Indian tribes:** The Nez Perce Tribe, the Confederated Tribes and Bands of the Yakama Indian Nation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes of the Umatilla Indian Reservation.

(8890) **Industrial uses:** Any use of land or water primarily involved in:

- (a) Assembly or manufacture of goods or products,
- (b) Processing or reprocessing of raw materials, processing of recyclable materials or agricultural products not produced within a constituent farm unit,
- (c) Storage or warehousing, handling or distribution of manufactured goods or products, raw materials, agricultural products, forest products, or recyclable materials for purposes other than retail sale and service, or
- (d) Production of electric power for commercial purposes.

(8991) **Interpretive displays:** Signs and structures that provide for the convenience, education, and enjoyment of visitors, helping visitors understand and appreciate natural and cultural resources and their relationship to them.

(9092) **Key components:** The attributes that are essential to maintain the long-term use and productivity of a wildlife site. The key components vary by species and wildlife site. Examples include fledgling and perching trees, watering sites, and foraging habitat.

(9193) **Key viewing areas:** Those portions of important public roads, parks, or other vantage points within the Scenic Area from which the public views Scenic Area landscapes. These include:

Historic Columbia River Highway
Crown Point
Highway I-84, including rest stops
Multnomah Falls
Washington State Route 14
Beacon Rock
Panorama Point Park
Cape Horn
Dog Mountain Trail
Cook-Underwood Road
Rowena Plateau and Nature Conservancy Viewpoint
Portland Women's Forum State Park
Bridal Veil State Park
Larch Mountain
Rooster Rock State Park
Bonneville Dam Visitor Centers
Columbia River
Washington State Route 141
Washington State Route 142
Oregon Highway 35
Sandy River
Pacific Crest Trail

SMA only:

Old Washington State Route 14 (County Road 1230)
Wyeth Bench Road
Larch Mountain Road
Sherrard Point on Larch Mountain

(9294) **Land division:** The division or redivision of contiguous land(s) into tracts, parcels, sites or divisions, regardless of the proposed parcel or tract size or use. A land division includes, but is not limited to, short subdivisions, partitions, and subdivisions.

(9395) **Landscape setting:** The combination of land use, landform, and vegetation patterns that distinguish an area in appearance and character from other portions of the Scenic Area.

(9496) **Livestock feedlot:** Stockyards and commercial livestock finishing yards for cattle, sheep, swine, and fur bearers. Feedlots do not include winter pasture or winter hay-feeding grounds.

(9597) **Lot line adjustment:** Relocation of one or more common boundary lines between two contiguous parcels that does not create additional parcels.

(9698) **Maintenance:** Ordinary upkeep or preservation of a serviceable structure affected by wear or natural ele-

ments. Maintenance does not change the original size, scope, configuration or design of a structure.

Maintenance includes, but is not limited to, painting and refinishing, regrouting masonry, patching roofs, grading gravel roads and road shoulders, cleaning and armoring ditches and culverts, filling potholes, controlling vegetation within rights-of-way, removing trees and other roadside hazards within rights-of-way, and testing and treating utility poles.

(9799) Mitigation: The use of any or all of the following actions:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(98100) Mosaic (SMA): The dispersal of overstory and understory trees in irregularly spaced clumps of varying sizes throughout an irregularly shaped forest opening.

(99101) Multifamily dwelling: A dwelling constructed or modified into two or more single-family units.

(100102) Native species: Species that naturally inhabit an area.

(101103) Natural grade: The undisturbed elevation of the ground level of a property before any excavation or construction operations.

(102104)(a) Natural resources (SMA): Naturally occurring features including land, water, air, plants, animals (including fish), plant and animal habitat, and scenery.

(b) Natural Resources (GMA): Wetlands, streams, ponds and lakes, riparian areas, wildlife and wildlife habitat, rare plants, and natural areas.

(103105) Natural resource specialist: A person with professional qualifications, including an academic degree or sufficient professional experience, in the subject matter the specialist is being asked to analyze or evaluate.

(104106) Natural resource-based recreation (SMA): Recreation activities, uses, or facilities that essentially depend on the unique natural, scenic, or cultural resources found within the Scenic Area. Campgrounds, trails, boating and windsurfing facilities, swimming beaches, picnic sites, viewpoints, interpretive parks, and similar outdoor recreation facilities are considered resource-based; golf courses, tennis courts, and rental cabins are not.

(105107) Nonprofit organization: An organization whose nonprofit status has been approved by the U.S. Internal Revenue Service.

(106108) Not visually evident (SMA): A visual quality standard that provides for development or uses that are not visually noticeable to the casual visitor. Developments or uses shall only repeat form, line, color, and texture that are frequently found in the natural landscape, while changes in their qualities of size, amount, intensity, direction, pattern, etc., shall not be noticeable.

(107109) Old growth (SMA): A forest stand usually at least 180-220 years old with moderate to high canopy closure; a multi-layered, multi-species canopy dominated by large overstory trees; high incidence of large trees, some with broken tops and other indications of old and decaying wood (decadence); numerous large snags, and heavy accumulations of wood, including large logs on the ground.

(108110) Operational (SMA): For new agricultural use, an agricultural use shall be deemed operational when the improvements and investments described in the Stewardship Plan are in place on the parcel.

(109111) Ordinary high water mark: The mark on all streams, ponds, and lakes that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a vegetative character distinct from that of the abutting upland. In any area where the ordinary high water mark cannot be found, the line of mean high water shall substitute.

(110112) Other related major structure (SMA): A structure related to a dwelling on a parcel in the SMA that is less than 40 acres in size, which is not incidental and subordinate to the main use of the property. A building or structure that satisfies the definition of "accessory building" is not an "other related major structure" or a "major development action."

(111113) Overstory (SMA): For forest practices, the tall or mature trees that rise above the shorter or immature understory trees.

(112114) Parcel:

(a) Any unit of land legally created by a short division, partition, or subdivision that was legally recognized under all state laws and local ordinances in effect on November 17, 1986. A unit of land that is eligible for consolidation as provided in the Management Plan shall not be considered a parcel.

(b) Any unit of land legally created and separately described by deed, sales contract, or record of survey prior to November 17, 1986, if the unit of land complied with all planning, zoning, and land division ordinances or regulations applicable at the time of creation and up through November 16, 1986.

(c) A unit of land legally created and separately described by deed or sales contract after November 17, 1986 if the unit was approved under the Final Interim Guidelines or a land use ordinance consistent with the Management Plan, or by the Forest Service Office prior to the Final Interim Guidelines.

(d) A unit of land shall not be considered a separate parcel simply because the subject tract of land:

(A) Is a unit of land solely created to establish a separate tax account;

(B) Lies in different counties;

(C) Lies in different sections or government lots;

(D) Lies in different land use or zoning designations; or

(E) Is dissected by a public or private road.

(113115) Practicable: Able to be done, considering technology and cost.

(~~114~~116) **Preexisting:** Existing prior to the adoption of the Columbia River Gorge National Scenic Area Management Plan.

(~~115~~117) **Previously disturbed:** An area of land where the natural surface has been graded, excavated, paved and/or graveled.

(~~116~~118) **Project area:** The geographic area or areas within which new development and uses may cause changes in the character or use of cultural resources, if any such resources exist.

(~~117~~119) **Public use facility:** Recreation development(s) that meet the definition of "recreation facility" in the Management Plan and are open for use by the general public. Private clubs and other facilities limited to members or otherwise restricted in availability shall not be considered public use facilities.

(~~118~~120) **Rare plant species:** Used in a generic sense to refer to various categories of sensitive plants cited in federal and state programs.

(~~119~~121) **Recreation facility:** A cluster or grouping of recreational developments or improvements located in relatively close proximity to one another, and that are not separated in distance by more than 1/4 mile of land that does not contain any such developments or improvements, except for roads and/or pathways.

(~~120~~122) **Reconnaissance survey:** Actions conducted to determine if archaeological resources are present in an area that would be affected by a proposed use. Reconnaissance surveys may include archival research, surface surveys, sub-surface testing, and ethnographic research.

(~~121~~123) **Recreation opportunity spectrum (ROS):** A means of classifying areas in relation to the types of recreation opportunities and experiences they provide or are appropriate for. The spectrum ranges from primitive (wilderness areas) to urban (highly modified areas).

(a) Primitive: Remote, inaccessible areas with a high degree of solitude and with resources essentially unmodified.

(b) Semiprimitive: Areas accessible only by primitive transportation routes, with low to moderately infrequent human encounters and with only subtle modifications to the natural setting.

(c) Roaded Natural: Roaded areas with moderately frequent human encounters and with resource modifications evident.

(d) Rural: Roaded areas with moderate to highly frequent human encounters and with the natural setting dominated by cultural modifications.

(e) Suburban: Areas representing the rural-urban interface, with urban-like roads, structures, highly frequent human encounters, and dominant resource modifications encroaching into the rural landscape.

(f) Urban: Highly accessible, roaded areas dominated by human encounters and human-related structures.

(~~122~~124) **Recreation resources:** Areas and facilities that provide recreation opportunities and experiences. Recreation resources include semiprimitive areas with few facilities and developed sites.

(~~123~~125) **Regularly maintained:** An area of land that has been previously disturbed and where periodic actions have been taken to (1) keep the area clear of vegetation (e.g.,

shoulders, utility yards), (2) limit the height and type of vegetation (e.g., utility rights-of-way), and/or (3) establish and retain non-native vegetation (e.g., landscaped medians, rest area grounds).

(~~124~~126) **Rehabilitation (natural resources):** A human activity that returns a wetland, stream, buffer zone, or other sensitive area that was disturbed during construction of a permitted use to its natural or preconstruction condition.

(~~125~~127) **Remnant old forest (SMA):** Large trees in the overstory that are well into the mature growth state (older than 180 years).

(~~126~~128) **Repair:** Replacement or reconstruction of a part of a serviceable structure after damage, decay or wear. A repair returns a structure to its original and previously authorized and undamaged condition. It does not change the original size, scope, configuration or design of a structure, nor does it excavate beyond the depth of the original structure.

Repair includes, but is not limited to, reroofing a building, replacing damaged guardrails, reconstructing a rotten deck or porch, replacing a broken window or door, replacing a utility pole and associated anchors, replacing a section of broken water or sewer line, replacing a damaged or defective utility line, reconstructing a portion of a building damaged by fire or a natural event, and replacing railroad ties or rails.

(~~127~~129) **Resource-based recreation:** Those recreation uses that are essentially dependent upon the natural, scenic, or cultural resources of the Scenic Area and that do not adversely affect those resources upon which they depend.

(~~128~~130) **Restoration (wetlands):** A human activity that converts an area that was formerly a wetland back into a wetland. This definition presumes that the area to be restored no longer qualifies as a wetland because of past activities, alterations, or catastrophic events.

(~~129~~131) **Review uses:** Proposed uses and developments that must be reviewed by a county planning department, the Gorge Commission, or the Forest Service to determine if they comply with the policies and guidelines in the Management Plan.

(~~130~~132) **Riparian area:** The area immediately adjacent to streams, ponds, lakes, and wetlands that directly contributes to the water quality and habitat components of the water body. This may include areas that have high water tables and soils and vegetation that exhibit characteristics of wetness, as well as upland areas immediately adjacent to the water body that directly contribute shade, nutrients, cover, or debris, or that directly enhance water quality within the water body.

(~~131~~133) **Road:** The entire right-of-way of any public or private way that provides ingress to or egress from property by means of vehicles or other means or that provides travel between places by means of vehicles. "Road" includes, but is not limited to:

(a) Ways described as streets, highways, throughways, or alleys.

(b) Road-related structures that are in the right-of-way, such as tunnels, culverts, or similar structures.

(c) Structures that provide for continuity of the right-of-way, such as bridges.

(~~132~~134) **Scenic Area:** The Columbia River Gorge National Scenic Area.

(~~133~~135) **Scenic travel corridor:** Those portions of Interstate 84, the Historic Columbia River Highway, Oregon Highway 35, and Washington State Routes 14, 141, and 142 located in the Scenic Area and specifically designated to be managed as scenic and recreational travel routes.

(~~134~~136) **Secretary:** The Secretary of Agriculture.

(~~135~~137) **Sensitive plant species:** Plant species that are (1) endemic to the Columbia River Gorge and vicinity, (2) listed as endangered or threatened pursuant to federal or state endangered species acts, or (3) listed as endangered, threatened or sensitive by the Oregon or Washington Natural Heritage Program.

In the SMA, sensitive plant species also include plant species recognized by the Regional Forester as needing special management to prevent them from being placed on federal or state endangered species lists.

(~~136~~138) **Sensitive wildlife species:** Animal species that are (1) listed as endangered or threatened pursuant to federal or state endangered species acts, (2) listed as endangered, threatened, sensitive, or candidate by the Washington Wildlife Commission, (3) listed as sensitive by the Oregon Fish and Wildlife Commission, or (4) considered to be of special interest to the public, limited to great blue heron, osprey, mountain goat, golden eagle, and prairie falcon.

In the SMA, sensitive wildlife species also include animal species recognized by the Regional Forester as needing special management to prevent them from being placed on federal or state endangered species lists.

(~~137~~139) **Service station:** A business operated for the purpose of retailing and delivering motor vehicle fuel into the fuel tanks of motor vehicles.

(~~138~~140) **Serviceable:** Presently useable.

(~~139~~141) **Shall:** Action is mandatory.

(~~140~~142) **Should:** Action is encouraged.

(~~141~~143) **Shrub:** A woody plant usually greater than 3 feet but less than 20 feet tall that generally exhibits several erect, spreading, or prostrate stems and has a bushy appearance. (Note: For the Management Plan, seedlings of woody plants that are less than 3 feet tall shall be considered part of the herbaceous layer.)

(~~142~~144) **Sign:** Any placard, poster, billboard, advertising structure or inscribed surface, pattern or artificial lighting, pictorial or symbolic ornament, emblematic structure, banner, fluttering apparatus, statue, model, ornamental figure, or other visually communicative or expressive device that is visible from an out-of-doors position and is used to advertise or call the public's attention to any public, business, commercial, industrial, recreational or any other activity, object for sale or lease, person or place, or to bear any kind of message. It includes any surface on which a name, text, device, signal, ornament, logotype, or advertising matters is made visible. The meaning of "sign" shall also include any sign currently in disuse, but still visible from an out-of-doors position, and any frame or support structure erected specifically to bear or uphold a sign.

(~~143~~145) **Significant cultural resource (SMA):** A cultural resource that is included in, or eligible for inclusion in, the National Register of Historic Places. (The criteria for evaluating the eligibility of properties for the National Register

of Historic Places appear in "National Register Criteria for Evaluation" [36 CFR 60].)

(~~144~~146) **Skyline:** The line that represents the place at which a landform, such as a cliff, bluff or ridge, meets the sky, as viewed from a specified vantage point (generally a key viewing area, for the purpose of the Management Plan). In areas with thick, unbroken tree cover, the skyline is generally formed by the top of the vegetative canopy. In treeless areas or areas with more open tree cover, the skyline is generally formed by the surface of the ground.

(~~145~~147) **Soil capability class:** A classification system developed by the U.S. Department of Agriculture, Natural Resources Conservation Service to group soils as to their capability for agricultural use.

(~~146~~148) **Special habitat area:** Wetlands, mudflats, shallow water, and riparian vegetation that have high values for waterfowl, shorebirds, raptors, songbirds, upland game, and reptiles.

(~~147~~149) **Special streams:** Streams that are primary water supplies for fish hatcheries and rearing ponds.

(~~148~~150) **Stand:** A group of trees possessing uniformity in regard to type, age, vigor, or size.

(~~149~~151) **Story:** A single floor level of a structure, as defined by the Uniform Building Code.

(~~150~~152) **Streams:** Areas where surface water produces a defined channel or bed, including bedrock channels, gravel beds, sand and silt beds, springs and defined-channel swales. The channel or bed does not have to contain water year-round. This definition is not meant to include irrigation ditches, canals, storm or surface water runoff structures, or other artificial watercourses unless they are used to convey streams naturally occurring prior to construction of such watercourses.

For the Management Plan, streams are categorized into two classes: perennial streams and intermittent streams. Perennial stream means a stream that flows year-round during years of normal precipitation. Intermittent stream means a stream that flows only part of the year, or seasonally, during years of normal precipitation.

(~~151~~153) **Structure:** That which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner. This includes, but is not limited to, buildings, walls, fences, roads, parking lots, signs, and additions/alterations to structures.

(~~152~~154) **Submit:** To deliver a document (e.g., land use application, written comment) to a reviewing agency's office by personal delivery, commercial delivery, mail, fax, or E-mail. When a document must be submitted within a specified period, it must arrive at the reviewing agency's office by the close of business on the last day of the specified period.

(~~153~~155) **Subsurface testing:** Any procedure that removes material from beneath the ground surface for the purpose of identifying cultural resources, such as shovel tests, posthole digger tests, and auger borings.

(~~154~~156) **Suitability:** The appropriateness of land for production of agricultural or forest products or for recreation, considering its capability for production; surrounding uses and features associated with development; compatibility with scenic, cultural, natural and recreation resources; compatibil-

ity among uses; and other cultural factors, such as roads, powerlines, dwellings, and size of ownership.

(~~155~~157) **Thinning (SMA):** A forest practice intended to create favorable conditions for the continued growth of trees within an existing stand of trees. A thinning becomes a forest opening in coniferous forests when the average canopy closure of the overstory layer is zero or less than 40 percent and the understory layer is less than 60 percent average canopy closure of trees averaging less than 5 inches diameter at breast height. A thinning becomes a forest opening in oak woodlands when the total average canopy closure is less than 25 percent.

(~~156~~158) **Total canopy closure (SMA):** For forest practices, the percentage measuring the degree to which all layers of the tree canopy combine together to block sunlight or obscure the sky as measured from below.

(~~157~~159) **Travelers accommodations:** Any establishment having rooms rented or kept for rent on a daily or weekly basis to travelers or transients for a charge or fee paid or to be paid for rental use or use of facilities.

(~~158~~160) **Treatment (SMA):** For forest practices, a site-specific operation that carries out the forest management objectives for an area.

(~~159~~161) **Treaty rights or other rights:** Rights reserved by the Indian tribes through the Treaties of 1855. These include the right of fishing at all usual and accustomed places, as well as the privilege of pasturing livestock and hunting and gathering on open and unclaimed lands in common with the citizens of the states.

(~~160~~162) **Tributary fish habitat:** Streams that are used by anadromous or resident fish for spawning, rearing and/or migration.

(~~161~~163) **Understory (SMA):** For forest practices, the shorter or immature trees below the tall or mature overstory trees.

(~~162~~164) **Undertaking:** Any project, activity, program or development or change in land use that can result in changes in the character or use of a cultural resource, if any such cultural resources are located in the area of potential effects. For federal undertakings, the project, activity, or program must be under the direct or indirect jurisdiction of a federal agency or licensed or assisted by a federal agency. Undertakings include new and continuing projects, activities, or programs and any of their elements [36 CFR 800.16(y)].

(~~163~~165) **Unimproved lands:** Lands that generally do not have developments such as buildings or structures.

(~~164~~166) **Upland:** Any area that does not qualify as a wetland because the associated hydrologic regime is not sufficiently wet to elicit development of vegetation, soils, and/or hydrologic characteristics associated with wetlands.

(~~165~~167) **Uses allowed outright:** New uses and developments that may occur without being reviewed by a county planning department, the Gorge Commission, or the Forest Service to determine if they are consistent with the Management Plan.

(~~166~~168) **Utility facility:** Any structure that provides for the transmission or distribution of water, sewer, fuel, electricity, or communications.

(~~167~~169) **Vested right:** The right to develop or continue to develop a use, development or structure that was reviewed and approved pursuant to this Management Plan.

(~~168~~170) **Viewshed:** A landscape unit seen from a key viewing area.

(~~169~~171) **Visual quality objective (VQO):** A set of visual management goals established by the Forest Service to achieve a desired visual objective. These objectives include retention (not visually evident) and partial retention (visually subordinate), and others in the Mt. Hood and Gifford Pinchot National Forest Plans.

(~~170~~172) **Visually subordinate:** A description of the relative visibility of a structure or use where that structure or use does not noticeably contrast with the surrounding landscape, as viewed from a specified vantage point (generally a key viewing area, for the Management Plan). As opposed to structures that are fully screened, structures that are visually subordinate may be partially visible. They are not visually dominant in relation to their surroundings. Visually subordinate forest practices in the SMA shall repeat form, line, color, or texture common to the natural landscape, while changes in their qualities of size, amount, intensity, direction, pattern, etc., shall not dominate the natural landscape setting.

(~~171~~173) **Water-dependent:** Uses that absolutely require, and cannot exist without, access or proximity to, or siting within, a water body to fulfill their basic purpose. Water-dependent uses include, but are not limited to, docks, wharfs, piers, dolphins, certain fish and wildlife structures, boat launch facilities, and marinas. Dwellings, parking lots, spoil and dump sites, roads, restaurants, trails and paths, trailer parks, resorts, and motels are not water-dependent.

(~~172~~174) **Water-related:** Uses not directly dependent upon access to a water body, but whose presence facilitates public access to and enjoyment of a water body. In the GMA, water-related uses shall be limited to boardwalks, trails and paths, observation decks, and interpretative aids, such as kiosks and signs.

(~~173~~175) **Wetlands:** Areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. This does not include riparian areas, rivers, streams, and lakes.

(~~174~~176) **Wetlands functions:** The beneficial roles that wetlands serve, including storage, conveyance, and attenuation of floodwaters and stormwaters; groundwater recharge and discharge; protection of water quality and reduction of sediment and erosion; production of waterfowl, game and nongame birds, mammals, and other living resources; protection of habitat for endangered, threatened, and sensitive species; food chain support for a broad range of wildlife and fisheries; educational, historical, and archaeological value protection; and scenic, aesthetic, and recreational amenities.

(~~175~~177) **Winery:** An agricultural facility used for processing grapes into wine, including laboratories, processing areas, offices, and storage areas. A winery is distinct from a wine sales/tasting room; each of these uses must be explicitly reviewed and approved.

(~~176~~178) **Wine sales/tasting room:** A facility that is accessory to a winery and used for tasting and retail sales of

wine, including interior space (e.g., wine bar, sitting room) and exterior space (e.g., patio, veranda). A wine sales/tasting room shall not be used for preparing or serving meals or hosting weddings, receptions or other commercial events, unless allowed, reviewed and approved under the "Commercial Events" provisions in 350-81-108. A wine sales/tasting room is distinct from a winery; each of these uses must be explicitly reviewed and approved.

(477179) **Woody plant:** A seed plant (gymnosperm or angiosperm) that develops persistent, hard, fibrous tissues.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Columbia River Gorge Commission and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 12-09-077, filed April 17, 2012)

350-81-540. General Management Area Cultural Resource Review Criteria

(1) General Provisions for Implementing the Cultural Resources Protection Process.

(a) All cultural resource surveys, evaluations, assessments, and mitigation plans shall be performed by professionals whose expertise reflects the type of cultural resources that are involved. Principal investigators shall meet the professional standards published in 36 Code of Federal Regulations (CFR) Part 61 and *Guidelines for Evaluating and Documenting Traditional Cultural Properties* (Parker and King, no date).

(b) Cultural resource surveys, evaluations, assessments, and mitigation plans shall generally be conducted in consultation with Indian tribal governments and any person who submits written comments on a proposed use (interested person). Indian tribal governments shall be consulted if the affected cultural resources are prehistoric or otherwise associated with Native Americans. If the cultural resources are associated with non-Native Americans, such as an historic house or pioneer campsite, the Indian tribal governments do not have to be consulted.

(c) Reconnaissance and Historic Surveys and Survey Reports.

(A) Reconnaissance survey requirements and exceptions.

(i) Each proposed use or element of a proposed use within an application shall be evaluated independently to determine whether a reconnaissance survey is required; for example, an application that proposes a land division and a new dwelling would require a reconnaissance survey if a survey would be required for the dwelling.

(ii) A reconnaissance survey shall be required for all proposed uses within 500 feet of a known cultural resource, including those uses listed as exceptions in 350-81-540 (1)(c)(A)(iii) below.

(iii) A reconnaissance survey shall be required for all proposed uses, except:

(I) The modification, expansion, replacement, or reconstruction of existing buildings and structures.

(II) Proposed uses that would not disturb the ground, including land divisions and lot-line adjustments; storage sheds that do not require a foundation; low-intensity recreation uses, such as fishing, hunting, and hiking; installation of surface chemical toilets; hand treatment of brush within established rights-of-way; and new uses of existing structures.

(III) Proposed uses that involve minor ground disturbance, as defined by depth and extent, including repair and maintenance of lawfully constructed and serviceable structures; home gardens; livestock grazing; cultivation that employs minimum tillage techniques, such as replanting pastures using a grassland drill; construction of fences; new utility poles that are installed using an auger, post-hole digger, or similar implement; and placement of mobile homes where septic systems and underground utilities are not involved.

The Gorge Commission shall review all land use applications and determine if proposed uses would have a minor ground disturbance.

(IV) Proposed uses that occur on sites that have been disturbed by human activities, provided the proposed uses do not exceed the depth and extent of existing ground disturbance. To qualify for this exception, a project applicant must demonstrate that land-disturbing activities occurred in the project area. Land-disturbing activities include grading and cultivation.

(V) Proposed uses that would occur on sites that have been adequately surveyed in the past.

The project applicant must demonstrate that the project area has been adequately surveyed to qualify for this exception. Past surveys must have been conducted by a qualified professional and must include a surface survey and subsurface testing. The nature and extent of any cultural resources in the project area must be adequately documented.

(VI) Proposed uses occurring in areas that have a low probability of containing cultural resources, except:

- Residential development that involves two or more new dwellings for the same project applicant.
- Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities.
- Public transportation facilities that are outside improved rights-of-way.
- Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater.
- Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances.

Areas that have a low probability of containing cultural resources shall be identified using the results of reconnaissance surveys conducted by the Gorge Commission, the Forest Service, public agencies, and private archaeologists.

The Gorge Commission, after consulting Indian tribal governments and state historic preservation officers, shall

prepare and adopt a map showing areas that have a low probability of containing cultural resources. This map shall be adopted within 200 days after the Secretary of Agriculture concurs with the Management Plan. It shall be refined and revised as additional reconnaissance surveys are conducted. Areas shall be added or deleted as warranted. All revisions of this map shall be reviewed and approved by the Gorge Commission.

(iv) The Gorge Commission may choose to conduct a reconnaissance survey for proposed uses listed in the exceptions if, in its professional judgment, a reconnaissance survey may be necessary to ensure protection of cultural resources.

(B) A historic survey shall be required for all proposed uses that would alter the exterior architectural appearance of buildings and structures that are 50 years old or older, or would compromise features of the surrounding area that are important in defining the historic or architectural character of buildings or structures that are 50 years old or older.

(C) The Gorge Commission shall conduct and pay for all reconnaissance and historic surveys for small-scale uses in the General Management Area. When archaeological resources or traditional cultural properties are discovered, the Gorge Commission also shall identify the approximate boundaries of the resource or property and delineate a reasonable buffer zone. Reconnaissance surveys and buffer zone delineations for large-scale uses shall be the responsibility of the project applicant.

For 350-81-540, large-scale uses include residential development involving two or more new dwellings; all recreation facilities; commercial and industrial development; public transportation facilities; electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances.

(D) Reconnaissance Surveys for Small-Scale Uses.

Reconnaissance surveys for small-scale uses shall generally include a surface survey and subsurface testing. They shall meet the following guidelines:

(i) A surface survey of the project area shall be conducted, except for inundated areas and impenetrable thickets.

(ii) Subsurface testing shall be conducted if the surface survey reveals that cultural resources may be present. Subsurface probes shall be placed at intervals sufficient to determine the absence or presence of cultural resources.

(E) Reconnaissance Survey Reports for Small-Scale Uses

The results of a reconnaissance survey for small-scale uses shall be documented in a confidential report that includes:

(i) A description of the fieldwork methodology used to identify cultural resources, including a description of the type and extent of the reconnaissance survey.

(ii) A description of any cultural resources that were discovered in the project area, including a written description and photographs.

(iii) A map that shows the project area, the areas surveyed, the location of subsurface probes, and, if applicable, the approximate boundaries of the affected cultural resources and a reasonable buffer zone.

(F) Reconnaissance Surveys for Large-Scale Uses

(i) Reconnaissance surveys for large-scale uses shall be designed by a qualified professional. A written description of the survey shall be submitted to and approved by the Gorge Commission's designated archaeologist.

(ii) Reconnaissance surveys shall reflect the physical characteristics of the project area and the design and potential effects of the proposed use. They shall meet the following guidelines:

(I) Archival research shall be performed before any field work. It should entail a thorough examination of tax records; historic maps, photographs, and drawings; previous archaeological, historic, and ethnographic research; cultural resource inventories and records maintained by federal, state, and local agencies; and primary historic accounts, such as diaries, journals, letters, and newspapers.

(II) Surface surveys shall include the entire project area, except for inundated areas and impenetrable thickets.

(III) Subsurface probes shall be placed at intervals sufficient to document the presence or absence of cultural resources.

(IV) Archaeological site inventory forms shall be submitted to the State Historic Preservation Officer whenever cultural resources are discovered.

(G) Reconnaissance Survey Reports for Large-Scale Uses

The results of a reconnaissance survey for large-scale uses shall be documented in a confidential report that includes:

(i) A description of the proposed use, including drawings and maps.

(ii) A description of the project area, including soils, vegetation, topography, drainage, past alterations, and existing land use.

(iii) A list of the documents and records examined during the archival research and a description of any prehistoric or historic events associated with the project area.

(iv) A description of the fieldwork methodology used to identify cultural resources, including a map that shows the project area, the areas surveyed, and the location of subsurface probes. The map shall be prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.

(v) An inventory of the cultural resources that exist in the project area, including a written description, photographs, drawings, and a map. The map shall be prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.

(vi) A summary of all written comments submitted by Indian tribal governments and other interested persons.

(vii) A preliminary assessment of whether the proposed use would or would not have an effect on cultural resources. The assessment shall incorporate concerns and recommendations voiced during consultation meetings and information obtained through archival and ethnographic research and field surveys.

(H) Historic Surveys and Reports

(i) Historic surveys shall document the location, form, style, integrity, and physical condition of historic buildings and structures. They shall include original photographs and

maps. Archival research, blueprints, and drawings should be used as necessary.

(ii) Historic surveys shall describe any uses that will alter or destroy the exterior architectural appearance of the historic buildings or structures, or compromise features of the site that are important in defining the overall historic character of the historic buildings or structures.

(iii) The project applicant shall provide detailed architectural drawings and building plans that clearly illustrate all proposed alterations.

(d) The responsibility and cost of preparing an evaluation of significance, assessment of effect, or mitigation plan shall be borne by the project applicant, except for resources discovered during construction. The Gorge Commission shall conduct and pay for evaluations of significance and mitigation plans for resources that are discovered during construction of small-scale and large-scale uses.

(e) Cultural resources are significant if one of the following criteria is satisfied:

(A) The cultural resources are included in, or eligible for inclusion in, the National Register of Historic Places. The criteria for evaluating the eligibility of cultural resources for the National Register of Historic Places appear in the "National Register Criteria for Evaluation" (36 CFR 60.4).

(B) The cultural resources are determined to be culturally significant by an Indian tribal government, based on criteria developed by that Indian tribal government and filed with the Gorge Commission.

(f) The Gorge Commission shall establish a Cultural Advisory Committee (CAC). The CAC shall comprise cultural resource professionals, interested individuals, and at least one representative from each of the four Indian tribes. If a project applicant's and Indian tribal government's evaluations of significance contradict, the Cultural Advisory Committee (CAC) shall review the applicant's evaluation and Indian tribal government's substantiated concerns. The CAC will submit a recommendation to the Executive Director as to whether affected cultural resources are significant.

(g) Determination of potential effects to significant cultural resources shall include consideration of cumulative effects of proposed developments that are subject to any of the following: 1) a reconnaissance or historic survey; 2) a determination of significance; 3) an assessment of effect; or 4) a mitigation plan.

(2) Cultural Resource Reconnaissance and Historic Surveys

(a) Consultation and Ethnographic Research

(A) When written comments are submitted to the Executive Director within the comment period provided in 350-81-040, the project applicant shall offer to meet with the interested persons within 10 calendar days. The 10-day consultation period may be extended upon agreement between the project applicant and the interested persons. Consultation meetings should provide an opportunity for interested persons to explain how the proposed use may affect cultural resources. Recommendations to avoid potential conflicts should be discussed.

All written comments and consultation meeting minutes shall be incorporated into the reconnaissance or historic survey report. In instances where a survey is not required, all

such information shall be recorded and addressed in a report that typifies a survey report; inapplicable elements may be omitted.

(B) A project applicant who is proposing a large-scale use shall conduct interviews and other forms of ethnographic research if interested persons submit a written request for such research. All requests must include a description of the cultural resources that may be affected by the proposed use and the identity of knowledgeable informants. Ethnographic research shall be conducted by qualified specialists. Tape recordings, maps, photographs, and minutes shall be used when appropriate.

