

**WSR 19-05-001**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 19-24—Filed February 6, 2019, 1:35 p.m., effective February 11, 2019, 8:00 a.m.]

Effective Date of Rule: February 11, 2019, 8:00 a.m.

Purpose: Amend coastal commercial crab fishery rules.

Citation of Rules Affected by this Order: Repealing WAC 220-340-42000L and 220-340-45000J; and amending WAC 220-340-420 and 220-340-450.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This rule is needed to open the commercial crab fishery in the Makah Special Management Area. Mandatory pick rate allowance for coastal crab will be achieved by the opening dates contained herein. The agreed to criteria to include the area north of Destruction Island has been achieved. The stepped opening periods/areas will also provide for fair start provisions. Pot limits will reduce the crowding effect in this restricted area and language improves enforcement of pot limits. A longer gear set period will allow for safer fishing conditions. A delay due to elevated marine toxins aligns with the Tri-State Crab Agreement and similar rules in Oregon and California. Provisions in state/tribal management agreements will be achieved by the opening dates contained herein. The special management areas are listed in accordance with state/tribal management agreements. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 6, 2019.

Kelly Susewind  
Director

**NEW SECTION**

**WAC 220-340-42000N Commercial crab fishery—Unlawful acts.** Notwithstanding the provisions of WAC 220-

340-420, effective 8:00 a.m. February 11, 2019, until further notice:

(1) It is unlawful for any fisher or wholesale dealer or buyer to land or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, Columbia River, or Washington coastal or adjacent waters of the Pacific Ocean from any vessel, unless:

(a) The vessel inspection certificate numbers are recorded on all shellfish tickets completed for coastal Dungeness crab landings until February 14, 2019 and;

(b) A valid Washington crab vessel inspection certificate has been issued to the delivering vessel. Vessel-hold inspection certificates dated from January 3, 2019 to January 8, 2019, are only valid for the area south of 46°28.00' N. Lat.

(2) It is unlawful for a vessel to use more than 200 pots in the Makah SMA beginning 8:00 A.M. February 11, 2019, until 8:00 A.M. March 13, 2019. Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the three following methods:

- Fax transmission to Robert Morgan at 360-249-1229;
- E-mail to Robert Morgan at [Robert.Morgan@dfw.wa.gov](mailto:Robert.Morgan@dfw.wa.gov); or
- Telephone call to Robert Morgan at 360-249-1206.

(3) All other provisions of the permanent rule remain in effect.

**Reviser's note:** The unnecessary underscoring 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 220-340-45000K Commercial crab fishery—Seasons and areas—Coastal.** Notwithstanding the provisions of WAC 220-340-450, effective 8:00 a.m. February 11, 2019 until further notice: it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided in this section.

(1) Open area: The area from Klipsan Beach (46°28.00') to the WA/OR border (46°15.00') and Willapa Bay.

(a) For the purposes of this section, the waters of Willapa Bay include the marine waters east of a line connecting 46°44.76' N, 124°05.76' W and 46°38.93' N, 124°04.33' W.

(b) Licenses and vessels designated to those licenses that participate in the coastal commercial Dungeness crab fishery in the waters from Point Arena, California, to Klipsan Beach, Washington (46°28.00'), including Willapa Bay, before 8:00 a.m., January 7, 2019, are prohibited from fishing in the waters between Oysterville (46°33.00') and the U.S./Canada border until 8:00 a.m. February 14, 2019.

(2) Open area: The area from Klipsan Beach (46°28.00') to Destruction Island (47°40.50') and Grays Harbor.

(3) Open area: The area from Destruction Island (46°28.00') to the US/Canada Border

(4) For waters of the Pacific Ocean north of Point Arena, California, it is unlawful for a person to use a vessel to fish in any area where the season opening is delayed due to marine biotoxins for the first 30 days following the opening of the

area if the vessel was employed in the coastal crab fishery during the previous 45 days.

(5) The Quinault primary special management area (PSMA) is closed to fishing for Dungeness crab until further notice. The PSMA includes the area shoreward of a line approximating the 27-fathom depth curve between Raft River (47°28.00') and Copalis River (47°08.00') according to the following coordinates:

(a) Northeast Corner (Raft River): 47°28.00' N. Lat. 124°20.70' W. Lon.

(b) Northwest Corner: 47°28.00' N. Lat. 124°34.00' W. Lon.

(c) Southwest Corner: 47°08.00' N. Lat. 124°25.50' W. Lon.

(d) Southeast Corner (Copalis River): 47°08.00' N. Lat. 124°11.20' W. Lon.

(6) The Quileute special management area (SMA) is closed to fishing for Dungeness crab until further notice. The SMA includes the area shoreward of a line approximating the 30-fathom depth curve between Destruction Island and Cape Johnson according to the following points:

(a) Northeast Corner (Cape Johnson): 47°58.00' N. Lat. 124°40.40' W. Lon.

(b) Northwest Corner: 47°58.00' N. Lat. 124°49.00' W. Lon.

(c) Southwest Corner: 47°40.50' N. Lat. 124°40.00' W. Lon.

(d) Southeast Corner (Destruction Island): 47°40.50' N. Lat. 124°24.43' W. Lon.

(7) Effective 8:00 AM February 11, 2019, the Makah special management area (SMA) is open to fishing. The SMA includes the waters between 48°02.15' N. Lat. and 48°19.50' N. Lat. east of a line connecting those points and approximating the 25-fathom line according to the following coordinates:

(a) Northeast Corner: Tatoosh Island

(b) Northwest Corner: 48°19.50' N. Lat. 124°50.45' W. Lon.

(c) Southwest Corner: 48°02.15' N. Lat. 124°50.45' W. Lon.

(d) Southeast Corner: 48°02.15' N. Lat. 124°41.00' W. Lon.

(8) All other provisions of the permanent rule remain in effect.

#### REPEALER

The following sections of the Washington Administrative Code are repealed effective 8:00 a.m. February 11, 2019:

WAC 220-340-42000L Commercial crab fishery—Unlawful acts. (19-06)

WAC 220-340-45000J Commercial crab fishery—Seasons and areas—Coastal. (19-06)

### WSR 19-05-016 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 19-26—Filed February 7, 2019, 2:56 p.m., effective February 11, 2019]

Effective Date of Rule: February 11, 2019.

Purpose: Amend Puget Sound commercial scallop rules.

Citation of Rules Affected by this Order: Amending WAC 220-340-610.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency rule is needed to open the Puget Sound commercial scallop season. A harvestable surplus of pink and spiny scallops exists in the areas specified to allow for commercial harvest. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

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

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

Date Adopted: February 7, 2019.

Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-340-61000F Commercial scallop fishery—Puget Sound.** Notwithstanding the provisions of WAC 220-340-610, effective February 11, 2019 until further notice, it is unlawful to take or possess pink or spiny scallops taken for commercial purposes except as provided for in this section:

(1) It is unlawful to fish for, take, or possess pink or spiny scallops with shellfish dive gear without a commercial scallop dive fishery license holder on board the designated harvest vessel.

(2) Pink or spiny scallop harvest using shellfish diver gear is only allowed in Washington Department of Health (DOH) Approved Commercial Shellfish Growing Areas of Marine Fish/Shellfish Catch Reporting Areas 20A, 20B,

21A, 21B, 22A, 22B, 23A, 23B, 25A and 25B, except as noted in (3) below.

(3) Pink or spiny scallop harvest using shellfish diver gear is also allowed within Department of Health's Restricted Scallop Area 2 Rosario Strait defined by the Washington Department of Health in Marine Fish/Shellfish Catch Reporting Areas 20B, 21A, and 22A.

(4) It is unlawful for more than two divers from a harvest vessel to be in the water at any one time during pink or spiny scallop harvest operations or when commercial quantities of pink or spiny scallops are on board the vessel.

(5) It is unlawful to possess any other species of commercial shellfish during pink or spiny scallop harvest operations and when pink or spiny scallops are onboard the harvest vessel.

**WSR 19-05-026**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**CHILDREN, YOUTH, AND FAMILIES**

[Filed February 12, 2019, 2:37 p.m., effective February 12, 2019, 2:37 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The extended foster care WAC are being amended to align with recent changes in legislation regarding the eligibility requirements for the program. These changes went into effect on July 1, 2018. These changes are currently in the process of becoming permanent.

Citation of Rules Affected by this Order: Repealing WAC 110-90-0041 and 110-90-0042; and amending WAC 110-90-0020, 110-90-0030, 110-90-0040, 110-90-0110, and 110-90-0140.

Statutory Authority for Adoption: RCW 13.34.267, 13.34.268, 74.13.020, 74.13.031, 74.13.336.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: These changes in legislation went into effect on July 1, 2018, and were previously filed under WSR 18-21-090. The department is filing an extension while they go through the permanent rule-making process.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 5, Repealed 2.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: February 12, 2019.

Brenda Villareal  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-90-0020 What is the purpose of the extended foster care program?** The extended foster care program provides an opportunity for young adults (~~in foster care~~) who are dependent at age eighteen to voluntarily agree to continue receiving foster care services, including placement services, while the youth:

- (1) Completes a high school or a high school equivalency program;
- (2) Completes a secondary or post-secondary academic or vocational program;
- (3) Participates in a program or activity designed to promote employment or remove barriers to employment;
- (4) Is engaged in employment for eighty hours or more per month; or
- (5) Is unable to engage in subsections (1) through (4) of this section due to a documented medical condition.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-90-0030 What is extended foster care?** Extended foster care is a program offered to young adults, age eighteen to twenty-one, who turn eighteen while in (~~foster care~~) a dependency, to enable them to:

- (1) Complete a high school diploma or high school equivalency certificate;
- (2) Complete a post-secondary academic or vocational program;
- (3) Participate in a program or activity designed to promote employment or remove barriers to employment;
- (4) Be employed for eighty hours or more per month; or
- (5) Participate in the program if unable to engage in subsections (1) through (4) of this section due to a documented medical condition.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-90-0040 Who is eligible for extended foster care?** (1) To be eligible for the extended foster care program, a youth, on his or her eighteenth birthday must be dependent under chapter 13.34 RCW (~~placed in foster care as defined in WAC 388-25-0508 by CA,~~) and:

- (a) Enrolled in school as described in WAC (~~388-25-0512~~) 110-90-0050;
- (b) Have applied for, or can demonstrate intent to timely enroll in a post-secondary academic or vocational education program as described in WAC (~~388-25-0514~~) 110-90-0060;
- (c) Participating in a program or activity designed to promote employment or remove barriers to employment as described in WAC (~~388-25-0515~~) 110-90-0070;
- (d) Engaged in employment for eighty hours or more per month;

(e) Unable to engage in subsection (1)(a) through (d) of this section due a documented medical condition as described in WAC ~~((388-25-0519))~~ 110-90-0100; or

(f) Did not enroll in the extended foster care program; and

(i) Had their dependency dismissed on their eighteenth birthday;

(ii) Is requesting to enroll in the extended foster care program through a voluntary placement agreement (VPA) prior to reaching the age of ~~((nineteen))~~ twenty-one; and

(iii) Meets one of the criteria found in subsection (1)(a) through (e) of this section.