All written comments, consultation meeting minutes, and ethnographic research shall be incorporated into the reconnaissance or historic survey report. In instances where a survey is not required, all such information shall be recorded and addressed in a report that typifies a survey report.

(b) Notice of Survey Results

(A) The Executive Director shall submit a copy of all cultural resource survey reports to the State Historic Preservation Officer and the Indian tribal governments. Survey reports may include measures to avoid affected cultural resources, such as a map that shows a reasonable buffer zone.

(B) The State Historic Preservation Officer and the tribes shall have 30 calendar days from the date a survey report is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.

(c) Conclusion of the Cultural Resource Protection Process

(A) The Executive Director shall make a final decision on whether the proposed use would be consistent with 350-81-540. If the final decision contradicts the comments submitted by the State Historic Preservation Officer, the Executive Director shall justify how an opposing conclusion was reached.

(B) The cultural resource protection process may conclude when one of the following conditions exists:

(i) The proposed use does not require a reconnaissance or historic survey, no cultural resources are known to exist in the project area, and no substantiated concerns were voiced by interested persons within 21 calendar days of the date that a notice was mailed.

(ii) A reconnaissance survey demonstrates that cultural resources do not exist in the project area, no substantiated concerns were voiced by interested persons within 21 calendar days of the date that a notice was mailed, and no substantiated concerns regarding the reconnaissance survey were voiced by the State Historic Preservation Officer or Indian tribal governments during the 30-day comment period required in subsection 2 (b)(B) above.

(iii) The proposed use would avoid archaeological resources and traditional cultural resources that exist in the project area. To meet this guideline, a reasonable buffer zone must be established around the affected resources or properties; all ground-disturbing activities shall be prohibited within the buffer zone.

Buffer zones must preserve the integrity and context of cultural resources. They will vary in width depending on the eventual use of the project area, the type of cultural resources

that are present, and the characteristics for which the cultural resources may be significant. A deed covenant, easement, or other appropriate mechanism shall be developed to ensure that the buffer zone and the cultural resources are protected.

An evaluation of significance shall be conducted if a project applicant decides not to avoid the affected cultural resource. In these instances, the reconnaissance survey and survey report shall be incorporated into the evaluation of significance.

(iv) A historic survey demonstrates that the proposed use would not have an effect on historic buildings or structures because:

(a) The State Historic Preservation Officer concludes that the historic buildings or structures are clearly not significant, as determined by using the criteria in the "National Register Criteria for Evaluation" (36 CFR 60.4), or

(b) The proposed use would not compromise the historic or architectural character of the affected buildings or structures, or compromise features of the site that are important in defining the overall historic character of the affected buildings or structures, as determined by the guidelines and standards in *The Secretary of the Interior's Standards for Rehabilitation* (U.S. Department of the Interior 1990) and *The Secretary of the Interior's Standards for Historic Preservation Projects* (U.S. Department of the Interior 1983).

The historic survey conducted by the Gorge Commission may provide sufficient information to satisfy these guidelines. If it does not, architectural and building plans, photographs, and archival research may be required. The project applicant shall be responsible for providing information beyond that included in the survey conducted by the Gorge Commission.

The historic survey and report must demonstrate that these guidelines have been clearly and absolutely satisfied. If the State Historic Preservation Officer or the Executive Director question whether these guidelines have been satisfied, the project applicant shall conduct an evaluation of significance.

(3) Evaluation of Significance

(a) Evaluation Criteria and Information Needs

If cultural resources would be affected by a new use, an evaluation of their significance shall be conducted. Evaluations of significance shall meet the following guidelines:

(A) Evaluations of significance shall follow the procedures in *How to Apply the National Register Criteria for Evaluation* (U.S. Department of the Interior, no date) and *Guidelines for Evaluating and Documenting Traditional Cultural Properties* (Parker and King, no date). They shall be presented within local and regional contexts and shall be guided by previous research and current research designs that are relevant to specific research questions for the Columbia River Gorge.

(B) To evaluate the significance of cultural resources, the information gathered during the reconnaissance or historic survey may have to be supplemented. Detailed field mapping, subsurface testing, photographic documentation, laboratory analyses, and archival research may be required.

(C) The project applicant shall contact Indian tribal governments and interested persons, as appropriate. Ethno-

graphic research shall be undertaken as necessary to fully evaluate the significance of the cultural resources.

(D) The evaluation of significance shall follow the principles, guidelines, and report format recommended by the Oregon State Historic Preservation Office (Oregon SHPO 1990) or Washington Office of Archaeology and Historic Preservation (Washington SHPO, no date). It shall incorporate the results of the reconnaissance or historic survey and shall illustrate why each cultural resource is or is not significant. Findings shall be presented within the context of relevant local and regional research.

(E) All documentation used to support the evaluation of significance shall be cited. Evidence of consultation with Indian tribal governments and other interested persons shall be presented. All comments, recommendations, and correspondence from Indian tribal governments and interested persons shall be appended to the evaluation of significance.

(b) Notice of Evaluation Results

(A) If the evaluation of significance demonstrates that the cultural resources are not significant, the Executive Director shall submit a copy of the evaluation of significance to the State Historic Preservation Officer and the Indian tribal governments.

(B) The State Historic Preservation Officer, Indian tribal governments, and interested persons shall have 30 calendar days from the date the evaluation of significance is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.

(c) Cultural Resources are Culturally Significant

(A) If an Indian tribal government believes that the affected cultural resources are culturally significant, contrary to the evaluation submitted by the project applicant, the Cultural Advisory Committee (CAC) shall make an independent review of the applicant's evaluation and the Indian tribal government's substantiated concerns. The CAC shall formulate a recommendation regarding the significance of the cultural resources.

(B) The Indian tribal government shall substantiate its concerns in a written report. The report shall be submitted to the Executive Director, CAC, and the project applicant within 15 calendar days from the date the evaluation of significance is mailed. The CAC must submit its recommendation to the Executive Director within 30 calendar days from the date the evaluation of significance is mailed.

(d) Conclusion of the Cultural Resource Protection Process

(A) The Executive Director shall make a final decision on whether the affected resources are significant. If the final decision contradicts the comments or recommendations submitted by the State Historic Preservation Officer or CAC, the Executive Director shall justify how an opposing conclusion was reached.

(B) The cultural resource protection process may conclude if the affected cultural resources are not significant.

(C) If the project applicant or the Executive Director determines that the cultural resources are significant, the effects of the proposed use shall be assessed.

(4) Assessment of Effect

(a) Assessment Criteria and Information Needs

If a use could potentially affect significant cultural resources, an assessment shall be made to determine if it would have no effect, no adverse effect, or an adverse effect. The assessment shall meet the following guidelines:

(A) The assessment of effect shall be based on the criteria published in "Protection of Historic Properties" (36 CFR 800.5) and shall incorporate the results of the reconnaissance or historic survey and the evaluation of significance. All documentation shall follow the requirements listed in 36 CFR 800.11.

(i) Proposed uses are considered to have an effect on cultural resources when they alter or destroy characteristics of the resources that make them significant [36 CFR 800.5].

(ii) Proposed uses are considered to have an adverse effect when they may diminish the integrity of the cultural resource's location, design, setting, materials, workmanship, feeling, or association [36 CFR 800.5]. Adverse effects on cultural resources include, but are not limited to:

(I) Physical destruction, damage, or alteration of all or part of the cultural resource.

(II) Isolation of the cultural resource from its setting or alteration of the character of the resource's setting when that character contributes to the resource's qualification as being significant.

(III) Introduction of visual, audible, or atmospheric elements that are out of character with the cultural resource or its setting.

(IV) Neglect of a significant cultural resource resulting in its deterioration or destruction, except as described in 36 CFR 800.5.

(B) The assessment of effect shall be prepared in consultation with Indian tribal governments and interested persons, as appropriate. The concerns and recommendations voiced by Indian tribal governments and interested persons shall be recorded and addressed in the assessment.

(C) The effects of a proposed use that would otherwise be determined to be adverse may be considered to be not adverse if any of the following instances apply:

(i) The cultural resources are of value only for their potential contribution to archeological, historical, or architectural research, and when such value can be substantially preserved through the conduct of appropriate research before development begins, and such research is conducted in accordance with applicable professional standards and guidelines.

(ii) The undertaking is limited to the rehabilitation of buildings and structures, and is conducted in a manner that preserves the historical and architectural character of affected cultural resources through conformance with *The Secretary of the Interior's Standards for Rehabilitation* (U.S. Department of the Interior 1990) and *The Secretary of the Interior's Standards for Historic Preservation Projects* (U.S. Department of the Interior 1983).

(b) Notice of Assessment Results

(A) If the assessment of effect concludes that the proposed use would have no effect or no adverse effect on significant cultural resources, the Executive Director shall submit a copy of the assessment to the State Historic Preservation Officer and the Indian tribal governments.

(B) The State Historic Preservation Officer, Indian tribal governments, and interested persons shall have 30 calendar

days from the date the assessment of effect is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.

(c) Conclusion of the Cultural Resource Protection Process

(A) The Executive Director shall make a final decision on whether the proposed use would have no effect, no adverse effect, or an adverse effect. If the final decision contradicts the comments submitted by the State Historic Preservation Officer, the Executive Director shall justify how an opposing conclusion was reached.

(B) The cultural resource protection process may conclude if the proposed use would have no effect or no adverse effect on significant cultural resources.

(C) A mitigation plan shall be prepared if a project applicant or the Executive Director determines that the proposed use would have an adverse effect on significant cultural resources.

(5) Mitigation Plans

(a) Mitigation Plan Criteria and Information Needs

Mitigation plans shall be prepared when proposed uses would have an adverse effect on significant cultural resources. The plans shall reduce an adverse effect to no effect or no adverse effect. Mitigation plans shall meet the following guidelines:

(A) Mitigation plans shall be prepared in consultation with persons who have concerns about or knowledge of the affected cultural resources, including Indian tribal governments, Native Americans, local governments whose jurisdiction encompasses the project area, and the State Historic Preservation Officer.

(B) Avoidance of cultural resources through project design and modification is preferred. Avoidance may be effected by reducing the size, scope, configuration, and density of the proposed use.

Alternative mitigation measures shall be used only if avoidance is not practicable. Alternative measures include, but are not limited to, burial under fill, stabilization, removal of the cultural resource to a safer place, and partial to full excavation and recordation. If the mitigation plan includes buffer zones to protect cultural resources, a deed covenant, easement, or other appropriate mechanism shall be developed and recorded in county deeds and records.

(C) Mitigation plans shall incorporate the results of the reconnaissance or historic survey, the evaluation of significance, and the assessment of effect, and shall provide the documentation required in 36 CFR 800.11, including, but not limited to:

(i) A description and evaluation of any alternatives or mitigation measures that the project applicant proposes for reducing the effects of the proposed use.

(ii) A description of any alternatives or mitigation measures that were considered but not chosen and the reasons for their rejection.

(iii) Documentation of consultation with the State Historic Preservation Officer regarding any alternatives or mitigation measures.

(iv) A description of the project applicant's efforts to obtain and consider the views of Indian tribal governments, interested persons, and Executive Director.

(v) Copies of any written recommendations submitted to the Executive Director or project applicant regarding the effects of the proposed use on cultural resources and alternatives to avoid or reduce those effects.

(b) Notice of Mitigation Plan Results

(A) If a mitigation plan reduces the effect of a use from an adverse effect to no effect or no adverse effect, the Executive Director shall submit a copy of the mitigation plan to the State Historic Preservation Officer and the Indian tribal governments.

(B) The State Historic Preservation Officer, Indian tribal governments, and interested persons shall have 30 calendar days from the date the mitigation plan is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.

(c) Conclusion of the Cultural Resource Protection Process

(A) The Executive Director shall make a final decision on whether the mitigation plan would reduce an adverse effect to no effect or no adverse effect. If the final decision contradicts the comments submitted by the State Historic Preservation Officer, the Executive Director shall justify how an opposing conclusion was reached.

(B) The cultural resource protection process may conclude if a mitigation plan would reduce an adverse effect to no effect or no adverse effect.

(C) The proposed use shall be prohibited when acceptable mitigation measures fail to reduce an adverse effect to no effect or no adverse effect.

(6) Cultural Resources Discovered After Construction Begins

The following procedures shall be effected when cultural resources are discovered during construction activities. All survey and evaluation reports and mitigation plans shall be submitted to the Executive Director and the State Historic Preservation Officer. Indian tribal governments also shall receive a copy of all reports and plans if the cultural resources are prehistoric or otherwise associated with Native Americans.

(a) Halt of Construction. All construction activities within 100 feet of the discovered cultural resource shall cease. The cultural resources shall remain as found; further disturbance is prohibited.

(b) Notification. The project applicant shall notify the Executive Director within 24 hours of the discovery. If the cultural resources are prehistoric or otherwise associated with Native Americans, the project applicant shall also notify the Indian tribal governments within 24 hours.

(c) Survey and Evaluation. The Gorge Commission shall survey the cultural resources after obtaining written permission from the landowner and appropriate permits from the State Historic Preservation Officer. (See Oregon Revised Statute [ORS] 358.905 to 358.955, and Revised Code of Washington [RCW] 27.53). It shall gather enough information to evaluate the significance of the cultural resources. The survey and evaluation shall be documented in a report that

generally follows the guidelines in "Reconnaissance Survey Reports for Large-Scale Uses" [350-80-540 (1)(c)(G)] and "Evaluation of Significance: Evaluation Criteria and Information Needs" [350-80-540 (3)(a)].

Based on the survey and evaluation report and any written comments, the Executive Director shall make a final decision on whether the resources are significant. Construction activities may recommence if the cultural resources are not significant.

A mitigation plan shall be prepared if the affected cultural resources are significant.

(d) Mitigation Plan. Mitigation plans shall be prepared according to the information, consultation, and report guidelines contained in the "Mitigation Plans: Mitigation Plan Criteria and Information Needs" section of this chapter. Construction activities may recommence when the conditions in the mitigation plan have been executed.

(7) Discovery of Human Remains

The following procedures shall be effected when human remains are discovered during a cultural resource survey or during construction. Human remains means articulated or disarticulated human skeletal remains, bones, or teeth, with or without attendant burial artifacts.

(a) Halt of Activities. All survey, excavation, and construction activities shall cease. The human remains shall not be disturbed any further.

(b) Notification. Local law enforcement officials, the Executive Director, and the Indian tribal governments shall be contacted immediately.

(c) Inspection. The county coroner, or appropriate official, shall inspect the remains at the project site and determine if they are prehistoric/historic or modern. Representatives from the Indian tribal governments shall have an opportunity to monitor the inspection.

(d) Jurisdiction. If the remains are modern, the appropriate law enforcement officials shall assume jurisdiction and the cultural resource protection process may conclude.

(e) Treatment. In Oregon, prehistoric/historic remains of Native Americans shall generally be treated in accordance with the procedures set forth in ORS 97.740 to 97.760. In Washington, the procedures set forth in RCW 27.44 and 68.05 shall generally be implemented if the remains are prehistoric/historic.

If the human remains will be reinterred or preserved in their original position, a mitigation plan shall be prepared in accordance with the consultation and report requirements specified in "Mitigation Plans: Mitigation Plan Criteria and Information Needs" [350-81-540 (5)(a)].

The mitigation plan shall accommodate the cultural and religious concerns of Native Americans. The cultural resource protection process may conclude when the conditions set forth in "Mitigation Plans: Conclusion of the Cultural Resource Protection Process" [350-81-540 (5)(c)] are met and the mitigation plan is executed.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Columbia River Gorge Commission and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 12-09-077, filed April 17, 2012)

350-81-560. General Management Area Wetland Review Criteria

(1) Wetlands Boundaries and Site Plans for Review Uses in Wetlands

(a) If the proposed use is within a wetland or wetlands buffer zone, the applicant shall be responsible for determining the exact location of the wetland boundary.

(A) The approximate location and extent of wetlands in the Scenic Area is shown on the National Wetlands Inventory (U.S. Department of the Interior 1987). In addition, the list of hydric soils and the soil survey maps shall be used as an indicator of wetlands. Wetlands boundaries shall be delineated using the procedures specified in the *Corps of Engineers Wetlands Delineation Manual* (Wetlands Research Program Technical Report Y-87-1, on-line edition, updated through March 21, 1997).

(B) All wetlands delineations shall be conducted by a professional which has been trained to use the federal delineation process, such as a soil scientist, botanist, or wetlands ecologist.

(C) The Executive Director may verify the accuracy of, and may render adjustments to, a wetlands boundary delineation. In the event the adjusted boundary delineation is contested by the applicant, the Executive Director shall, at the applicant's expense, obtain professional services to render a final delineation.

(b) In addition to the information required in all site plans, site plans for proposed uses in wetlands or wetlands buffer zones shall include:

(A) a site plan map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail;

(B) the exact boundary of the wetland and the wetlands buffer zone; and

(C) a description of actions that would alter or destroy the wetland.

~~(c) Determination of potential effects to significant natural resources shall include consideration of cumulative effects of proposed developments within wetlands and their buffer zones.~~

(2) Commission Rule 350-81-560 shall not apply to proposed uses that would occur in the main stem of the Columbia River. The main stem of the Columbia River is depicted on the map titled "Boundary Map, Columbia River Gorge National Scenic Area," numbered NSA-001 and dated September 1986. (This map is available at county planning departments and Commission and Forest Service offices.) The boundaries of the main stem appear as a heavy black line that generally follows the shoreline. For Commission Rule 350-81, backwaters and isolated water bodies created by roads and railroads are not part of the main stem of the Columbia River.

(3) The following uses may be allowed in wetlands and wetlands buffer zones when approved pursuant to the provisions in 350-81-560(5), and reviewed under the applicable provisions of 350-81-520 through 350-81-620: Proposed uses in wetlands and wetland buffer zones shall be evaluated

for adverse effects, including cumulative effects, and adverse effects shall be prohibited.

(a) The modification, expansion, replacement, or reconstruction of serviceable structures, if such actions would not:

(A) Increase the size of an existing structure by more than 100 percent,

(B) Result in a loss of wetlands acreage or functions, and

(C) Intrude further into a wetland or wetlands buffer zone. New structures shall be considered intruding further into a wetland or wetlands buffer zone if any portion of the structure is located closer to the wetland or wetlands buffer zone than the existing structure.

(b) The construction of minor water-related recreation structures that are available for public use. Structures in this category shall be limited to boardwalks; trails and paths, provided their surface is not constructed of impervious materials; observation decks; and interpretative aids, such as kiosks and signs.

(c) The construction of minor water-dependent structures that are placed on pilings, if the pilings allow unobstructed flow of water and are not placed so close together that they effectively convert an aquatic area to dry land. Structures in this category shall be limited to public and private docks and boat houses, and fish and wildlife management structures that are constructed by federal, state, or tribal resource agencies.

(4) Uses not listed in 350-81-560 (2) and (3) may be allowed in wetlands and wetlands buffer zones, when approved pursuant to 350-81-560(6) and reviewed under the applicable provisions of 350-81-520 through 350-81-620.

(5) Applications for modifications to serviceable structures and minor water-dependent and water-related structures in wetlands shall demonstrate that:

(a) Practicable alternatives to locating the structure outside of the wetlands or wetland buffer zone and/or minimizing the impacts of the structure do not exist;

(b) All reasonable measures have been applied to ensure that the structure will result in the minimum feasible alteration or destruction of the wetlands, existing contour, functions, vegetation, fish and wildlife resources, and hydrology;

(c) The structure will be constructed using best management practices;

(d) Areas disturbed during construction of the structure will be rehabilitated to the maximum extent practicable; and

(e) The structure complies with all applicable federal, state, and county laws.

(6) Applications for all other Review Uses in wetlands shall demonstrate that:

(a) The proposed use is water-dependent, or is not water-dependent but has no practicable alternative considering all of the following:

(A) The basic purpose of the use cannot be reasonably accomplished using one or more other sites in the vicinity that would avoid or result in less adverse effects on wetlands;

(B) The basic purpose of the use cannot be reasonably accomplished by reducing its size, scope, configuration, or density as proposed, or by changing the design of the use in a way that would avoid or result in less adverse effects on wetlands; and

(C) Reasonable attempts have been made to remove or accommodate constraints that caused a project applicant to reject alternatives to the use as proposed. Such constraints include inadequate infrastructure, parcel size, and zone designations. If a land designation or recreation intensity class is a constraint, an applicant must request a Management Plan amendment to demonstrate that practicable alternatives do not exist.

An alternative site for a proposed use shall be considered practicable if it is available and the proposed use can be undertaken on that site after taking into consideration cost, technology, logistics, and overall project purposes.

(b) The proposed use is in the public interest. The following factors shall be considered when determining if a proposed use is in the public interest:

(A) The extent of public need for the proposed use.

(B) The extent and permanence of beneficial or detrimental effects that the proposed use may have on the public and private uses for which the property is suited.

(C) The functions and size of the wetland that may be affected.

(D) The economic value of the proposed use to the general area.

(E) The ecological value of the wetland and probable effect on public health and safety, fish, plants, and wildlife.

(c) Measures will be applied to ensure that the proposed use results in the minimum feasible alteration or destruction of the wetland's functions, existing contour, vegetation, fish and wildlife resources, and hydrology.

(d) Groundwater and surface-water quality will not be degraded by the proposed use.

(e) Those portions of a proposed use that are not water-dependent or have a practicable alternative will not be located in wetlands or wetlands buffer zones.

(f) The proposed use complies with all applicable federal, state, and county laws.

(g) Areas that are disturbed during construction will be rehabilitated to the maximum extent practicable.

(h) Unavoidable impacts to wetlands will be offset through restoration, creation, or enhancement of wetlands. Wetlands restoration, creation, and enhancement are not alternatives to the guidelines listed above; they shall be used only as a last resort to offset unavoidable wetlands impacts.

The following wetlands restoration, creation, and enhancement guidelines shall apply:

(A) Impacts to wetlands shall be offset by restoring or creating new wetlands or by enhancing degraded wetlands. Wetlands restoration shall be the preferred alternative.

(B) Wetlands restoration, creation, and enhancement projects shall be conducted in accordance with a wetlands compensation plan.

(C) Wetlands restoration, creation, and enhancement projects shall use native vegetation.

(D) The size of replacement wetlands shall equal or exceed the following ratios (the first number specifies the required acreage of replacement wetlands and the second number specifies the acreage of wetlands altered or destroyed):

(i) Restoration: 2:1

(ii) Creation: 3:1

(iii) Enhancement: 4:1

(E) Replacement wetlands shall replicate the functions of the wetland that will be altered or destroyed such that no net loss of wetlands functions occurs.

(F) Replacement wetlands should replicate the type of wetland that will be altered or destroyed. If this guideline is not feasible or practical due to technical constraints, a wetland type of equal or greater benefit may be substituted, provided that no net loss of wetlands functions occurs.

(G) Wetlands restoration, creation, or enhancement should occur within 1,000 feet of the affected wetland. If this is not practicable due to physical or technical constraints, replacement shall occur within the same watershed and as close to the altered or destroyed wetland as practicable.

(H) Wetlands restoration, creation, and enhancement efforts should be completed before a wetland is altered or destroyed. If it is not practicable to complete all restoration, creation, and enhancement efforts before the wetland is altered or destroyed, these efforts shall be completed before the new use is occupied or used.

(I) Five years after a wetland is restored, created, or enhanced at least 75 percent of the replacement vegetation must survive. The owner shall monitor the hydrology and vegetation of the replacement wetland and shall take corrective measures to ensure that it conforms with the approved wetlands compensation plan and this guideline.

(7) Wetlands Buffer Zones

(a) The width of wetlands buffer zones shall be based on the dominant vegetation community that exists in a buffer zone.

(b) The dominant vegetation community in a buffer zone is the vegetation community that covers the most surface area of that portion of the buffer zone that lies between the proposed activity and the affected wetland. Vegetation communities are classified as forest, shrub, or herbaceous.

(A) A forest vegetation community is characterized by trees with an average height equal to or greater than 20 feet, accompanied by a shrub layer; trees must form a canopy cover of at least 40 percent and shrubs must form a canopy cover of at least 40 percent. A forest community without a shrub component that forms a canopy cover of at least 40 percent shall be considered a shrub vegetation community.

(B) A shrub vegetation community is characterized by shrubs and trees that are greater than 3 feet tall and form a canopy cover of at least 40 percent.

(C) A herbaceous vegetation community is characterized by the presence of herbs, including grass and grasslike plants, forbs, ferns, and nonwoody vines.

(c) Buffer zones shall be measured outward from a wetlands boundary on a horizontal scale that is perpendicular to the wetlands boundary. The following buffer zone widths shall be required:

(A) Forest communities: 75 feet

(B) Shrub communities: 100 feet

(C) Herbaceous communities: 150 feet

(d) Except as otherwise allowed, wetlands buffer zones shall be retained in their natural condition. When a buffer zone is disturbed by a new use, it shall be replanted with native plant species.

(8) Wetlands Compensation Plans

Wetlands compensation plans shall be prepared when a project applicant is required to restore, create or enhance wetlands. They shall satisfy the following guidelines:

(a) Wetlands compensation plans shall be prepared by a qualified professional hired by a project applicant. They shall provide for land acquisition, construction, maintenance, and monitoring of replacement wetlands.

(b) Wetlands compensation plans shall include an ecological assessment of the wetland that will be altered or destroyed and the wetland that will be restored, created, or enhanced. The assessment shall include information on flora, fauna, hydrology, and wetlands functions.

(c) Compensation plans shall also assess the suitability of the proposed site for establishing a replacement wetland, including a description of the water source and drainage patterns, topography, wildlife habitat opportunities, and value of the existing area to be converted.

(d) Plan view and cross-sectional, scaled drawings; topographic survey data, including elevations at contour intervals no greater than 1 foot, slope percentages, and final grade elevations; and other technical information shall be provided in sufficient detail to explain and illustrate:

(A) Soil and substrata conditions, grading, and erosion and sediment control needed for wetland construction and long-term survival.

(B) Planting plans that specify native plant species, quantities, size, spacing, or density; source of plant materials or seeds; timing, season, water, and nutrient requirements for planting; and where appropriate, measures to protect plants from predation.

(C) Water-quality parameters, water source, water depths, water-control structures, and water-level maintenance practices needed to achieve the necessary hydrologic conditions.

(e) A 5-year monitoring, maintenance, and replacement program shall be included in all plans. At a minimum, a project applicant shall provide an annual report that documents milestones, successes, problems, and contingency actions. Photographic monitoring stations shall be established and photographs shall be used to monitor the replacement wetland.

(f) A project applicant shall demonstrate sufficient fiscal, technical, and administrative competence to successfully execute a wetlands compensation plan.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Columbia River Gorge Commission and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 12-09-077, filed April 17, 2012)

350-81-570. General Management Area Stream, Pond, Lake and Riparian Area Review Criteria

(1) Stream, Pond, and Lake Boundaries and Site Plans for Review Uses in Aquatic and Riparian Areas

(a) If a proposed use would be in a stream, pond, lake or their buffer zones, the project applicant shall be responsible for determining the exact location of the ordinary high watermark or normal pool elevation.

(b) In addition to the information required in all site plans, site plans for proposed uses in streams, ponds, lakes, and their buffer zones shall include:

(A) a site plan map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail;

(B) the exact boundary of the ordinary high watermark or normal pool elevation and prescribed buffer zone; and

(C) a description of actions that would alter or destroy the stream, pond, lake, or riparian area.

~~(e) Determination of potential effects to significant natural resources shall include consideration of cumulative effects of proposed developments within streams, ponds, lakes, riparian areas and their buffer zones.~~

(2) Commission Rule 350-81-570 shall not apply to proposed uses that would occur in those portions of the main stem of the Columbia River that adjoin the Urban Area.

(3) The following uses may be allowed in streams, ponds, lakes and riparian areas and their buffer zones, when approved pursuant 350-81-570(5), and reviewed under the applicable provisions of 350-81-520 through 350-81-620: Proposed uses in streams, ponds, lakes, and riparian areas and their buffer zones shall be evaluated for adverse effects, including cumulative effects, and adverse effects shall be prohibited.

(a) The modification, expansion, replacement, or reconstruction of serviceable structures, provided that such actions would not:

(A) Increase the size of an existing structure by more than 100 percent,

(B) Result in a loss of water quality, natural drainage, and fish and wildlife habitat, or

(C) Intrude further into a stream, pond, lake, or buffer zone. New structures shall be considered intruding further into a stream, pond, lake, or buffer zone if any portion of the structure is located closer to the stream, pond, lake, or buffer zone than the existing structure.

(b) The construction of minor water-related recreation structures that are available for public use. Structures in this category shall be limited to boardwalks; trails and paths, provided their surface is not constructed of impervious materials; observation decks; and interpretative aids, such as kiosks and signs.

(c) The construction of minor water-dependent structures that are placed on pilings, if the pilings allow unobstructed flow of water and are not placed so close together that they effectively convert an aquatic area to dry land. Structures in this category shall be limited to public and private docks and boat houses, and fish and wildlife management structures that are constructed by federal, state, or tribal resource agencies.

(4) Uses not listed in 350-81-074, 350-81-570 (2) and (3) may be allowed in streams, ponds, lakes, and riparian areas, when approved pursuant to 350-81-570(6) and reviewed under the applicable provisions of 350-81-520 through 350-81-620.

(5) Applications for modifications to serviceable structures and minor water-dependent and water-related structures in aquatic and riparian areas shall demonstrate that:

(a) Practicable alternatives to locating the structure outside of the stream, pond, lake, or buffer zone and/or minimizing the impacts of the structure do not exist;

(b) All reasonable measures have been applied to ensure that the structure will result in the minimum feasible alteration or destruction of water quality, natural drainage, and fish and wildlife habitat of streams, ponds, lakes, and riparian areas;

(c) The structure will be constructed using best management practices;

(d) Areas disturbed during construction of the structure will be rehabilitated to the maximum extent practicable; and

(e) The structure complies with all applicable federal, state, and local laws.

(6) Applications for all other Review Uses in streams, ponds, lakes, and riparian areas shall demonstrate that:

(a) The proposed use is water-dependent, or is not water-dependent but has no practicable alternative as determined by 350-81-560 (6)(a), substituting the term stream, pond, lake, or riparian area as appropriate.

(b) The proposed use is in the public interest as determined by 350-81-560 (6)(b), substituting the term stream, pond, lake, or riparian area as appropriate.

(c) Measures have been applied to ensure that the proposed use results in minimum feasible impacts to water quality, natural drainage, and fish and wildlife habitat of the affected stream, pond, lake, and/or buffer zone.

At a minimum, the following mitigation measures shall be considered when new uses are proposed in streams, ponds, lakes, and buffer zones:

(A) Construction shall occur during periods when fish and wildlife are least sensitive to disturbance. Work in streams, ponds, and lakes shall be conducted during the periods specified in "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources" (Oregon Department of Fish and Wildlife, 2000), unless otherwise coordinated with and approved by the Oregon Department of Fish and Wildlife. In Washington, the Washington Department of Fish and Wildlife shall evaluate specific proposals and specify periods for in-water work.

(B) All natural vegetation shall be retained to the greatest extent practicable, including aquatic and riparian vegetation.

(C) Nonstructural controls and natural processes shall be used to the greatest extent practicable.

(D) Bridges, roads, pipeline and utility corridors, and other water crossings shall be minimized and should serve multiple purposes and properties.

(E) Stream channels should not be placed in culverts unless absolutely necessary for property access. Bridges are preferred for water crossings to reduce disruption to streams, ponds, lakes, and their banks. When culverts are necessary, oversized culverts with open bottoms that maintain the channel's width and grade should be used.

(F) Temporary and permanent control measures should be applied to minimize erosion and sedimentation when riparian areas are disturbed, including slope netting, berms and ditches, tree protection, sediment barriers, infiltration systems, and culverts.

(d) Groundwater and surface-water quality will not be degraded by the proposed use.

(e) Those portions of a proposed use that are not water-dependent or have a practicable alternative will be located outside of stream, pond, and lake buffer zones.

(f) The proposed use complies with all applicable federal, state, and county laws.

(g) Unavoidable impacts to aquatic and riparian areas will be offset through rehabilitation and enhancement.

Rehabilitation and enhancement shall achieve no net loss of water quality, natural drainage, and fish and wildlife habitat of the affected stream, pond, lake, and/or buffer zone. When a project area has been disturbed in the past, it shall be rehabilitated to its natural condition to the maximum extent practicable.

When a project area cannot be completely rehabilitated, such as when a boat launch permanently displaces aquatic and riparian areas, enhancement shall also be required.

The following rehabilitation and enhancement guidelines shall apply:

(A) Rehabilitation and enhancement projects shall be conducted in accordance with a rehabilitation and enhancement plan.

(B) Natural hydrologic conditions shall be replicated, including current patterns, circulation, velocity, volume, and normal water fluctuation.

(C) Natural stream channel and shoreline dimensions shall be replicated, including depth, width, length, cross-sectional profile, and gradient.

(D) The bed of the affected aquatic area shall be rehabilitated with identical or similar materials.

(E) Riparian areas shall be rehabilitated to their original configuration, including slope and contour.

(F) Fish and wildlife habitat features shall be replicated, including pool-riffle ratios, substrata, and structures. Structures include large woody debris and boulders.

(G) Stream channels and banks, shorelines, and riparian areas shall be replanted with native plant species that replicate the original vegetation community.

(H) Rehabilitation and enhancement efforts shall be completed no later 90 days after the aquatic area or buffer zone has been altered or destroyed, or as soon thereafter as is practicable.

(I) Three years after an aquatic area or buffer zone is rehabilitated or enhanced, at least 75 percent of the replacement vegetation must survive. The owner shall monitor the replacement vegetation and take corrective measures to satisfy this guideline.

(7) Stream, Pond, and Lake Buffer Zones

(a) Buffer zones shall generally be measured landward from the ordinary high water-mark on a horizontal scale that is perpendicular to the ordinary high water-mark. On the main stem of the Columbia River above Bonneville Dam, buffer zones shall be measured landward from the normal pool elevation of the Columbia River. The following buffer zone widths shall be required:

(A) Streams used by anadromous or resident fish (tributary fish habitat), special streams, intermittent streams that include year-round pools, and perennial streams: 100 feet

(B) Intermittent streams, provided they are not used by anadromous or resident fish: 50 feet

(C) Ponds and lakes: Buffer zone widths shall be based on dominant vegetative community as determined by 350-81-560 (7)(b), substituting the term pond or lake as appropriate.

(b) Except as otherwise allowed, buffer zones shall be retained in their natural condition. When a buffer zone is disturbed by a new use, it shall be replanted with native plant species.

(c) Determining the exact location of the ordinary high watermark or normal pool elevation shall be the responsibility of the project applicant. The Executive Director may verify the accuracy of, and may render adjustments to, an ordinary high water-mark or normal pool delineation. In the event the adjusted boundary delineation is contested by the applicant, the Executive Director shall, at the project applicant's expense, obtain professional services to render a final delineation.

(8) Rehabilitation and Enhancement Plans

Rehabilitation and enhancement plans shall be prepared when a project applicant is required to rehabilitate or enhance a stream, pond, lake and/or buffer area. They shall satisfy the following guidelines:

(a) Rehabilitation and enhancement plans are the responsibility of the project applicant; they shall be prepared by qualified professionals, such as fish or wildlife biologists.

(b) All plans shall include an assessment of the physical characteristics and natural functions of the affected stream, pond, lake, and/or buffer zone. The assessment shall include hydrology, flora, and fauna.

(c) Plan view and cross-sectional, scaled drawings; topographic survey data, including elevations at contour intervals of at least 2 feet, slope percentages, and final grade elevations; and other technical information shall be provided in sufficient detail to explain and illustrate:

(A) Soil and substrata conditions, grading and excavation, and erosion and sediment control needed to successfully rehabilitate and enhance the stream, pond, lake, and buffer zone.

(B) Planting plans that specify native plant species, quantities, size, spacing, or density; source of plant materials or seeds; timing, season, water, and nutrient requirements for planting; and where appropriate, measures to protect plants from predation.

(C) Water-quality parameters, construction techniques, management measures, and design specifications needed to maintain hydrologic conditions and water quality.

(d) A 3-year monitoring, maintenance, and replacement program shall be included in all rehabilitation and enhancement plans. At a minimum, a project applicant shall prepare an annual report that documents milestones, successes, problems, and contingency actions. Photographic monitoring shall be used to monitor all rehabilitation and enhancement efforts.

(e) A project applicant shall demonstrate sufficient fiscal, administrative, and technical competence to successfully execute and monitor a rehabilitation and enhancement plan.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Columbia River Gorge Commission and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 12-09-077, filed April 17, 2012)

350-81-580. General Management Area Sensitive Wildlife Review Criteria.

(1) Sensitive Wildlife Areas and Sites and Site Plans Near Sensitive Wildlife

(a) Proposed uses shall not adversely affect sensitive wildlife areas or sensitive wildlife sites:

(A) "Sensitive wildlife areas" in the Columbia Gorge means the following land and water areas that appear in the wildlife inventory map prepared and maintained by the Gorge Commission:

Bald eagle habitat
Deer and elk winter range
Elk habitat
Mountain goat habitat
Peregrine falcon habitat
Pika colony area
Pileated woodpecker habitat
Pine marten habitat
Shallow water fish habitat (Columbia R.)
Special streams
Special habitat area
Spotted owl habitat
Sturgeon spawning area
Tributary fish habitat
Turkey habitat
Waterfowl area
Western pond turtle habitat

(B) "Sensitive wildlife sites" means sites that are used by animal species that are

(i) listed as endangered or threatened pursuant to federal or state endangered species acts,

(ii) listed as endangered, threatened, sensitive, or candidate by the Washington Wildlife Commission,

(iii) listed as sensitive by the Oregon Fish and Wildlife Commission, or

(iii) considered to be of special interest to the public (limited to great blue heron, osprey, golden eagle, mountain goat, and prairie falcon).

Updated lists of species included in sensitive wildlife sites can be found on the websites for the Washington Department of Fish and Wildlife (Species of Concern list) and the Wildlife Division of Oregon Department of Fish and Wildlife. A list also is maintained by the USDA Forest Service - Scenic Area Office and available on the Gorge Commission website.

(b) In addition to the information required in all site plans, site plans for uses within 1,000 feet of a sensitive wildlife area or site shall include a map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.

~~(c) Determination of potential effects to significant natural resources shall include consideration of cumulative effects of proposed developments within 1000 feet of sensitive wildlife areas and sites. Proposed uses within 1,000 feet of a sensitive wildlife area or site shall be evaluated for~~

adverse effects, including cumulative effects, and adverse effects shall be prohibited.

(2) Field Survey

A field survey to identify sensitive wildlife areas or sites shall be required for:

- (a) Land divisions that create four or more parcels;
- (b) Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities;
- (c) Public transportation facilities that are outside improved rights-of-way;
- (d) Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and
- (e) Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances and other project related activities, except when all of their impacts will occur inside previously disturbed road, railroad or utility corridors, or existing developed utility sites, that are maintained annually.

Field surveys shall cover all areas affected by the proposed use or recreation facility. They shall be conducted by a professional wildlife biologist hired by the project applicant. All sensitive wildlife areas and sites discovered in a project area shall be described and shown on the site plan map.

(3) Review uses may be allowed within 1,000 feet of a sensitive wildlife area or site, when approved pursuant to 350-81-580(4) and reviewed under the applicable provisions of 350-81-520 through 350-81-620.

(4) Uses that are proposed within 1,000 feet of a sensitive wildlife area or site shall be reviewed as follows:

(a) Site plans shall be submitted to the Oregon Department of Fish and Wildlife or the Washington Department of Fish and Wildlife by the Development Review Officer. State wildlife biologists will review the site plan and their field survey records and:

- (A) Identify/verify the precise location of the wildlife area or site,
- (B) Ascertain whether the wildlife area or site is active or abandoned, and
- (C) Determine if the proposed use may compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance, such as nesting or rearing seasons. In some instances, state wildlife biologists may conduct field surveys to verify the wildlife inventory and assess the potential effects of a proposed use.

(b) The following factors may be considered when site plans are reviewed:

- (A) Biology of the affected wildlife species.
- (B) Published guidelines regarding the protection and management of the affected wildlife species. The Oregon Department of Forestry has prepared technical papers that include management guidelines for osprey and great blue heron. The Washington Department of Fish and Wildlife has prepared similar guidelines for a variety of species, including the western pond turtle, the peregrine falcon, and the Larch Mountain salamander (Rodrick and Milner, 1991).

(C) Physical characteristics of the subject parcel and vicinity, including topography and vegetation.

(D) Historic, current, and proposed uses in the vicinity of the sensitive wildlife area or site.

(E) Existing condition of the wildlife area or site and the surrounding habitat and the useful life of the area or site.

(c) The wildlife protection process may terminate if the Executive Director, in consultation with the state wildlife agency, determines:

- (A) The sensitive wildlife area or site is not active, or
- (B) The proposed use would not compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance.

(d) If the Executive Director, in consultation with the state wildlife agency, determines that the proposed use would have only minor effects on the wildlife area or site that could be eliminated through mitigation measures recommended by the state wildlife biologist, or by simply modifying the site plan or regulating the timing of new uses, a letter shall be sent to the applicant that describes the effects and measures needed to eliminate them. If the project applicant accepts these recommendations, the Executive Director will incorporate them into the development review order and the wildlife protection process may conclude.

(e) The project applicant shall prepare a wildlife management plan if the Executive Director, in consultation with the state wildlife agency, determines that the proposed use would adversely affect a sensitive wildlife area or site and the effects of the proposed use cannot be eliminated through site plan modifications or project timing.

(f) The Executive Director shall submit a copy of all field surveys and wildlife management plans to Oregon Department of Fish and Wildlife or Washington Department of Fish and Wildlife. The state wildlife agency will have 20 days from the date that a field survey or management plan is mailed to submit written comments to the Executive Director.

The Executive Director shall record and address any written comments submitted by the state wildlife agency in the land use review order.

Based on the comments from the state wildlife agency, the Executive Director will make a final decision on whether the proposed use would be consistent with the wildlife policies and guidelines. If the final decision contradicts the comments submitted by the state wildlife agency, the Executive Director shall justify how the opposing conclusion was reached.

The Executive Director shall require the applicant to revise the wildlife management plan as necessary to ensure that the proposed use would not adversely affect a sensitive wildlife area or site.

(5) Wildlife Management Plans

Wildlife management plans shall be prepared when a proposed use is likely to adversely affect a sensitive wildlife area or site. Their primary purpose is to document the special characteristics of a project site and the habitat requirements of affected wildlife species. This information provides a basis for the project applicant to redesign the proposed use in a manner that protects sensitive wildlife areas and sites, maximizes his/her development options, and mitigates temporary impacts to the wildlife area or site and/or buffer zone.

Wildlife management plans shall meet the following guidelines:

(a) Wildlife management plans shall be prepared by a professional wildlife biologist hired by the project applicant.

(b) All relevant background information shall be documented and considered, including biology of the affected species, published protection and management guidelines, physical characteristics of the subject parcel, past and present use of the subject parcel, and useful life of the wildlife area or site.

(c) The core habitat of the sensitive wildlife species shall be delineated. It shall encompass the sensitive wildlife area or site and the attributes, or key components, that are essential to maintain the long-term use and integrity of the wildlife area or site.

(d) A wildlife buffer zone shall be employed. It shall be wide enough to ensure that the core habitat is not adversely affected by new uses, or natural forces, such as fire and wind. Buffer zones shall be delineated on the site plan map and shall reflect the physical characteristics of the project site and the biology of the affected species.

(e) The size, scope, configuration, or density of new uses within the core habitat and the wildlife buffer zone shall be regulated to protect sensitive wildlife species. The timing and duration of all uses shall also be regulated to ensure that they do not occur during the time of the year when wildlife species are sensitive to disturbance. The following shall apply:

(A) New uses shall generally be prohibited within the core habitat. Exceptions may include uses that have temporary and negligible effects, such as the installation of minor underground utilities or the maintenance of existing structures. Low intensity, non-destructive uses may be conditionally authorized in the core habitat.

(B) Intensive uses shall be generally prohibited in wildlife buffer zones. Such uses may be conditionally authorized when a wildlife area or site is inhabited seasonally, provided they will have only temporary effects on the wildlife buffer zone and rehabilitation and/or enhancement will be completed before a particular species returns.

(f) Rehabilitation and/or enhancement shall be required when new uses are authorized within wildlife buffer zones. When a buffer zone has been altered or degraded in the past, it shall be rehabilitated to its natural condition to the maximum extent practicable. When complete rehabilitation is not possible, such as when new structures permanently displace wildlife habitat, enhancement shall also be required. Enhancement shall achieve a no net loss of the integrity of the wildlife area or site.

Rehabilitation and enhancement actions shall be documented in the wildlife management plan and shall include a map and text.

(g) The applicant shall prepare and implement a 3-year monitoring plan when the affected wildlife area or site is occupied by a species that is listed as endangered or threatened pursuant to federal or state wildlife lists. It shall include an annual report and shall track the status of the wildlife area or site and the success of rehabilitation and/or enhancement actions.

At the end of 3 years, rehabilitation and enhancement efforts may conclude if they are successful. In instances

where rehabilitation and enhancement efforts have failed, the monitoring process shall be extended until the applicant satisfies the rehabilitation and enhancement guidelines.

(6) New fences in deer and elk winter range

(a) New fences in deer and elk winter range shall be allowed only when necessary to control livestock or exclude wildlife from specified areas, such as gardens or sensitive wildlife sites. The areas fenced shall be the minimum necessary to meet the immediate needs of the project applicant.

(b) New and replacement fences that are allowed in winter range shall comply with the guidelines in Specifications for Structural Range Improvements (Sanderson, et. al. 1990), as summarized below, unless the applicant demonstrates the need for an alternative design:

(A) To make it easier for deer to jump over the fence, the top wire shall not be more than 42 inches high.

(B) The distance between the top two wires is critical for adult deer because their hind legs often become entangled between these wires. A gap of at least 10 inches shall be maintained between the top two wires to make it easier for deer to free themselves if they become entangled.

(C) The bottom wire shall be at least 16 inches above the ground to allow fawns to crawl under the fence. It should consist of smooth wire because barbs often injure animals as they crawl under fences.

(D) Stays, or braces placed between strands of wire, shall be positioned between fences posts where deer are most likely to cross. Stays create a more rigid fence, which allows deer a better chance to wiggle free if their hind legs become caught between the top two wires.

(c) Woven wire fences may be authorized only when it is clearly demonstrated that such a fence is required to meet specific and immediate needs, such as controlling hogs and sheep.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Columbia River Gorge Commission and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 12-09-077, filed April 17, 2012)

350-81-590. General Management Areas Rare Plant Review Criteria.

(1) Sensitive Plants and Site Plans for Review Uses Near Sensitive Plants

(a) Proposed uses shall not adversely affect sensitive plants. "Sensitive plants" means plant species that are

(A) endemic to the Columbia River Gorge and vicinity,

(B) listed as endangered or threatened pursuant to federal or state endangered species acts, or

(C) listed as endangered, threatened, or sensitive by the Oregon or Washington Natural Heritage program.

Updated lists of sensitive plant species can be found on the websites for the Oregon or Washington Natural Heritage Program. A list also is maintained by the USDA Forest Service - Scenic Area Office and available on the Gorge Commission website.

(b) In addition to the information required in all site plans, site plans for uses within 1,000 feet of a sensitive plant

shall include a map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.

~~(c) Determination of potential effects to significant natural resources shall include consideration of cumulative effects of proposed developments within 1,000 feet of rare plants. Proposed uses within 1,000 feet of a sensitive plant shall be evaluated for adverse effects, including cumulative effects, and adverse effects shall be prohibited.~~

(2) Field Survey

A field survey to identify sensitive plants shall be required for:

- (a) Land divisions that create four or more parcels;
- (b) Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities;
- (c) Public transportation facilities that are outside improved rights-of-way;
- (d) Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and
- (e) Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances and other project related activities, except when all of their impacts will occur inside previously disturbed road, railroad or utility corridors, or existing developed utility sites, that are maintained annually.

Field surveys shall cover all areas affected by the proposed use or recreation facility. They shall be conducted by a person with recognized expertise in botany or plant ecology hired by the project applicant. Field surveys shall identify the precise location of the sensitive plants and delineate a 200-foot buffer zone. The results of a field survey shall be shown on the site plan map.

(3) Review uses may be allowed within 1,000 feet of a sensitive plant, when approved pursuant to 350-81-590(4), and reviewed under the applicable provisions of 350-81-520 through 350-81-620.

(4) Uses that are proposed within 1,000 feet of a sensitive plant shall be reviewed as follows:

(a) Site plans shall be submitted to the Oregon or Washington Natural Heritage Program by the Executive Director. The Natural Heritage Program staff will review the site plan and their field survey records. They will identify the precise location of the affected plants and delineate a 200-foot buffer zone on the project applicant's site plan.

If the field survey records of the state heritage program are inadequate, the project applicant shall hire a person with recognized expertise in botany or plant ecology to ascertain the precise location of the affected plants.

(b) The rare plant protection process may conclude if the Executive Director, in consultation with the Natural Heritage Program staff, determines that the proposed use would be located outside of a sensitive plant buffer zone.

(c) New uses shall be prohibited within sensitive plant species buffer zones.

(d) If a proposed use must be allowed within a sensitive plant buffer area in accordance with 350-81-078, the project applicant shall prepare a protection and rehabilitation plan pursuant to 350-81-590(5).

(e) The Executive Director shall submit a copy of all field surveys and protection and rehabilitation plans to the Oregon or Washington Natural Heritage Program. The Natural Heritage Program staff will have 20 days from the date that a field survey is mailed to submit written comments to the Executive Director. The Executive Director shall record and address any written comments submitted by the Natural Heritage Program staff in the land use review order.

Based on the comments from the Natural Heritage Program staff, the Executive Director will make a final decision on whether the proposed use would be consistent with the rare plant policies and guidelines. If the final decision contradicts the comments submitted by the Natural Heritage Program staff, the Executive Director shall justify how the opposing conclusion was reached.

(5) Protection and Rehabilitation Plans

Protection and rehabilitation plans shall minimize and offset unavoidable impacts that result from a new use that occurs within a sensitive plant buffer zone as the result of a variance.

Protection and rehabilitation plans shall meet the following guidelines:

(a) Protection and rehabilitation plans shall be prepared by a professional botanist or plant ecologist hired by the project applicant.

(b) Construction, protection, and rehabilitation activities shall occur during the time of the year when ground disturbance will be minimized and protection, rehabilitation, and replacement efforts will be maximized.

(c) Sensitive plants that will be destroyed shall be transplanted or replaced, to the maximum extent practicable. Replacement is used here to mean the establishment of a particular plant species in areas of suitable habitat not affected by new uses. Replacement may be accomplished by seeds, cuttings, or other appropriate methods.

Replacement shall occur as close to the original plant site as practicable. The project applicant shall ensure that at least 75 percent of the replacement plants survive 3 years after the date they are planted.

(d) Sensitive plants and their surrounding habitat that will not be altered or destroyed shall be protected and maintained. Appropriate protection and maintenance techniques shall be applied, such as fencing, conservation easements, livestock management, and noxious weed control.

(e) Habitat of a sensitive plant that will be affected by temporary uses shall be rehabilitated to a natural condition.

(f) Protection efforts shall be implemented before construction activities begin. Rehabilitation efforts shall be implemented immediately after the plants and their surrounding habitat are disturbed.

(g) Protection and rehabilitation plans shall include maps, photographs, and text. The text shall:

(A) Describe the biology of sensitive plant species that will be affected by a proposed use.

(B) Explain the techniques that will be used to protect sensitive plants and their surrounding habitat that will not be altered or destroyed.

(C) Describe the rehabilitation and enhancement actions that will minimize and offset the impacts that will result from a proposed use.

(D) Include a 3-year monitoring, maintenance, and replacement program. The project applicant shall prepare and submit to the Executive Director an annual report that documents milestones, successes, problems, and contingency actions.

(6) Sensitive Plant Buffer Zones

(a) A 200-foot buffer zone shall be maintained around sensitive plants. Buffer areas shall remain in an undisturbed, natural condition.

(b) Buffer zones may be reduced if a project applicant demonstrates that intervening topography, vegetation, man-made features, or natural plant habitat boundaries negate the need for a 200 foot radius. Under no circumstances shall the buffer zone be less than 25 feet.

(c) Requests to reduce buffer areas shall be considered if a professional botanist or plant ecologist hired by the project applicant:

(A) Identifies the precise location of the sensitive plants,

(B) Describes the biology of the sensitive plants, and

(C) Demonstrates that the proposed use will not have any negative effects, either direct or indirect, on the affected plants and the surrounding habitat that is vital to their long-term survival.

All requests shall be prepared as a written report. Published literature regarding the biology of the affected plants and recommendations regarding their protection and management shall be cited. The report shall include detailed maps and photographs.

(d) The Executive Director shall submit all requests to reduce sensitive plant species buffer areas to the Oregon or Washington Natural Heritage Program. The Natural Heritage Program staff will have 20 days from the date that such a request is mailed to submit written comments to the Executive Director.

The Executive Director shall record and address any written comments submitted by the Oregon or Washington Natural Heritage Program in the development review order.

Based on the comments from the Oregon or Washington Natural Heritage Program, the Executive Director will make a final decision on whether the reduced buffer area is justified. If the final decision contradicts the comments submitted by the Natural Heritage Program staff, the Executive Director shall justify how the opposing conclusion was reached.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Columbia River Gorge Commission and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 105-11-054 [05-11-054], filed May 16, 2005)

350-81-600. Special Management Areas Natural Resource Review Criteria

(1) All new developments and uses, as described in a site plan prepared by the applicant, shall be evaluated using the following guidelines to ensure that natural resources are protected from adverse effects. Cumulative effects analysis is not required for expedited review uses or developments. Comments from state and federal agencies shall be carefully considered. (Site plans are described in 350-81-032).

(2) Water Resources (Wetlands, Streams, Ponds, Lakes, and Riparian Areas)

(a) All Water Resources shall, in part, be protected by establishing undisturbed buffer zones as specified in subsections (2)(a)(B)(i) and (ii) below. These buffer zones are measured horizontally from a wetland, stream, lake, or pond boundary as defined below.

(A) All buffer zones shall be retained undisturbed and in their natural condition, except as permitted with a mitigation plan.

(B) Buffer zones shall be measured outward from the bank full flow boundary for streams, the high water mark for ponds and lakes, the normal pool elevation for the Columbia River, and the wetland delineation boundary for wetlands on a horizontal scale that is perpendicular to the wetlands, stream, pond or lake boundary. On the main stem of the Columbia River above Bonneville Dam, buffer zones shall be measured landward from the normal pool elevation of the Columbia River. The following buffer zone widths shall be required:

(i) A minimum 200 foot buffer on each wetland, pond, lake, and each bank of a perennial or fish bearing stream, some of which can be intermittent.

(ii) A 50-foot buffer zone along each bank of intermittent (including ephemeral), non-fish bearing streams.

(iii) Maintenance, repair, reconstruction and realignment of roads and railroads within their rights-of-way shall be exempted from the wetlands and riparian guidelines upon demonstration of all of the following:

(I) The wetland within the right-of-way is a drainage ditch not part of a larger wetland outside of the right-of-way.

(II) The wetland is not critical habitat.

(III) Proposed activities within the right-of-way would not adversely affect a wetland adjacent to the right-of-way.

(C) The buffer width shall be increased for the following:

(i) When the channel migration zone exceeds the recommended buffer width, the buffer width shall extend to the outer edge of the channel migration zone.

(ii) When the frequently flooded area exceeds the recommended riparian buffer zone width, the buffer width shall be extended to the outer edge of the frequently flooded area.

(iii) When an erosion or landslide hazard area exceeds the recommended width of the buffer, the buffer width shall be extended to include the hazard area.

(D) Buffer zones can be reconfigured if a project applicant demonstrates all of the following: (1) the integrity and function of the buffer zones is maintained, (2) the total buffer area on the development proposal is not decreased, (3) the width reduction shall not occur within another buffer, and (4) the buffer zone width is not reduced more than 50% at any particular location. Such features as intervening topography, vegetation, man made features, natural plant or wildlife habitat boundaries, and flood plain characteristics could be considered.

(E) Requests to reconfigure buffer zones shall be considered if an appropriate professional (botanist, plant ecologist, wildlife biologist, or hydrologist), hired by the project applicant (1) identifies the precise location of the sensitive wild-life/plant or water resource, (2) describes the biology of the

sensitive wildlife/plant or hydrologic condition of the water resource, and (3) demonstrates that the proposed use will not have any negative effects, either direct or indirect, on the affected wildlife/plant and their surrounding habitat that is vital to their long-term survival or water resource and its long term function.

(F) The Executive Director shall submit all requests to re-configure sensitive wildlife/plant or water resource buffers to the Forest Service and the appropriate state agencies for review. All written comments shall be included in the project file. Based on the comments from the state and federal agencies, the Executive Director will make a final decision on whether the reconfigured buffer zones are justified. If the final decision contradicts the comments submitted by the federal and state agencies, the Executive Director shall justify how the opposing conclusion was reached.

(b) When a buffer zone is disturbed by a new use, it shall be replanted with only native plant species of the Columbia River Gorge.

(c) The applicant shall be responsible for identifying all water resources and their appropriate buffers. (see above)

(d) Wetlands Boundaries shall be delineated using the following:

(A) The approximate location and extent of wetlands in the Scenic Area is shown on the National Wetlands Inventory (U.S. Department of the Interior 1987). In addition, the list of hydric soils and the soil survey maps shall be used as an indicator of wetlands.

(B) Some wetlands may not be shown on the wetlands inventory or soil survey maps. Wetlands that are discovered by the local planning staff during an inspection of a potential project site shall be delineated and protected.

(C) The project applicant shall be responsible for determining the exact location of a wetlands boundary. Wetlands boundaries shall be delineated using the procedures specified in the '1987 Corps of Engineers Wetland Delineation Manual (on-line Edition)'.

(D) All wetlands delineations shall be conducted by a professional who has been trained to use the federal delineation procedures, such as a soil scientist, botanist, or wetlands ecologist.

(e) Stream, pond, and lake boundaries shall be delineated using the bank full flow boundary for streams and the high water mark for ponds and lakes. The project applicant shall be responsible for determining the exact location of the appropriate boundary for the water resource.

(f) The Executive Director may verify the accuracy of, and render adjustments to, a bank full flow, high water mark, normal pool elevation (for the Columbia River), or wetland boundary delineation. If the adjusted boundary is contested by the project applicant, the Executive Director shall obtain professional services, at the project applicant's expense, or ask for technical assistance from the Forest Service to render a final delineation.

(g) Buffer zones shall be undisturbed unless the following criteria have been satisfied:

(A) The proposed use must have no practicable alternative as determined by the practicable alternative test.

Those portions of a proposed use that have a practicable alternative will not be located in wetlands, stream, pond, lake, and riparian areas and/or their buffer zone.

(B) Filling and draining of wetlands shall be prohibited with exceptions related to public safety or restoration/enhancement activities as permitted when all of the following criteria have been met:

(i) A documented public safety hazard exists or a restoration/ enhancement project exists that would benefit the public and is corrected or achieved only by impacting the wetland in question, and

(ii) Impacts to the wetland must be the last possible documented alternative in fixing the public safety concern or completing the restoration/enhancement project, and

(iii) The proposed project minimizes the impacts to the wetland.

(C) Unavoidable impacts to wetlands and aquatic and riparian areas and their buffer zones shall be offset by deliberate restoration and enhancement or creation (wetlands only) measures as required by the completion of a mitigation plan.

(h) Proposed uses and development within wetlands, streams, ponds, lakes, riparian areas and their buffer zones shall be evaluated for cumulative effects to natural resources and cumulative effects that are adverse shall be prohibited.

(3) Wildlife and Plants

(a) Protection of sensitive wildlife/plant areas and sites shall begin when proposed new developments or uses are within 1000 ft of a sensitive wildlife/plant site and/or area.

Sensitive Wildlife Areas and endemic plants are those areas depicted in the wildlife inventory and listed in the "Types of Wildlife Areas and Sites Inventoried in the Columbia Gorge" and "Columbia Gorge and Vicinity Endemic Plant Species" tables in the Management Plan, including all Priority Habitats listed in this Chapter. The approximate locations of sensitive wildlife and/or plant areas and sites are shown in the wildlife and rare plant inventory.

Updated lists of sensitive wildlife and plant species can be found on websites for the Washington Department of Fish and Wildlife, the Wildlife Division of Oregon Department of Fish and Wildlife, and the Oregon or Washington Natural Heritage Programs. A list also is maintained by the USDA Forest Service - Scenic Area Office and available on the Gorge Commission website.

(b) The Executive Director shall submit site plans (of uses that are proposed within 1,000 feet of a sensitive wildlife and/or plant area or site) for review to the Forest Service and the appropriate state agencies (Oregon Department of Fish and Wildlife or the Washington Department of Fish and Wildlife for wildlife issues and by the Oregon or Washington Natural Heritage Program for plant issues).

(c) The Forest Service wildlife biologists and/or botanists, in consultation with the appropriate state biologists, shall review the site plan and their field survey records. They shall:

(A) Identify/verify the precise location of the wildlife and/or plant area or site,

(B) Determine if a field survey will be required,

(C) Determine, based on the biology and habitat requirements of the affected wildlife/plant species, if the proposed

use would compromise the integrity and function of or result in adverse affects (including cumulative effects) to the wildlife or plant area or site. This would include considering the time of year when wildlife or plant species are sensitive to disturbance, such as nesting, rearing seasons, or flowering season, and

(D) Delineate the undisturbed 200 ft buffer on the site plan for sensitive plants and/or the appropriate buffer for sensitive wildlife areas or sites, including nesting, roosting and perching sites.

(i) Buffer zones can be reconfigured if a project applicant demonstrates all of the following: (1) the integrity and function of the buffer zones is maintained, (2) the total buffer area on the development proposal is not decreased, (3) the width reduction shall not occur within another buffer, and (4) the buffer zone width is not reduced more than 50% at any particular location. Such features as intervening topography, vegetation, man made features, natural plant or wildlife habitat boundaries, and flood plain characteristics could be considered.

(ii) Requests to reduce buffer zones shall be considered if an appropriate professional (botanist, plant ecologist, wildlife biologist, or hydrologist), hired by the project applicant, (1) identifies the precise location of the sensitive wildlife/plant or water resource, (2) describes the biology of the sensitive wildlife/plant or hydrologic condition of the water resource, and (3) demonstrates that the proposed use will not have any negative effects, either direct or indirect, on the affected wildlife/plant and their surrounding habitat that is vital to their long-term survival or water resource and its long term function.

(iii) The Executive Director shall submit all requests to re-configure sensitive wildlife/plant or water resource buffers to the Forest Service and the appropriate state agencies for review. All written comments shall be included in the record of application and based on the comments from the state and federal agencies, the Executive Director will make a final decision on whether the reduced buffer zone is justified. If the final decision contradicts the comments submitted by the federal and state agencies, the Executive Director shall justify how the opposing conclusion was reached

(d) The Executive Director, in consultation with the State and federal wildlife biologists and/or botanists, shall use the following criteria in reviewing and evaluating the site plan to ensure that the proposed developments or uses do not compromise the integrity and function of or result in adverse affects to the wildlife or plant area or site:

(A) Published guidelines regarding the protection and management of the affected wildlife/plant species. Examples include: the Oregon Department of Forestry has prepared technical papers that include management guidelines for osprey and great blue heron; the Washington Department of Fish and Wildlife has prepared similar guidelines for a variety of species, including the western pond turtle, the peregrine falcon, and the Larch Mountain salamander.

(B) Physical characteristics of the subject parcel and vicinity, including topography and vegetation.

(C) Historic, current, and proposed uses in the vicinity of the sensitive wildlife/plant area or site.

(D) Existing condition of the wildlife/plant area or site and the surrounding habitat and the useful life of the area or site.

(E) In areas of winter range, habitat components, such as forage, and thermal cover, important to the viability of the wildlife must be maintained or, if impacts are to occur, enhancement must mitigate the impacts so as to maintain overall values and function of winter range.

(F) The site plan is consistent with the "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources" (Oregon Department of Fish and Wildlife 2000) and the Washington guidelines when they become finalized.

(G) The site plan activities coincide with periods when fish and wildlife are least sensitive to disturbance. These would include, among others, nesting and brooding periods (from nest building to fledgling of young) and those periods specified.

(H) The site plan illustrates that new developments and uses, including bridges, culverts, and utility corridors, shall not interfere with fish and wildlife passage.

(I) Maintain, protect, and enhance the integrity and function of Priority Habitats (such as old growth forests, talus slopes, and oak woodlands) as listed on the following Priority Habitats Table. This includes maintaining structural, species, and age diversity, maintaining connectivity within and between plant communities, and ensuring that cumulative impacts are considered in documenting integrity and function.

PRIORITY HABITATS TABLE	
Priority Habitats	Criteria
Aspen stands	High fish and wildlife species diversity, limited availability, high vulnerability to habitat alteration.
Caves	Significant wildlife breeding habitat, limited availability, dependent species.
Old-growth forest	High fish and wildlife density, species diversity, breeding habitat, seasonal ranges, and limited and declining availability, high vulnerability.
Oregon white oak woodlands	Comparatively high fish and wildlife density, species diversity, declining availability, high vulnerability
Prairies and steppe	Comparatively high fish and wildlife density, species diversity, important breeding habitat, declining and limited availability, high vulnerability.
Riparian	High fish and wildlife density, species diversity, breeding habitat, movement corridor, high vulnerability, dependent species.

PRIORITY HABITATS TABLE	
Priority Habitats	Criteria
Wetlands	High species density, high species diversity, important breeding habitat and seasonal ranges, limited availability, high vulnerability.
Snags and logs	High fish and wildlife density, species diversity, limited availability, high vulnerability, dependent species.
Talus	Limited availability, unique and dependent species, high vulnerability.
Cliffs	Significant breeding habitat, limited availability, dependent species.
Dunes	Unique species habitat, limited availability, high vulnerability, dependent species.