(2) A youth is not eligible to enroll in extended foster care while in the care and custody of juvenile rehabilitation, county detention, or in the department of corrections. Youth meeting EFC eligibility in subsection (1)(a) through (e) of this section may enroll when they are released from juvenile rehabilitation, county detention, or department of corrections custody.

(3) If the youth was in the extended foster care program but then unenrolled or lost their eligibility, the youth may reenroll in the extended foster care program through a VPA ~~((one-time))~~ before the age of twenty-one. The youth must meet one of the criteria in subsection (1)(a) through (e) when requesting to reenroll in the extended foster care program.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-90-0110 How does a youth agree to participate in the extended foster care program?** (1) An eligible dependent youth can agree to participate by:

(a) Signing an extended foster care agreement; or

(b) For developmentally disabled youth, remaining in the foster care placement and continuing in an appropriate educational program.

(2) An eligible nondependent youth who did not elect to participate in the program on their eighteenth birthday can agree to participate by:

(a) Signing a voluntary placement agreement (VPA) before reaching age ~~((nineteen))~~ twenty-one; or

(b) Establishing a nonminor dependency before reaching age ~~((nineteen))~~ twenty-one if the department denied entry into the program.

(3) An eligible ~~((nondependent))~~ nonminor dependent youth requesting to reenter the program may agree to participate by signing a VPA prior to reaching age twenty-one ~~((as long as the youth has not previously entered into a VPA for extended foster care services))~~.

(4) In order to continue receiving extended foster care services after entering into a VPA with the department, the youth must agree to the entry of an order of dependency within one hundred eighty days of the date that the youth is placed in foster care pursuant to a VPA.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-90-0140 If an extended foster care participant loses his or her eligibility before he or she turns twenty-one, may he or she reapply for extended foster**

**care?** ~~((H))~~ Yes. If a youth was receiving extended foster care services and lost eligibility, he or she may reapply as long as the youth:

~~((a))~~ (1) Has not turned twenty-one; and

~~((b))~~ (2) Meets one of the conditions for eligibility in WAC ~~((388-25-0506))~~ 110-90-0040 (1)(a) through (e) ~~((; and~~

~~((e) Has not entered into a prior voluntary placement agreement with the department for the purposes of participating in the extended foster care program.~~

(2) Youth may reenter the extended foster care program one time between the ages of eighteen to twenty one).

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 110-90-0041 When is a youth considered to be "in foster care"?

WAC 110-90-0042 When is a youth not "in foster care"?

#### **WSR 19-05-027**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **FISH AND WILDLIFE**

[Order 19-25—Filed February 12, 2019, 3:10 p.m., effective February 12, 2019, 3:10 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends recreational harvest rules for razor clams.

Citation of Rules Affected by this Order: Repealing WAC 220-330-16000Z; and amending WAC 220-330-160.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency rule is needed to open the recreational razor clam season. Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 3, 4, 5 and 6 for recreational harvest. Washington department of health has certified clams from this beach to be safe for human consumption. Razor clam beaches are closed by permanent rules unless opened by an emergency rule. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

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

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

Date Adopted: February 12, 2019.

Kelly Susewind  
Director

## NEW SECTION

**WAC 220-330-16000Z Razor clams—Areas and seasons.** Notwithstanding the provisions of WAC 220-330-160, it is unlawful to take, dig for or possess razor clams taken for personal use from any beaches in any razor clam area except as provided for in this section:

(1) Effective 12:01 p.m. February 17, 2019 through 11:59 p.m. February 17, 2019, razor clam digging is permissible in Razor Clam Area 1. Digging is permissible from 12:01 p.m. to 11:59 p.m. only.

(2) Effective 12:01 p.m. February 15, 2019 through 11:59 p.m. February 21, 2019, razor clam digging is permissible in Razor Clam Area 3. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(3) Effective 12:01 p.m. February 16, 2019 through 11:59 p.m. February 17, 2019 razor clam digging is permissible in Razor Clam Area 4. Digging is permissible from 12:01 p.m. to 11:59 p.m. only.

(4) Effective 12:01 p.m. February 15, 2019 through 11:59 p.m. February 15, 2019 and 12:01 p.m. February 17, 2019 through 11:59 p.m. February 18, 2019, razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(5) Effective 12:01 p.m. February 16, 2019 through 11:59 p.m. February 18, 2019, razor clam digging is permissible in Razor Clam Area 6. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(6) It is unlawful to dig for razor clams at any time in the Twin Harbors and Copalis Beach Clam sanctuaries defined in WAC 220-320-130.

## REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. February 22, 2019:

WAC 220-330-16000Z Razor clams—Areas and seasons.

**WSR 19-05-033  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 19-28—Filed February 13, 2019, 10:47 a.m., effective February 13, 2019, 10:47 a.m.]

Effective Date of Rule: Immediately upon filing.

**Purpose:** The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes and federal law governing Washington's relationship with Oregon.

**Citation of Rules Affected by this Order:** Repealing WAC 220-359-02000B; and amending WAC 220-359-020.

**Statutory Authority for Adoption:** RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

**Other Authority:** *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

**Reasons for this Finding:** This rule is needed because a sufficient number of fish remain on the harvest guideline for the commercial gillnet fishery in The Dalles and John Day pools. This rule is consistent with actions of the Columbia River compacts on January 29 and February 12, 2019. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River Compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302

F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 1.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

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

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

Date Adopted: February 13, 2019.

Joe Stohr  
for Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-359-02000C Columbia River salmon seasons above Bonneville Dam.** Notwithstanding the provisions of WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H. However, those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

(1) Open Areas: SMCRA 1G and 1H (The Dalles and John Day pools only)

(a) Season: Immediately through 6 PM Tuesday, February 19, 2019

(b) Gear: Gillnets with no minimum mesh size restriction.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon from 43 to 54 inches fork length in The Dalles and John Day pools may be sold or kept for subsistence purposes. Fish landed during the open periods are allowed to be sold after the period concludes.

(d) Standard river mouth and dam sanctuary closures remain in place for this gear.

(2) Open Areas: SMCRA 1F, 1G, 1H (Zone 6)

(a) Season: Immediately to 6 PM Thursday, March 21, 2019.

(b) Gear: Hoop nets/bag nets, dip nets, and rod and reel with hook and line.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon from 38 to 54

inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools may be kept for subsistence purposes. Further, sturgeon within the legal size limit and caught in the platform and hook and line fishery may only be sold if caught during the open period and open pool of an open gillnet fishery. Fish landed during the open periods are allowed to be sold after the period concludes.

(d) Standard river mouth and dam sanctuary closures remain in place for this gear.

(3) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-352-315, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

(4) Fish caught during the open period may be sold after the period concludes.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-359-02000B Columbia River salmon seasons above Bonneville Dam. (19-18)

#### **WSR 19-05-042**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **CHILDREN, YOUTH, AND FAMILIES**

[Filed February 14, 2019, 8:57 a.m., effective February 15, 2019]

Effective Date of Rule: February 15, 2019.

Purpose: Chapter 110-03 WAC creates rules for informal dispute resolution between the department of children, youth, and families (DCYF) and person[s] or entities, and hearing regulations involving DCYF. This chapter supplements chapter 43.216 RCW, the Administrative Procedure Act, chapter 34.05 RCW, and the model rules of procedure adopted by the office of administrative hearings, chapter 10-08 WAC.

Citation of Rules Affected by this Order: New chapter 110-03 WAC.

Statutory Authority for Adoption: Chapters 43.216, 34.05 RCW.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: These rules were previously adopted on July 1, 2018 (WSR 18-14-076), on an emergency basis when DCYF began operations. These emergency rules are being extended while the department goes through the permanent rule-making process. It is critical for these rules to continue on an emergency basis to ensure informal dispute and administrative hearing processes are in place while DCYF conducts rule making to adopt the permanent rules.

The administrative hearing process provides the general public the opportunity to appeal the department's decisions, decisions that can impact the aggrieved person's ability to be licensed or employed.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 59, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 59, Amended 0, Repealed 0.

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

Date Adopted: February 14, 2019.

Brenda Villarreal  
Rules Coordinator

## Chapter 110-03 WAC

### HEARING RULES

#### NEW SECTION

**WAC 110-03-0010 Purpose and scope.** (1) Application. This chapter contains the procedural rules that apply to adjudicative proceedings involving the department of children, youth and families (DCYF).

(2) This chapter:

(a) Where appropriate, establishes rules encouraging informal dispute resolution between DCYF and persons or entities who disagree with the department's actions; and

(b) Regulates all hearings involving DCYF.

(3) The rules of this chapter are intended to supplement chapter 43.216 RCW; the Administrative Procedure Act (APA), chapter 34.05 RCW; and the model rules of procedure adopted by the office of administrative hearings (OAH), chapter 10-08 WAC. If a provision of this chapter conflicts with a provision in any chapter containing a specific procedural or substantive rule, the provision in the chapter containing the specific procedural or substantive rule governs.

(4) This chapter and any amendments to this chapter apply to cases pending before OAH or a review judge at the time of adoption unless the amendment or rule specifically states otherwise. An amendment to this chapter does not require that issues already addressed by OAH or a review judge be readdressed in order to comply with the amendment, unless the amendment expressly says otherwise.

(5) Nothing in this chapter is intended to affect the constitutional rights of any person or to limit or change additional requirements imposed by statute or other rule. Other laws or rules determine whether a hearing right exists, including the APA and DCYF program rules and laws.

(6) Specific DCYF hearing rules contained in other chapters within this title will prevail over the rules in this chapter.

(7) Effective date. This chapter is effective July 1, 2018.

(a) This chapter, and not chapter 388-02 or 170-03 WAC, applies to all cases in which DCYF has issued written notice of an appealable decision that is mailed after July 1, 2018.

(b) Chapter 388-02 or 170-03 WAC, and not this chapter, apply:

(i) To all cases in which the department of social and health services (DSHS) or the department of early learning (DEL) has issued written notice of an appealable decision concerning a DCYF program that was mailed before July 1, 2018, but an initial administrative hearing has not taken place.