(e) The wildlife/plant protection process may terminate if the Executive Director, in consultation with the Forest Service and state wildlife agency or Heritage program, determines (1) the sensitive wildlife area or site is not active, or (2) the proposed use is not within the buffer zones and would not compromise the integrity of the wildlife/plant area or site, and (3) the proposed use is within the buffer and could be easily moved out of the buffer by simply modifying the project proposal (site plan modifications). If the project applicant accepts these recommendations, the Executive Director shall incorporate them into the final decision and the wildlife/plant protection process may conclude.

(f) If the above measures fail to eliminate the adverse affects, the proposed project shall be prohibited, unless the project applicant can meet the Practicable Alternative Test and prepare a mitigation plan to offset the adverse effects by deliberate restoration and enhancement.

(g) The Executive Director shall submit a copy of all field surveys (if completed) and mitigation plans to the Forest Service and appropriate state agencies. The Executive Director shall include all comments in the record of application and address any written comments submitted by the state and federal wildlife agency/heritage programs in the final decision.

Based on the comments from the state and federal wildlife agency/heritage program, the Executive Director shall make a final decision on whether the proposed use would be consistent with the wildlife/plant policies and guidelines. If the final decision contradicts the comments submitted by the state and federal wildlife agency/heritage program, the Executive Director shall justify how the opposing conclusion was reached.

(h) The Executive Director shall require the project applicant to revise the mitigation plan as necessary to ensure that the proposed use would not adversely affect a sensitive wildlife/plant area or site.

(i) Proposed uses and developments within 1,000 feet of sensitive wildlife areas and sites or within 1,000 feet of rare plants shall be evaluated for cumulative effects to natural

resources and cumulative effects that are adverse shall be prohibited.

(4) Soil Productivity

(a) Soil productivity shall be protected using the following guidelines:

(A) A description or illustration showing the mitigation measures to control soil erosion and stream sedimentation.

(B) New developments and land uses shall control all soil movement within the area shown on the site plan.

(C) The soil area disturbed by new development or land uses, except for new cultivation, shall not exceed 15 percent of the project area.

(D) Within 1 year of project completion, 80 percent of the project area with surface disturbance shall be established with effective native ground cover species or other soil-stabilizing methods to prevent soil erosion until the area has 80 percent vegetative cover.

Practicable Alternative Test

(1) An alternative site for a proposed use shall be considered practicable if it is available and the proposed use can be undertaken on that site after taking into consideration cost, technology, logistics, and overall project purposes.

A practicable alternative does not exist if a project applicant satisfactorily demonstrates all of the following:

(a) The basic purpose of the use cannot be reasonably accomplished using one or more other sites in the vicinity that would avoid or result in less adverse effects on wetlands, ponds, lakes, riparian areas, wildlife, or plant areas and sites.

(b) The basic purpose of the use cannot be reasonably accomplished by reducing its proposed size, scope, configuration, or density, or by changing the design of the use in a way that would avoid or result in less adverse effects on wetlands, ponds, lakes, riparian areas, wildlife, or plant areas and sites.

(c) Reasonable attempts were made to remove or accommodate constraints that caused a project applicant to reject alternatives to the proposed use. Such constraints include inadequate infrastructure, parcel size, and land use designations. If a land use designation or recreation intensity class is a constraint, an applicant must request a Management Plan amendment to demonstrate that practicable alternatives do not exist.

Mitigation Plan

(1) Mitigation Plan shall be prepared when:

(a) The proposed development or use is within a buffer zone (wetland, pond, lakes, riparian areas, wildlife or plant areas and/or sites).

(b) There is no practicable alternative (see the "practicable alternative" test).

(2) In all cases, Mitigation Plans are the responsibility of the applicant and shall be prepared by an appropriate professional (botanist/ecologist for plant sites, a wildlife/fish biologist for wildlife/fish sites, and a qualified professional for water resource sites).

(3) The primary purpose of this information is to provide a basis for the project applicant to redesign the proposed use in a manner that protects sensitive water resources, and wildlife/plant areas and sites, that maximizes his/her development options, and that mitigates, through restoration, enhancement, and replacement measures, impacts to the water

resources and/or wildlife/plant area or site and/or buffer zones.

(4) The applicant shall submit the mitigation plan to the Executive Director. The Executive Director shall submit a copy of the mitigation plan to the Forest Service, and appropriate state agencies. If the final decision contradicts the comments submitted by the state and federal wildlife agency/heritage program, the Executive Director shall justify how the opposite conclusion was reached.

(5) A project applicant shall demonstrate sufficient fiscal, technical, and administrative competence to successfully execute a mitigation plan involving wetland creation.

(6) Mitigation plans shall include maps, photographs, and text. The text shall:

(a) Describe the biology and/or function of the sensitive resources (e.g. Wildlife/plant species, or wetland) that will be affected by a proposed use. An ecological assessment of the sensitive resource to be altered or destroyed and the condition of the resource that will result after restoration will be required. Reference published protection and management guidelines.

(b) Describe the physical characteristics of the subject parcel, past, present, and future uses, and the past, present, and future potential impacts to the sensitive resources. Include the size, scope, configuration, or density of new uses being proposed within the buffer zone.

(c) Explain the techniques that will be used to protect the sensitive resources and their surrounding habitat that will not be altered or destroyed (for examples, delineation of core habitat of the sensitive wildlife/plant species and key components that are essential to maintain the long-term use and integrity of the wildlife/plant area or site).

(d) Show how restoration, enhancement, and replacement (creation) measures will be applied to ensure that the proposed use results in minimum feasible impacts to sensitive resources, their buffer zones, and associated habitats.

(e) Show how the proposed restoration, enhancement, or replacement (creation) mitigation measures are NOT alternatives to avoidance. A proposed development/use must first avoid a sensitive resource, and only if this is not possible should restoration, enhancement, or creation be considered as mitigation. In reviewing mitigation plans, the local government, appropriate state agencies, and Forest Service shall critically examine all proposals to ensure that they are indeed last resort options.

(7) At a minimum, a project applicant shall provide to the Executive Director a progress report every 3-years that documents milestones, successes, problems, and contingency actions. Photographic monitoring stations shall be established and photographs shall be used to monitor all mitigation progress.

(8) A final monitoring report shall be submitted to the Executive Director for review upon completion of the restoration, enhancement, or replacement activity. This monitoring report shall document successes, problems encountered, resource recovery, status of any sensitive wildlife/plant species and shall demonstrate the success of restoration and/or enhancement actions. The Executive Director shall submit copies of the monitoring report to the Forest Service; who shall offer technical assistance to the Executive Director in

helping to evaluate the completion of the mitigation plan. In instances where restoration and enhancement efforts have failed, the monitoring process shall be extended until the applicant satisfies the restoration and enhancement guidelines.

(9) Mitigation measures to offset impacts to resources and/or buffers shall result in no net loss of water quality, natural drainage, fish/wildlife/plant habitat, and water resources by addressing the following:

(a) Restoration and enhancement efforts shall be completed no later than one year after the sensitive resource or buffer zone has been altered or destroyed, or as soon thereafter as is practicable.

(b) All natural vegetation within the buffer zone shall be retained to the greatest extent practicable. Appropriate protection and maintenance techniques shall be applied, such as fencing, conservation buffers, livestock management, and noxious weed control. Within five years, at least 75 percent of the replacement vegetation must survive. All plantings must be with native plant species that replicate the original vegetation community.

(c) Habitat that will be affected by either temporary or permanent uses shall be rehabilitated to a natural condition. Habitat shall be replicated in composition, structure, and function, including tree, shrub and herbaceous species, snags, pool-riffle ratios, substrata, and structures, such as large woody debris and boulders.

(d) If this standard is not feasible or practical because of technical constraints, a sensitive resource of equal or greater benefit may be substituted, provided that no net loss of sensitive resource functions occurs and provided the Executive Director, in consultation with the appropriate State and Federal agency, determine that such substitution is justified.

(e) Sensitive plants that will be destroyed shall be transplanted or replaced, to the maximum extent practicable. Replacement is used here to mean the establishment of a particular plant species in areas of suitable habitat not affected by new uses. Replacement may be accomplished by seeds, cuttings, or other appropriate methods.

Replacement shall occur as close to the original plant site as practicable. The project applicant shall ensure that at least 75 percent of the replacement plants survive 3 years after the date they are planted.

(f) Nonstructural controls and natural processes shall be used to the greatest extent practicable.

(A) Bridges, roads, pipeline and utility corridors, and other water crossings shall be minimized and should serve multiple purposes and properties.

(B) Stream channels shall not be placed in culverts unless absolutely necessary for property access. Bridges are preferred for water crossings to reduce disruption to hydrologic and biologic functions. Culverts shall only be permitted if there are no practicable alternatives as demonstrated by the 'Practical Alternative Test'.

(C) Fish passage shall be protected from obstruction.

(D) Restoration of fish passage should occur wherever possible.

(E) Show location and nature of temporary and permanent control measures that shall be applied to minimize erosion and sedimentation when riparian areas are disturbed,

including slope netting, berms and ditches, tree protection, sediment barriers, infiltration systems, and culverts.

(F) Groundwater and surface water quality will not be degraded by the proposed use. Natural hydrologic conditions shall be maintained, restored, or enhanced in such a manner that replicates natural conditions, including current patterns (circulation, velocity, volume, and normal water fluctuation), natural stream channel and shoreline dimensions and materials, including slope, depth, width, length, cross-sectional profile, and gradient.

(G) Those portions of a proposed use that are not water-dependent or that have a practicable alternative will be located outside of stream, pond, and lake buffer zones.

(H) Streambank and shoreline stability shall be maintained or restored with natural revegetation.

(I) The size of restored, enhanced, and replacement (creation) wetlands shall equal or exceed the following ratios. The first number specifies the required acreage of replacement wetlands, and the second number specifies the acreage of wetlands altered or destroyed.

Restoration: 2: 1

Creation: 3: 1

Enhancement: 4: 1

(g) Wetland creation mitigation shall be deemed complete when the wetland is self-functioning for 5 consecutive years. Self-functioning is defined by the expected function of the wetland as written in the mitigation plan. The monitoring report shall be submitted to the local government to ensure compliance. The Forest Service, in consultation with appropriate state agencies, shall extend technical assistance to the local government to help evaluate such reports and any subsequent activities associated with compliance.

(h) Wetland restoration/enhancement can be mitigated successfully by donating appropriate funds to a non-profit wetland conservancy or land trust with explicit instructions that those funds are to be used specifically to purchase protection easements or fee title protection of appropriate wetlands acreage in or adjacent to the Columbia River Gorge meeting the ratios given above in guideline (9)(f)(I). These transactions shall be explained in detail in the Mitigation Plan and shall be fully monitored and documented in the monitoring report.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

WSR 18-01-100
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Services and Enterprise Support Administration)

[Filed December 19, 2017, 9:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-17-102.

Title of Rule and Other Identifying Information: The department is proposing to create new WAC 388-01-005; repeal WAC 388-01-040; and amend WAC 388-01-010, 388-

01-015, 388-01-020, 388-01-030, 388-01-050, 388-01-060, 388-01-070, 388-01-080, 388-01-090, 388-01-100, 388-01-110, 388-01-120, 388-01-130, 388-01-140, 388-01-150, 388-01-160, 388-01-170, 388-01-180, 388-01-190, and 388-01-200.

Hearing Location(s): On February 6, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than February 7, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., February 6, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by January 23, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amended rules add language to clarify, update, and ensure clear policies for responding to public records requests under chapter 42.56 RCW, and align policy to comply with new statutes. The proposed repeal of WAC 388-01-040 removes existing redundant language, and the proposed new WAC 388-01-005 adds a new definition section for rule clarity.

Reasons Supporting Proposal: See purpose statement above.

Statutory Authority for Adoption: RCW 42.56.040.

Statute Being Implemented: Chapter 42.56 RCW.

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

Name of Proponent: [DSHS], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Natasha House, DSHS Public Records Officer, P.O. Box 45135, Olympia, WA 98504, 360-902-8484.

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

A cost-benefit analysis is not required under RCW 34.05.328. Amendments to chapter 388-01 WAC clarify current department policy and are not considered "significant legislative rules."

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

December 13, 2017
Katherine I. Vasquez
Rules Coordinator

NEW SECTION

WAC 388-01-005 What definitions apply to this chapter? The following definitions apply to this chapter:

(1) "Authorization" means a detailed document that gives DSHS permission to use or disclose confidential information and records for specified purposes.

(2) "Business days" means Monday through Friday, excluding legal holidays.

(3) "Client" means a person who receives services or benefits from DSHS. Clients include but are not limited to, consumers, recipients, applicants, residents of DSHS facilities or institutions, patients, parents and children involved with child welfare services, juveniles involved with the juvenile justice system, parents receiving support enforcement services, persons who previously received services or benefits, and persons applying for benefits or services.

(4) "DSHS" means the department of social and health services

(5) "Public records coordinator" means a person designated to respond to public records requests within an organizational unit or who are appointed as responsible for a local office, unit, region, program, or facility.

(6) "Public records officer" means the person designated as the public records officer for the DSHS under RCW 42.56.580. The DSHS public records officer has primary responsibility for management, oversight, and monitoring of DSHS's public records request process.

(7) "Redact" means deleting or marking out exempt information from a public record.

(8) "Third party notice" means notifying affected persons or entities of a public records request to allow the opportunity to enjoin disclosure of the records under RCW 42.56-540.

AMENDATORY SECTION (Amending WSR 99-15-065, filed 7/19/99, effective 8/19/99)

WAC 388-01-010 What are the purposes of this chapter? The purposes of this chapter are to:

(1) Describe the organization of the department of social and health services (DSHS); and

(2) ~~((Ensure that DSHS complies with laws governing the disclosure (release) of public records; and~~

~~(3))~~ Explain how an individual or organization ~~((can))~~ may obtain public records.

AMENDATORY SECTION (Amending WSR 02-15-119, filed 7/18/02, effective 8/18/02)

WAC 388-01-015 Does any provision in this title create a ~~((right or))~~ cause of action ~~((, or compel DSHS to establish a program or entitlement))~~? Except where otherwise provided, no provision in Title 388 WAC:

(1) Creates or is intended to create any right or cause of action ~~((, or))~~;

(2) Adds to or intends to add to any existing right or cause of action ~~((, nor may anything in Title 388 WAC be relied upon to compel))~~; or

(3) Compels the establishment of any program or special entitlement.

AMENDATORY SECTION (Amending WSR 99-15-065, filed 7/19/99, effective 8/19/99)

WAC 388-01-020 ~~((What is DSHS and))~~ How is DSHS organized? (1) ~~((DSHS was created to unite related statewide social and health service programs within a single agency. DSHS programs are designed to protect the general public, as well as persons who are unable to fully care for themselves or meet their basic needs))~~ DSHS's current organizational structure can be located at the following link: <https://www.dshs.wa.gov/strategic-planning/organizational-chart>.

(2) ~~((It is organized into seven administrations plus the secretary's and deputy secretary's offices:~~

~~(a) Aging and adult services;~~

~~(b) Children's services;~~

~~(c) Economic services;~~

~~(d) Health and rehabilitative services;~~

~~(e) Juvenile rehabilitation;~~

~~(f) Management services; and~~

~~(g) Medical assistance.~~

(3) To request an organizational chart, contact: DSHS, Office of the Secretary, P.O. Box 45010, Olympia, WA 98504-5010, or telephone number (360) 902-7800.

(4) DSHS has offices in the community to serve clients. Local DSHS offices have various names, such as community services office (CSO), regional offices, home and community services (HCS), division of child support (DCS), children's services, division of developmental disabilities (DDD) field service offices, and facilities)) You may also request organizational charts by writing to:

DSHS, office of the secretary

PO Box 45010

Olympia, WA 98504-5010.

AMENDATORY SECTION (Amending WSR 03-17-014, filed 8/12/03, effective 9/12/03)

WAC 388-01-030 What ~~((DSHS))~~ public records are available? (1) DSHS prepares and keeps public records that relate to the programs it administers. All records DSHS uses to conduct business are public records.

DSHS public records may include ~~((;))~~ documents, audio and video recordings, pictures, email, computer disks, and electronic data.

(2) DSHS public records are available to the public unless a law exempts them from disclosure. Some DSHS records ~~((contain))~~ are confidential ~~((information that is))~~ and not available to everyone. Records exempt from public disclosure are listed under chapter 42.56 RCW, WAC 388-01-020, and other federal and state laws applicable to DSHS.

(3) ~~((You))~~ Clients, or someone authorized to act for ~~((you or by you))~~ a client, may ~~((have))~~ access ~~((to))~~ confidential records about ~~((you))~~ the client that ~~((would otherwise be))~~ are exempt from disclosure to the public unless specifically prohibited by law.

(4) Upon ~~((your))~~ request, DSHS may ~~((give you))~~ provide access to records such as rules, policies, indexes, interpretive statements, pamphlets, forms, and other publications

at cost under WAC 388-01-180 without using the public records (~~(disclosure)~~) request process.

AMENDATORY SECTION (Amending WSR 99-15-065, filed 7/19/99, effective 8/19/99)

WAC 388-01-050 Who should be contacted to request a public record? ~~((An individual should contact the public disclosure coordinators at DSHS offices to request a public record. Public disclosure coordinators are located at local community service offices (CSO), regional offices, home and community services (HCS), division of child support (DCS), children's services, DDD field services offices, DSHS facilities, and within each DSHS administration))~~ Requests for public records may be sent to the DSHS public records officer using the following contact information:

DSHS public records officer
Services and enterprise support administration
Information governance unit
PO Box 45135
Olympia, WA 98504-5135
Telephone: (360) 902-8484
Fax: (360) 902-7855
Email: DSHSPublicDisclosure@dshs.wa.gov.

AMENDATORY SECTION (Amending WSR 99-15-065, filed 7/19/99, effective 8/19/99)

WAC 388-01-060 How ~~((can))~~ may an individual request a public record? (1) An individual ~~((can))~~ may request a public record orally or in writing. DSHS ~~((encourages))~~ prefers that all public record requests be in writing on ~~((a))~~ the "request for ~~((disclosure of))~~ DSHS records" form, DSHS 17-041(X). Individuals may ~~((request this form from DSHS, Forms and Records Management Services, P.O. Box 45805, Olympia, WA 98504 5805, (360) 664-6120, or email at DSHSFormsRecordsMgmt@dshs.wa.gov))~~ locate this form on the DSHS website at <https://www.dshs.wa.gov/fsa/forms> or request it from:

DSHS public records officer
Services and enterprise support administration
Information governance unit
PO Box 45135
Olympia, WA 98504-5135
Telephone: (360) 902-8484
Fax: (360) 902-7855
Email: DSHSPublicDisclosure@dshs.wa.gov.

(2) If ~~((the form is not used))~~ an individual does not use the DSHS form, the written public record request should include the following information:

- (a) The requester's name, organization, mailing address, telephone number, fax number, and email address;
- (b) The date of the request;
- (c) A detailed description of the identifiable public record being requested;
- (d) The email or mailing address where DSHS should send copies of the ~~((record are to be mailed))~~ records, or if the requester wants to ~~((examine))~~ inspect the record at DSHS; and

(e) The requester's signature ~~((of the requester))~~.

(3) An individual ~~((can))~~ may fill out a record request at a DSHS office~~((s))~~ or send it by regular mail, ~~((electronic mail))~~ email, or fax to the public ~~((disclosure coordinator at the appropriate DSHS office))~~ records officer listed in WAC 388-01-050.

(4) Requests by third parties for confidential client records must be accompanied by a valid authorization as set forth in WAC 388-01-150.

(5) DSHS may ask an individual requesting a public record for personal identification when the law makes a record disclosable to a specific person.

(6) DSHS may deny a "bot" request, which is one of multiple requests from a requester within a twenty-four period, if responding to multiple requests would cause excessive interference with other essential DSHS functions.

AMENDATORY SECTION (Amending WSR 99-15-065, filed 7/19/99, effective 8/19/99)

WAC 388-01-070 When ~~((can))~~ may a public record be ~~((examined))~~ inspected? (1) Individuals ~~((can examine))~~ may inspect public records during DSHS office hours. The office hours are 8:00 a.m. to noon and 1:00 p.m. to 5:00 p.m., Monday through Friday, ~~((except for))~~ excluding legal holidays. Contact the public ~~((disclosure))~~ records coordinator in the appropriate office to arrange a time to ~~((examine))~~ inspect the public record.

(2) In order to preserve the record or prevent interference in the performance of departmental duties, DSHS reserves the right to restrict an individual's ability to ~~((examine))~~ inspect or copy public records. This does not prevent DSHS from providing copies of the public record by mail or email.

AMENDATORY SECTION (Amending WSR 99-15-065, filed 7/19/99, effective 8/19/99)

WAC 388-01-080 Does DSHS charge for ~~((examining))~~ inspecting or ~~((copying))~~ providing public records? (1) There is no fee for ~~((examining))~~ inspecting public records.

(2) ~~((DSHS charges one or more of the following fees for copies of public records:~~

(a) Up to fifteen cents per page for black and white photocopies of a record;

(b) The actual cost of manuals, blueprints, and other non-printed materials such as audio or video tapes; and

(c) The cost of postage, when items are mailed (see RCW 42.17.260)) Pursuant to RCW 42.56.120 (2)(b), DSHS does not calculate the actual costs for copying records because to do so would be unduly burdensome for the following reasons:

(a) DSHS does not have the resources to conduct a study to determine all of its actual copying costs; and

(b) To conduct such a study would interfere with other essential agency functions.

(3) ~~((Government agencies, or DSHS clients involved in an administrative hearing procedure, may receive public records reasonably related to the hearing free of charge))~~ DSHS may do one or more of the following:

(a) Charge for copies of records according to the default fees in RCW 42.56.120 (2)(b), (c) and (d);

(b) Charge for customized services pursuant to RCW 42.56.120(3);

(c) Charge other copy fees authorized by statutes outside of chapter 42.56 RCW;

(d) Enter into an alternative fee agreement with a requester under RCW 42.56.120(4).

(4) DSHS may waive copying ((and postage)) fees ((if)) in one or more of the following circumstances:

(a) ((Providing a copy of the record assists in managing a program)) Clients receiving the first copy of their file; ((or))

(b) ((The expense of billing exceeds the copying and postage costs)) Producing records assists in managing a program;

(c) The expense of billing exceeds the cost of producing records.

AMENDATORY SECTION (Amending WSR 99-15-065, filed 7/19/99, effective 8/19/99)

WAC 388-01-090 When and how must DSHS respond to a public record request? (1) Within five business days after ((receiving the)) DSHS receives a public record request, DSHS must ((review the public record and must)):

((1)) Provide the)) (a) Produce responsive public records; ((or

((2)) (b) Acknowledge receipt of the request((;)) and ((give the DSHS)) provide an estimated date for first response; ((or

((3)) (c) Provide an internet address and link to the specific records requested;

(d) Seek clarification of an unclear request; or

(e) Deny the request in writing, noting the reason(s) for denial.

(2) DSHS may produce records in installments, as appropriate.

AMENDATORY SECTION (Amending WSR 99-15-065, filed 7/19/99, effective 8/19/99)

WAC 388-01-100 When ((might)) may DSHS need to extend the time to respond to a public record request? (1) DSHS ((might need to)) may extend ((the time to respond to a public record request)) its estimated response time to:

(a) Locate and gather ((the information requested)) responsive records;

(b) Notify an individual or organization identified in or affected by the request; ((and/or))

(c) Determine whether ((the information)) requested ((is)) records are exempt and whether all or part of the ((public record requested)) records may be released; ((and/or))

(d) Contact the ((individual requesting the public record)) requester to clarify the intent, scope, or specifics of the request.

(2) If ((the individual requesting the public record fails to)) a requester does not clarify ((the)) an unclear request under subsection (1)(d) of this section, DSHS does not have to respond to the unclear parts of the request.

AMENDATORY SECTION (Amending WSR 99-15-065, filed 7/19/99, effective 8/19/99)

WAC 388-01-110 What if ((an individual thinks DSHS is unreasonably delaying the release of a public record)) a requester disputes production time estimates?

If ((an individual requesting a public record)) a requester thinks ((DSHS)) DSHS's time estimate for producing records under chapter 42.56 RCW is ((unreasonably delaying the release of a public record)) unreasonable, the ((individual)) requester may:

(1) Petition the public ((disclosure)) records coordinator to ((release the public record before the date indicated on DSHS response (see WAC 388-01-090))) reduce the time estimate; or

(2) File a lawsuit in superior court ((to require DSHS to release the public record)) under RCW 42.56.550(2).

AMENDATORY SECTION (Amending WSR 99-15-065, filed 7/19/99, effective 8/19/99)

WAC 388-01-120 What if the public record ((that is requested)) contains information that is exempt from public disclosure? (1) ((If the requested public record contains information that is exempt from public disclosure, DSHS may:

(a) Release the nonexempt portion, explaining what exemption applies to the deleted portion of the record; or

(b) Deny release of the entire record, sending a written explanation citing the exemption that applies to the denial)) Public records and information may be exempt from disclosure or production under chapter 42.56 RCW or other state or federal laws. Commonly applicable exemptions include, but are not limited to, the following:

(a) Under RCW 42.56.230(1), personal information in files maintained for welfare recipients and patients or clients of public institutions or public health agencies. Personal information includes, but is not limited to:

(i) Names;

(ii) Telephone numbers;

(iii) Fax numbers;

(iv) Email addresses;

(v) Social security numbers;

(vi) Medical record numbers;

(vii) Health plan beneficiary numbers;

(viii) Account numbers;

(ix) Certificate or license numbers;

(x) Vehicle identifiers and serial numbers, including license plate numbers;

(xi) Device identifiers and serial numbers;

(xii) Web universal resource locators (URLs);

(xiii) Internet protocol (IP) address numbers;

(xiv) Biometric identifiers, including finger and voice prints;

(xv) Full face photographic images and any comparable images;

(xvi) Any other unique identifying number, characteristic, or code;

(xvii) All geographic subdivisions smaller than a state, including street address, mailing address, city, county, pre-

cinct, geocodes, and zip code, except for the initial three digits of a zip code; and

(xviii) All elements of dates (except year) for dates directly related to an individual, including birth date, admission date, discharge date, date of death.

(b) Under RCW 74.04.060 and related federal laws, information and records about applicants and recipients of public assistance and other services provided and received under Title 74 RCW.

(c) Under chapter 13.50 RCW and related federal laws, information and records about juvenile offender and child welfare cases.

(d) Under chapter 26.23 RCW and related federal laws, information and records about child support enforcement.

(e) Under chapter 26.33 RCW and related federal laws, information and records about adoption.

(f) Under chapter 70.02 RCW and related federal laws, protected health care information and medical records.

(g) Under RCW 74.34.095, information and records about alleged abandonment, abuse, financial exploitation, or neglect of a vulnerable adult.

(h) Under RCW 42.56.230(3), personal information in files maintained for DSHS employees or elected officials to the extent that disclosure would violate their right to privacy.

(i) Under RCW 42.56.250, the following information from personnel records, public employment related records, volunteer rosters, or included in any mailing list of employees or volunteers of any public agency:

(A) Residential addresses;

(B) Residential phone numbers;

(C) Personal wireless telephone numbers;

(D) Personal email addresses;

(E) Social security numbers;

(F) Driver's license numbers;

(G) Identocard numbers;

(H) Emergency contact information; and

(I) Names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal email addresses, social security numbers, and emergency contact information of dependents of employees or volunteers of a public agency.

(j) Under RCW 42.56.640 and 43.17.410, sensitive personal information of vulnerable individuals and in-home caregivers for vulnerable populations, except as allowed under subsection (3) of this section.

(2) ~~((DSHS may release information to law enforcement officers and United States immigration officials to the extent authorized by RCW 74.04.062))~~ If the requested public record contains information that is exempt from public disclosure, DSHS may:

(a) As appropriate, release the nonexempt portion, explaining what exemptions apply to redacted portions of the record;

(b) As appropriate, deny release of the entire record, sending a written explanation and citing the exemption that applies to the denial; or

(c) Neither confirm or deny the existence of the requested records and provide the legal basis for confidentiality as if the responsive records existed, when a denial would

reveal information that is confidential and must not be disclosed.

(3) Sensitive personal information under subsection (1)(j) of this section may be disclosed or produced if DSHS determines that the requester:

(a) Is exempt under RCW 42.56.645;

(b) Is subject to a current contract or court order requiring the requester to protect the confidentiality of the information; or

(c) Has complied with procedures developed by DSHS to protect the confidentiality of the information.

AMENDATORY SECTION (Amending WSR 99-15-065, filed 7/19/99, effective 8/19/99)

WAC 388-01-130 What are ((an individual's)) a requester's options if DSHS denies a public record request? ((H)) (1) After DSHS ((denies)) takes final action to deny all or a portion of a public record request, ((an individual)) a requester may do any one or more of the following:

((H)) (a) Petition for ((a)) agency review ((of the denied request from)) by the denying public ((disclosure)) records coordinator or ((a director)) an approved designee. ((Contact DSHS to obtain a petition form (DSHS 17-062(X)) at: DSHS Forms and Records Management Services, P.O. Box 45805, Olympia, WA 98504-5805, (360) 664-6120, or email DSHS FormsRecordsMgmt@dshs.wa.gov. DSHS has two business days after receiving the petition to respond. If DSHS upholds the denial, the decision is considered final; or

((2)) The written request must specifically refer to the written statement by the public records coordinator that constituted or accompanied the denial.

(b) Ask the office of the attorney general to review the public record request.

((a)) (i) Send a copy of the denied public record request and the DSHS written denial to:

Office of the attorney general

Public records review

((P.O.)) P.O. Box 40100

Olympia WA 98504-0100.

((b)) (ii) The office of the attorney general will review the request and DSHS denial. The office of the attorney general issues a written opinion as to whether the requested public record is excluded from disclosure.

((3)) (c) File a lawsuit for ((release of a public record)) judicial review under the Public Records Act in superior court in the county where the public record is located.

((a)) ~~DSHS must establish that its denial of a public record is legal.~~

(b) If the DSHS denial is reversed, the court may require DSHS to pay costs and attorney fees. DSHS may be fined five dollars to one hundred dollars a day for each day they denied the public record.) (2) "Final action" occurs when DSHS indicates that it will not provide responsive records. When DSHS produces installments of records, final action occurs when DSHS produces its last installment or indicates that it will not reconsider a denial. Before DSHS produces its last installment, DSHS may cure deficiencies within prior installments. DSHS encourages requesters to contact the pub-

lic records coordinator with questions or concerns about installments prior to final action.

AMENDATORY SECTION (Amending WSR 99-15-065, filed 7/19/99, effective 8/19/99)

WAC 388-01-140 ~~If a public record ((contains personal information that)) identifies or pertains to an individual or organization, other than the ((subject of the record)) requester, is that individual or organization notified?~~ (1) ~~If ((a public record contains personal information that identifies)) records responsive to a public records request identify or pertain directly to an individual or organization other than the ((subject of the requested public record)) requester, DSHS may notify ((that)) the named individual or organization about the request.~~

(2) ~~((DSHS may send a written notice to the individual or organization if releasing the personal information could damage the individual or organization, or government operations, or is not in the best interest of the public. The notice should)) DSHS's third party notice may include:~~

(a) ~~((The record being requested)) A copy of the original request;~~

(b) ~~((The date DSHS intends to release the record)) If appropriate, the records that identify or pertain to the third party; ((and))~~

(c) ~~((How the individual or organization can prevent release of the record (see RCW 42.17.330))) The date DSHS intends to release the record; and~~

(d) ~~A statement that the third party may prevent release of the record by agreement or by bringing a lawsuit and getting an injunction against DSHS and the requester under RCW 42.56.540 prior to the intended release date.~~

(3) ~~DSHS may ((also send a written notice to the record)) inform the requester ((notifying them)) that:~~

(a) ~~((The individual or organization whose personal information is contained in the requested public record has been)) A third party has been notified of the request;~~

(b) ~~DSHS ((expects a response from the individual or organization regarding)) provided the third party with a due date for objecting to disclosure ((of their personal information by a specified date)); and~~

(c) ~~((Disclosure may be denied)) In the absence of an agreement with the requester, the third party may bring a lawsuit against the requester and DSHS under RCW 42.56.540 to stop disclosure.~~

~~((4) DSHS releases the record by the specified date if no one objects or the contacted party does not respond by the specified date.~~

~~(5) DSHS must notify the office of the attorney general when an individual or organization, other than the subject of a record, files a lawsuit to prevent release of the record.)~~

AMENDATORY SECTION (Amending WSR 99-15-065, filed 7/19/99, effective 8/19/99)

WAC 388-01-150 ~~((Can an individual's record be requested by his or her representative)) May a third party request a client's record?~~ (1) ~~((An individual's)) A third party, such as a DSHS client's attorney((, legal guardian,)) or lay representative ((can request the individual's~~

~~record with a signed written release)), may access confidential records about a DSHS client with a valid authorization.~~

(2) ~~The ((written release must include)) authorization should:~~

(a) ~~((The identity of the individual(s) or organization(s) authorized to receive the records)) Identify the client;~~

(b) ~~((An identification of the record(s), or part of the record, that the individual wants released)) Identify the individual(s) or organization(s) authorized to receive the records; ((and))~~

(c) ~~((The date the release expires)) State that DSHS may disclose the information to the requester;~~

(d) ~~Identify the record(s) that the client wants DSHS to release;~~

(e) ~~State the date the authorization expires or an expiration event that relates to the client or the purpose of the use of disclosure;~~

(f) ~~State the reason for disclosure;~~

(g) ~~State the right to revoke;~~

(h) ~~State the potential for redisclosure;~~

(i) ~~As appropriate, include specific language authorizing DSHS to release any one or more of the following to the requester: chemical dependency records, HIV or STD records, or mental health records; and~~

(j) ~~Include a dated verified signature of the individual with legal authority to authorize the release of records.~~

(3) ~~DSHS may ask for ((identification verifying)) additional proof to verify the ((representative's relationship to the individual)) third party's authority to access confidential records.~~

(4) ~~In general, a parent may access confidential records about a child under age eighteen. But a child must consent to disclosure of the following confidential records:~~

(a) ~~At any age, birth control or abortion records (see RCW 9.02.100);~~

(b) ~~If over age thirteen, chemical dependency or mental health records (see RCW 70.96A.230 and RCW 71.34.530);~~

(c) ~~If over age fourteen, sexually transmitted disease records (see RCW 70.24.110); and~~

(d) ~~If over age eighteen, all client records held by DSHS.~~

(5) ~~Legal guardians authorized by court order to act on behalf of a client are not considered to be a third party request.~~

AMENDATORY SECTION (Amending WSR 99-15-065, filed 7/19/99, effective 8/19/99)

WAC 388-01-160 ~~Is DSHS required to create public records for requesters?~~ (1) ~~DSHS is only required to provide access to existing, identifiable public records in its possession at the time of the request (see RCW ((42.17.270)) 42.56.080).~~

(2) ~~DSHS is not required to collect information to create a public record that does not exist at the time ((of)) the public record request is received.~~

AMENDATORY SECTION (Amending WSR 99-15-065, filed 7/19/99, effective 8/19/99)

WAC 388-01-170 ~~((Can)) May DSHS release public records ((to its offices and to)) outside ((agencies)) of the~~

Public Records Act? (1) ~~((For the purposes of this chapter, outside agencies include, but are not limited to, group homes, mental health centers, drug and alcohol agencies, and other state agencies))~~ A request for information is not a Public Records Act request.

(2) ~~((DSHS may release public records to its offices and to outside agencies when the information relates to the administration of DSHS programs unless exempt by 45 C.F.R. 205.50 or other law))~~ A request to access records under authority other than the Public Records Act is not a Public Records Act request, including but not limited to the following examples:

(a) Requests by current employees to access their personnel files under RCW 49.12.240;

(b) Requests by employees and labor unions to access employment records under collective bargaining agreements;

(c) Requests by qualified individuals and organizations to access confidential juvenile offender and child welfare records under chapter 13.50 RCW and related federal laws;

(d) Requests by qualified individuals or organizations to access confidential child support enforcement records under chapter 26.23 RCW and related federal laws;

(e) Requests by qualified individuals or organizations to access confidential adoption records under RCW 26.33.340;

(f) Requests for public access to confidential child welfare records under RCW 74.13.500 through RCW 74.13.525;

(g) Requests by qualified individuals and organizations to access confidential health care information and medical records under chapter 70.02 RCW and related federal laws;

(h) Requests for records pursuant to a contract; and

(i) A legal subpoena for DSHS records.

~~((3) If an outside agency requests a public record for reasons other than information that relates to the administration of DSHS programs, the outside agency must have the individual's written authorization.~~

~~(4) Outside agencies receiving information are subject to applicable disclosure confidentiality laws.)~~

AMENDATORY SECTION (Amending WSR 99-15-065, filed 7/19/99, effective 8/19/99)

WAC 388-01-180 Who should ~~((be contacted))~~ an individual contact to review or get a copy of an interpretive or policy statement index~~((, or to get a copy of the documents))~~? DSHS issues administrative policy statements that apply to the whole department. Administrations may issue policies and interpretive statements that relate to their own programs. (See RCW 34.05.010).

(1) To receive a copy of a DSHS administrative policy, send a written request to:

Office of ~~((Legal Affairs,))~~ policy and external relations

Rules and policies assistance unit~~((, P.O.))~~

PO Box 45850(;))

Olympia, ((Washington)) WA 98504-5850.

(2) To receive a copy or review a specific administration's policies or interpretive statements, send a written request to the administration.

AMENDATORY SECTION (Amending WSR 99-15-065, filed 7/19/99, effective 8/19/99)

WAC 388-01-190 How can an individual get an index of DSHS significant decisions? (1) The DSHS board of appeals reviews and selects orders and creates an index of significant decisions that substantially affect DSHS performance (see RCW ~~((42.17.260))~~ 42.56.070).

(2) The index:

(a) Is divided into program categories;

(b) Contains a copy or synopsis of the order; and

(c) Is updated, as needed.

(3) An individual can ~~((inspect or request a copy of))~~ view the index on the boards of appeals website at <https://www.dshs.wa.gov/node/4060/board-appeals> or inspect or request a copy by contacting the board of appeals ~~((located))~~ at:

~~((Board of Appeals~~

~~Blake Office Park~~

~~4500 – 10th Avenue Southeast~~

~~Lacey, WA 98503-5803~~

~~(360) 664-6100~~

Mailing address:

Board of Appeals

P.O. Box 45803

Olympia, WA 98503-5803))

Board of appeals

1115 Washington ST SE

Olympia, WA 98504-5803

Telephone: (360) 664-6100

Mailing address:

Board of appeals

PO Box 45803

Olympia, WA 98504-5803.

(4) An individual may ask the board of appeals to index an order as a significant decision by sending a written request with a copy of the order to the mailing address.

AMENDATORY SECTION (Amending WSR 99-15-065, filed 7/19/99, effective 8/19/99)

WAC 388-01-200 How ~~((are petitions))~~ may an individual file a petition for declaratory~~((orders filed))~~ order by DSHS? An individual may file a petition for declaratory order by DSHS as follows:

(1) ~~((First,))~~ Read the information on declaratory orders in RCW 34.05.240 and WAC 10-08-250, 10-08-251, and 10-08-252(;)); and

(2) ~~((Next,))~~ File the petition with the DSHS rules and policies assistance unit(;)) at:

DSHS((; P.O.)) rules and policies assistance unit

PO Box 45850(;))

Olympia, WA 98504-5850.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-01-040 What public records are available for release?

WSR 18-02-061
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed December 29, 2017, 10:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-11-086.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-449-0010 What evidence do we consider to determine disability? and 388-447-0005 What evidence does the department consider to determine incapacity?

Hearing Location(s): On February 6, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than February 7, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., February 6, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by January 23, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These changes ensure that the eligibility standards adopted by the department for the aged, blind, or disabled and the housing and essential needs referral programs are consistent with, and not more restrictive than, standards adopted by the Social Security Administration (SSA).

Reasons Supporting Proposal: SSA adopted new standards, DI 22505.003 Evidence from an Acceptable Medical Source (AMS), which expanded the federal definition of an AMS.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.62.030, 41.05.021, 74.09.035, and 74.09.530.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Nicholas Swiatkowski, 712 Pear Street S.E., Olympia, WA 98501, 360-725-4638.

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

A cost-benefit analysis is not required under RCW 34.05.328. These rules do not impact small businesses. They only impact DSHS clients.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Is exempt under RCW 34.05.328 (5)(b)(vii).

December 27, 2017
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-24-044, filed 11/26/13, effective 1/1/14)

WAC 388-447-0005 What evidence ~~((does the department))~~ do we consider to determine incapacity? (1) To determine whether a medically determinable impairment exists, we ~~((accept))~~ consider medical evidence from ~~((the following sources when considering incapacity))~~ "acceptable medical sources." "Acceptable medical sources" include the following:

~~((+))~~ (a) For a physical impairment, a health professional licensed in Washington state or where the examination was performed:

~~((a))~~ A physician, which includes:)

(i) Medical doctor ~~((M.D.))~~ (MD); ~~((and))~~

(ii) Doctor of osteopathy ~~((D.O.))~~ (DO);

~~((b))~~ An advanced registered nurse practitioner (ARNP) for physical impairments that are within their area of certification to treat;

~~((c))~~ A Physician's assistant (P.A.);

~~((d))~~ A) (iii) Doctor of optometry ~~((O.D.))~~ (OD) for visual ~~((acuity impairments))~~ disorders;

~~((e))~~ (iv) Doctor of podiatry ~~((D.P.))~~ (DP) for foot and ankle disorders;

(v) Physician assistant (PA) for impairments within their licensed scope of practice;

(vi) Advanced registered nurse practitioner (ARNP) for impairments within their licensed scope of practice;

(vii) Audiologist for impairments of hearing loss, auditory processing disorders, and balance disorders within their licensed scope of practice;

(viii) Qualified speech-language pathologist, for purposes of establishing speech or language impairments;

~~((f))~~ (ix) Doctor of dental surgery ~~((D.D.S.))~~ (DDS) or doctor of medical dentistry ~~((D.M.D.))~~ (DMD) for tooth abscesses or temporomandibular joint (TMJ) disorders; ~~((or))~~ and

~~((g))~~ The) (x) Chief of ~~((medical administration))~~ staff of ~~((the Veterans' Administration))~~ a U.S. Department of Veterans Affairs medical center, or their designee, as authorized in federal law.

~~((z))~~ (b) For a mental impairment, a health professional licensed in Washington state or where the examination was performed:

- ~~((a)-A) (i) Psychiatrist;~~
~~((b)-A) (ii) Psychologist;~~
~~((c)-A) An ARNP certified in psychiatric nursing; or~~
~~(d) At the department's discretion:~~

~~(i) A person identified as a mental health professional within the regional support network mental health treatment system provided the person's training and qualifications at a minimum include having a master's degree and two years of mental health treatment experience; or~~

~~(ii) A physician who is currently treating you for a mental impairment.~~

~~(3) We do not accept medical evidence from the medical professionals listed in (1) and (2) above, unless they are licensed in Washington state or the state where the examination was performed)) (iii) Advanced registered nurse practitioner (ARNP) for impairments within their licensed scope of practice;~~

~~(iv) Physician assistant (PA) for impairments within their licensed scope of practice;~~

~~(v) School psychologist or other licensed or certified individual who performs the same function as a school psychologist in a school setting for impairments of intellectual disability, learning disability, or borderline intellectual functioning;~~

~~(vi) Clinical social worker;~~

~~(vii) Mental health professional (MHP); and~~

~~(viii) Physician treating you for a mental impairment.~~

~~((4)) (2) "Supplemental medical evidence" means information from a licensed health professional (~~not listed in (1) or (2) above~~) who can provide supporting documentation for impairments established by (a medical professional) an "acceptable medical source" listed in subsection (1) ((or (2) above)) of this section. "Supplemental medical evidence" sources include, but are not limited to:~~

~~(a) (~~Health professionals who have conducted tests or provided ongoing treatment to you, such as a physical therapist, chiropractor, nurse, naturopath, audiologist, or licensed social worker;~~~~

~~(b) Workers at state institutions and agencies who are not health professionals and are providing or have provided medical or health-related services to you; or~~

~~(c) Chemical dependency professionals (CDPs) when requesting information on the effects of alcohol or drug abuse)) Naturopath;~~

~~(b) Chiropractor;~~

~~(c) Physical therapist; and~~

~~(d) Chemical dependency professional (CDP) when requesting information on the effects of substance use disorders.~~

~~((5)) (3) "Other evidence" means information from ~~(other)~~ sources not listed ~~(above)~~ in subsections (1) and (2) of this section who can provide supporting documentation of functioning for impairments established by an "acceptable medical ~~(sources)~~ source" in ~~(subsections)~~ subsection (1) ~~((or (2)))~~ of this section. Sources of "other evidence" may include public and private agencies, schools, ~~(parents)~~ family members, friends, caregivers, and employers~~(, and practitioners such as social workers)).~~~~

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

WAC 388-449-0010 What evidence do we consider to determine disability? (1) To determine whether a medically determinable impairment exists, we consider medical evidence from "acceptable medical sources." "Acceptable medical sources" include the following:

~~((+)) (a)~~ For a physical impairment, a health professional licensed in Washington state or where the examination was performed:

~~((a)-A) A physician, which includes:))~~

~~(i) Medical doctor ~~((M-D-))~~ (MD);~~

~~(ii) Doctor of osteopathy ~~((D-O-))~~ (DO);~~

~~(iii) Doctor of optometry ~~((O-D-))~~ (OD) for visual disorders;~~

~~(iv) Doctor of podiatry ~~((D-P-))~~ (DP) for foot and ankle disorders;~~

~~(v) Physician assistant (PA) for impairments within their licensed scope of practice;~~

~~(vi) Advanced registered nurse practitioner (ARNP) for impairments within their licensed scope of practice;~~

~~(vii) Audiologist for impairments of hearing loss, auditory processing disorders, and balance disorders within their licensed scope of practice; and~~

~~((+)) (viii) Qualified speech-language pathologist~~(s)~~, for purposes of establishing speech or language impairments ~~((only)).~~~~

~~((2)) (b) For a mental impairment, ~~(professionals)~~ a health professional licensed in Washington state or where the examination was performed:~~

~~((a)-A) (i) Psychiatrist; ~~((or~~~~

~~(b)-A) (ii) Psychologist;~~

~~(ii) Advanced registered nurse practitioner (ARNP) for impairments within their licensed scope of practice;~~

~~(iv) Physician assistant (PA) for impairments within their licensed scope of practice; and~~

~~(v) School psychologist or other licensed or certified individual who performs the same function as a school psychologist in a school setting for impairments of intellectual disability, learning disability, or borderline intellectual functioning.~~

~~((3)) (2) We accept medical evidence of how your impairment(s) affect your ability to function from "treating medical sources" once a diagnosis of a medically determinable impairment has been established by an "acceptable medical source" listed in subsection (1) ~~(and (2) above, "treating))~~ of this section. "Treating medical sources" must be licensed to provide healthcare and include, but are not limited to:~~

~~((All medical professionals listed in (1) and (2) above;~~

~~(b)-A) Physician treating you for a mental impairment;~~

~~((c)-A) A physician's assistant for physical impairments; and~~

~~(d) An advanced nurse practitioner for conditions within their certification)) (b) Clinical social worker;~~

~~(c) Mental health professional (MHP);~~

~~(d) Naturopath;~~

~~(e) Chiropractor;~~

~~(f) Physical therapist; and~~

(g) Chemical dependency professional (CDP) when requesting information on the effects of substance use disorders.

~~((4))~~ ~~(3)~~ "Other evidence" means information from ~~((other))~~ sources not listed in ~~((subsection))~~ subsections ~~(1)(3) and (2)(3))~~ of this section who can provide supporting documentation of functioning for impairments established by an "acceptable medical ~~((sources))~~ source" in ~~((subsections))~~ subsection (1) ~~((or (2)))~~ of this section. Sources of "other evidence" may include public and private agencies, schools, ~~((parents))~~ family members, friends, caregivers, and employers ~~((; and practitioners such as social workers, mental health professionals, naturopaths, chiropractors, physical therapists, and audiologists))~~.

WSR 18-02-068

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed January 2, 2018, 9:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-13-128.

Title of Rule and Other Identifying Information: Chapter 246-805 WAC, Applied behavior analysis, the department of health is proposing adding two new sections to the chapter to establish enforceable requirements: WAC 246-805-400 Continuing education requirements for a licensed behavior analyst (LBA) and licensed assistant behavior analyst (LABA) and 246-805-410 Continuing competency for a certified behavior technician (CBT).

Hearing Location(s): On February 7, 2018, at 10:00 a.m., at the Department of Health, Point Plaza East, Room 152, 310 Israel Road S.E., Tumwater, WA 98501.

Date of Intended Adoption: February 21, 2018.

Submit Written Comments to: Brett Lorentson, Applied Behavior Analysis (ABA), P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by February 7, 2018.

Assistance for Persons with Disabilities: Contact Brett Lorentson, phone 360-236-4611, TTY 360-833-6388 or 711, email Brett.Lorentson@doh.wa.gov, by February 2, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 18.380.110 gives the secretary the authority to establish continuing education or competency requirements through rule making. Completing continuing education and continuing competency requirements will help ABA providers to acquire knowledge and skills that will help them maintain professional competency, which will assist with providing competent ABA services to clients.

Reasons Supporting Proposal: The secretary recently adopted rules to create three new ABA credentials: LBA, LABA, and CBT. Continuing education is intended to enhance the professional competency of ABA providers.

Statutory Authority for Adoption: RCW 18.380.110.

Statute Being Implemented: RCW 18.380.110.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brett Lorentson, 111 Israel Road S.E., Tumwater, WA 98504-7852, 360-236-4611.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Brett Lorentson, ABA, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4611, fax 360-236-2901, TTY 360-833-6388 or 711, email Brett.Lorentson@doh.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rules do not impact businesses.

December 29, 2017

John Wiesman, DrPH, MPH
Secretary

NEW SECTION

WAC 246-805-400 Continuing education requirements for an LBA and LABA. An LBA or LABA must attest to completing the continuing education (CE) requirements in this section as a condition of renewing the license every two years. CE must be completed during the first full CE reporting period after July 1, 2018.

(1) Maintaining certification from the BACB or another national certification board approved by the secretary that requires CE as part of certification meets CE requirements as described in this section.

(2) An LBA shall complete a minimum of thirty-two hours of CE related to the practice of applied behavior analysis.

(a) A minimum of twenty hours of activities must directly address:

(i) Behavior analytic skill development; and

(ii) Current practices in clinical practice of applied behavior analysis.

(b) At least four hours must pertain to professional ethics and boundaries of a behavior analyst.

(c) No more than eight hours may be in professional development activities that enhance the licensee's business practice as an LBA.

(3) An LABA shall complete twenty hours of CE related to the practice of applied behavior analysis.

(a) A minimum of ten hours of activities must directly address:

(i) Behavior analytic skill development; and

(ii) Current practices in clinical practice of applied behavior analysis.

(b) At least four hours must pertain to professional ethics and boundaries of a behavior analyst.

(c) No more than six hours may be in professional development activities that enhance the licensee's business practice as an LABA.

(4) Fifty minutes of CE contact time or direct instruction is equivalent to one CE hour.

(5) The CE hours must be obtained through one or more of the following:

(a) Courses from a college or university accredited by the United States Department of Education may meet all of the required CE hours.

(i) One academic semester credit is equivalent to fifteen CE hours.

(ii) One academic quarter credit is equivalent to ten CE hours.

(b) Courses from a CE provider.

(i) Courses from providers approved by the BACB or a national certification board affiliated with behavior analysis approved by the secretary may meet all of the required CE hours.

(ii) Courses from providers not approved by a national certification board affiliated with behavior analysis may meet no more than eight CE hours.

(c) Instruction of a CE course.

(i) College or university instruction may meet no more than sixteen CE hours.

(ii) Any other type of instruction may meet no more than eight CE hours.

(iii) Repeated instruction in the same course may only qualify for CE credit one time in a single CE reporting period.

(iv) Instruction must be related to applied behavior analysis.

(d) The following activities are eligible for up to eight CE hours and only count during the CE time period when the article was published or reviewed:

(i) Publication of an applied behavior analysis article in a peer-reviewed journal is equivalent to eight CE hours;

(ii) Completion of reviewing an applied behavior analysis article for a peer-reviewed journal is equivalent to one CE hour; or

(iii) Serving as an action editor of an applied behavior analysis article for a peer-reviewed journal is equivalent to one CE hour.

(6) An LBA and LABA shall comply with the requirements of chapter 246-12 WAC, Part 7; and shall keep and provide CE documentation upon request. Acceptable documentation depends on the CE activity and includes:

(a) Course syllabus and transcript from college or university;

(b) Certificate or letter from a CE provider that includes the course topic and CE hours completed;

(c) Title, description, and dates of course of instruction on a letter from the academic institution or education provider;

(d) Copy of the final publication of article listing the credential holder as the author;

(e) Letter of attestation from the action editor reporting the credential holder's name as a reviewer of an applied behavior analysis article; or

(f) Editorial decision letter reporting the credential holder's name as an action editor of an applied behavior analysis article.

NEW SECTION

WAC 246-805-410 Continuing competency requirements for a CBT. A CBT must attest to completing the continuing competency requirements in this section as a condition of renewing the certification. The requirements in this section are effective for a certification renewed on or after July 1, 2018.

(1) A CBT must complete continuing education or demonstrate continuing competency by either:

(a) Maintaining certification from the BACB or another national certification board approved by the secretary; or

(b) Within three months prior to renewal obtaining an assessment by an LBA or LABA or otherwise qualified supervisor on performance or demonstration of the following applied behavior analysis tasks:

(i) Measurement;

(ii) Assessment;

(iii) Skill acquisition;

(iv) Behavior reduction;

(v) Documentation and reporting; and

(vi) Professional conduct and scope of practice.

(2) A CBT shall keep and provide documentation upon request.

(3) A CBT shall comply with the requirements of chapter 246-12 WAC, Part 7.

WSR 18-02-069

PROPOSED RULES

CRIMINAL JUSTICE

TRAINING COMMISSION

[Filed January 2, 2018, 10:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-22-024.

Title of Rule and Other Identifying Information: WAC 139-10-213 Employment of corrections personnel—Notification to commission.

Hearing Location(s): On Wednesday, March 14, 2018, at 10 a.m., at the Washington State Criminal Justice Training Commission (WSCJTC), 19010 1st Avenue South, Room C-121, Burien, WA 98148.

Date of Intended Adoption: March 14, 2018.

Submit Written Comments to: Sonja Peterson, 19010 1st Avenue South, Burien, WA 98148, email speterson@cjtc.state.wa.us, by March 7, 2018.

Assistance for Persons with Disabilities: Contact Sonja Peterson, phone 206-835-7356, TTY 206-835-7300, email speterson@cjtc.state.wa.us, by March 12, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 43.101.220 requires corrections employees to complete basic training within six months of hire. This rule will require corrections employees to successfully complete a basic corrections academy within the initial six months of employment.

Reasons Supporting Proposal: By adding this rule, WSCJTC will be able to identify who is and isn't in compliance with this requirement.

Statutory Authority for Adoption: RCW 43.101.080.

Statute Being Implemented: Not applicable.

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

Name of Proponent: WSCJTC staff, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Tisha Jones, Lacey, Washington, 360-486-2431.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

January 2, 2018

Sonja Peterson
Rules Coordinator

NEW SECTION

WAC 139-10-213 Employment of corrections personnel—Notification to commission. Upon employment, all counties and municipal corporations of the state of Washington, or any political subdivision thereof, shall immediately notify the commission on a personnel action report form provided by the commission of each instance where corrections personnel begins continuing and regular employment with that agency. The commission shall maintain these notices in a permanent file, subject to RCW 43.101.400.

WSR 18-02-070

PROPOSED RULES

CRIMINAL JUSTICE

TRAINING COMMISSION

[Filed January 2, 2018, 10:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-22-025.

Title of Rule and Other Identifying Information: WAC 139-10-214 Termination of corrections personnel—Notification to commission.

Hearing Location(s): On Wednesday, March 14, 2018, at 10 a.m., at the Washington State Criminal Justice Training Commission (WSCJTC), 19010 1st Avenue South, Room C-121, Burien, WA 98148.

Date of Intended Adoption: March 14, 2018.

Submit Written Comments to: Sonja Peterson, 19010 1st Avenue South, Burien, WA 98148, email speterson@cjtc.state.wa.us, by March 7, 2018.

Assistance for Persons with Disabilities: Contact Sonja Peterson, phone 206-835-7356, TTY 206-835-7300, email speterson@cjtc.state.wa.us, by March 12, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule is needed to clearly identify whether or not corrections personnel are still employed by a corrections agency.

Reasons Supporting Proposal: RCW 43.101.220 requires WSCJTC to provide basic corrections training. By adding this rule, WSCJTC will be able to identify who is and isn't in compliance with this requirement.

Statutory Authority for Adoption: RCW 43.101.080.

Statute Being Implemented: Not applicable.

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

Name of Proponent: WSCJTC staff, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Tisha Jones, Lacey, Washington, 360-486-2431.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

January 2, 2018

Sonja Peterson
Rules Coordinator

NEW SECTION

WAC 139-10-214 Termination of corrections personnel—Notification to commission. Upon termination, all counties and municipal corporations of the state of Washington, or any political subdivision thereof, must immediately notify the commission by approved form of each instance where corrections personnel has been separated for any reason. The agency of termination shall, within fifteen days of the termination, notify the commission on a personnel action report form provided by the commission. The commission shall maintain these notices in a permanent file, subject to RCW 43.101.400.

WSR 18-02-085

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 17-01—Filed January 2, 2018, 2:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-17-036.

Title of Rule and Other Identifying Information: Chapter 173-166 WAC, Emergency drought relief, is the permanent rule related to drought monitoring, declaration, and response.

Hearing Location(s): On February 7, 2018, at 10:00 a.m., at 300 Desmond Drive, Lacey, WA 98503; and at 1250 West Alder Street, Union Gap, WA 98903.

Date of Intended Adoption: February 28, 2018.

Submit Written Comments to: Rebecca Inman, P.O. Box 47600, email Rebecca.Inman@ecy.wa.gov, fax 360-407-7162, online <http://ws.ecology.commentinput.com/?id=H5PB6>, by February 16, 2018.

Assistance for Persons with Disabilities: Contact Hanna Waterstrat, phone 360-407-7668, TTY 877-833-6341, email Hanna.Waterstrat@ecy.wa.gov, 711 relay service, by January 19, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: We are proposing to amend the rule to make it consistent with current practices, remove unused funding language, correct out-of-date agency information, and improve clarity and consistency in the rule.

Recent legislative provisos for drought relief funding varied from the language in chapter 173-166 WAC, requiring adoption of an emergency rule. We will continue to adopt emergency rules to implement drought relief funding programs when authorized by the legislature. Removing the funding language from the permanent rule improves clarity versus having two rules for nearly identical functions and allows for funding decisions having an alternate appeal process.

Reasons Supporting Proposal: See purpose of the proposal above for this information.

Statutory Authority for Adoption: RCW 43.83B.420.

Statute Being Implemented: Chapter 43.83B RCW.

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

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Rebecca Inman, 300 Desmond Drive, Lacey, WA 98503, 360-407-6450; Implementation: Jeff Marti, 300 Desmond Drive, Lacey, WA 98503, 360-407-6627; and Enforcement: Rusty Post, 300 Desmond Drive, Lacey, WA 98503, 360-407-6625.

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

A cost-benefit analysis is not required under RCW 34.05.328. A preliminary cost-benefit analysis is not required because this rule making meets the following exemptions: RCW 34.05.328 (5)(b)(ii) rules relating to internal governmental operations that are not subject to violation by nongovernmental party, and RCW 34.05.328 (5)(b)(iv) rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect (adds clarity to the rule language).

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

December 29, 2017
Polly Zehm
Deputy Director

AMENDATORY SECTION (Amending WSR 91-03-081, filed 1/17/91, effective 2/17/91)

WAC 173-166-030 Definitions. As used in this chapter:

(1) "Ecology" is the department of ecology.

(2) "Drought conditions" are water supply conditions where a geographical area or a significant part of a geographical area is receiving, or is projected to receive, less than seventy-five percent of normal water supply as the result of natural conditions and the deficiency causes, or is expected to cause, undue hardship to water users within that area.

(3) "Essential minimum" for the fisheries resource is:

(a) That amount of water or flow rate established as a regulation adopted by ecology pursuant to RCW 90.22.020 or 90.54.050;

(b) That amount of water or flow placed as a proviso on a water right permit or certificate; or

(c) That amount of water or flow established on an interim basis to assure the maintenance of fisheries requirements. Such a determination will be made by ecology, in consultation with, among others, the department((s)) of ((fisheries)) fish and wildlife, any concerned federal agencies and affected Indian tribes.

(4) "Executive water emergency committee (EWEC)" is a committee, chaired by the governor's office, including members of state, local, and federal agencies which reviews water supply information provided by the water supply availability committee and determines potential effects of water shortages upon the state of Washington. Affected Indian tribes will be invited to participate.

(5) "Geographical area" is an area within the state of Washington which can be described either by natural or political boundaries and which can be specifically identified in an order declaring a drought emergency. Examples of specific geographical areas include, but are not limited to:

(a) The state of Washington.

(b) Counties.

(c) Water resource inventory areas (WRIAs) as defined in chapter 173-500 WAC.

(d) Individual watersheds which constitute only a portion of a WRIA but whose boundaries can be topographically described.

(e) Groundwater management areas and subareas as defined in chapter 173-100 WAC.

(f) Designated sole source aquifers.

(g) Combinations of the above areas.

(6) "Normal water supply" is((

~~(a))~~ for the purpose of ((the determination of)) determining drought conditions, the ((average)) median amount of water available to a geographical area ((on an annual basis, based upon evaluation of precipitation, streamflow, snowpack and other hydrological and meteorological factors.

~~(b) For the purpose of eligibility for drought assistance:~~

~~(i) That amount of water put to beneficial use during the irrigation season for the irrigation of one or more crops, using reasonably efficient practices, including reasonable conveyance losses, under a valid water right permit or certificate, or a supported registered water right claim; or~~

~~(ii) That amount or flow of water required for normal operations of fish hatchery or fish passage facilities. Such facilities, where required by law, must be operating under a~~

valid water right permit or certificate, or under a supported registered water right claim; or

(iii) The median amount or flow of water that is historically required to provide normal instream habitat conditions for the existing fishery population), relative to the most recent thirty-year base period used to define climate normals. The determination of drought conditions will consider seasonal water supply forecasts, other relevant hydro-meteorological factors (e.g., precipitation, snowpack, soil moisture, streamflow, and aquifer levels) and also may consider extreme departures from normal conditions over subseasonal time frames.

(7) "Previously established activities" include:

(a) The irrigation of a specified number of acres, using reasonably efficient practices, under a valid water right permit or certificate, or a supported registered water right claim.

(b) Those fish-management activities presently employed to maintain the fisheries resource. The resource itself must neither be restored nor enhanced by drought relief actions available under the provisions of this chapter.

(c) The delivery of water by public and private entities through existing supply systems to present populations, areas, and/or facilities for purposes that are nonagricultural and nonfishery related.

(8) "Reasonably efficient practices" are those practices including, but not limited to, methods of conveyance, use, and disposal of water which are reasonable and appropriate under the circumstances to bring about water use efficiency as determined by an area-specific application of criteria identified by ecology, which may include, among others:

(a) Customary practices in the area;

(b) Reasonableness of any facilities at the time of installation;

(c) Cost of improvements and impacts of the costs of upgrading facilities on the continued use of water by an appropriator;

(d) Changes in water use practices and technology; and

(e) Impact of alternative water use practices on other water uses and the environment.

(9) "Supported registered water right claim" is a registered water right claim which includes sufficient evidence to satisfy ecology that a valid water right would be confirmed should the claim be adjudicated. Applications made for emergency drought permits(~~(5)~~) or water transfers(~~(5)~~ or funding assistance) under this chapter must incorporate, either by reference or inclusion, necessary information to enable ecology to make an informed determination with respect to the claim. Such information may include, but is not limited to:

(a) Documentation of continuous historical exercise of the claimed right;

(b) Historical maps depicting the historical means of irrigation and the areas covered by the claimed right;

(c) Legal documentation, including any previous court or administrative board decisions, which addresses the historical nature and extent of the claimed right;

(d) "Old-timer" testimony which addresses the historical nature and extent of the claimed right.

(10) "Water supply availability committee (WSAC)" is a committee, with a core membership consisting of ecology, the National Weather Service, the ~~(Soil)~~ Natural Resources

Conservation Service, the U.S. Geological Survey, the U.S. Bureau of Reclamation, and other federal agencies involved in water supply forecasting, which reviews pertinent hydrological and meteorological information and assesses water supply conditions for the state of Washington.

AMENDATORY SECTION (Amending WSR 91-03-081, filed 1/17/91, effective 2/17/91)

WAC 173-166-040 General eligibility rule. (1) Applications for emergency drought permits, water transfers, or funding assistance made under this chapter will be processed only for previously established activities in a geographical area (~~(or part of a geographical area)~~) declared to be suffering from drought conditions. Where required by law, such activities must be conducted under a valid water right permit, certificate, or supported registered water right claim.

(2) Applications will be processed if the water user is receiving, or is projected to receive, less than seventy-five percent of normal water supply for the previously established activity and experiencing or expected to experience undue hardship as a result.

(3) All permits and approvals issued under this chapter will be subject to existing rights.

(4) Water obtained through the issuance of temporary permits(~~(7)~~) or water right transfers(~~(7)~~ and/or funding assistance for projects or measures) must be put to beneficial use in lieu of water which is unavailable because of drought conditions.

(5) All permits and approvals issued under this chapter will be of a temporary nature and will contain an expiration date.

AMENDATORY SECTION (Amending WSR 91-03-081, filed 1/17/91, effective 2/17/91)

WAC 173-166-050 Forecast of drought conditions. (1) Whenever it appears to the department of ecology that drought conditions as defined in WAC 173-166-030(2) either exist or are forecast to occur, ecology will consult with the state's water supply availability committee (WSAC) or its successor. Other appropriate sources of water supply information, such as the Columbia River water management group (~~and~~), the U.S. Army Corps of Engineers, and other water managers, may be consulted by the WSAC as needed.