(ii) To all cases in which DSHS or DEL has issued a written notice of an appealable decision concerning a DCYF program before July 1, 2018, and an initial administrative hearing has taken place, but an administrative law judge (ALJ) has not yet issued an initial order.

(iii) To all cases in which DSHS or DEL has issued written notice of an appealable decision concerning a DCYF program that was mailed before July 1, 2018, and an administrative hearing has taken place and an ALJ has issued an initial order, but a final order has not been issued by an ALJ from either OAH or a review judge from DSHS board of appeals (BOA).

(iv) To all cases in which an ALJ issued an initial or final order on a case concerning a DCYF program before July 1, 2018, and the appellant filed a petition for judicial review by July 1, 2018.

(c) WAC 110-03-0510 through 110-03-0590, governing review of initial and final orders, apply to the review of any orders issued in response to any written notice of an appealable decision mailed after July 1, 2018.

#### NEW SECTION

**WAC 110-03-0020 Definitions.** The following definitions apply to this chapter:

(1) "Adjudicative proceeding" means a proceeding in which an opportunity for hearing occurs before an administrative law judge (ALJ) concerning an administrative appeal of department action. An adjudicative proceeding may take place before the office of administrative hearings (OAH), and as provided under subsection (6) of this section, this term may also encompass hearings before the BOA.

(2) "Administrative law judge" or "ALJ" means an impartial decision-maker who is an attorney and presides over an administrative proceeding resulting in an initial order. The office of administrative hearings (OAH), which is an independent state agency, employs the ALJs.

(3) "Board of appeals" or "BOA" means the DCYF board of appeals.

(4) "Business days" means all days except for Saturdays, Sundays and state legal holidays.

(5) "Calendar days" means all days including Saturdays, Sundays and state legal holidays.

(6) "Case" means the entire proceeding following the filing of a request for hearing with OAH.

(7) "Continuance" means a change in the date or time of a prehearing conference, hearing, or deadline for other action.

(8) "Date of the department action" means the date when the department issued a written decision that was appealable to OAH.

(9) "DCYF" or "department" means the department of children, youth, and families.

(10) "DCYF" or "department representative" means an employee of the department, an assistant attorney general, or special assistant attorney general authorized to represent DCYF in an administrative hearing.

(11) "Deliver" means giving a document to a person or entity in person or placing the document into the person's or entity's possession as authorized by the rules of this chapter or chapter 34.05 RCW.

(12) "Documents" means papers, letters, writings, or other printed or written items.

(13) "Ex parte contact" means a written or oral communication with an ALJ or review judge about something related to the hearing when all other parties are not present. Procedural questions are not considered an ex parte contact. Examples of procedural questions include clarifying the hearing date, time, or location or asking for directions to the hearing location as provided in RCW 34.05.455.

(14) "Final order" means an order that is the final DCYF decision. An ALJ's initial order becomes a final order if the ALJ's initial order is not appealed to the BOA. If an ALJ's initial order is appealed to the BOA, the review judge's order is DCYF's final order.

(15) "Good cause" means a substantial reason or legal justification for an action or for failing to appear, act, or respond to an action required under these rules.

(a) To show good cause, the ALJ must find that the party had a good reason for what they did or did not do using the provisions of superior court civil rule 60 as a guideline.

(b) Good cause may include, but is not limited to, the following examples:

(i) You ignored a notice because you were in the hospital or were otherwise prevented from responding; or

(ii) You could not respond to the notice because it was written in a language that you did not understand.

(16) "Hearing" means a session held before OAH or a BOA review judge for the purpose of deciding issues of fact or law that gives an aggrieved party an opportunity to be heard in disputes resulting from actions taken against the party by DCYF. For purposes of this chapter, adjudicative proceedings include administrative hearings, and any other similar term referenced under chapter 34.05 RCW, the Administrative Procedure Act, Title 110 WAC, or other law.

(17) "Hearing impaired person" means a person who, because of a hearing or speech impairment, cannot readily speak, understand or communicate in spoken language.

(18) "Initial order" is a decision made by an ALJ that may be reviewed by a BOA review judge at either party's request.

(19) "Judicial review" means a superior court's review of a final order.

(20) "Limited-English-proficient person" includes limited-English-speaking persons or other persons unable to readily communicate in spoken English.

(21) "Limited-English-speaking person" means a person who, because of non-English-speaking cultural background or disability (including a hearing impairment), cannot readily speak or understand the English language.

(22) "OAH" means the office of administrative hearings. This is a separate agency and not a part of DCYF.

(23) "Party" means a person or entity to whom a DCYF adverse action is directed and who has a right under law or rule to be involved in the hearing process. DCYF also is a party.

(24) "Prehearing conference" means a proceeding scheduled and conducted by an ALJ or review judge in preparation for a hearing.

(25) "Program" means a DCYF organizational unit and the services that it provides, including services provided by DCYF staff and through contracts with providers. Organizational units include, but are not limited to, DCYF administrations and divisions.

(26) "Reconsideration" has the same meaning as described in WAC 110-03-0590(1).

(27) "Record" means the official documentation of the hearing process. The record includes tape recordings or transcripts, admitted exhibits, decisions, briefs, notices, orders, and other filed documents.

(28) "Representative" means the person selected by a party to represent that party in an administrative hearing. "Lay representative" means a person or advocate who is assisting a party in presenting that party's case in an administrative hearing. If the party selects an attorney or a lay representative as their representative, DCYF will not pay for that attorney's or lay representative's services.

(29) "Review" means the act of reviewing initial orders and issuing the DCYF final order as provided by RCW 34.05.464.

(30) "Review judge" or "BOA review judge" means an attorney employed by the DCYF BOA to act as the reviewing officer and who is authorized to review initial orders and to prepare and enter the final agency order.

(31) "Rule" means a state regulation, including a licensing standard. Rules are found in the Washington Administrative Code (WAC).

(32) "Stay" means an order temporarily halting the DCYF decision or action.

#### NEW SECTION

**WAC 110-03-0030 Computing time for meeting deadlines in the hearing process.** (1) When counting days to determine when the time allowed or prescribed for an action under these rules or to meet a hearing deadline:

(a) Do not include the day of the action, notice, or order. For example, if an initial order is mailed on Tuesday and a party has twenty-one days from the date of mailing to request a review, count Wednesday as the first day.

(b) Count the last day of the period, unless the last day is a Saturday, Sunday or state legal holiday, in which case the deadline is the next business day.



(2) For periods of seven days or less, count only business days.

(3) For periods over seven days, count every day, including Saturdays, Sundays, and state legal holidays.

(4) The deadline ends at 5:00 p.m. on the last day.

(5) If a request is not received within the required time frames, an individual loses their right to a hearing or to appeal an adverse action by DCYF.

#### NEW SECTION

**WAC 110-03-0040 The right to a hearing.** (1) A person or entity has a right to a hearing only if a law or DCYF rule expressly gives that right and a hearing is requested in a timely manner. If a party is unsure if they have a right to a hearing, they should request one.

(2) Some DCYF programs may require a party to go through an informal administrative review process before they can request a hearing. The notice of action that DCYF sends a party should include information about this requirement.

(3) A party has only a limited time to request a hearing. The deadline for the request is set by statute or DCYF rule. In most cases, DCYF will send a notice of adverse action that gives specific information about how, where and when to request a hearing.

(4) A challenge to a DCYF adverse action is heard in an administrative hearing by an administrative law judge (ALJ) employed by the office of administrative hearings (OAH). Not all DCYF actions may be challenged through the hearing process.

(5) If a party requests a hearing that is authorized under subsection (1) of this section, one will be scheduled.

(6) If DCYF or the ALJ questions a party's right to a hearing, the ALJ decides whether the party has that right. The ALJ will decide either:

(a) There is no right to a hearing and dismiss the case; or

(b) There is a right to a hearing and proceed with the hearing.

#### NEW SECTION

**WAC 110-03-0050 Requesting a hearing.** (1) A request for hearing must be made in writing. DCYF will provide forms that requesting parties may use to request a hearing. The request for hearing can be made by the party requesting the hearing or by the party's representative.

(2) The hearing request must include:

(a) The requesting party's name, address, and telephone number;

(b) A brief explanation of why the requesting party disagrees with the DCYF adverse action;

(c) Any assistance, such as a foreign or sign language interpreter or accommodation for a disability, needed by the requesting party; and

(d) A copy of the notice from DCYF stating the adverse action.

(3) For a request for a hearing of a child protective services founded finding of child abuse or neglect, the request for hearing must be filed with OAH and served on DCYF

within thirty calendar days after receiving notice of the agency review determination, pursuant to RCW 26.44.125.

(4) For a request for a hearing of a child care or foster care licensing adverse action, a request for hearing must be filed with OAH and served on DCYF within twenty-eight calendar days of DCYF's notice of the adverse action.

(5) For all other requests for hearings, a request for a hearing must be filed with OAH and served on DCYF as stated in the rule or law governing that action.

#### NEW SECTION

**WAC 110-03-0060 Filing the request for hearing.** (1) Filing is the act of delivering documents to OAH at the location listed in WAC 110-03-0070.

(2) The date of filing is the date documents are actually received by OAH during office hours.

(3) A party may file documents with OAH by:

(a) Personal service (hand delivery);

(b) First class, registered, or certified mail;

(c) Fax transmission, if the party also mails a copy of the document the same day;

(d) Commercial delivery service; or

(e) Legal messenger service.

(4) A party cannot file documents by email.

#### NEW SECTION

**WAC 110-03-0070 Location of office of administrative hearings.** (1) The office of administrative hearings (OAH) is open from 8:00 a.m. to 5:00 p.m. Monday through Friday, except state legal holidays.

(2) The address for the OAH is:

Office of Administrative Hearings

2420 Bristol Court S.W., 1st Floor

P.O. Box 42489

Olympia, WA 98504-2489

Phone: 360-407-2700

Fax: 360-664-8721.

#### NEW SECTION

**WAC 110-03-0080 Service of notice and documents.** (1) Service is the act of delivering a copy of documents to the opposing party. Service gives the opposing party notice of the request for a hearing or other action. When a document is delivered to a party, that party is considered served with official notice of the contents of the document.

(2) Unless otherwise stated in law or rule, a party may serve another party by:

(a) Personal service (hand delivery);

(b) First class, registered, or certified mail;

(c) Fax, if the party also mails a copy of the document the same day;

(d) Commercial delivery service; or

(e) Legal messenger service.

(3) A party cannot serve documents by email.

(4) A party must serve all other parties or a party's representative, if the party is represented, whenever the party files

a document or brief with OAH or BOA or when required by law.