(2) Ecology may solicit input from local authorities to aid ecology in determining the anticipated level of hardship and will make that information available to the executive water emergency committee (EWEC).

(3) Should the (~~water supply availability committee~~) WSAC determine that a geographical area (~~(or a part of a geographical area)~~) is receiving, or is likely to receive, seventy-five percent or less of its normal water supply, it will advise the (~~executive water emergency committee~~) EWEC and the Indian tribes within the area (~~(of that fact)~~). The (~~executive water emergency committee~~) EWEC will then make a determination as to whether or not undue hardships will occur as a result of the shortage.

(~~(3)~~) (4) Should the (~~executive water emergency committee~~) EWEC determine that an area will suffer undue hardship as a result of a reduced water supply, it will submit a rec-

ommendation to that effect to the governor for written approval. Affected Indian tribes will be notified at the time such a recommendation is submitted.

~~((4))~~ (5) Upon securing the written approval of the governor, ecology will then issue an order declaring a geographical area ~~((or a significant part of a geographical area))~~ to be suffering from drought conditions and publish that order in a newspaper of general circulation in the area affected by the order.

~~((5) The determination of drought conditions will be based upon the updated seasonal forecast as applied to the water supply conditions within the designated geographical area or part of a designated geographical area.)~~

AMENDATORY SECTION (Amending WSR 91-03-081, filed 1/17/91, effective 2/17/91)

WAC 173-166-060 Orders declaring drought conditions. (1) If the department of ecology determines that a geographical area ~~((or part of a geographical area))~~ is suffering from drought conditions, it may, upon the advice of the ~~((water supply availability committee))~~ WSAC, with the concurrence of the ~~((executive water emergency committee))~~ EWEC, and the written approval of the governor, issue an order to that effect.

(2) The order declaring drought conditions for a geographical area ~~((or part of a geographical area))~~ must contain the following elements:

(a) A description of the geographical area ~~((or part of a geographical area))~~ which is being so designated.

(b) The facts leading to the issuance of the order.

(c) The statutory authority upon which the order is being issued.

(d) The commencement date and termination date of the order. The termination date may be no later than one calendar year from the date the order is issued.

(e) Brief descriptions of the emergency actions which are possible under the order.

(f) Provisions for the termination of withdrawals if essential minimum flows are jeopardized.

(3) Ecology must publish the order declaring a geographical area ~~((or a part of a geographical area))~~ to be suffering from drought conditions in a newspaper of general circulation in the area affected by the order.

(4) Persons may file written protest as to the contents of the order with ecology. Ecology will have fifteen calendar days from the date of receipt of the protest in which to consult with members of WSAC, EWEC, and the governor and to make a determination as to its validity~~((using the procedure specified in WAC 173-166-050))~~.

(5) A person who believes that an area should be declared to be suffering from drought conditions may petition ecology for such a declaration. Upon the receipt of such a petition, ecology will have fifteen calendar days from the date of receipt of the petition in which to make a determination as to its validity, using the procedure specified in WAC 173-166-050, and provide a decision to the applicant. The petition should contain the following information:

(a) A description of the geographical area ~~((or part of a geographical area))~~ which is being requested for designation.

(b) The nature of the relief sought in requesting such a designation.

(c) The facts upon which the petition is based.

(6) Orders declaring areas to be suffering from drought conditions may, with the written approval of the governor, be amended one or more times to change the termination date, provided that the termination date of the order, as amended, is no more than two calendar years from the date the order is first issued.

(7) Orders declaring areas to be suffering from drought conditions may be issued for different areas of the state and sequentially for the same area if drought conditions persist.

AMENDATORY SECTION (Amending WSR 91-03-081, filed 1/17/91, effective 2/17/91)

WAC 173-166-070 Emergency drought permits.

Ecology may allow water users to obtain water from alternate sources during drought conditions. To accomplish this, ecology may issue emergency drought permits authorizing withdrawals of groundwater and surface water, including dead storage in reservoirs. Permits will be processed under the following criteria:

(1) Applicants must be conducting a previously established activity within a geographical area ~~((or part of a geographical area))~~ declared to be suffering from drought conditions.

(2) An application will be processed if the water user is receiving, or is projected to receive, less than seventy-five percent of normal water supply, as the result of natural drought conditions, for the previously established activity and experiencing, or is expected to experience, undue hardship as a result.

(3) Ecology, plus all state and local agencies with authority to issue permits or other authorizations in connection with emergency actions authorized under the provisions of this chapter, will have fifteen calendar days from the date of receipt of the respective application(s) in which to provide a decision to the applicant. Agencies with authority to review applications for emergency drought permits, such as under RCW 75.20.050, and affected Indian tribes will have fifteen calendar days from the date ecology receives the application in which to provide ecology with an opinion as to any effects of the proposed withdrawal.

(4) Waters authorized to be withdrawn must be used in relation to a previously established activity as defined in this chapter. The permit must not cover irrigation of new lands, restoration or enhancement of the fisheries resource, or a new water ~~((supply in addition to the normal amount used))~~ use than practiced in the past by individuals, private entities, or public bodies.

(5) ~~((Waters to be withdrawn must constitute an alternate (supplemental) water supply to the user's normal source of water.))~~ Emergency drought permits may authorize replacing all or a portion of the normal supply that is unavailable due to drought, but cannot increase authorized use.

(6) The withdrawal must not reduce flows or levels below essential minimums necessary to assure the maintenance of fisheries requirements and to protect federal and

state interests including, but not limited to, power generation, navigation, water quality, and existing water rights.

(7) Emergency drought permits issued under this chapter will be temporary in nature and must expire no later than the expiration date of the order declaring the area in which the permitted activity is authorized to be suffering from drought conditions.

(8) Priority will be given to domestic and irrigation uses of water for any emergency withdrawals authorized under this chapter.

(9) Emergency drought permits issued under this chapter must contain provisions for termination should the withdrawal reduce flows or levels below essential minimums as defined in this chapter.

(10) To expedite the issuance of emergency drought permits, ecology is authorized to process the applications and issue the permits without compliance with requirements for:

- (a) Notice of newspaper publication.
- (b) The State Environmental Policy Act.

AMENDATORY SECTION (Amending WSR 91-03-081, filed 1/17/91, effective 2/17/91)

WAC 173-166-080 Temporary transfers of water rights. (1) Ecology may approve emergency water right changes in order to effect a transfer of water between willing parties. Water right changes can include purpose of use, place of use, and point of diversion.

(2) Examples of possible water right transfers include, but are not limited to, the following situations:

(a) A water right holder may choose to reduce irrigated acreage and transfer the unused water to another water right holder whose normal water supply is decreased by drought conditions. The acreage irrigated with transferred water on the second parcel may not exceed the acreage reduction on the first parcel.

(b) A water right holder may transfer a water right from an out-of-stream use to an instream use.

(c) Municipalities or other public bodies may transfer water between one another.

(3) Requests for water right transfers will be processed under the following criteria:

(a) Applicants must be conducting a previously established activity within a geographical area (~~or part of a geographical area~~) declared to be suffering from drought conditions.

(b) An application for a water right transfer will be processed if the recipient water user is receiving, or is projected to receive, less than seventy-five percent of normal water supply, as the result of natural drought conditions, for the previously established activity and experiencing, or is expected to experience, undue hardship as a result.

(c) All approvals by ecology for water right transfers under this chapter will be temporary in nature and will be for the purpose of alleviating drought conditions. These approvals must terminate no later than the expiration date of the order which declares the area to be suffering from drought conditions.

(d) Water right transfers between willing parties may be approved when an emergency exists only if such a transfer

will not affect existing rights whatsoever, or reduce flows or levels below essential minimums, or adversely affect federal and state interests including, but not limited to, power generation, navigation, and water quality.

(e) Water rights may be transferred within areas declared to be suffering from drought conditions. Water rights may also be transferred from outside an area declared to be suffering from drought conditions into an area declared to be suffering from drought conditions, provided such a transfer of water is physically possible and is consistent with the provisions of RCW 90.03.380, 90.03.390, and 90.44.100. Water rights will not be transferred from within an area declared to be suffering from drought conditions to outside that area.

(f) To expedite water transfers during drought conditions, ecology can approve temporary changes in water rights without compliance with requirements for:

- (i) Notice of newspaper publication.
- (ii) The State Environmental Policy Act.

(g) In those cases where temporary water transfers require court approval while general adjudication proceedings are ongoing, ecology will assist the court in coordination, maintaining communications, and providing technical assistance when requested.

(h) The temporary changing of a water right under this chapter will not be admissible as evidence in either supporting or contesting the validity of water claims in a general adjudication of water rights in the state of Washington.

(i) Ecology, plus all state and local agencies with authority to issue permits or other authorizations in connection with emergency actions authorized under the provisions of this chapter, will have fifteen calendar days from the date of receipt of the respective application(s) in which to provide a decision to the applicant. Agencies with authority to review applications for temporary water right transfers, such as under RCW 75.20.050, and affected Indian tribes will have fifteen calendar days from the date ecology receives the application in which to provide ecology with an opinion as to any effects of the proposed transfer.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 173-166-090 Funding assistance—General criteria.

WAC 173-166-100 Funding assistance—Agricultural criteria.

WAC 173-166-110 Funding assistance—Fisheries criteria.

WAC 173-166-120 Requests for drought relief—Contacts—Applications.

WSR 18-02-087
WITHDRAWAL OF PROPOSED RULES
EDMONDS COMMUNITY COLLEGE

[Filed January 2, 2018, 3:56 p.m.]

Edmonds Community College is withdrawing CR-102 filed on December 6, 2017, in WSR 17-24-122 due to significant changes. We will refile at a later date.

Dennis Curran
 Vice President of
 Human Resources

WSR 18-02-088
PROPOSED RULES
HEALTH CARE AUTHORITY

[Filed January 2, 2018, 3:57 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-11-029.

Title of Rule and Other Identifying Information: WAC 182-531A-0800 Applied behavior analysis (ABA)—Provider requirements.

Hearing Location(s): On February 6, 2018, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than February 7, 2018.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by February 6, 2018.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, TTY 800-848-5429 or 711, email amber.lougheed@hca.wa.gov, by February 2, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is revising WAC 182-531A-0800 Applied behavior analysis (ABA)—Provider requirements, to align with new credentialing for ABA providers through the Washington state department of health (DOH) under chapter 246-805 WAC. The agency added requirements for providers to be recognized by the agency as centers of excellence (COE).

Reasons Supporting Proposal: The new credentialing requirements for ABA providers are required under SSB 5488 of 2015. The information regarding COEs is being added to clarify requirements.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, SSB 5488, 64th legislature, 2015 regular session.

Statute Being Implemented: RCW 41.05.021, 41.05.160, 64th legislature, 2015 regular session.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Katie Pounds, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1346; Implementation and Enforcement: Rebecca Peters, P.O. Box 45530, Olympia, WA 98504-5530, 360-725-1194.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The agency determined that these rules do not impose more-than-minor costs on businesses. Most of the new rules are being revised to comply with legislative requirements and align with DOH credentialing requirements. The training and form requirements for COEs do not impose more than a minor cost to businesses. The required training applies to certain physicians and advanced registered nurse practitioners (one employee per COE) and is provided at no cost and in several locations.

January 2, 2018
 Wendy Barcus
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-19-121, filed 9/21/15, effective 10/22/15)

WAC 182-531A-0800 Applied behavior analysis (ABA)—Provider requirements.

Center of excellence.

(1) A center of excellence (COE) may be an entity or an individual. The COE's evaluating and prescribing providers must function as a multidisciplinary care team.

(2) The COE must employ:

(a) A person licensed under Title 18 RCW who is experienced in the diagnosis and treatment of autism spectrum disorders and is:

- (i) An advanced registered nurse practitioner (ARNP);
- (ii) A developmental pediatrician;
- (iii) A neurologist;
- (iv) A pediatric neurologist;
- (v) A pediatric psychiatrist;
- (vi) A psychiatrist; or
- (vii) A psychologist; or

(b) A qualified medical provider who meets qualifications in subsection (3) of this section (~~and~~), who has been designated by the agency as a COE, and who has successfully completed the agency's approved COE training.

(3) The COE must be prequalified by the agency as meeting or employing people who meet the following criteria:

(a) ARNPs, physicians, and psychologists must have demonstrated expertise in diagnosing an autism spectrum disorder by:

- (i) Using a validated diagnostic tool;

(ii) Confirming the diagnosis by observing the client's behavior and interviewing family members; or

(iii) Reviewing the documentation available from the client's primary care provider, individualized education plan, or individualized family service plan;

(b) ARNPs, physicians, and psychologists must understand the medically necessary use of applied behavior analysis (ABA); and

(c) ARNPs, physicians, and psychologists must be sufficiently qualified to conduct and document a comprehensive diagnostic evaluation, and develop a multidisciplinary clinical treatment plan under WAC 182-531A-0500(2).

(4) To be recognized as a COE by the agency, the provider must submit a signed COE Attestation form, HCA 13-009, to the agency.

(5) The COE must be enrolled with the agency or the client's managed care organization (unless the client has third-party insurance) to be reimbursed for services.

(6) Examples of providers who can qualify as a designated COE include:

- (a) Multidisciplinary clinics;
- (b) Individual qualified provider offices; and
- (c) Neurodevelopmental centers.

(7) All ABA providers must meet the specified minimum qualifications and comply with applicable state laws.

Lead behavior analysis therapist.

(8) The lead behavior analysis therapist (LBAT) must (be):

(a) Be licensed by the department of health (DOH) to practice independently as (an ARNP, physician, psychologist, or licensed mental health practitioner under Title 18 RCW, or credentialed as a certified counselor or certified counselor advisor under Title 18 RCW,) a behavior analyst or an assistant behavior analyst with supervision from a licensed behavior analyst or licensed psychologist (see chapter 18.380 RCW) and be an eligible provider according to chapter 182-502 WAC; or

(b) (Employed by or contracted with an agency that is enrolled as a participating provider and licensed by DOH as a hospital, a residential treatment facility, or an in-home services agency and be licensed by DOH to practice independently as an ARNP, physician, psychologist, licensed mental health practitioner, or credentialed as a counselor, under Title 18 RCW, and be an eligible provider according to chapter 182-502 WAC; or

(c) Employed or contracted with an agency that is enrolled as a participating provider and licensed by the department of social and health services' division of behavioral health and recovery (DBHR) with certification to provide ABA services, and be able to meet the staff requirements specified in chapter 388-877A WAC). Be a DOH-licensed mental health counselor, DOH-licensed marriage and family therapist, DOH-licensed independent clinical social worker, DOH-licensed advanced social worker, or DOH-licensed psychologist (see chapter 18.380 RCW). Providers listed in this subsection must have a signed Applied Behavior Analysis (ABA) Attestation form, HCA 13-008, regarding certification as a board-certified behavior analyst (BCBA) or a

board-certified assistant behavior analyst (BCaBA) on file with the agency.

(9) The LBAT must enroll as a servicing provider under chapter 182-502 WAC, be authorized to supervise ancillary providers, and be:

(a) A (board-certified behavior analyst (BCBA) with proof of board certification through the Behavior Analysis Certification Board (BACB)) DOH-licensed behavior analyst (LBA) (see chapter 18.380 RCW); or

(b) (Eligible to sit for board certification under standards set by the BACB; or

(c) Certified by the BACB as an assistant behavior analyst (BCaBA) and practice according to the scope and responsibilities defined by the BACB) A DOH-licensed assistant behavior analyst (LABA) (see chapter 18.380 RCW).

(10) If the LBAT's role is filled by a (BCaBA) LABA, the responsibilities below must be fulfilled by both the (BCaBA) LABA and the supervising (BCBA) LBA or licensed psychologist, as required by (the BACB) DOH under chapter 246-805 WAC. The LBAT must:

(a) Develop and maintain an ABA therapy treatment plan that is comprehensive, incorporating treatment provided by other health care professionals, and that states how all treatment will be coordinated; and

(b) Supervise at least five percent of the total direct care provided by the (therapy assistant) certified behavior technician per week.

(Therapy assistant.

(10) The therapy assistant (TA) must be:

(a) Able to practice independently by being licensed)

Certified behavior technician.

(11) The certified behavior technician (CBT) must:

(a) Be certified by DOH as a (licensed mental health practitioner or credentialed as a counselor) CBT under ((Title 18)) chapter 18.380 RCW in good standing with no license restrictions; or

(b) (Employed by or contracted with an agency enrolled as a participating provider and licensed by DOH as a hospital, a residential treatment facility, or an in-home services agency with a home health service category to provide ABA services, and be able to practice independently by being licensed by DOH as a licensed mental health practitioner or credentialed as a counselor under Title 18 RCW in good standing with no license restrictions; or

(c) Employed by or contracted with an agency enrolled as a participating provider and licensed by DBHR as a community mental health agency with certification to provide ABA services, and be able to meet the staff requirements specified in chapter 388-877A WAC;

(12) Be a DOH-licensed mental health counselor, DOH-licensed marriage and family therapist, DOH-licensed independent clinical social worker, DOH-licensed advanced social worker, or DOH-licensed psychologist (see chapter 18.380 RCW). Providers listed in this subsection must have a signed Applied Behavior Analysis (ABA) Attestation form, HCA 13-0008, regarding ABA qualifications on file with the agency.

~~(12)~~ The ~~((TA))~~ CBT must enroll as a ~~((performing or))~~ servicing provider ~~((and have:~~

~~(a) Sixty hours of ABA training that includes applicable ABA principles and techniques, services, and caring for a client with core symptoms of autism; and~~

~~(b) A letter of attestation signed by the lead LBAT, documenting that the ~~((TA))~~ CBT has demonstrated competency in implementing ABA therapy treatment plans and delivering ABA services.~~

~~(12))~~ under chapter 182-502 WAC.

~~(13)~~ The ~~((TA))~~ CBT must:

~~(a) Deliver services according to the ABA therapy treatment plan; ~~((and))~~~~

~~(b) Be supervised by ~~((an LBAT))~~ a DOH-licensed professional who meets the requirements under ~~((subsection (7), (8), and (9) of this section))~~ WAC 246-805-330; and~~

~~(c) Review the client's progress with the ~~((LBAT))~~ supervisor at least every two weeks to confirm that the ABA therapy treatment plan still meets the client's needs. If changes are clinically indicated, they must be made by the ~~((LBAT))~~ supervisor.~~

Facility-based day program.

~~((13))~~ ~~(14)~~ All facility-based day program providers must meet the requirements under WAC 182-531A-0600 (3)(a), and meet the following ~~((licensure))~~ requirements:

~~(a) Outpatient hospital facilities must meet the applicable DOH licensure requirements under chapter 246-320 WAC;~~

~~(b) ~~((A clinic or nonhospital-based facility must be licensed as a community mental health agency by DBHR under chapter 388-877A WAC;~~~~

~~(e) A) Any provider rendering direct ABA services in the facility-based day program must meet the qualifications and applicable licensure or certification requirements as described in this subsection, as applicable; ~~((and~~~~

~~((d))~~ ~~(c)~~ Any provider serving as a member of the multi-disciplinary care team must be licensed or certified under Title 18 RCW; and

~~(d) Have a signed ABA Day Program Capacity Attestation form, HCA 13-0007, on file with the agency.~~

WSR 18-02-094

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed January 3, 2018, 9:29 a.m.]

Supplemental Notice to WSR 17-17-105.

Preproposal statement of inquiry was filed as WSR 17-08-008.

Title of Rule and Other Identifying Information: WAC 182-551-3000 Private-duty nursing services for clients seventeen years of age and younger and new WAC 182-551-3100 Private-duty nursing services for clients age seventeen and younger—Client eligibility, 182-551-3200 Private-duty nursing services for clients age seventeen and younger—Client requirements, 182-551-3300 Private-duty nursing services for clients age seventeen and younger—Fee-for-service

application requirements, and 182-551-3400 Private-duty nursing services for clients age seventeen and younger—Fee-for-service authorization.

Hearing Location(s): On February 6, 2018, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than February 7, 2018.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by February 6, 2018.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, TTY 800-848-5429 or 711, email amber.lougheed@hca.wa.gov, by February 2, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules govern the administration of the medically intensive children's program (MICP) to provide private duty nursing hours for children age seventeen and younger. The program is available for clients whose complex medical needs cannot be managed within the scope of intermittent home health services. The proposed rule changes reorganize the private duty nursing rules within chapter 182-551 WAC, revise eligibility criteria, and clarify current agency policy.

The agency is amending WAC 182-551-3000 Private duty nursing services for clients age seventeen and younger—General, as follows: (1) Renaming the title to reflect that it contains general information about private duty nursing for clients age seventeen and younger; (2) removing the definition of "private duty nursing" and moving it to a new section for definitions; (3) adding information about receiving services through a managed care organization (MCO); (4) adding information about coverage for services when the client has third-party liability (TPL) coverage; (5) removing and moving to new sections all information regarding client eligibility, provider requirements, application requirements, and authorization; and (6) housekeeping changes. Changes to WAC 182-551-3000 explain that private duty nursing services are provided to clients through MICP and further clarify how services are provided through MCOs and when clients have TPL coverage. The agency is creating new WAC 182-551-3050 Private duty nursing services for clients age seventeen and younger—Definitions, to define terms not previously found in WAC regarding private duty nursing services. The agency is creating new sections for client eligibility, provider requirements, application requirements, and authorization (new WAC 182-551-3100 through 182-551-3400).

The agency previously proposed amendments to these rules under WSR 17-17-105 and held a public hearing on September 26, 2017. As a result of stakeholder comments, the agency has further revised the rules and will hold another public hearing.

Reasons Supporting Proposal: The reorganization of the private duty nursing rules makes the information easier to

find. Other changes to these rules clarify the administration of the MICP program in regards to client eligibility criteria, provider requirements, application requirements, and authorization.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Katie Pounds, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1346; Implementation and Enforcement: Nancy Hite, P.O. Box 45530, Olympia, WA 98504-5530, 360-725-1611.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. These rules do not impose compliance costs on businesses. The rules do not create additional compliance requirements for providers.

January 3, 2018

Wendy Barcus

Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-551-3000 Private duty nursing ((services)) for clients age seventeen ((years of age)) and younger—

General. ((This section applies to private duty nursing services for eligible clients on fee-for-service programs.)) (1) The medically intensive children's program (MICP) provides private duty nursing to clients, either through fee-for-service or an agency-contracted managed care organization (MCO).

(2) The MICP is available to clients age seventeen and younger, whose complex medical needs cannot be managed within the scope of intermittent home health services.

(3) Managed care clients receive private duty nursing services through their ((plans)) agency-contracted MCO. (See chapter ((388-538)) 182-538 WAC. ((1) "Private duty nursing" means four hours or more of continuous skilled nursing services provided in the home to eligible clients with complex medical needs that cannot be managed within the scope of intermittent home health services. Skilled nursing service is the management and administration of the treatment and care of the client, and may include, but is not limited to:

(a) Assessments (e.g., respiratory assessment, patency of airway, vital signs, feeding assessment, seizure activity, hydration, level of consciousness, constant observation for comfort and pain management);

(b) Administration of treatment related to technological dependence (e.g., ventilator, tracheotomy, bilevel positive

airway pressure, intravenous (IV) administration of medications and fluids, feeding pumps, nasal stints, central lines);

(c) Monitoring and maintaining parameters/machinery (e.g., oximetry, blood pressure, lab draws, end tidal CO₂s, ventilator settings, humidification systems, fluid balance, etc.); and

(d) Interventions (e.g., medications, suctioning, IV's, hyperalimentation, enteral feeds, ostomy care, and tracheostomy care).

(2) To be eligible for private duty nursing services, a client must meet all the following:

(a) Be seventeen years of age or younger (see chapter 388-71 WAC for information about private duty nursing services for clients eighteen years of age and older);

(b) Be eligible for categorically needy (CN) or medically needy (MN) scope of care (see WAC 388-501-0060 and 388-501-0065);

(c) Need continuous skilled nursing care that can be provided safely outside an institution; and

(d) Have prior authorization from the department.

(3) The department contracts only with home health agencies licensed by Washington state to provide private duty nursing services and pays a rate established by the department according to current funding levels.

(4) A provider must coordinate with a division of developmental disabilities case manager and request prior authorization by submitting a complete referral to the department, which includes all of the following:

(a) The client's age, medical history, diagnosis, and current prescribed treatment plan, as developed by the individual's physician;

(b) Current nursing care plan that may include copies of current daily nursing notes that describe nursing care activities;

(c) An emergency medical plan which includes notification of electric, gas and telephone companies as well as local fire department;

(d) Psycho-social history/summary which provides the following information:

(i) Family constellation and current situation;

(ii) Available personal support systems;

(iii) Presence of other stresses within and upon the family; and

(iv) Projected number of nursing hours needed in the home, after discussion with the family or guardian.

(e) A written request from the client or the client's legally authorized representative for home care.

(5) The department approves requests for private duty nursing services for eligible clients on a case-by-case basis when:

(a) The information submitted by the provider is complete;

(b) The care provided will be based in the client's home;

(c) Private duty nursing will be provided in the most cost-effective setting;

(d) An adult family member, guardian, or other designated adult has been trained and is capable of providing the skilled nursing care;

(e) A registered or licensed practical nurse will provide the care under the direction of a physician; and

~~(f) Based on the referral submitted by the provider, the department determines:~~

~~(i) The services are medically necessary for the client because of a complex medical need that requires continuous skilled nursing care which can be provided safely in the client's home;~~

~~(ii) The client requires more nursing care than is available through the home health services program; and~~

~~(iii) The home care plan is safe for the client.~~

~~(6) Upon approval, the department will authorize private duty nursing services up to a maximum of sixteen hours per day except as provided in subsection (7) of this section, restricted to the least costly equally effective amount of care.~~

~~(7) The department may authorize additional hours:~~

~~(a) For a maximum of thirty days if any of the following apply:~~

~~(i) The family or guardian is being trained in care and procedures;~~

~~(ii) There is an acute episode that would otherwise require hospitalization, and the treating physician determines that noninstitutionalized care is still safe for the client;~~

~~(iii) The family or guardian caregiver is ill or temporarily unable to provide care;~~

~~(iv) There is a family emergency; or~~

~~(v) The department determines it is medically necessary.~~

~~(b) After the department evaluates the request according to the provisions of WAC 388-501-0165 and 388-501-0169:~~

~~(8) The department adjusts the number of authorized hours when the client's condition or situation changes.~~

~~(9) Any hours of nursing care in excess of those authorized by the department are the responsibility of the client, family or guardian.) Providers must follow the policies and procedures of the client's MCO, including the authorization of services.~~

~~(4) For clients with third-party liability (TPL) coverage (see WAC 182-500-0105) that includes private duty nursing, the procedures and policies in subchapter III, titled Private Duty Nursing, apply when determining coverage of additional hours under MICP.~~

NEW SECTION

WAC 182-551-3050 Private duty nursing for clients age seventeen and younger—Definitions. The following definitions and those found in chapter 182-500 WAC apply to this subchapter.

"Nursing care consultant" means a registered nurse employed by the department of social and health services (DSHS) to evaluate clinical eligibility for the medically intensive children's program (MICP) and provide a written assessment summary.

"Private duty nursing" means skilled nursing care and services provided in the home for clients with complex medical needs that cannot be managed within the scope of intermittent home health services.

"Skilled nursing care" means the medical care provided by a licensed nurse or delegate working under the direction of a physician as described in RCW 18.79.260.

"Skilled nursing services" means the management and administration of skilled nursing care requiring the special-

ized judgment, knowledge, and skills of a registered nurse or licensed practical nurse as described in RCW 18.79.040 and 18.79.060.

NEW SECTION

WAC 182-551-3100 Private duty nursing for clients age seventeen and younger—Client eligibility. (1) To be eligible for private duty nursing under the medically intensive children's program (MICP), clients must:

(a) Be age seventeen or younger;

(b) Have informal support by a person who has been trained to provide designated skilled nursing care and is able to perform the care as required;

(c) Have prior authorization from the department of social and health services/developmental disabilities administration (DSHS/DDA);

(d) Have exhausted all other funding sources for private duty nursing, according to RCW 74.09.185, prior to accessing these services through the medically intensive children's program (MICP);

(e) Meet financial eligibility under subsection (2) of this section; and

(f) Meet medical eligibility under subsection (3) of this section.

(2) To be financially eligible for private duty nursing, clients must meet medicaid eligibility requirements under the categorically needy program, the medically needy program, or alternative medical program (see WAC 182-501-0060).

(3) To be medically eligible for private duty nursing under fee-for-service, clients must be assessed by a DSHS/DDA nursing care consultant and determined medically eligible for MICP.

(4) Clients must meet the following criteria to be medically eligible for MICP:

(a) Require four or more continuous hours of active skilled nursing care with consecutive tasks at a level that:

(i) Cannot be delegated at the time of the initial assessment; and

(ii) Can be provided safely outside of a hospital in a less restrictive setting.

(b) Require two or more tasks of complex skilled nursing care such as:

(i) System assessments, including multistep approaches of systems (e.g., respiratory assessment, airway assessment, vital signs, nutritional and hydration assessment, complex gastrointestinal assessment and management, seizure management requiring intervention, or level of consciousness);

(ii) Administration of treatment for complex respiratory issues related to technological dependence requiring multistep approaches on a day-to-day basis (e.g., ventilator tracheostomy);

(iii) Assessment of complex respiratory issues and interventions with use of oximetry, titration of oxygen, ventilator settings, humidification systems, fluid balance, or any other cardiopulmonary critical indicators based on medical necessity;

(iv) Skilled nursing interventions of intravenous/parenteral administration of multiple medications and nutritional

substances on a continuing or intermittent basis with frequent interventions; or

(v) Skilled nursing interventions of enteral nutrition and medications requiring multistep approaches daily.

NEW SECTION

WAC 182-551-3200 Private duty nursing for clients age seventeen and younger—Provider requirements. Providers qualified to deliver private duty nursing under the medically intensive children's program must have the following:

(1) A home health agency license with the state of Washington to provide private duty nursing;

(2) A contract with the department of social and health services/developmental disabilities administration (DSHS/DDA) to provide private duty nursing; and

(3) A signed core provider agreement with the medicaid agency.

NEW SECTION

WAC 182-551-3300 Private duty nursing for clients age seventeen and younger—Application requirements. Clients requesting private duty nursing through fee-for-service must submit a complete signed medically intensive children's program (MICP) application (DSHS form 15-398). The MICP application must include the following:

(1) DSHS 14-012 consent form;

(2) DSHS 14-151 request for DDA eligibility determination form for clients not already determined DDA eligible;

(3) DSHS 03-387 notice of practices for client medical information;

(4) Appropriate and current medical documentation including medical plan of treatment or plan of care (WAC 246-335-080) with the client's age, medical history, diagnoses, and the parent/guardian contact information including address and phone number;

(5) A list of current treatments or treatment records;

(6) Information about ventilator, bilevel positive airway pressure (BiPAP), or continuous positive airway pressure (CPAP) hours per day or frequency of use;

(7) History and physical from current hospital admission, recent discharge summary, or recent primary physician exam;

(8) A recent interim summary, discharge summary, or clinical summary;

(9) Recent nursing charting within the past five to seven days of hospitalization or in-home nursing documentation;

(10) Current nursing care plan that may include copies of current daily nursing notes that describe nursing care activities;

(11) An emergency medical plan that includes strategies to address loss of power and environmental disasters such as methods to maintain life-saving medical equipment supporting the client. The plan may include notification of electric and gas companies and the local fire department;

(12) A psycho-social history/summary with the following information, as available:

(a) Family arrangement and current situation;

(b) Available personal support systems; and

(c) Presence of other stresses within and upon the family.

(13) Statement that the home care plan is safe for the child and is agreed to by the child's parent or legal guardian;

(14) Information about other family supports such as medicaid, school hours, or hours paid by a third-party insurance or trust; and

(15) For a client with third-party insurance or a managed care organization (MCO), a denial letter from the third-party insurance or MCO that states the private duty nursing will not be covered.

NEW SECTION

WAC 182-551-3400 Private duty nursing for clients age seventeen and younger—Authorization. (1) Private duty nursing when provided through fee-for-service requires prior authorization from the department of social and health services/developmental disabilities administration (DSHS/DDA).

(2) DSHS/DDA authorizes requests for private duty nursing on a case-by-case basis when:

(a) The application requirements under WAC 182-551-3300 are met; and

(b) The nursing care consultant determines the services to be medically necessary, as defined in WAC 182-500-0070 and according to the process in WAC 182-501-0165.

(3) DSHS/DDA only authorizes the number of private duty nursing hours that are medically necessary.

(a) Services are limited to sixteen hours of private duty nursing per day.

(b) DSHS/DDA may adjust the number of authorized hours when the client's condition or situation changes.

(c) Additional hours beyond sixteen per day are subject to review as a limitation extension under WAC 182-501-0169.

(4) Private duty nursing provided to the client in excess of the authorized hours may be the financial responsibility of the client, the client's family, or the client's guardian. Providers must follow the provisions of WAC 182-502-0160.