(5) Unless otherwise stated in law or rule, service is complete when:

- (a) Personal service is made;
- (b) Mail is properly stamped, addressed, and deposited in the United States mail;
- (c) Fax produces proof of transmission;
- (d) A parcel is delivered to a commercial delivery service with charges prepaid; or
- (e) A parcel is delivered to a legal messenger service with charges prepaid.

#### NEW SECTION

**WAC 110-03-0090 Proof of service.** A party may prove that an opposing party was served with documents by providing any of the following:

- (1) A sworn statement by the person who served the document;
- (2) The certified mail receipt signed by the recipient;
- (3) An affidavit or certificate of mailing;
- (4) A signed receipt from the person who accepted the commercial delivery service or legal messenger service package;
- (5) Proof of fax transmission; or
- (6) Acknowledgment by the party being served.

#### NEW SECTION

**WAC 110-03-0100 Representation during the hearing process.** (1) The party requesting the hearing may represent himself or herself or may have another person, except a DCYF employee, act as the representative.

(2) The representative may be a friend, relative, community advocate, attorney, paralegal, or lay representative.

(3) The representative must provide OAH and the other parties with the representative's name, address, and telephone number. If the representative is an attorney or lay representative, the representative must file a written notice of appearance in the action. If the party's representative is not an attorney, the party must provide a written statement to DCYF authorizing the release of information about the party to the representative.

(4) DCYF may be represented by a DCYF employee, a DCYF contractor, an assistant attorney general, or a special assistant attorney general.

#### NEW SECTION

**WAC 110-03-0110 The right to an interpreter in the hearing process.** (1) If a party or witness has limited-English proficiency (LEP), OAH will provide an interpreter during the hearing at no cost.

(2) If OAH is notified that a party is a limited-English-speaking person, all notices concerning hearings must:

- (a) Be written in the party's primary language; or
- (b) Include a statement, in the primary language, explaining the importance of the notice and informing the party how to get help in understanding the notice and responding to it.

#### NEW SECTION

**WAC 110-03-0120 Interpreter qualifications.** (1) Pursuant to chapters 2.42 and 2.43 RCW, OAH must provide a qualified interpreter to assist any person who:

- (a) Has limited-English proficiency; or
- (b) Is limited-English-speaking or hearing impaired; and
- (c) Is a party or witness in a hearing.

(2) OAH may hire or contract with persons to interpret at hearings.

(3) Relatives of any party and DCYF employees may not be used as interpreters.

(4) The ALJ must determine, at the beginning of the hearing, if an interpreter can accurately interpret all communication for the person requesting the service.

(5) The parties or their representatives may question the interpreter's qualifications and ability to be impartial.

(6) If, at any time before or during the hearing, the ALJ finds that the interpreter does not provide accurate and effective communication, OAH must provide another interpreter.

#### NEW SECTION

**WAC 110-03-0130 Waiver of interpreter services.** (1) An eligible party may waive interpreter services.

(2) A request for waiver must be made in writing or through a qualified interpreter on the record.

(3) The ALJ must determine that the waiver has been knowingly and voluntarily made.

(4) A waiver of interpreter services may be withdrawn at any time before or during the hearing.

(5) A waiver of interpreter services at the hearing constitutes a waiver of a right to challenge any aspect of the hearing based on a lack of understanding resulting from an inability to understand or a lack of proficiency in the English language.

#### NEW SECTION

**WAC 110-03-0140 Requirements that apply to the use of interpreters.** (1) Interpreters must:

(a) Use the interpretive mode that the parties, the limited English proficient, limited-English-speaking, or hearing impaired person, the interpreter, and the ALJ consider the most accurate and effective;

(b) Interpret statements made by the parties, witnesses, and the ALJ;

(c) Not disclose information about the hearing without the written consent of the parties unless required by law; and

(d) Not comment on the hearing or give legal advice.

(2) The ALJ must allow enough time for all interpretations to be made and understood.

(3) The ALJ may videotape a hearing and use it as the official transcript for hearings involving a hearing impaired person.

#### NEW SECTION

**WAC 110-03-0150 Requirements that apply to decisions involving limited-English-speaking parties.** (1) When an interpreter is used at a hearing, the administrative

law judge (ALJ) must explain on the record that decisions are written in English and that the office of administrative hearings (OAH) will provide an interpreter for an oral translation of the decision at no cost to the party needing interpretation services.

(2) OAH must provide the party needing interpretation services information about how to obtain those services. Information about how to access interpretation services must be attached to the decision or order. The individual who provides the interpretation services does not need to be the same individual who provided the interpretation services at the hearing.

(3) OAH or the BOA review judge must send a copy of a decision or order to an interpreter for use in oral interpretation.

#### NEW SECTION

**WAC 110-03-0160 Notice of hearing.** (1) When a hearing is requested, OAH sends the parties a written notice of the hearing or prehearing conference. A notice of a hearing must be sent to all parties and their representatives at least fourteen calendar days before the hearing date.

(2) The notice of hearing or prehearing conference will include:

- (a) The names, mailing addresses, and telephone numbers of all parties and of their representatives;
- (b) The name, mailing address, and telephone number of the ALJ;
- (c) The date, time, place, and nature of the hearing or prehearing conference;
- (d) The legal authority and jurisdiction for the hearing or prehearing conference; and
- (e) The date of the hearing request.

(3) OAH will also send information with the notice of hearing or prehearing conference stating:

(a) If a party and the party's representative fail to attend or participate in a prehearing conference or a hearing, that party may lose the right to a hearing and the ALJ may enter an order of default or an order dismissing the case;

(b) If a party or witness needs a qualified interpreter because the party or witness is entitled to an interpreter under WAC 110-03-0110 and 110-03-0120, OAH will provide an interpreter at no cost to the party;

(c) Whether the hearing or prehearing conference is to be held by telephone or in person, and how to request a change in the way it is held;

(d) How to indicate any special needs for a party or witness; and

(e) How to contact OAH if a party or witness has a safety concern.

(4) If the hearing is scheduled as:

(a) An in-person hearing, an ALJ is physically present.

(b) A telephonic hearing, an ALJ is present by telephone.

(5) The ALJ and the parties may agree to shorten the amount of notice required by any rule.

(6) Any party may request that the proceeding be rescheduled and OAH must reschedule it if:

(a) A rule requires OAH to provide notice of a proceeding; and

(b) OAH does not provide the amount of notice required.

#### NEW SECTION

**WAC 110-03-0170 Prehearing conferences.** (1) A prehearing conference is a formal meeting that may be conducted by an ALJ before a full hearing. A prehearing conference may not be conducted in some cases. In others, more than one prehearing conference may be necessary.

(2) Either the ALJ orders a prehearing conference, or a party may request that the ALJ order a prehearing conference. If the ALJ decides to hold a prehearing conference, OAH sends notice of the time and date of the prehearing conference to all parties and their representatives at least seven business days before the date of the prehearing conference except:

(a) An ALJ may convert a scheduled hearing into a prehearing conference and provide less than seven days' notice of the prehearing conference;

(b) OAH may provide less than seven business days' notice if the only purpose of the prehearing conference is to consider whether there is good cause to grant a continuance under WAC 110-03-0250.

(3) The ALJ must reschedule the hearing if necessary to comply with the notice requirements in this section.

(4) An ALJ may conduct the prehearing conference in person, by telephone conference call, by electronic means, or in any other manner acceptable to the parties.

(5) Attendance by the parties or their representatives is mandatory. A party may lose the right to participate during the hearing if that party or his/her representative, if any, does not attend the prehearing conference. A party's appeal may be dismissed by the BOA if the party or the party's representative, if any, do not attend.

(6) Additional prehearing conferences may be requested by the parties or set by the ALJ to address procedural or other issues specific to the case.

#### NEW SECTION

**WAC 110-03-0180 Purposes of prehearing conferences.** (1) The purposes of the prehearing conferences are to clarify issues, set deadlines for the parties to exchange information regarding witnesses and evidence, and set the time for the hearing.

(2) During a prehearing conference, the parties and the ALJ may:

(a) Simplify or clarify the issues to be decided during the hearing;

(b) Agree to the date, time, and place of the hearing;

(c) Identify accommodation and safety issues;

(d) Agree to postpone the hearing;

(e) Allow the parties to make changes in their own documents, including but not limited to, the DCYF notice of adverse action or the appealing party's hearing request;

(f) Agree to facts and documents to be entered during the hearing;

(g) Set a deadline for each party to file and serve the document containing the names and phone numbers of witnesses and copies of all documents or other exhibits that will be presented at the hearing;

- (h) Schedule additional prehearing conferences;
- (i) Resolve the dispute;
- (j) Consider granting a stay if authorized by law or DCYF rule;
- (k) Consider a motion for summary judgment or other motion; or
- (l) Determine any other procedural issues were raised by the parties.

(3)(a) If the parties resolve the dispute during the prehearing conference and put it in writing or present the agreement to the ALJ, the agreement may be legally enforceable.

(b) If the parties want the ALJ to consider any agreements or stipulations made at the prehearing conference, the parties must present them to the ALJ either before or during the hearing.

(c) If all the issues are resolved and the settlement agreement is in writing and signed by both parties, or presented verbally by both parties to the ALJ, the ALJ enters the settlement agreement into the record and the agreement constitutes a withdrawal of the appellant's hearing request.

#### NEW SECTION

**WAC 110-03-0190 Prehearing order.** (1) After the prehearing conference ends, the ALJ will send a prehearing order describing:

- (a) The decisions made or actions taken during the conference;
- (b) Any changes to DCYF's or other party's initial documents; and
- (c) Any agreements reached.

(2) A party may object to the prehearing order by notifying the ALJ in writing within ten days after the mailing date of the order. The ALJ must issue a ruling on the objection.

(3) If no objection is made to the prehearing order, the order determines how the hearing is conducted, including whether the hearing will be in person or held by telephone conference or other means, unless the ALJ changes the order for good cause.

(4) Prehearing orders are not final appealable orders of the department.

#### NEW SECTION

**WAC 110-03-0200 Assignment and challenge of assignment of administrative law judge.** (1) OAH assigns an ALJ at least five business days before the hearing and discloses that assignment in writing to the parties. A party may ask which ALJ is assigned to the hearing by calling or writing the OAH field office listed on the notice of hearing.