WSR 18-02-095

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed January 3, 2018, 9:32 a.m.]

Supplemental Notice to WSR 17-17-177.

Preproposal statement of inquiry was filed as WSR 17-11-110.

Title of Rule and Other Identifying Information: The department is proposing to create new sections in a new chapter 388-829B WAC, Enhanced case management program.

Hearing Location(s): On February 6, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than February 7, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., February 6, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, TTY 360-664-6178, email KildaJA@dshs.wa.gov, by January 23, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to create new rules in order to implement SB [E2SSB] 6564 (2016).

Reasons Supporting Proposal: The proposed rules address abuse and neglect of individuals with developmental disabilities by increasing monitoring, reporting, and home visits for clients assessed as being at the highest risk of abuse and neglect.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: Chapters 71A.12, 43.382 RCW.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1589; Implementation and Enforcement: Heather Lum, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1526.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1589, fax 360-407-0955, email chantelle.diaz@dshs.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: Under RCW 19.85.025(4), the department is exempt from preparing a small business economic impact statement if the department has prepared a cost-benefit analysis that meets requirements under RCW 34.05.328.

December 27, 2017
Katherine I. Vasquez
Rules Coordinator

Chapter 388-829B WAC

ENHANCED CASE MANAGEMENT PROGRAM

NEW SECTION

WAC 388-829B-100 What is the enhanced case management program? The enhanced case management program is a program that facilitates client integration, improves quality of care, and promotes a safe home environment.

Funds appropriated for the enhanced case management program support up to seven hundred clients through increased:

- (1) Access to a case manager;
- (2) Access to education and resources; and
- (3) Frequency of home visits.

NEW SECTION

WAC 388-829B-200 What definitions apply to this chapter? The following definitions apply to this chapter.

"**CARE assessment**" means an inventory and evaluation of a client's strengths and limitations based on an in-person interview in the client's home or place of residence.

"**Caregiver**" means a person contracted with the developmental disabilities administration (DDA) to provide medicaid or waiver personal care, respite care, or attendant care services.

"**Client**" means a person who has a developmental disability as defined in RCW 71A.10.020(5) and has been determined eligible to receive services by DDA under chapter 71A.16 RCW.

"**Collateral contact**" means a person or agency that is involved in the client's life, such as a legal guardian, family member, provider, or friend.

"**Independent supports**" means an adult, other than the client's paid caregiver, who observes the care a client receives from their paid caregiver.

NEW SECTION

WAC 388-829B-300 Who may DDA enroll in the enhanced case management program? The developmental disabilities administration (DDA) may enroll a client in the enhanced case management program if the client is largely dependent on a paid caregiver in the client's home and:

- (1) The client's CARE assessment indicates the client:
 - (a) Is not always able to supervise their caregiver;
 - (b) Has communication barriers and few documented collateral contacts; and
 - (c) Lacks additional, independent supports that regularly help the client monitor the care being provided in their home;
 or
- (2) The client lives with the paid caregiver and:
 - (a) The client has been the subject of an adult protective services or child protective services referral in the past year;
 - (b) DDA has concerns that the home environment or quality of care may jeopardize the client's health or safety.

NEW SECTION

WAC 388-829B-400 How often must the case manager visit the enhanced case management program client?

- (1) The client's case manager must visit each enhanced case management program client at least once every four months at the client's home, including unannounced visits as needed. Each required visit must not occur more than four months apart.
- (2) An unannounced visit may replace a scheduled visit.

(3) If a client declines a visit, announced or unannounced, the case manager must document the declined visit in the enhanced case management program node.

(4) If the case manager is unable to meet with the client for a required visit, the case manager must schedule a follow-up visit as soon as possible and no later than thirty days.

NEW SECTION

WAC 388-829B-500 When will I transfer off of the enhanced case management program? If you no longer meet eligibility criteria for the enhanced case management program under WAC 388-829B-300, DDA will disenroll you from the program.

WSR 18-02-097

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed January 3, 2018, 9:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-19-101.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-827-0105 Who is eligible for a state supplementary payment? and 388-827-0120 May DDA deny, reduce, or terminate a state supplementary payment?

Hearing Location(s): On February 6, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than February 7, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., February 6, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by January 23, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments to these rules clarify language related to state supplementary payments (SSP) program eligibility.

Reasons Supporting Proposal: These changes are necessary to preserve public health, safety, and general welfare of SSP clients who rely on SSP funds and may be at risk of losing program eligibility.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 71A.12.030.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1589; Implementation and Enforcement: Lonnie Keesee, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1529.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1589, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

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

Is exempt under RCW 19.85.025(4) because the rules do not affect small businesses.

Explanation of exemptions: The proposed amendments will impose no new or disproportionate costs on small businesses so a small business economic impact statement is not required.

December 27, 2017
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-13-022, filed 6/12/17, effective 7/13/17)

WAC 388-827-0105 Who is eligible for a state supplementary payment? (1) The developmental disabilities administration (DDA) must not enroll you in state supplementary payments after the effective date of this section, unless you are eligible for a state supplementary payment for prevocational legacy.

(2) To be eligible for a state supplementary payment, you must meet all general eligibility requirements under subsection (3) of this section and any applicable program-specific requirements under subsections (4) through (8) of this section.

(3) To be eligible for a state supplementary payment, you must:

(a) Be determined DDA eligible under chapter 388-823 WAC;

(b) Complete an in-person interview and reassessment with DDA once every twelve months—or more often if DDA deems it necessary—to determine whether you continue to meet eligibility requirements; and

(c) Be financially eligible because:

(i) You receive supplementary security income cash assistance for the month in which the state supplementary payment is issued; or

(ii) You receive social security Title II benefits as a disabled adult child(~~(, your SSI was terminated due to the receipt of these benefits,)) and you would be eligible for SSI if you did not receive these benefits.~~)

(4) To be eligible for children's legacy care state supplementary payments, you must live with your family as defined in WAC 388-832-0001.

(5) To be eligible for a state supplementary payment for waiver services, you must be enrolled in a home and commu-

nity based services waiver program as described in chapter 388-845 WAC.

(6) To be eligible for prevocational legacy state supplementary payments, you must:

(a) Have left prevocational services on or after September 1, 2015; and

(b) Not be enrolled in a DDA residential (~~habilitative~~) habilitation service.

(7) To be eligible for residential habilitation state supplementary payments, you must be receiving a residential habilitation service as described in chapter 388-845 WAC and as identified in your person-centered service plan.

(8) To be eligible for state supplementary payments in lieu of individual and family services you must be:

(a) At least three years old; and

(b) Living with your family as defined in WAC 388-832-0001.

AMENDATORY SECTION (Amending WSR 17-13-022, filed 6/12/17, effective 7/13/17)

WAC 388-827-0120 May DDA deny, reduce, or terminate a state supplementary payment? (1) The developmental disabilities administration (DDA) may deny, reduce, or terminate a state supplementary payment if one or more of the following is true:

(a) You do not meet the eligibility requirements under WAC 388-827-0105;

(b) You do not cooperate with DDA during:

(i) Service planning; or

(ii) Required quality assurance and program monitoring activities;

(c) You choose to unenroll from state supplementary payments.

(2) Except for state supplementary payments for prevocational legacy and state supplementary payments for waiver services, DDA will terminate your state supplementary payment if you enroll in a DDA-administered home and community based services waiver.

(3) State supplementary payments are limited to available funding.

(4) DDA will terminate your state supplementary payments for prevocational legacy if you enter into a DDA prevocational service or a DDA residential habilitation service.

WSR 18-02-099

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed January 3, 2018, 10:19 a.m.]

Supplemental Notice to WSR 17-18-113.

Preproposal statement of inquiry was filed as WSR 17-09-020.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-78A-2590, 388-78A-2592, and 388-78A-2594.

Hearing Location(s): On February 6, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than February 7, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., February 6, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 360-664-6178, email KildaJA@dshs.wa.gov, by January 23, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending these rules to conform to current department practice related to management agreements. For example, the department is removing language indicating that the department approves all management agreements.

Reasons Supporting Proposal: Although the department receives copies of management agreements and has authority to review them, it frequently relies upon a management agreement attestation document submitted by a proposed licensee.

Statutory Authority for Adoption: Chapter 18.20 RCW.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jeanette Childress, P.O. Box 45600, Olympia, WA 98506, 360-725-2591.

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

A cost-benefit analysis is not required under RCW 34.05.328. The department has analyzed the proposed rules and determined that they have no fiscal impact.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

January 2, 2018

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2590 Management agreements—General. (1) If the proposed or current licensee uses a manager, the licensee must have a written management agreement (~~((approved by the department))~~) that is consistent with this chapter.

(2) The proposed or current licensee must notify the department of its use of a manager upon:

(a) Initial application for a license;

- (b) Retention of a manager following initial application;
 - (c) Change of managers; and
 - (d) Modification of existing management agreement.
- (3) The proposed or current licensee must provide to the department a written management agreement, including an organizational chart showing the relationship between the proposed or current licensee, management company, and all related organizations.
- (4) The written management agreement must be submitted:
- (a) Sixty days before:
 - (i) The initial licensure date;
 - (ii) The proposed change of ownership date; or
 - (iii) The effective date of the management agreement; or
 - (b) Thirty days before the effective date of any amendment to an existing management agreement.
- (5) The proposed licensee or the current licensee must notify the resident and their representatives sixty days before entering into a new management agreement.
- (6) A proposed licensee must submit a management agreement attestation form, as required by the assisted living facility application.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2592 Management agreements—Licensee. (1) The licensee is responsible for:

- (a) The daily operations and provisions of services in the assisted living facility (~~((see))~~), as required by WAC 388-78A-2730 (1)(a)(i));
 - (b) Ensuring the assisted living facility is operated in a manner consistent with all laws and rules applicable to assisted living facilities (~~((see WAC 388-78A-2730 (1)(b))))~~, as required by WAC 388-78A-2730 (1)(b);
 - (c) Ensuring the manager acts in conformance with (~~(department approved))~~ the management agreement; and
 - (d) Ensuring the manager does not represent itself as, or give the appearance that it is the licensee.
- (2) The licensee must not give the manager responsibilities that are so extensive that the licensee is relieved of daily responsibility for the daily operations and provision of services in the assisted living facility. If the licensee does so, then the department must determine that a change of ownership has occurred.
- (3) The licensee and manager must act in accordance with the terms of the (~~(department approved))~~ management agreements. If the department determines they are not, then the department may (~~(take licensing action))~~ impose enforcement remedies.

- (4) The licensee may enter into a management agreement only if the management agreement creates a principal/agent relationship between the licensee and manager.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2594 Management agreements—Department review. (~~(Upon receipt of a proposed))~~ The department may review a management agreement((:)) at any time. Following the review, the department may require:

- (1) The proposed or current licensee or manager to provide additional information or clarification;
- (2) Any changes necessary to:
 - (a) Bring the management agreement into compliance with this chapter; and
 - (b) Ensure that the licensee has not been relieved of the responsibility for the daily operations of the facility.
- (3) The licensee to participate in monthly meetings and quarterly on-site visits to the assisted living facility.

WSR 18-02-100
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed January 3, 2018, 10:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-14-074.

Title of Rule and Other Identifying Information: Amends WAC 181-79A-030 on renewal requirements for educator certificates with either professional growth plans or clock hours. Amends WAC 181-79A-251 to comport with the changes in WAC 181-79A-030. All changes are the continuing work to implement requirements in HB [E2SHB] 1341, Laws of 2017.

Hearing Location(s): On March 15, 2018, at 8:30 a.m., at the Raddison Hotel SeaTac, 18118 International Boulevard, Seattle, WA 98188.

Date of Intended Adoption: March 15, 2018.

Submit Written Comments to: David Brenna, 600 Washington Street, Olympia, WA 98504, email david.brenna@k12.wa.us, by March 8, 2018.

Assistance for Persons with Disabilities: Contact David Brenna, phone 360-725-6238, email david.brenna@k12.wa.us, by March 8, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The 2017 legislature removed second tier certification requirements for most educators. The amendments to rules in these two sections clarifies the professional group plans for renewal, and [as] well as the value of clock hours required to renew. These changes are required in clarifying and streamlining the regulations related to certification after the implementation of HB [E2SHB] 1341.

Reasons Supporting Proposal: Improves system for renewal of all educator certificates.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Statute Being Implemented: Not applicable, while HB [E2SHB] 1341 (2017) required significant rule changes, these amendments are in compliance with those earlier changes, but negotiated changes initiated by the board.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fis-

cal Matters: The agency took the opportunity to streamline requirements.

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: David Brenna, 600 Washington Street, Olympia, WA 98504, 360-725-6238.

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

A cost-benefit analysis is not required under RCW 34.05.328. No costs involved.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

January 3, 2018
David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 14-24-057, filed 11/25/14, effective 12/26/14)

WAC 181-79A-030 Definitions. The following definitions shall apply to terms used in this chapter:

(1) The terms, "program approval," "endorsement," "interstate compact," "college or university," and "~~((regionally))~~ accredited institution of higher education," as defined in WAC 180-78-010 and 181-78A-010 shall apply to the provisions of this chapter.

(2) "Certificate" means the license issued by the superintendent of public instruction to teachers, administrators, and educational staff associates verifying that the individual has met the requirements set forth in this chapter.

(3) "Certificate renewal" means the process whereby the validity of a certificate, subject to expiration, is extended.

(4) "Certificate reinstatement" means the process whereby the validity of an expired certificate is regained.

(5) "Lapsed certificate" means a residency certificate that is subject to the timelines and renewal described under WAC 181-79A-251.

(6) "Expired certificate" means a teacher certificate that can only be reinstated under WAC 181-79A-251.

(7) "Classroom teaching" means instructing pupils in an instructional setting.

(8) "Approved baccalaureate degree" for the purpose of this chapter, means a baccalaureate from ~~((a regionally))~~ an accredited college or university in any of the subject areas of the endorsement listed in chapter 181-82 WAC as now or hereafter amended: Provided, That if a candidate is accepted into a program in Washington state on or before August 31, 2000, and completes the program on or before August 31, 2003, in accordance with WAC 181-79A-299, the candidate may hold a baccalaureate degree in any of the subject areas of

the endorsements listed in WAC 181-79A-302. Such degrees shall require the completion of at least forty-five quarter hours (thirty semester hours) of course work in the subject area: Provided, That a candidate who holds a baccalaureate degree in another academic field will not be required to obtain a second baccalaureate degree if the candidate provides evidence to the superintendent of public instruction that he or she has completed the required forty-five quarter or thirty semester hours of course work in one of the subject areas of the endorsements listed in chapter 181-82 WAC: Provided further, That a candidate who holds a baccalaureate degree in early childhood education, elementary education, or special education will not be required to obtain a second baccalaureate degree if the candidate provides evidence to the superintendent of public instruction that he or she has completed thirty quarter or twenty semester credit hours in one academic field in an approved endorsement area pursuant to WAC 181-82A-202.

(9) "Issues of abuse course work requirement" means completion of course work or an in-service program on issues of abuse. The content shall discuss the identification of physical, emotional, sexual, and substance abuse, information on the impact of abuse on the behavior and learning abilities of students, discussion of the responsibilities of a teacher to report abuse or provide assistance to students who are victims of abuse, and methods for teaching students about abuse of all types and their prevention. Additionally, content areas identified by the legislature in RCW 28A.410.035 shall be required in the issues of abuse course, including exploitation of minors and suicide prevention.

(10) "Approved master's degree" for the purpose of this chapter, means a master's or doctorate degree from ~~((a regionally))~~ an accredited college or university.

(11) "Credit hour(s)" means credit (normally 100 level or above) awarded by ~~((a regionally))~~ an accredited institution of higher education.

(12) "Previous standards" means a certification system in place prior to a revision in rules that results in changed names and/or validity periods for the certificates issued.

(13) "Application for certification" means an application for a certificate or endorsement that includes a signed affidavit (as specified in WAC 181-79A-157) by the applicant. Such application shall be considered valid for two years from the date of receipt by the superintendent of public instruction, or its designee.

(14) "Professional growth team" for the purpose of certificate renewal ~~((of the professional certificate,))~~ means a team comprised of the individual renewing the certificate and a minimum of one colleague, who holds a current Washington state educator certificate, chosen by the individual.

(15) "Professional growth plan."

(a) Teacher individualized professional growth plan means the document which identifies the formalized learning opportunities and professional development activities that relate to the specific competencies, knowledge, skills and experiences needed to meet the standards at the "career level" benchmarks as published by the professional educator standards board.

(b) Principal/program administrator individualized professional growth plan means the document which identifies

the formalized learning opportunities and professional development activities that relate to the specific competencies, knowledge, skills and experiences needed to meet the standards at the "career level" benchmarks ((set forth in WAC 181-78A-540(1))) as published by the professional educator standards board.

(c) ESA individualized professional growth plan means the document which identifies the formalized learning opportunities and professional development activities that relate to the specific competencies, knowledge, skills and experiences needed to meet the standards ((and) at the career level benchmarks ((set forth in WAC 181-78A-540(2))) as published by the professional educator standards board.

(d) Only one professional growth plan may be completed each year. Professional growth plans will be completed during the period beginning July 1st of one year and ending June 30th of the following year. Completion of the professional growth plan will include review by the professional growth team, as defined in subsection (14) of this section.

(e) Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal, per RCW 28A.405.100 (12)(c)(vi).

(f) Until June 30, 2018, individuals who complete the requirements of the annual professional growth plan to renew their certificate shall receive the equivalent of thirty hours of continuing education credit hours. Beginning July 1, 2018, individuals who complete an annual professional growth plan to renew their certificate shall receive the equivalent of twenty-five continuing education credit hours.

(g) For educators holding multiple certificates in chapter 181-85 or 181-79A WAC, a professional growth plan for teacher, administrator or educational staff associate shall meet the requirements for all certificates held by an individual.

(16) "A positive impact on student learning" means that a teacher through instruction and assessment has been able to document students' increased knowledge and/or demonstration of a skill or skills related to the state goals and/or essential academic learning requirements: Provided, That teachers employed by private schools who are candidates for the professional teaching certificate shall document students' increased knowledge and/or demonstration of a skill or skills related to either:

(a) The state goals or essential academic learning requirements; or

(b) Such alternative learning goals as the private school has established.

(17) "Professional certificate support provider" means any organization or institution operating training or consulting services as a public entity or private company holding an appropriate business license.

(18) "Approved private school" means any organization of institution providing educational services to children including, but not limited to, approved private schools, state institutions, juvenile institutions, nonpublic agencies providing special education services, development centers, and bureau of Indian affairs schools.

AMENDATORY SECTION (Amending WSR 17-23-176, filed 11/21/17, effective 12/22/17)

WAC 181-79A-251 Teacher residency and professional certification—Renewal and reinstatement. (1) Residency certificates shall be renewed under one of the following options:

(a) Individuals who hold, or have held, residency certificates have the following options for renewal:

(i) One hundred continuing education credit hours as defined in chapter 181-85 WAC, or four annual professional growth plans as defined in WAC 181-79A-030, completed within the previous five years from the date of the five-year renewal application. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

Subsequent five-year renewals shall be issued based on completion of one hundred continuing education credit hours since the issue date of the latest five-year residency teacher renewal certificate or four professional growth plans developed since the certificate was issued. Completion of four annual professional growth plans during each five-year period between subsequent lapse dates meets the requirement for renewal. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

~~((The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and career level benchmarks defined in WAC 181-79A-207 for teachers.~~

~~For educators holding multiple certificates in chapter 181-85 or 181-79A WAC, a professional growth plan for teacher, administrator or educational staff associate shall meet the requirements for all certificates held by an individual per this chapter.~~

~~Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal.~~

~~Until June 30, 2018, individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours. Beginning July 1, 2018, individuals who complete an annual professional growth plan to renew their professional certificate shall receive the equivalent of twenty-five continuing education credit hours.)~~

Provided, application for subsequent renewals shall not be submitted earlier than twelve months prior to the expiration date of the current renewal.

Expired five-year residency teacher renewal certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the five-year renewal application or by completing four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

An expired certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour or professional growth plan requirement within the five years prior to the date of the renewal application.

Candidates who apply for the five-year residency teacher renewal certificate who have not successfully completed course work or an in-service program on issues of abuse, must complete the abuse course work requirement as defined in WAC 181-79A-030(6) and required per RCW 28A.410.2212.

Continuing education for teachers at the elementary and secondary levels in science, technology, engineering, and mathematics (STEM) related subjects must include a specific focus on the integration of STEM instruction as per RCW 28A.410.2212. This ~~((renewal requirement applies to the following endorsement areas: Elementary education; early childhood education; middle level mathematics and science; secondary mathematics and science; the designated secondary sciences; technology; and career and technical education. Applications for certificate renewal dated September 1, 2019, and beyond must demonstrate completion of at least fifteen continuing education credit hours with an emphasis on the integration of STEM. This requirement is considered to be met by holders of a valid National Board Certificate issued by the National Board for Professional Teaching Standards (NBPTS)))~~ STEM continuing education requirement for certificate renewal is as described in WAC 181-85-075(6).

(ii) Individuals who have attempted and failed the professional certificate assessment are eligible for a two-year renewal.

(iii) Individuals who have not been employed ~~((or employed less than full-time))~~ as a teacher during the dated, three-year residency certificate may receive a two-year renewal by submitting an affidavit to the certification office confirming that they will register and submit a uniform assessment portfolio or they will complete assessment for National Board for Professional Teaching Standards. Individuals not employed as a teacher may permit their certificate to lapse until such time they register for the professional certificate assessment, or the National Board Certification.

(iv) Individuals whose three- or five-year residency certificate has lapsed may receive a two-year renewal by submitting an affidavit to the certification office confirming that they will register and submit a uniform assessment portfolio for the professional certificate assessment or assessment for National Board for Professional Teaching Standards ~~((= Provided, That teachers holding certificates expiring in 2014, 2015, or 2016 who have completed the available sections for the National Board Teacher Certificate may receive an additional two-year renewal in 2016 or 2017 to complete the assessment))~~.

(b) A residency certificate expires after the first renewal if the candidate has not registered for and submitted a portfolio assessment prior to June 30th of the expiration year, to achieve the professional certificate, Provided: When the first two-year residency teacher renewal certificate expires, teachers have three renewal options:

(i) Individuals who were employed but failed the professional certification assessment, may receive a second two-year renewal;

(ii) Individuals who were ~~((unemployed or employed less than full-time))~~ not employed as a teacher during the first two-year renewal may permit their certificate to lapse. Upon contracting to return to a teacher role, individuals may apply for a final, second two-year renewal by submitting an affidavit to the certification office confirming that they will register and submit a uniform assessment portfolio for the professional certification assessment;

(iii) An individual who completes a National Board Certification assessment but does not earn National Board Certification, may use that completed assessment to apply for a final, second two-year renewal by submitting an affidavit to the certification office confirming that they will complete and submit their scores from the assessment for National Board for Professional Teaching Standards or register and submit the Washington uniform assessment portfolio as per this section, WAC 181-79A-251.

(2) Teacher professional certificate.

(a) Individuals who hold a professional teacher certificate may have that certificate renewed for additional five-year periods by the completion of one hundred continuing education credit hours as defined in chapter 181-85 WAC or by completing four professional growth plans annually during the period in which the certificate is valid as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

Provided, application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current renewal.

Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the five-year renewal application or by completing four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

An expired professional certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour or professional growth plan requirement within the five years prior to the date of the renewal application. All continuing education credit hours shall relate to one of the three standards: Effective instruction, professional contributions or professional development.

(b) ~~((Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal.~~

~~((c) Until June 30, 2018, individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours. Beginning July 1, 2018, individuals who complete an annual professional growth plan to renew their professional certificate~~

shall receive the equivalent of twenty-five continuing education credit hours.

~~(d) The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks defined in WAC 181-79A-207.~~

~~(e) Beginning September 1, 2014,)) Continuing education or professional growth plans for teachers at the elementary and secondary levels in STEM-related subjects must include a specific focus on the integration of science, technology, engineering, and mathematics (STEM) instruction as per RCW 28A.410.2212. This ((renewal requirement applies to the following endorsement areas: Elementary education; early childhood education; middle level mathematics and science; secondary mathematics and science; the designated secondary sciences; technology; and career and technical education endorsements. Applications for certificate renewal dated September 1, 2019, and beyond must demonstrate completion of at least fifteen continuing education credit hours, or at least one goal from an annual professional growth plan, with an emphasis on the integration of science, technology, engineering and mathematics)) STEM continuing education requirement for certificate renewal is as described in WAC 181-85-075(6). This requirement is for all professional teacher certificate holders regardless of date of issuance of the first professional certificate. ((This requirement is considered to be met by holders of a valid National Board Certificate issued by the National Board for Professional Teaching Standards (NBPTS)).~~

~~(f)) (c) Provided, That a professional certificate may be renewed based on the possession of a valid teaching certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater. Such renewal is only available one time during the validity period of the National Board Certificate and cannot be the same National Board Certificate used to obtain the professional certificate.~~

~~((g) For educators holding multiple certificates in WAC 181-79A-251, 181-79A-2510, 181-79A-2511, or 181-79A-2512, or in chapter 181-85 WAC, a professional growth plan for teacher, administrator, or education staff associate shall meet the requirement for all certificates held by an individual which is affected by this section.~~

~~(h)) (d) Provided, as per RCW 28A.410.278(2) ((beginning September 1, 2016)), in-service training, continuing education, or professional growth plans shall incorporate professional development on the revised teacher and principal evaluation systems under RCW 28A.405.100 as a requirement for renewal of continuing or professional level certificates. ((Applications for certificate renewal dated September 1, 2019, and beyond for all teachers must document completion of at least fifteen clock hours, or at least one goal from an annual professional growth plan, related to knowledge and competency of the teacher and principal evaluation criteria or system.~~

~~This requirement is considered met by holders of a valid National Board Certificate issued by the National Board for Professional Teaching Standards (NBPTS).)) This continu-~~

ing education requirement related to the teacher and principal evaluation system is as described in WAC 181-85-075(7).

WSR 18-02-101
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed January 3, 2018, 10:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-02-031.

Title of Rule and Other Identifying Information: Amends WAC 181-85-075 to reflect changes made to renewal requirements, resulting from 2017 legislation HB [E2SHB] 1341.

Hearing Location(s): On March 15, 2018, at 8:30 a.m., at the Raddison Hotel SeaTac, 18118 International Boulevard, Seattle, WA 98188.

Date of Intended Adoption: March 15, 2018.

Submit Written Comments to: David Brenna, 600 Washington Street, Olympia, WA 98504, email david.brenna@k12.wa.us, by March 8, 2018.

Assistance for Persons with Disabilities: Contact David Brenna, phone 360-725-6238, fax 360-586-4548, email david.brenna@k12.wa.us, by March 8, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The 2017 legislature removed second tier certification requirements for most educators. The amendments to this rule results from restructuring renewal requirements.

Reasons Supporting Proposal: Improves system for renewal of all educator certificates requirements and streamline the system.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Statute Being Implemented: Not applicable, while HB [E2SHB] 1341 (2017) required significant rule changes, these amendments are in compliance with those earlier changes, but negotiated changes initiated by the board.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The agency took the opportunity to streamline requirements.

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: David Brenna, 600 Washington Street, Olympia, WA 98504, 360-725-6238.

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

A cost-benefit analysis is not required under RCW 34.05.328. No costs involved.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

January 3, 2018
David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 17-23-176, filed 11/21/17, effective 12/22/17)

WAC 181-85-075 Continuing education requirement. Continuing education requirements are as follows:

(1) Each holder of a continuing certificate affected by this chapter shall be required to complete during a five-year period one hundred continuing education credit hours, as defined in WAC 181-85-025 and 181-85-030, prior to the lapse date of the first issue of the continuing certificate and during each five-year period between subsequent lapse dates as calculated in WAC 181-85-100.

(2) Individuals holding a valid continuing certificate in subsection (1) of this section may choose to renew the certificate via annual professional growth plans developed since the certificate was issued. Professional growth plans are defined in WAC 181-79A-030. Completion of four annual professional growth plans during each five-year period between subsequent lapse dates meets the requirement for renewal. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred hours to meet the requirements of subsection (1) of this section. ~~((The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks defined in WAC 181-79A-207 for teachers, and as published by the professional educator standards board for administrators and educational staff associates.))~~ For educators holding multiple certificates in chapter 181-85 or 181-79A WAC ~~((or WAC 181-79A-254)),~~ a professional growth plan for teacher, administrator, or educational staff associate shall meet the requirement for all certificates held by an individual which is affected by this section. ~~((Until June 30, 2018, each completed annual professional growth plan shall receive the equivalent of thirty continuing education credit hours. Beginning July 1, 2018, each completed annual professional growth plan shall receive the equivalent of twenty-five continuing education credit hours.~~

~~Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal.))~~

(3) Provided, That each holder of a ~~((continuing or a standard))~~ certificate affected by this chapter may present a copy of a valid certificate issued by the National Board for Professional Teaching Standards in lieu of the completion of the continuing education credit hours required by this chapter.

(4) Each holder of a continuing or professional school psychologist certificate affected by this chapter may present a copy of a valid National Certified School Psychologist certificate issued by the National Association of School Psychologists in lieu of the completion of the continuing education credit hours required by this chapter.

(5) Each holder of a school speech language pathologist or audiologist certificate affected by this chapter may present a copy of a valid certificate of clinical competence (CCC) issued by the American Speech-Language Hearing Association (ASHA) in lieu of the completion of the continuing education credit hours required by this chapter.

(6) Beginning September 1, 2014, continuing education or professional growth plans for teachers at the elementary and secondary levels in STEM-related subjects must include a specific focus on the integration of science, mathematics, technology, and/or engineering instruction as per RCW 28A.410.2212. This renewal requirement applies to the following endorsement areas: Elementary education; early childhood education; middle level mathematics and science; secondary mathematics; secondary science; the designated sciences; and career and technical education. Specific endorsements in these endorsement areas are as published by the professional educator standards board. Applications for certificate renewal dated September 1, 2019, and beyond must demonstrate completion of at least fifteen continuing education credit hours, or at least one goal from an annual professional growth plan with an emphasis on the integration of science, technology, engineering, and mathematics. This requirement is considered to be met by holders of a valid National Board Certificate issued by the National Board for Professional Teaching Standards (NBPTS).

~~((6))~~ (7) Provided, as per RCW 28A.410.278(2) beginning September 1, 2016, in-service training, continuing education, or professional growth plans shall incorporate professional development on the revised teacher and principal evaluation systems under RCW 28A.405.100 as a requirement for renewal of continuing or professional level certificates. Applications for certificate renewal dated September 1, 2019, and beyond for all teachers, principals, program administrators, and superintendents with continuing or professional certificates must document completion of at least fifteen clock hours, or at least one goal from an annual professional growth plan, related to knowledge and competency of the teacher and principal evaluation criteria or system. This requirement is considered to be met by holders of a valid National Board Certificate issued by the National Board for Professional Teaching Standards (NBPTS).

WSR 18-02-106
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed January 3, 2018, 10:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-21-106.

Title of Rule and Other Identifying Information: Amends WAC 181-77-031 and 181-77-041 to clarify requirements for both university routes to career and technical education certification and business and industry routes.

Hearing Location(s): On March 15, 2018, at 8:30 a.m., at the Raddison Hotel SeaTac, 18118 International Boulevard, Seattle, WA 98188.

Date of Intended Adoption: March 15, 2018.

Submit Written Comments to: David Brenna, 600 Washington Street, Olympia, WA 98504, email david.brenna@k12.wa.us, by March 8, 2018.

Assistance for Persons with Disabilities: Contact David Brenna, phone 360-725-6238, fax 360-586-4548, email david.brenna@k12.wa.us, by March 8, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Streamlines and clarifies requirements for legislative changes related to teacher principal evaluation program and science, technology, engineering and mathematics requirements.

Reasons Supporting Proposal: Improves system for renewal of all educator certificates requirements and streamline[s] the system.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Statute Being Implemented: RCW 28A.405.100, 28A.410.278.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The professional educators standards board (PESB) initiated these changes to clarify requirements.

Name of Proponent: PESB, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: David Brenna, 600 Washington Street, Olympia, WA 98504, 360-725-6238.

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

A cost-benefit analysis is not required under RCW 34.05.328. No costs involved.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

January 3, 2018
David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 16-23-064, filed 11/14/16, effective 12/15/16)

WAC 181-77-031 Requirements for candidates seeking career and technical education certification who have

completed approved college/university programs in a career and technical education endorsement area. Candidates shall complete the following requirements in addition to those set forth in WAC 181-79A-150, 181-79A-155, 181-82-322, and chapter 181-78A WAC.

(1) Initial.

(a) Candidates for the initial certificate shall hold a baccalaureate degree from a regionally accredited college or university which includes a minimum of forty-five quarter hours of study in the specific career and technical education subject area for which certification is sought.

(b) Candidates for the initial certificate shall demonstrate competency in one or more of the (~~specific endorsement areas of WAC 181-82-322~~) career and technical education areas: Agriculture education, business and marketing education, family and consumer sciences education, and technology education, as listed in WAC 181-77-005.