(2) A party may file a motion of prejudice against an ALJ under RCW 34.12.050 and 34.05.425 by:

- (a) Sending a written motion of prejudice at least three business days before the hearing and before the ALJ rules on a discretionary issue in the case;
- (b) The motion of prejudice must include an affidavit that a party does not believe the ALJ can hear the case fairly;
- (c) The party must send the request to the chief administrative law judge in care of the OAH field office where the ALJ works and send a copy of the request to all other parties or, if other parties are represented, to the representatives.

(3) The first timely request for a different ALJ under RCW 34.12.050 is automatically granted. Any later request may be granted or denied by the chief ALJ or a designee.

(4) A party may also request that an ALJ or BOA review judge be disqualified under RCW 34.05.425, for bias, prejudice, conflict of interest, or any other good cause or if one of the parties or a party's representative has an ex parte contact with the ALJ or BOA review judge by:

(a) Sending a written petition for disqualification. A petition for disqualification is a written explanation to request assignment of a different ALJ or BOA review judge. A party must promptly make the petition upon discovery of facts establishing grounds for disqualification.

(b) A party must send or deliver the petition to the ALJ or BOA review judge assigned to the case and send a copy of the petition to all other parties or, if other parties are represented, to the representatives. The ALJ or BOA review judge must decide whether to grant or deny the petition and must state the facts and reasons for the decision.

#### NEW SECTION

**WAC 110-03-0210 Rules an ALJ or review judge must apply when making a decision.** (1) ALJs and BOA review judges must first apply the DCYF rules adopted in the Washington Administrative Code.

(2) If no DCYF rule applies, the ALJ or BOA review judge must decide the issues according to the best legal authority and reasoning available, including federal and Washington state constitutions, statutes, rules, and published appellate court decisions.

(3) When applying program rules regarding the substantive rights and responsibilities of the parties (such as eligibility for services, benefits, or a license), the ALJ and review judge must apply the program rules in effect on the date of the DCYF action, unless otherwise required by other rule or law. If DCYF amends its notice of action, the ALJ or BOA review judge must apply the rules in effect on the date the amendment was made, unless otherwise required by other rule or law.

(4) When applying procedural rules, the ALJ and the BOA review judge must apply the rules that are in effect on the date the procedure is followed.

(5) The ALJ and the BOA review judge must apply the rules in this chapter beginning on the date each rule is effective.

#### NEW SECTION

**WAC 110-03-0220 Challenges to validity of DCYF rules.** (1) Neither an ALJ nor a BOA review judge may decide that a DCYF rule is invalid or unenforceable. Only a court may decide this issue.

(2) If the validity of a DCYF rule is raised during the hearing, the ALJ or BOA review judge may allow argument for later court review.

#### NEW SECTION

**WAC 110-03-0230 Amendment to DCYF notice or party's request for hearing.** (1) The ALJ must allow DCYF

to amend (change) the notice of a DCYF adverse action before or during the hearing to match the evidence and facts.

(2) If DCYF amends its notice, it must put the change in writing and give a copy to the ALJ and the other parties.

(3) The ALJ may allow an appealing party to amend a hearing request before or during the hearing to conform with an amended DCYF notice.

(4) If there is an amendment to either the DCYF notice or the appealing party's request for a hearing, the ALJ must offer to continue or postpone the hearing to give the parties more time to prepare or present evidence or argument if there is a significant change from the earlier DCYF notice or from the appealing party's request for hearing.

(5) If the ALJ grants a continuance, OAH must send a new hearing notice at least seven business days before the new hearing date.

#### NEW SECTION

**WAC 110-03-0240 Changes of address.** (1) Parties and representatives must tell DCYF and OAH, as soon as possible, when the party's or the representative's name, mailing address or telephone number changes.

(2) If OAH and DCYF are not notified of a change in a party's or a representative's mailing address and either DCYF or OAH continues to send documents to the address stated in the file, the ALJ and DCYF may assume the documents were received.

#### NEW SECTION

**WAC 110-03-0250 Continuances.** (1) Any party may request a continuance either verbally or in writing.

(2) Before contacting the ALJ to request a continuance, a party may contact the other parties, if possible, to find out if they will agree to a continuance.

(3) The party making the request for a continuance must let the ALJ know whether the other parties agree to the continuance.

(a) If the parties agree to a continuance, the ALJ will grant the request, unless the ALJ finds that good cause for a continuance does not exist.

(b) If the parties do not agree to a continuance, the ALJ will set a hearing to decide whether there is good cause to grant or deny the request for continuance.

(4) If a request for continuance is granted, OAH will send written notice of the changed time and date of the hearing.

#### NEW SECTION

**WAC 110-03-0260 Orders of dismissal and default.**

(1)(a) An order of dismissal is an order sent by the ALJ to end the hearing. The order may be based on a request for dismissal made by the department, request for dismissal based on an agreement by the parties, or because the party who requested the hearing withdrew the request, failed to appear, or refused to participate.

(b) If a hearing is dismissed because the appealing party withdrew the request, did not appear, or refused to participate, the DCYF decision must be the final decision.

(c) If the hearing is dismissed due to a written agreement between the parties, the parties must comply with the agreement.

(2)(a) An order of default may be entered when the appealing party fails to attend a scheduled prehearing conference or hearing. The order of default will include an inquiry as to whether the appealing party wants to petition to reinstate the hearing.

(b) The appealing party may file a request to vacate an order of default under WAC 110-03-0270.

(c) An order of default becomes a final order dismissing the appealing party's request for a hearing if the appealing party does not file a request to vacate within twenty-one calendar days of the order being served (mailed) on the parties.

(d) The DCYF action must remain in effect and be the final action after an order of default becomes a final order.

#### NEW SECTION

**WAC 110-03-0270 Vacating an order of default or order of dismissal.** (1) A party may ask the ALJ to vacate (set aside) an order of default or dismissal.

(a) A request to vacate an order must be filed with OAH within twenty-one calendar days after the date the order of default or dismissal was mailed. If no request is received within that deadline, the order becomes a final order.

(b) The request to vacate an order of default or dismissal must specify why the party believes there is good cause for the order to be vacated.

(2) OAH will schedule a hearing on the request to vacate the order.

(3) At the hearing, the ALJ will receive evidence and argument from the parties on whether there is good cause for an order of default to be vacated.

(4) The ALJ will vacate an order of dismissal and reinstate the hearing if the defaulted party shows good cause or if the DCYF representative agrees to waive the deadline.

(5) An agreed order of dismissal may be vacated only upon proof that a party has violated a condition of the agreed order of dismissal.

(6) A party may make a late request to vacate the order of dismissal for up to one year after it was mailed but they must show good cause according to WAC 110-03-0020 for the late request to be accepted and the dismissal to be vacated.

(7) If a party requests to vacate an order more than one year after it was mailed, the ALJ may vacate the order of dismissal if the DCYF representative and any other party agrees to waive (excuse) the deadline.

#### NEW SECTION

**WAC 110-03-0280 Stay of DCYF action.** The appealing party may request that an ALJ or review judge stay (stop) a DCYF action until there is a decision entered by the ALJ or review judge. Stay of summary suspension of child care license actions are governed by WAC 110-03-0290.

NEW SECTION

**WAC 110-03-0290 Stay of summary suspension of child care license.** (1) The department may immediately and summarily suspend a child care license when:

(a) It finds that conditions in the licensed facility constitute an imminent danger to a child or children in care; or

(b) The public health, safety, or welfare requires emergency action.

(2) Pursuant to WAC 110-03-0040, 110-03-0050, and 110-03-0280 a licensee may request a hearing to challenge the decision to summarily suspend a license. A licensee who contests a summary suspension of a license may obtain a stay of the effective date of the suspension only as set forth in this section.

(3) It is the licensee's burden to establish that the stay is in the public interest and is made for good cause.

(4) The licensee's request for a stay of the summary suspension must be made by filing a motion for stay of summary suspension. The motion for stay of summary suspension must be filed with the initial request for hearing, or by subsequent motion. The motion for stay, and documents and pleadings described in subsection (5) of this section, must be served on the office of administrative hearings and attorney general's office by noon on the seventh day before the hearing, unless a shorter time is ordered. Reply affidavits or declarations must be served on the licensee's attorney, or representative, by noon on the day prior to the hearing. If unrepresented, the reply affidavits or declarations must be served on the licensee.

(5) The motion for stay must be accompanied by a statement of grounds justifying the stay and a description of evidence setting forth the factual basis upon which the request is based. The decision to grant or deny the request for a stay must be based on:

(a) Legal authority; and

(b) Affidavits or declarations signed under penalty of perjury.

(6) The ALJ must not allow the presentation of oral testimony at a stay hearing except under the following circumstances:

(a) The party seeking the opportunity to offer oral testimony must file a motion for permission to offer oral testimony. The decision to grant or deny the motion must be based on affidavits filed in support of or opposition to the motion to offer oral testimony.

(b) Oral testimony must only be permitted if substantial evidence has been presented establishing that the failure to allow oral testimony will deny the moving party the opportunity for a fair stay hearing.

(7) Upon receipt of a motion for a stay, the ALJ must schedule a hearing on the motion, not less than seven days from the date the request is received by the office of administrative hearings.

(8) The ALJ must not grant the motion for stay unless the ALJ makes specific findings that the stay is in the public interest and is made for good cause. In finding good cause, the ALJ must determine:

(a) The licensee is likely to prevail in the hearing on the merits of the licensing action;

(b) The licensee will suffer irreparable injury if the stay is not granted;

(c) The threat to the public health, safety, or welfare inherent in the licensee's operation of a child care facility is not sufficiently serious to justify the suspension of the license; and

(d) Economic hardship itself is an insufficient reason for a finding of irreparable injury under (b) of this subsection.

(9) Unless otherwise stipulated by the parties, the ALJ, after granting or denying a motion for stay, will expedite the hearing and decision on the merits.

(10) The decision on the motion for stay is subject to review by the BOA at the request of either DCYF or the licensee. The request for review must be filed not later than seven days following the date the decision on the motion for stay is mailed by OAH to the parties.

(11) The BOA review judge must promptly determine a request for review. The BOA review judge's decision on the request for review, regarding the motion for stay, must not be subject to judicial review.

NEW SECTION

**WAC 110-03-0300 Conduct of hearings.** (1) Hearings may be held in person or by telephone conference or other electronic means.

(a) A telephone conference hearing is where all parties appear by telephone.

(b) An in-person hearing is where you appear face-to-face with the ALJ and the other parties appear either in person or by telephone.

(2) Parties and their witnesses may appear in person or by telephone conference. The ALJ may require parties or their witnesses to appear in person if the ALJ determines there is a compelling reason and the compelling reason is stated in a hearing notice or prehearing order.

(3) Whether a hearing is held in person or by telephone conference, the parties have the right to see all documents, hear all testimony, and question all witnesses.

(4) When a hearing is held by telephone or other electronic means, all documentary evidence must be filed and served in advance of the hearing.

(5) All hearings must be recorded.

NEW SECTION

**WAC 110-03-0310 Authority of the administrative law judge.** (1) The ALJ must hear and decide the issues de novo (anew) based on what is presented during the hearing. The ALJ's authority is limited to determining whether the sanction imposed or action taken by the department was warranted or justified under the evidence presented during the hearing. The ALJ does not have authority to substitute or impose an alternative sanction, remedy, or action.

(2) As needed, the ALJ may:

(a) Administer oaths and affirmations;

(b) Determine the order for presenting evidence;

(c) Issue subpoenas and protective orders as provided in the Administrative Procedure Act;

(d) Rule on objections, motions, and other procedural matters;

- (e) Rule on motions for summary judgment;
  - (f) Rule on offers of proof and admit relevant evidence;
  - (g) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;
  - (h) Question witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;
  - (i) Request additional exhibits or testimony following a finding that the additional evidence is necessary to complete the record provided all parties are given a full opportunity for cross-examination and/or rebuttal;
  - (j) Take official notice of facts pursuant to RCW 34.05.452(5);
  - (k) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;
  - (l) Permit or require oral argument or briefs and determine the time limits for submission thereof;
  - (m) Issue an order of default pursuant to RCW 34.05.-440;
  - (n) Hold prehearing conferences;
  - (o) Allow a party to waive rights given by chapter 34.05 RCW or these rules unless another law prevents it;
  - (p) Decide whether a party has a right to a hearing;
  - (q) Permit and regulate the taking of discovery;
  - (r) Consider granting a stay if authorized by law or DCYF rule; and
  - (s) Take any other action necessary and authorized by any applicable statute or rule.
- (3) The ALJ may, upon his or her own motion or the motion of any party, order that multiple administrative proceedings be consolidated for the hearing if they involve common issues or parties.
- (4) The ALJ may waive any of the department's procedural rules, other than a rule relating to jurisdiction, for any party not represented by legal counsel or a lay representative upon specific findings that the waiver:
- (a) Is necessary to avoid manifest injustice to the unrepresented party; and
  - (b) Would not prejudice any other party.
- (5) The ALJ must make findings of fact based on the preponderance of the evidence standard, unless otherwise required by law.
- (6) The ALJ's authority is limited to those powers granted by statute or rule. The ALJ has no inherent or common law powers.

#### NEW SECTION

**WAC 110-03-0320 Order of the hearing.** (1) At the hearing, the ALJ:

- (a) Explains the rights of the parties;
  - (b) Marks and admits or rejects exhibits;
  - (c) Sustains or overrules objections made by the parties, as provided by law;
  - (d) Ensures that a record is made;
  - (e) Explains that a decision is mailed after the hearing;
- and
- (f) Notifies the parties of appeal rights.

- (2) The parties may:
  - (a) Make opening statements to explain the issues;
  - (b) Offer evidence to prove their positions, including oral or written statements of witnesses;
  - (c) Question the witnesses presented by the other parties; and
  - (d) Give closing arguments about what the evidence shows and what laws apply.
- (3) The record is closed at the end of the hearing if the ALJ does not allow more time to offer evidence.

#### NEW SECTION

**WAC 110-03-0330 Evidence.** (1) Evidence includes documents, objects, and testimony of witnesses that parties offer during the hearing to help prove their positions.

- (2) Evidence may include all or parts of original documents or copies of the originals.
- (3) If a witness cannot appear, a party may offer as evidence statements signed by the witness that are under oath or affirmation.
- (4) The ALJ may give more weight to testimony that is subject to cross-examination by the other parties.
- (5) The ALJ's decision will only be based on admissible evidence.

#### NEW SECTION

**WAC 110-03-0340 Introduction of evidence into the record.** (1) The ALJ may set a deadline before the hearing for the parties to provide proposed exhibits and names of witnesses to the ALJ and to all other parties. If the parties miss the deadline, the ALJ may refuse to admit the evidence unless the parties show:

- (a) They have good cause for missing the deadline; or
  - (b) The other parties agree to waive the deadline.
- (2) The ALJ may admit and consider hearsay evidence. Hearsay is a statement made outside of the hearing used to prove the truth of what is in the statement. Hearsay evidence is admissible if in the judgment of the ALJ it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs.
- (3) The ALJ may reject evidence, if it:
    - (a) Is not relevant;
    - (b) Repeats evidence already admitted;
    - (c) Is from a privileged communication protected by law;
- or
- (d) Is otherwise legally improper.

(4) Where the department's notice of adverse action alleges the person lacks the character to provide for the needs of any child in care or to have unsupervised access to any child in care, evidence regarding character or reputation must be admissible. In all other proceedings, evidence regarding character or reputation must be admissible as provided by law. In cases where such evidence is admissible, the ALJ must exercise reasonable control over the number of character witnesses so as to avoid duplication of testimony and evidence and needless consumption of time.

NEW SECTION

**WAC 110-03-0350 Objections to evidence.** (1) Although a party may offer any documents and testimony at the hearing to support the party's position, other parties may object to the evidence and may question the witnesses. For example, a party may object to the authenticity or admissibility of any exhibit or offer argument about how much weight the ALJ should give the exhibit.

(2) The ALJ determines whether to admit the evidence and what weight (importance) to give it.

(3) If the ALJ does not admit the evidence, the party may make an offer of proof to show why the ALJ should admit it. The offer of proof preserves the issue for appeal. To make an offer of proof, a party presents evidence and argument on the record to show why the ALJ should consider the evidence.

(4) If a witness refuses to answer any question ruled proper by the ALJ, the ALJ may reject all of the related testimony of that witness.

NEW SECTION

**WAC 110-03-0360 Stipulations.** (1) A stipulation is an agreement among two or more parties that certain facts or evidence are correct or authentic.

(2) If an ALJ accepts a stipulation, the ALJ must enter the stipulation into the record.

(3) A stipulation may be made before or during the hearing.

NEW SECTION

**WAC 110-03-0370 Proposed exhibits.** (1) Proposed exhibits are documents or other objects that a party wants the ALJ to consider when reaching a decision. If the exhibit is admitted into evidence by the ALJ, the exhibit will be considered by the ALJ in reaching his or her decision.

(2) The ALJ may require the parties to mark and number their proposed exhibits before the hearing and to provide copies to the other parties as far ahead of the hearing as possible.

(3) The ALJ admits proposed exhibits into the record by marking, listing, identifying, and admitting the proposed exhibits.

(4) The ALJ may also exclude proposed exhibits from the record.

NEW SECTION

**WAC 110-03-0380 Judicial notice.** (1) Judicial notice is evidence that includes facts or standards that are generally recognized and accepted by judges, government agencies, or national associations, such as a calendar, building code or standard of practice.

(2) An ALJ may consider and admit evidence by taking judicial notice.

(3) If a party requests judicial notice, or if the ALJ intends to take judicial notice, the ALJ may ask the party to provide a copy of the document that contains the information.

(4) The ALJ must give the parties time to object to judicial notice evidence.

NEW SECTION

**WAC 110-03-0390 Witnesses.** (1) A witness is any person who makes statements or gives testimony that becomes evidence in a hearing.

(2) One type of witness is an expert witness. An expert witness is qualified by knowledge, experience, and education to give opinions or evidence in a specialized area.

(3) Witnesses may include:

(a) The appealing party or a DCYF representative; and

(b) Anyone a party or the ALJ asks to be a witness.

(4) The ALJ decides who may testify as a witness.

(5) Unless DCYF agrees, a current or former DCYF employee may not be an expert witness against DCYF if that employee was actively involved in the case while working for DCYF, or if that employee was actively involved in the case while working for the department of early learning or the children's administration on or before June 30, 2018.

NEW SECTION

**WAC 110-03-0400 Requiring witnesses to testify or provide documents.** (1) A party may require witnesses to testify or provide documents by issuing a subpoena. A subpoena is an order to appear at a certain time and place to give testimony or to provide books, documents, or other items.

(2) ALJs, DCYF, and attorneys for the parties may prepare subpoenas.

(3) If a party is not represented by an attorney, the party may ask the ALJ to prepare a subpoena on that party's behalf:

(a) The ALJ may schedule a hearing to decide whether to issue a subpoena;

(b) There is no cost to prepare a subpoena, but a party may have to pay for:

(i) Serving a subpoena;

(ii) Complying with a subpoena; and

(iii) Witness fees according to RCW 34.05.446(7).

(4) A party may request that an ALJ quash (set aside) or change the subpoena at any time before the deadline given in the subpoena.

(5) An ALJ may set aside or change a subpoena if it is unreasonable.

NEW SECTION

**WAC 110-03-0410 Serving a subpoena.** (1) Any person who is at least eighteen years old and not a party to the hearing may serve a subpoena.

(2) Service of a subpoena is complete when the server:

(a) Gives the witness a copy of the subpoena; or

(b) Leaves a copy at the residence of the witness with a person over the age of eighteen.

(3) To prove that a subpoena was served on a witness, the person serving the subpoena must sign a written, dated statement that includes the following:

(a) Who was served with the subpoena;

(b) When the subpoena was served;

(c) Where the subpoena was served; and

(d) The name, age, and address of the person who served the subpoena.



NEW SECTION

**WAC 110-03-0420 Testimony.** (1) Direct examination. All witnesses may be asked questions by the party that calls the witness to testify. Each witness:

(a) Must affirm or take an oath to testify truthfully during the hearing;

(b) May testify in person, or by telephone if approved by the ALJ;

(c) May request interpreters from OAH at no cost to the parties;

(d) May be subpoenaed and ordered to appear according to WAC 110-03-0400.

(2) Cross-examination. The parties have the right to cross-examine (question) each witness called by any other party.

(3) If a party has a representative, only the representative, not the party, may question the witness.

(4) The ALJ may also question witnesses.

(5) Witnesses may refuse to answer questions. However, if a witness refuses to answer a question, the ALJ may reject all of the related testimony of that witness.

NEW SECTION

**WAC 110-03-0430 Burden of proof and standard of proof.** (1) The party who has the burden of proof is the party who has the responsibility to provide evidence to persuade the ALJ that a position is correct under the standard of proof required.

(2) Standard of proof refers to the amount of evidence needed to prove a party's position. Unless a rule or the law states otherwise, the standard of proof in a hearing is a preponderance of the evidence. This standard means that it is more likely than not that something happened or exists.

(3) The ALJ decides if a party has met the burden of proof.