(c) Candidates for the initial certificate shall complete a state approved career and technical education teacher training program through a regionally accredited college or university which shall include completion of student teaching in the relevant career and technical education subject area.

(d) Candidates for the initial certificate shall provide documentation of one year of paid occupational experience (two thousand hours) in the specific career and technical education field for which certification is sought. If all or part of the two thousand hours is more than six years old, candidates must complete an additional three hundred hours of recent (occurring in the last two years) occupational experience. The candidate must also apply for the residency teacher certificate or add the subject area to their basic education certificate in their subject area, take and pass the content knowledge test(s) for subject area, be issued the residency teacher certificate before the CTE initial can be issued.

(e) In addition, candidates for initial certification in career choices or coordinator of worksite learning shall demonstrate competency in knowledge and skills described in WAC 181-77A-180.

(2) Initial renewal. Candidates for renewal of the initial certificate must complete three quarter hours of credit or thirty clock hours of career and technical education educator training in the subject area certified to teach since the initial certificate was issued or renewed.

(3) Continuing.

(a) Candidates for the continuing certificate shall have in addition to the requirements for the initial certificate at least nine quarter hours or ninety clock hours of career and technical education educator training in the career and technical education subject area to be certified completed subsequent to the conferral of the baccalaureate degree.

(b) Candidates for the continuing certificate shall provide as a condition for the issuance of a continuing certificate documentation of two years of teaching/coordination in the career and technical education subject area certified to teach with an authorized employer (i.e., school district(s) or skills center(s)).

(4) Continuing certificate renewal. Candidates for renewal of the continuing certificate shall complete since the previous continuing certificate was issued one of the following:

(a) Six quarter hours or sixty clock hours of career and technical education educator training;

(b) Three quarter hours or thirty clock hours of career and technical education educator training and three quarter hours or thirty clock hours of technical education/upgrading;

(c) Three quarter hours or thirty clock hours of career and technical education educator training and three hundred hours of occupational experience;

(d) ~~((Provided, beginning September 1, 2014,))~~ Continuing education or professional growth plans for teachers at the elementary and secondary levels in STEM-related subjects must include a specific focus on the integration of science, mathematics, technology, and engineering instruction as per RCW 28A.410.2212. This renewal requirement applies to career and technical education endorsement ~~((s))~~ areas. ~~((Applications for certificate renewal dated September 1, 2019, and beyond must demonstrate completion of at least fifteen continuing education credit hours, or at least one goal from an annual professional growth plan, with an emphasis on the integration of science, technology, engineering and mathematics;))~~ This STEM continuing education requirement for certificate renewal is as described in WAC 181-85-075(6);

(e) Provided, as per RCW 28A.410.278(2) ~~((beginning September 1, 2016))~~, in-service training, continuing education, or professional growth plans shall incorporate professional development on the revised teacher and principal evaluation systems under RCW 28A.405.100 as a requirement for renewal of continuing or professional level certificates. ~~((Applications for certificate renewal dated September 1, 2019, and beyond for all teachers must document completion of at least fifteen clock hours, or at least one goal from an annual professional growth plan, related to knowledge and competency of the teacher and principal evaluation criteria or system;))~~ This continuing education requirement related to the teacher and principal evaluation system is as described in WAC 181-85-075(7).

AMENDATORY SECTION (Amending WSR 16-23-064, filed 11/14/16, effective 12/15/16)

WAC 181-77-041 Requirements for candidates seeking career and technical education certification on the basis of business and industry work experience. Candidates for certification who have not completed approved programs set forth in ~~((WAC 181-82-322))~~ chapter 181-78A WAC shall complete the following requirements in addition to those set forth in WAC 181-79A-150 (1) and (2) and 181-79A-155 (1) and (2).

(1) Initial.

(a) Candidates for the initial certificate shall provide documentation of paid occupational experience in the specific career and technical education subcategory for which certification is sought: Provided, That individuals seeking the initial certification for the sole purpose of instruction of American sign language who are deaf, hard of hearing per

RCW 43.20A.720, or ~~((who's))~~ whose primary method of communication is American sign language, may have the requirements for interpreter experience waived by the certification office of the superintendent of public instruction.

(i) Three years (six thousand hours) is required.

(ii) One year (two thousand hours) must be within the past six years. Candidates may use up to four thousand hours of teaching experience in the specialty area they are experienced in and the remaining two thousand hours must be from industry experience (nonteaching). For STEM, candidate may use all six thousand hours of teaching experience in science, technology, engineering and/or math in lieu of industry experience. For biomedical and biotechnology, candidates may use all six thousand hours of teaching experience in biology in lieu of industry experience.

(iii) If all or part of the two thousand hours is more than six years old, an additional three hundred hours of recent (occurring in the last two years) occupational experience is required.

(iv) Individuals seeking this certification solely for teaching American sign language must also hold or earn the national interpreter certification, certified deaf interpreter certificate, the American sign language teachers association certificate, the American sign language performance interview, or meet the standard required of interpreters for the deaf per RCW 28A.410.271.

(b) Candidates for the initial certificate shall complete a professional educator standards board approved program under WAC 181-77A-029 in which they demonstrate competence in the general standards for all career and technical education teacher certificate candidates pursuant to WAC 181-77A-165, which include but are not limited to knowledge and skills in the following areas:

(i) General and specific safety;

(ii) Career and technical education teaching methods;

(iii) Occupational analysis;

(iv) Course organization and curriculum design;

(v) Philosophy of vocational education;

(vi) Personal student development and leadership techniques.

(c) Candidates for the initial certificate shall also demonstrate knowledge and skills in the following areas:

(i) School law;

(ii) Issues related to abuse as specified in WAC 181-77A-165(7).

(d) In addition, candidates for initial certification in career choices or coordinator of worksite learning shall demonstrate competency in knowledge and skills described in WAC 181-77A-180.

(2) Initial renewal. Candidates for renewal of the initial certificate must complete three quarter hours of credit or thirty clock hours of career and technical education educator training in the subject matter certified to teach since the initial certificate was issued or renewed.

(3) Continuing.

(a) Candidates for the continuing certificate shall have in addition to the requirements for the initial certificate at least nine quarter hours or ninety clock hours of career and technical education educator training in the career and technical

education subject matter to be certified completed subsequent to the issuance of the initial certificate.

(b) Candidates for the continuing certificate shall provide as a condition for the issuance of a continuing certificate documentation of two years of teaching/coordination in the career and technical education subject matter certified to teach with an authorized employer (i.e., school district(s) or skills center(s)).

(4) Continuing certificate renewal.

(a) Candidates for renewal of the continuing certificate shall complete since the previous continuing certificate was issued one of the following:

(i) Six quarter hours or sixty clock hours of career and technical education educator training;

(ii) Three quarter hours or thirty clock hours of career and technical education educator training and three quarter hours or thirty clock hours of technical education/upgrading;

(iii) Three quarter hours or thirty clock hours of career and technical education educator training and three hundred hours of occupational experience.

~~(b) ((Provided, beginning September 1, 2014,)) Continuing education or professional growth plans for teachers at the elementary and secondary levels in STEM-related subjects must include a specific focus on the integration of science, mathematics, technology, and engineering instruction as per RCW 28A.410.2212. This renewal requirement applies to career and technical education endorsement((s)) areas. ((Applications for renewal dated September 1, 2018, and beyond must demonstrate completion of at least fifteen continuing education credit hours, or at least one goal from an annual professional growth plan, with an emphasis on the integration of science, technology, engineering and mathematics.)) This STEM continuing education requirement for certificate renewal is as described in WAC 181-85-075(6).~~

~~(c) Provided, as per RCW 28A.410.278(2) ((beginning September 1, 2016,)) in-service training, continuing education, or professional growth plans shall incorporate professional development on the revised teacher and principal evaluation systems under RCW 28A.405.100 as a requirement for renewal of continuing or professional level certificates. ((Applications for certificate renewal dated September 1, 2018, and beyond for all teachers must document completion of at least fifteen clock hours, or at least one goal from an annual professional growth plan, related to knowledge and competency of the teacher and principal evaluation criteria or system.)) This continuing education requirement related to the teacher and principal evaluation system is as described in WAC 181-85-075(7).~~

(d) Beginning January 2018, renewal of continuing certificates under this section specifically for teaching American sign language will require the national interpreter certification, certified deaf interpreter certificate, the American sign language teachers association certificate, or meet the standard required of interpreters of the deaf per RCW 28A.410-271.

WSR 18-02-108
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed January 3, 2018, 11:10 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05-330(1).

Title of Rule and Other Identifying Information: WAC 357-01-072 Child, 357-01-172 Family members, 357-01-202 Minor/dependent child, 357-01-227 Parent, 357-01-228 Parent-in-law, 357-31-100 Must an employer have a policy for requesting and approving leave?, 357-31-120 Do overtime exempt employees accrue sick leave if they have taken leave without pay during the month?, 357-31-121 Do overtime eligible employees accrue sick leave if they have taken leave without pay during the month?, 357-31-125 For general government part-time employees, how is leave accrual prorated?, and 357-31-130 When can an employee use accrued sick leave?

Hearing Location(s): On February 8, 2018, at 8:30 a.m., at the Office of Financial Management, Capitol Court Building, 1110 Capitol Way South, Suite 120, Conference Room 110, Olympia, WA 98501.

Date of Intended Adoption: February 8, 2018.

Submit Written Comments to: Kristie Wilson, Office of Financial Management, P.O. Box 47500, Olympia, WA 98501, email Kristie.Wilson@ofm.wa.gov, fax 360-586-4694, by February 1, 2018.

Assistance for Persons with Disabilities: Contact Office of Financial Management, TTY 711 or 1-800-833-6384, by February 1, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Initiative 1433 (I-1433) which was approved by Washington voters in November 2016, requires employers to provide paid sick leave to most employees effective January 1, 2018. This initiative modified chapter 49.46 RCW to include paid sick leave provisions (one hour for every forty hours worked).

Reasons Supporting Proposal: To align Title 357 WAC with the changes made to chapter 49.46 RCW effective January 1, 2018.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: Chapter 49.46 RCW.

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

Name of Proponent: [Office of financial management], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kristie Wilson, 128 10th Avenue, 360-407-4139.

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

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

January 3, 2018
Roselyn Marcus
Assistant Director of
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 07-17-124, filed 8/20/07, effective 9/20/07)

WAC 357-01-072 Child. A biological, adopted, ~~((or))~~ foster child, ~~((or a))~~ stepchild, ~~((a))~~ legal ward, or a child of a person standing *in loco parentis*, a child of a legal guardian, or a child of a de facto parent, regardless of age or dependency status.

AMENDATORY SECTION (Amending WSR 09-17-057 and 09-18-112, filed 8/13/09 and 9/2/09, effective 12/3/09)

WAC 357-01-172 Family members. Individuals considered to be members of the family are parent, ~~((step parent, sister, brother))~~ sibling, parent-in-law, spouse, registered domestic partner, grandparent, grandchild, minor/dependent child, and child. For the purpose of domestic violence, sexual assault, or stalking provisions within Title 357 WAC family member also includes a domestic partner as defined in RCW 26.60.020 or a person with whom the employee has a dating relationship as defined in RCW 26.50.010.

AMENDATORY SECTION (Amending WSR 05-12-093, filed 5/27/05, effective 7/1/05)

WAC 357-01-202 Minor/dependent child. A biological, adopted, ~~((or))~~ foster child, ~~((a))~~ stepchild, ~~((a))~~ legal ward, a child of a de facto parent, regardless of age or dependency status, or a child of a person standing *in loco parentis*, *who is*:

- Under eighteen years of age, or
- Eighteen years of age or older and incapable of self-care because of a mental or physical disability.

Persons who are *in loco parentis* are those with day-to-day responsibilities to care for and financially support a child.

AMENDATORY SECTION (Amending WSR 06-19-063, filed 9/19/06, effective 10/20/06)

WAC 357-01-227 Parent. A biological ~~((or))~~, adoptive ~~((parent))~~, de facto, or foster parent, step-parent, or legal guardian of an employee or ~~((an individual))~~ the employee's spouse or registered domestic partner, or a person who stood *in loco parentis* to an employee when the employee was a child. A person who had day-to-day responsibilities to care for and financially support the employee when ~~((he or she was))~~ they were a child is considered to have stood *in loco parentis* to the employee.

AMENDATORY SECTION (Amending WSR 10-17-061, filed 8/13/10, effective 9/15/10)

WAC 357-01-228 Parent-in-law. A biological ~~((or))~~, adoptive ~~((parent))~~, de facto, or foster parent, step-parent, or legal guardian of an employee's spouse or an employee's registered domestic partner or ~~((an individual))~~ a person who stood *in loco parentis* to an employee's spouse or to an employee's registered domestic partner when the employee's spouse or the employee's registered domestic partner was a child. A person who had day-to-day responsibilities to care for and financially support the employee's spouse or the employee's registered domestic partner when ~~((he or she was))~~ they were a child is considered to have stood *in loco parentis* to the employee's spouse or to the employee's registered domestic partner.

AMENDATORY SECTION (Amending WSR 14-11-035, filed 5/14/14, effective 6/16/14)

WAC 357-31-100 Must an employer have a policy for requesting and approving leave? Each employer must develop a leave policy which specifies the procedure for requesting and approving all leave, as provided in the civil service rules. The employer's policy must:

(1) Allow an employee to use vacation leave without advance approval when the employee is requesting to use vacation leave to respond to family care emergencies, or for an emergency health condition as provided in WAC 357-31-200 (1)(b);

(2) Allow an employee to use a reasonable amount of accrued leave or unpaid leave when the employee is a victim, or has a family member, as defined in chapter 357-01 WAC, who is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020;

(3) Address advance notice from the employee when the employee is seeking leave under subsection (2) of this section. When advance notice cannot be given because of an emergency or unforeseen circumstances due to domestic violence, sexual assault, or stalking, the employee or the employee's designee must give notice to the employer no later than the end of the first day that the employee takes such leave; ~~((and))~~

(4) Allow an employee to use sick leave for qualifying absences under the Family and Medical Leave Act (FMLA) for parental leave for the purpose of baby bonding with his/her newborn, adoptive, or foster child in accordance with WAC 357-31-495. The policy must state the maximum amount of sick leave allowed to be used during the twelve-week FMLA period;

(5) Address overtime eligible employees that are required to provide medical certification or verification to their employer for the use of paid sick leave under chapter 296-128 WAC; and

(6) Address overtime eligible employees that are required to provide reasonable notice to their employer for an absence from work for the use of paid sick leave under chapter 296-128 WAC.

AMENDATORY SECTION (Amending WSR 12-04-016, filed 1/24/12, effective 2/24/12)

WAC 357-31-120 Do overtime exempt employees accrue sick leave if they have taken leave without pay during the month? (1) Full-time overtime exempt general government employees who are in pay status for less than eighty nonovertime hours in a month do not earn a monthly accrual of sick leave. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(2) Full-time and part-time overtime exempt higher education employees ~~((who have more than ten working days of))~~ with leave without pay exceeding eighty hours in a month (prorated for part-time) do not earn a monthly accrual of sick leave. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

NEW SECTION

WAC 357-31-121 Do overtime eligible employees accrue sick leave if they have taken leave without pay during the month? (1) Full-time overtime eligible general government employees who are in pay status for less than eighty hours in a month, earn a monthly accrual proportionate to the number of hours in pay status, in the month to that required for full-time employment. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this section.

(2) Full-time and part-time overtime eligible higher education employees with leave without pay exceeding eighty hours in a month (prorated for part-time) will accrue a minimum of one hour for every forty hours worked.

AMENDATORY SECTION (Amending WSR 10-23-040, filed 11/10/10, effective 12/13/10)

WAC 357-31-125 For general government part-time employees, how is leave accrual prorated? Vacation and sick leave accruals for part-time general government employees will be proportionate to the number of hours in pay status, in the month to that required for full-time employment. Sick leave accruals must not exceed eight hours in a month. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this section.

AMENDATORY SECTION (Amending WSR 14-11-035, filed 5/14/14, effective 6/16/14)

WAC 357-31-130 When can an employee use accrued sick leave? The employer may require medical verification or certification of the reason for sick leave use in accordance with the employer's leave policy and in compliance with chapter 296-128 WAC.

(1) Employers **must** allow the use of accrued sick leave under the following conditions:

(a) ~~((Because of and during))~~ An employee's mental or physical illness, disability, ~~((or))~~ injury, or health condition that has incapacitated the employee from performing required duties; to accommodate the employee's need for

medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an employee's need for preventive medical care.

(b) By reason of exposure of the employee to a contagious disease when the employee's presence at work would jeopardize the health of others.

~~((To care for a minor/dependent child with a health condition requiring treatment or supervision.~~

~~To care for a spouse, registered domestic partner, parent, parent-in-law, or grandparent of the employee who has a serious health condition or emergency health condition.))~~ When the employee's place of business has been closed by order of a public official for any health-related reason, or when an employee's child's school or place of care has been closed for such reason.

(d) To allow an employee to provide care for a family member with a mental or physical illness, injury, or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or care for a family member who needs preventive medical care.

(e) For family care emergencies per WAC 357-31-290, 357-31-295, 357-31-300, and 357-31-305.

~~((For personal health care appointments.~~

~~(g) For family members' health care appointments when the presence of the employee is required if arranged in advance with the employing official or designee.~~

~~((h))~~ When an employee is required to be absent from work to care for members of the employee's household or relatives of the employee or relatives of the employee's spouse/registered domestic partner who experience an illness or injury, not including situations covered by subsection (1)(d) of this section.

(i) The employer must approve up to five days of accumulated sick leave each occurrence. Employers may approve more than five days.

(ii) For purposes of this subsection, "relatives" is limited to spouse, registered domestic partner, child, grandchild, grandparent or parent.

~~((j))~~ (g) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

~~((k))~~ (h) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

~~((l))~~ (i) For qualifying absences under the Family and Medical Leave Act for parental leave for the purpose of bonding with ~~((his/her))~~ their newborn, adoptive, or foster child in accordance with WAC 357-31-495. The amount of sick leave allowed to be used must be addressed in the employer's leave policy in accordance with WAC 357-31-100.

(2) Employers **may** allow the use of accrued sick leave under the following conditions:

(a) For condolence or bereavement.

(b) When an employee is unable to report to work due to inclement weather in accordance with the employer's policy on inclement weather as described in WAC 357-31-255.

WSR 18-02-110

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed January 3, 2018, 11:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-19-104.

Title of Rule and Other Identifying Information: The department is amending WAC 388-76-10000 Definitions, to strike the term "willful" from the definition list as a result of an order by the Division III Court of Appeals in *Crosswhite v. DSHS* invalidating the current definition of "willful." The removal of the current term is necessary to comply with the court's order.

Hearing Location(s): On February 6, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than February 7, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., February 6, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by January 23, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-76-10000 to strike the term "willful" from the definition list in order to comply with the court's order.

Reasons Supporting Proposal: The Division III Court of Appeals invalidated the current definition of "willful" in WAC 388-76-10000. The removal of the term is necessary to comply with the court's order.

Statutory Authority for Adoption: Chapters 70.128, 74.34 RCW.

Rule is necessary because of state court decision, *Verda Lee Crosswhite v. Washington State Department of Social and Health Services* Yakima County Superior Court No. 142024800.

Name of Proponent: [DSHS], governmental.

Name of Agency Personnel Responsible for Drafting: Claudia Baetge, P.O. Box 45600, Olympia, WA 98504, 360-

725-2589; Implementation: Candace Goehring, P.O. Box 45600, Olympia, WA 98504, 360-725-2401; and Enforcement: Bett Schlemmer, P.O. Box 45600, Olympia, WA 98504, 360-725-2404.

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

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b)(iii), a cost-benefit analysis is not required for rules adopting or incorporating by reference, without material change, Washington state statutes or federal statutes or regulations.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under RCW 19.85.030.

Explanation of exemptions: The department has analyzed the proposed rule and concluded that no new costs will be imposed on small businesses affected by them. The preparation of a comprehensive small business economic impact statement is not required under RCW 19.85.030.

December 26, 2017

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-20-095, filed 10/4/16, effective 11/4/16)

WAC 388-76-10000 Definitions. "Abandonment" means action or inaction by a person or entity with a duty of care for a frail elder or vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult.

(1) In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish.

(2) Abuse includes sexual abuse, mental abuse, physical abuse, and personal exploitation of a vulnerable adult, and improper use of restraint against a vulnerable adult which have the following meanings:

(a) **"Sexual abuse"** means any form of nonconsensual sexual conduct, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse also includes any sexual conduct between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not consensual.

(b) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an

object, slapping, pinching, choking, kicking, shoving, or prodding.

(c) **"Mental abuse"** means a willful verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. Mental abuse may include ridiculing, yelling, or swearing.

(d) **"Personal exploitation"** means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

(e) **"Improper use of restraint"** means the inappropriate use of chemical, physical, or mechanical restraints for convenience or discipline or in a manner that:

(i) Is inconsistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW;

(ii) Is not medically authorized; or

(iii) Otherwise constitutes abuse under this section.

"Adult family home" means:

(1) A residential home in which a person or an entity is licensed to provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to a licensed operator, resident manager, or caregiver, who resides in the home.

(2) As used in this chapter, the term "entity" includes corporations, partnerships, and limited liability companies, and the term "adult family home" includes the person or entity that is licensed to operate an adult family home.

"Affiliated with an applicant" means any person listed on the application as a partner, officer, director, resident manager, or majority owner of the applying entity, or is the spouse or domestic partner of the applicant.

"Applicant" means an individual, partnership, corporation, or other entity seeking a license to operate an adult family home.

"Capacity" means the maximum number of persons in need of personal or special care who are permitted to reside in an adult family home at a given time. ~~((The))~~ Capacity includes:

(1) The number of related children or adults in the home who receive personal or special care and services; ~~((plus))~~ and

(2) The number of residents the adult family home may admit and retain ~~((The))~~ (resident capacity((The capacity))), which is the number listed on the license ~~((is the "resident capacity"))~~.

"Caregiver" means any person eighteen years of age or older responsible for providing direct personal or special care to a resident and who is not the provider, entity representative, a student or volunteer.

"Chemical restraint" means the administration of any drug to manage a vulnerable adult's behavior in a way that reduces the safety risk to the vulnerable adult or others, has a temporary effect of restricting the vulnerable adult's freedom of movement, and is not standard treatment for the vulnerable adult's medical or psychiatric condition.

"Consent" means express written consent granted after the vulnerable adult or ~~((his or her))~~ their legal representative

has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

"Dementia" ~~((is defined as))~~ means a condition documented through the assessment process required by WAC 388-76-10335.

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

"Department case manager" means the department authorized staff person or designee assigned to negotiate, monitor, and facilitate a care and services plan for residents receiving services paid for by the department.

"Developmental disability" means~~((:~~

~~(1) A person who meets the eligibility criteria defined by the division of developmental disabilities under WAC 388-823-0040; or~~

~~(2) A person with a severe, chronic disability which is attributable to cerebral palsy or epilepsy, or any other condition, other than mental illness, found to be closely related to mental retardation which results in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation, and requires treatment or services similar to those required for these persons (i.e., autism); and~~

~~(a) The condition was manifested before the person reached age eighteen;~~

~~(b) The condition is likely to continue indefinitely; and~~

~~(c) The condition results in substantial functional limitations in three or more of the following areas of major life activities:~~

~~(i) Self care;~~

~~(ii) Understanding and use of language;~~

~~(iii) Learning;~~

~~(iv) Mobility;~~

~~(v) Self direction; and~~

~~(vi) Capacity for independent living))~~ the same as defined under WAC 388-823-0015.

"Direct supervision" means oversight by a person who has demonstrated competency in the basic training and specialty training if required, or who has been exempted from the basic training requirements and is:

(1) On the premises; and

(2) Quickly and easily available to the caregiver.

"Domestic partners" means two adults who meet the requirements for a valid state registered domestic partnership as established by RCW 26.60.030 and who have been issued a certificate of state registered domestic partnership.

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.020(7).

"Financial solvency" means that the applicant or provider is able to meet debts or financial obligations with some money to spare.

"Entity representative" means the individual designated by a provider who is or will be responsible for the daily operation of the adult family home and who meets the requirements of this chapter and chapter 388-112 WAC.

"Home" means adult family home.

"Imminent danger" or **"immediate threat"** means serious physical harm to or death of a resident has occurred, or there is a serious threat to the resident's life, health, or safety.

"Indirect supervision" means oversight by a person who is quickly and easily available to the caregiver, but not necessarily on-site and:

(1) Has demonstrated competency in the basic (~~training~~) and specialty training, if required; or

(2) (~~Has been exempted~~) Is exempt from (~~the~~) basic training requirements(~~;~~ and

(3) ~~Is quickly and easily available to the caregiver, but not necessarily on-site~~).

"Inspection" means a review by department personnel to determine the health, safety, and well-being of residents, and the adult family home's compliance with this chapter and chapters 70.128, 70.129, 74.34 RCW, and other applicable rules and regulations. The department's review may include an on-site visit.

"Management agreement" means a written, executed agreement between the adult family home and another individual or entity regarding the provision of certain services on behalf of the adult family home.

"Mandated reporter" means an employee of the department, law enforcement, officer, social worker, professional school personnel, individual provider, an employee of a facility, an employee of a social service, welfare, mental health, adult day health, adult day care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter 18.130 RCW. For the purpose of the definition of a mandated reporter, **"Facility"** means a residence licensed or required to be licensed under chapter 18.20 RCW (assisted living facilities), chapter 18.51 RCW (nursing homes), chapter 70.128 RCW (adult family homes), chapter 72.36 RCW (soldiers' homes), chapter 71A.20 RCW (residential habilitation centers), or any other facility licensed by the department.

"Mechanical restraint" means any device attached or adjacent to the vulnerable adult's body that (~~he or she~~) they cannot easily remove (~~that~~) and restricts freedom of movement or normal access to (~~his or her~~) the vulnerable adult's body. "Mechanical restraint" does not include the use of devices, materials, or equipment that are:

(a) Medically authorized, as required; and

(b) Used in a manner that is consistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW.

"Medical device" as used in this chapter, means any piece of medical equipment used to treat a resident's assessed need.

(1) A medical device is not always a restraint and should not be used as a restraint;

(2) Some medical devices have considerable safety risks associated with use; and

(3) Examples of medical devices with known safety risks when used are transfer poles, Posey or lap belts, and side rails.

"Medication administration" means giving resident medications by a person legally authorized to do so, such as a physician, pharmacist, or nurse.

"Medication organizer" is a container with separate compartments for storing oral medications organized in daily doses.

"Mental illness" is defined as an axis I or II diagnosed mental illness as outlined in volume IV of the Diagnostic and Statistical Manual of Mental Disorders (a copy is available for review through the aging and disability services administration).

"Minimal" means violations that result in little or no negative outcome (~~and/or~~) or little or no potential harm for a resident.

"Moderate" means violations that result in negative outcome and actual or potential harm for a resident.

"Multiple facility provider" means a provider who is licensed to operate more than one adult family home.

"Neglect" means:

(1) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or

(2) An act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42-100.

"Nurse delegation" means a registered nurse transfers the performance of selected nursing tasks to competent nursing assistants in selected situations. The registered nurse delegating the task retains the responsibility and accountability for the nursing care of the resident.

"Over-the-counter medication" is any medication that can be purchased without a prescriptive order, including but not limited to vitamin, mineral, or herbal preparations.

"Permanent restraining order" means a restraining order (~~and/or~~) or order of protection issued either following a hearing, or by stipulation of the parties. A "permanent restraining order" order may be in force for a specific time period (for example, one year), after which it expires.

"Personal care services" means both physical assistance (~~and/or~~) and prompting and supervising the performance of direct personal care tasks as determined by the resident's needs and does not include assistance with tasks performed by a licensed health professional.

"Physical restraint" means application of physical force without the use of any device, for the purpose of restraining the free movement of a vulnerable adult's body. "Physical restraint" does not include briefly holding without undue force (~~on~~) a vulnerable adult in order to calm or comfort (~~him or her~~) them, or holding a vulnerable adult's hand to safely escort (~~him or her~~) them from one area to another.

"Placement agency" is an "elder or vulnerable adult referral agency" as defined in chapter 18.330 RCW and means a business or person who receives a fee from or on behalf of a vulnerable adult seeking a referral to care services or supportive housing or who receives a fee from a care ser-

vices provider or supportive housing provider because of any referral provided to or on behalf of a vulnerable adult.

"Practitioner" includes a physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant licensed in the state of Washington.

"Prescribed medication" refers to any medication (legend drug, controlled substance, and over-the-counter) that is prescribed by an authorized practitioner.

"Provider" means:

(1) Any person who is licensed to operate an adult family home and meets the requirements of this chapter; or

(2) Any corporation, partnership, or limited liability company that is licensed under this chapter to operate an adult family home and meets the requirements of this chapter.

"Psychopharmacologic medications" means the class of prescription medications, which includes but is not limited to antipsychotics, antianxiety medications, and antidepressants, capable of affecting the mind, emotions, and behavior.

"Recurring" or "repeated" means that the department has cited the adult family home for a violation of applicable licensing laws or rules and the circumstances of (1) ~~(and)~~ or (2) of this definition are present and if the previous violation in subsection (1) or (2) of this definition was pursuant to a law or rule that has changed at the time of the new violation, a citation to the equivalent current rule or law is sufficient:

(1) The department previously imposed an enforcement remedy for a violation of the same section of law or rule for substantially the same problem following any type of inspection within the preceding thirty-six months ~~(or)~~;

(2) The department previously cited a violation under the same section of law or rule for substantially the same problem following any type of inspection on two occasions within the preceding thirty-six months.

~~((3) If the previous violation in (1) or (2) of this definition was pursuant to a law or rule that has changed at the time of the new violation, a citation to the equivalent current law or rule section is sufficient.))~~

"Resident" means any adult unrelated to the provider who lives in the adult family home and who is in need of care. Except as specified elsewhere in this chapter, for decision-making purposes, the term "resident" includes the resident's surrogate decision maker acting under state law.

"Resident manager" means a person employed or designated by the provider to manage the adult family home and who meets the requirements of this chapter.

"Serious" means violations that either result in one or more negative outcomes and significant actual harm to residents that does not constitute imminent danger ~~(and/or)~~, or there is a reasonable predictability of recurring actions, practices, situations, or incidents with potential for causing significant harm to a resident, or both.

"Severity" means the seriousness of a violation as determined by actual or potential negative outcomes for residents and subsequent actual or potential for harm. Outcomes include any negative effect on the resident's physical, mental, or psychosocial well-being ~~((i.e.))~~ such as safety, quality of life, quality of care).

"Significant change" means:

(1) A lasting change, decline, or improvement in the resident's baseline physical, mental, or psychosocial status;

(2) The change is significant enough so either the current assessment ~~((and/or))~~, or negotiated care plan, or both, do not reflect the resident's current status; and

(3) A new assessment may be needed when the resident's condition does not return to baseline within a two week period of time.

"Special care" means care beyond personal care services as defined in this section.

"Staff" means any person who ~~(is)~~ ~~(+))~~ is employed or used by an adult family home, directly or by contract, to provide care and services to any residents.

~~((2))~~ Staff must meet all ~~((of))~~ the requirements in this chapter and chapter 388-112 WAC.

"Temporary restraining order" means a restraining order or order of protection that expired without a hearing, was dismissed following an initial hearing, or was dismissed by stipulation of the parties before an initial hearing.

"Uncorrected" means the department has cited a violation of WAC or RCW following an inspection and the violation remains uncorrected at the time of a subsequent inspection for the specific purpose of verifying whether such violation has been corrected.

"Unsupervised" means not in the presence of:

(1) Another employee or volunteer from the same business or organization; or

(2) Any relative or guardian of any of the children or individuals with developmental disabilities or vulnerable adults to which the employee, student, or volunteer has access during the course of ~~((his or her))~~ their employment or involvement with the business or organization.

"Usable floor space" means resident bedroom floor space exclusive of:

(1) Toilet rooms;

(2) Closets;

(3) Lockers;

(4) Wardrobes;

(5) Vestibules; and

(6) The space required for the door to swing if the bedroom door opens into the resident bedroom.

"Water hazard" means any body of water over twenty-four inches in depth that can be accessed by a resident, and includes but is not limited to:

(1) In-ground, above-ground, and on-ground pools;

(2) Hot tubs, spas;

(3) Fixed-in-place wading pools;

(4) Decorative water features;

(5) Ponds; or

(6) Natural bodies of water such as streams, lakes, rivers, and oceans.

~~((**"Willful"** means the deliberate or nonaccidental action or inaction by an individual that he/she knew or reasonably should have known could cause a negative outcome, including harm, injury, pain or anguish.))~~

"Vulnerable adult" includes a person:

- (1) Sixty years of age or older who has the functional, mental, or physical inability to care for ~~((himself or herself))~~ themselves;
- (2) Found incapacitated under chapter 11.88 RCW;
- (3) Who has a developmental disability as defined under RCW 71A.10.020;
- (4) Admitted to any facility;
- (5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW;
- (6) Receiving services from an individual provider; or
- (7) With a functional disability who lives in ~~((his or her))~~ their own home, who is directing and supervising a paid personal aide to perform a health care task as authorized by RCW 74.39.050.