NEW SECTION

**WAC 110-03-0440 Equitable estoppel.** (1) Equitable estoppel is a legal doctrine defined in case law that may only be used as a defense to prevent DCYF from taking some action against a party, such as collecting an overpayment. Equitable estoppel may not be used to require DCYF to continue to provide something, such as benefits, services, or a license, or to require the department to take action contrary to a statute.

(2) Equitable estoppel contains five elements, all of which must be proved by clear and convincing evidence:

(a) DCYF made a statement or took action or failed to take action, which is inconsistent with its later claim or position regarding an overpayment;

(b) The appealing party relied on DCYF's original statement, action or failure to act;

(c) The appealing party will be injured if DCYF is allowed to contradict the original statement, action or failure to act;

(d) Equitable estoppel is needed to prevent a manifest injustice; and

(e) The exercise of government functions is not impaired.

(3) If the ALJ concludes that all of the elements of equitable estoppel described in subsection (2) of this section have been proved by clear and convincing evidence, DCYF is estopped or prevented from taking action or enforcing its claim for repayment of the overpayment.

NEW SECTION

**WAC 110-03-0450 Closing the record.** When the record is closed, no more evidence may be taken, without a showing of good cause. The record is closed:

(1) At the end of the hearing if the ALJ does not allow more time to offer evidence or argument; or

(2) After the deadline set by the ALJ for offering evidence or argument has passed.

NEW SECTION

**WAC 110-03-0460 Timing of the ALJ's decision.** (1) After the record is closed, the ALJ must write an initial order and send copies to the parties.

(2) The maximum time an ALJ has to send an initial order is ninety calendar days after the record is closed.

(3) OAH must send the official record of the proceedings to the BOA. The record must be complete when it is sent and include all parts required by WAC 110-03-0480.

NEW SECTION

**WAC 110-03-0470 Contents of the hearing record.** (1) The administrative law judge must produce a complete official record of the proceedings.

(2) The official record must include, if applicable:

(a) Notice of all proceedings;

(b) Any prehearing orders;

(c) Any motions, pleadings, briefs, petitions, requests, and intermediate rulings;

(d) Evidence received or considered;

(e) A statement of matters officially noticed;

(f) Offers of proof, objections, and any resulting rulings;

(g) Proposed findings, requested orders and exceptions;

(h) A complete audio recording of the entire hearing, together with any transcript of the hearing;

(i) Any final order, initial order, or order on reconsideration; and

(j) Matters placed on the record after an ex parte communication.

NEW SECTION

**WAC 110-03-0480 Contents of the initial order.** The ALJ's initial order must:

(1) Identify the hearing decision as a DCYF case;

(2) List the name and docket number of the case and the names of all parties and representatives;

(3) Find the specific facts determined to exist by the ALJ, based on the hearing record, and relied on by the ALJ in resolving the dispute;

- (4) Explain why evidence is credible when the facts or conduct of a witness is in question;
- (5) State the law that applies to the dispute;
- (6) Apply the law to the facts of the case in the conclusions of law;
- (7) Discuss the reasons for the decision based on the facts and the law;
- (8) State the result;
- (9) Explain how to request corrections to the initial order or how to request a petition for review by the BOA and provide deadlines for such requests;
- (10) State the date the decision becomes final; and
- (11) Include any other information required by law or DCYF program rules.

NEW SECTION

**WAC 110-03-0490 Finality of initial order.** If no one timely requests review of the initial order or if a review request is dismissed, the initial order becomes the DCYF final decision twenty-one calendar days after the date it is mailed to the parties by OAH.

NEW SECTION

**WAC 110-03-0500 Correcting clerical errors in ALJ's decisions.** (1) A clerical error is a mistake that does not change the result or intent of the decision. Some examples of clerical errors are:

- (a) Missing or incorrect words or numbers;
  - (b) Dates inconsistent with the decision or evidence in the record such as using May 3, 2081, instead of May 3, 2018; or
  - (c) Math errors when adding the total of an overpayment.
- (2) If a party disagrees with an ALJ's initial order because of a clerical error, the party may ask for a corrected decision from the ALJ. A party may ask for a corrected ALJ decision by making the request in writing and sending it to the OAH office that held the hearing. A copy of the request must be sent to the other parties or their representatives.
- (3) A request to correct a clerical error must be made within ten days of the date the decision was mailed to the parties by OAH.
- (4) When asking for a corrected decision, a party must clearly identify the clerical error.
- (5) When a party requests a corrected initial or final order, the ALJ must either:
- (a) Send all parties a corrected order; or
  - (b) Deny the request within three business days of receiving it.
- (6) If the ALJ corrects an initial order and a party does not request review, the corrected initial order becomes final twenty-one calendar days after the original initial order was mailed.
- (7) If the ALJ denies the request for a corrected initial order and a party does not request review, the initial order becomes final twenty-one calendar days after the original initial order was mailed.
- (8) Requesting a corrected initial order for a case does not extend the deadline to request review of the initial order by the review judge.

NEW SECTION

**WAC 110-03-0510 Review of the initial order.** (1) If a party disagrees with or wants a change in an initial order, other than correcting a clerical error, he or she may seek review of the initial order with the BOA.

(2) A party must request review of an initial order from the BOA as provided in WAC 110-03-0520 through 110-03-0540.

(3) If more than one party requests review, each request must meet the deadlines described in WAC 110-03-0520.

(4) Before deciding if the initial order should be affirmed, reversed, or remanded for further proceedings the BOA review judge will consider the request, the initial order, and record.

(5) Any party may request that the BOA review an initial order.

(6) BOA review judges may not review final orders entered by an ALJ.

NEW SECTION

**WAC 110-03-0520 Time for requesting review of initial order.** (1) The BOA must receive the written petition for review on or before the twenty-first calendar day after the initial order was mailed. A party may submit the review request by facsimile transmission (fax), but only if the party also submits the request by mail.

(2) A BOA review judge may extend the deadline if a party:

- (a) Asks for more time before the deadline expires; and
  - (b) Shows good cause for requesting more time.
- (3) The BOA may accept a review request after the twenty-one calendar day deadline only if:
- (a) The BOA receives the review request on or before the thirtieth calendar day after the deadline; and
  - (b) A party shows good cause for missing the deadline.

NEW SECTION

**WAC 110-03-0530 Petition for review of initial order.** (1) A party must make the review request (petition for review) in writing and clearly identify the:

- (a) Parts of the initial order with which the party disagrees; and
- (b) Arguments or evidence supporting the party's position.

(2) The petition for review must be filed with the BOA, and the BOA sends a copy to the other parties, their representatives and OAH.

(3) The BOA can be contacted at the following address or at the address stated on the letter containing instructions for obtaining review mailed with the initial order:

DCYF Board of Appeals  
1500 Jefferson St.  
P.O. Box 40975  
Olympia, WA 98504-0975

NEW SECTION

**WAC 110-03-0540 Response to petition for review of initial order.** (1) A party does not have to respond to the review request.

(2) If a party responds, that party must send the response so that the BOA receives it on or before the seventh business day after the date a copy of the petition for review was mailed to the party by the BOA.

(3) The responding party must send a copy of the response to any other party or representative.

(4) If a party needs more time to respond, the party must contact the BOA by the deadline in subsection (2) of this section and show good cause for an extension of time.

(5) The BOA may accept and consider a party's response even if it is received after the deadline.

NEW SECTION

**WAC 110-03-0550 Board of appeals decision process.** (1) After the response deadline, the record on review is closed unless there is a good cause to keep it open or to reopen the record.

(2) A BOA review judge is assigned by the BOA to review the initial order after the record is closed. The BOA review judge only considers evidence given at the original hearing unless the review judge has reopened the record pursuant to subsection (1) of this section.

(3) The BOA review judge will decide the appeal without oral argument, unless the BOA review judge determines that oral argument is necessary for resolution of the appeal.

(4) The BOA review judge enters a final order that affirms, changes, dismisses, or reverses the initial order, or remands (returns) the case to the administrative law judge for further specified action.

NEW SECTION

**WAC 110-03-0560 Authority of the board of appeals review judge.** (1) The BOA review judge reviews initial orders and enters final orders. The BOA review judge has the same decision-making authority as the ALJ. The BOA review judge considers the entire record and decides the case de novo (anew). In reviewing the findings of fact, the BOA review judge must give due regard to the ALJ's opportunity to observe witnesses.

(2) BOA review judges may return (remand) cases to the OAH for further action.

(3) A BOA review judge's authority is limited to those powers conferred (granted) by statute or rule. The BOA review judge has no inherent or common law powers.

(4) The BOA review judge's order is the DCYF final order in the case. If the BOA review judge's final order upholds the department's adverse action, the appealing party must comply with the final order unless the appealing party obtains a stay of the effectiveness of the final order from the superior court after filing a petition for judicial review in accordance with WAC 110-03-0590.

NEW SECTION

**WAC 110-03-0570 Reconsideration.** (1) Reconsideration is:

(a) Asking an ALJ to reconsider a final order entered by the ALJ because the party believes the ALJ made a mistake; and

(b) Asking a BOA review judge to reconsider a final order entered by a BOA review judge because the party believes the BOA review judge made a mistake.

(2) If a party asks for reconsideration of the final order, the reconsideration process must be completed before requesting judicial review. However, a request for reconsideration of a final order is not a precursor to requesting judicial review.

(3) The request for reconsideration should identify the parts of the final order with which the party disagrees and should identify the evidence in the hearing record supporting the party's position.

(4) A party does not have to respond to a request for reconsideration.

(5) If a party responds, that party must send a response to the ALJ or BOA review judge by or before the seventh business day after the date OAH or the BOA review judge mailed the request to the party.

(6) A party must send a copy of the response to any other party or representative.

(7) If a party needs more time to respond, OAH or the review judge may extend the deadline if the party demonstrates good cause for an extension within the deadline in subsection (5) of this section.

(8) The request for reconsideration must be filed with the BOA, and the BOA sends a copy to the other parties, their representatives and OAH.

NEW SECTION

**WAC 110-03-0580 Ruling on request for reconsideration.** (1) After the ALJ or BOA review judge receives a reconsideration request, the ALJ or BOA review judge has twenty calendar days to enter and serve a reconsideration decision unless the ALJ or BOA review judge sends notice that additional time is required.

(2) After the ALJ or BOA review judge receives a reconsideration request, the ALJ or BOA review judge must either:

(a) Write a reconsideration decision; or

(b) Serve all parties an order denying the request.

(3) If the ALJ or BOA review judge does not dispose of the petition or send the parties written notice setting a date by which the ALJ or BOA review judge will act on the petition within twenty days of receipt of the reconsideration request, the request is denied.

(4) The ALJ or BOA review judge decision on reconsideration is final when the decision is mailed or the date the request is denied.

NEW SECTION

**WAC 110-03-0590 Judicial review.** (1) Judicial review is the process of appealing a final order to a superior court.

(2) Any party, except DCYF, may appeal a final order by filing in superior court pursuant to RCW 34.05.514 a written petition for judicial review that meets the requirements of RCW 34.05.546. The petition must be properly filed and served within thirty calendar days of the date the review judge mails the final order in the case. Copies of the petition must be served on DCYF, the office of the attorney general, and all other parties.

(3) To serve DCYF, a copy of the petition must be delivered to the secretary of DCYF or to the DCYF BOA. The petition must be hand delivered or mailed with proof of receipt. The physical location of the secretary is:

DCYF Office of the Secretary  
1150 Jefferson St.  
Olympia, WA 98504-0975

The mailing address of the secretary is:

DCYF Office of the Secretary  
P.O. Box 40975  
Olympia, WA 98504-0975

The physical and mailing address for the DCYF BOA are in WAC 110-03-0530.

(4) To serve the office of the attorney general and other parties, a copy of the petition for judicial review must be sent by regular mail. The office of the attorney general may be served by hand delivery at:

Office of the Attorney General  
7141 Cleanwater Drive S.W.  
Tumwater, WA 98501

The mailing address of the office of the attorney general is:

Office of the Attorney General  
P.O. Box 40124  
Olympia, WA 98504-0124

(5) Generally, a party may file a petition for judicial review only after it has completed the administrative hearing process. See RCW 34.05.534.

(6) Filing a petition for judicial review of a final order does not stay the effectiveness of the final order.

(7) RCW 34.05.510 through 34.05.598 contain further details of the judicial review process.

immediate adoption of the rule because rules adopted by DSHS could not be enforced by the department. Emergency rules are also needed to implement ESHB [ESSB] 6491. The immediate adoption of rules was necessary to enable the certification of agencies to provide assisted outpatient substance use disorder treatment for certain individuals. The emergency adoption of this new chapter is necessary for the preservation of the safety of individuals receiving services and observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest (RCW 34.05.350).

Purpose: Chapter 246-341 WAC, Behavioral health services administrative requirements, the department is continuing the emergency adoption of a new chapter of rules regarding the licensing and certification of behavioral health services while pursuing the permanent adoption of these rules. The authority for behavioral health agency licensing and certification transferred from DSHS to the department effective July 1, 2018.

These rules replace and supersede the emergency rules filed on October 18, 2018, as WSR 18-21-122. There are no changes to these emergency rules from the second emergency rule filing or the initial emergency rule filing as WSR 18-14-018. These rules are substantially the same as the "single set" of licensing and certification rules in chapter 388-877 WAC filed by the DSHS division of behavioral health and recovery as WSR 18-06-043 that were repealed by DSHS as a result of the initial or f 2ESHB 1388. These rules continue to replace the sections in chapter 388-877 WAC that refer to licensing and certification of behavioral health agencies. In addition, the emergency rules continue a new certification for assisted outpatient behavioral health services created by ESSB 6491 (chapter 291, Laws of 2018), effective April 1, 2018.

The following is a summary of the differences between the department's emergency rules compared to the requirements that were initially required by DSHS in chapter 388-877 WAC that were repealed by DSHS effective July 1, 2018. The department:

1. Changed all WAC title and chapter numbers and internal references from WAC 388-877-XXXX to 246-341-XXXX. For example, WAC 388-877-0100 became 246-341-0100.

2. Changed the names of state organizations throughout the document consistent with the transfer of authority under 2ESHB 1388.

3. Removed specific information about the DSHS grievance process and added cross references to health care authority (HCA) rules in chapter 182-538D WAC.

4. Added a new certification for assisted outpatient behavioral health treatment as described in ESSB 6491.

5. Adjusted definitions to reflect duties transferred to DOH and HCA.

6. Changed information about where and how to send in licensure applications.

7. Changed how the department sends a behavioral health agency a statement of deficiencies report.

8. Added a statement that indicates that the department may summarily suspend an agency's license or certification when an immediate danger to public health, safety, or welfare requires emergency action.

### WSR 19-05-046

#### EMERGENCY RULES

#### DEPARTMENT OF HEALTH

[Filed February 15, 2019, 7:43 a.m., effective February 15, 2019]

Effective Date of Rule: February 15, 2019.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Effective July 1, 2018, Section 10002, of 2ESHB 1388 (chapter 201, Laws of 2018) transferred authority and responsibility for behavioral health agency licensing and certification from the department of social and health services (DSHS) to the department of health (department). This state law required

9. Updated the directions on how to appeal a decision made by the department regarding licensure or certification.

10. Added a cross reference to requirements for adult secure withdrawal management and stabilization services in the youth section that was inadvertently left out of the DSHS single set but was in rule prior to April 2018.

11. Added an exemption for state psychiatric hospitals, United States Veterans Administration facilities, and other federal facilities for inpatient behavioral health services that was inadvertently left out of the DSHS single set but was in rule prior to April 2018.

HCA is adopting rules to replace sections in chapter 388-877 WAC regarding behavioral health organization grievance processes.

Citation of Rules Affected by this Order: New WAC 246-341-0100, 246-341-0110, 246-341-0200, 246-341-0300, 246-341-0305, 246-341-0310, 246-341-0315, 246-341-0320, 246-341-0325, 246-341-0330, 246-341-0335, 246-341-0340, 246-341-0342, 246-341-0345, 246-341-0350, 246-341-0355, 246-341-0360, 246-341-0365, 246-341-0370, 246-341-0400, 246-341-0410, 246-341-0420, 246-341-0425, 246-341-0430, 246-341-0500, 246-341-0510, 246-341-0515, 246-341-0520, 246-341-0600, 246-341-0605, 246-341-0610, 246-341-0620, 246-341-0640, 246-341-0650, 246-341-0700, 246-341-0702, 246-341-0704, 246-341-0706, 246-341-0708, 246-341-0710, 246-341-0712, 246-341-0714, 246-341-0716, 246-341-0718, 246-341-0720, 246-341-0722, 246-341-0724, 246-341-0726, 246-341-0728, 246-341-0730, 246-341-0732, 246-341-0734, 246-341-0736, 246-341-0738, 246-341-0740, 246-341-0742, 246-341-0744, 246-341-0746, 246-341-0748, 246-341-0750, 246-341-0752, 246-341-0754, 246-341-0800, 246-341-0805, 246-341-0810, 246-341-0815, 246-341-0820, 246-341-0900, 246-341-0905, 246-341-0910, 246-341-0915, 246-341-0920, 246-341-1000, 246-341-1005, 246-341-1010, 246-341-1015, 246-341-1020, 246-341-1025, 246-341-1100, 246-341-1102, 246-341-1104, 246-341-1106, 246-341-1108, 246-341-1110, 246-341-1112, 246-341-1114, 246-341-1116, 246-341-1118, 246-341-1120, 246-341-1122, 246-341-1124, 246-341-1126, 246-341-1128, 246-341-1130, 246-341-1132, 246-341-1134, 246-341-1136, 246-341-1138, 246-341-1140, 246-341-1142, 246-341-1144, 246-341-1146, 246-341-1148, 246-341-1150, 246-341-1152, 246-341-1154, 246-341-1156, and 246-341-1158.

Statutory Authority for Adoption: 2ESHB 1388 (chapter 201, Laws of 2018).

Other Authority: ESSB 6491 (chapter 291, Laws of 2018).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: 2ESHB 1388 (chapter 201, Laws of 2018), transfers authority and responsibility for behavioral health agency licensing and certification from DSHS to the department on July 1, 2018. Because the law

transferred authority to adopt rules to the department on the same day the department began enforcing them, emergency rules are required to preserve continuity of certification and licensing functions of behavioral health agencies.

Additionally, Section 3 of ESSB 6491 (now codified as RCW 71.05.148) requires that a petition requesting the court to enter an order for up to ninety days less restrictive alternative treatment (for assisted outpatient substance use disorder (SUD) treatment) to include, "the name of an agency or facility which agreed to assume the responsibility of providing less restrictive alternative treatment if the petition is granted by the court." Continued emergency rules are needed to enable the department to certify agencies to provide assisted outpatient SUD treatment for these individuals. Without this certification in rule, there will be no agencies certified to provide this new treatment category, which could potentially lead to individuals being inappropriately housed in a locked, secure inpatient facility for longer than the court deems necessary or being released due to the lack of a department-certified outpatient SUD facility able to receive these individuals. In addition, public funding for these less restrictive alternative SUD treatment services only became available to pay for placement on July 1, 2018, according to appropriations in ESSB 6032, Section 213 (1)(zz). Under RCW 34.05.350, observing the time requirements of notice and opportunity to comment on proposed permanent rules would be contrary to the public interest, making the continuation of these emergency rules necessary.

This third emergency rule filing continues the previous emergency rule to allow time to complete the process of permanent adoption of these rules. The department filed a CR-101 on June 25, 2018, as WSR 18-14-019 to begin the permanent adoption of these rules, held a stakeholder information webinar on November 13, 2018, which was recorded and can be viewed at [doh.wa.gov/BHI](http://doh.wa.gov/BHI). The webinar explains the department's future plans for a complete redesign of the licensing and certification of behavioral health agencies once these emergency rules have been permanently codified. The department is filing a CR-102 at approximately the same time as this third emergency rule to propose adopting these emergency rules permanently so the rules are easier to find while the department continues working with our partners and stakeholders on the redesign in 2019 and 2020.

For more information about participating in behavioral health rule activities and information about behavioral health agencies, see the department of health web site at [www.doh.wa.gov/BHI](http://www.doh.wa.gov/BHI).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 108, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 108, Amended 0, Repealed 0.

Date Adopted: February 15, 2019.

John Wiesman, DrPH, MPH  
Secretary

### Chapter 246-341 WAC

#### BEHAVIORAL HEALTH SERVICES ADMINISTRATIVE REQUIREMENTS

#### SECTION ONE—BEHAVIORAL HEALTH SERVICES—PURPOSE AND SCOPE

##### NEW SECTION

##### **WAC 246-341-0100 Behavioral health services—**

**Purpose and scope.** (1) The rules in this chapter 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 requirements;
  - (c) Agency personnel requirements; and
  - (d) Agency clinical policies and procedures.

##### NEW SECTION

##### **WAC 246-341-0110 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 behavioral 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.

## SECTION TWO—BEHAVIORAL HEALTH SERVICES—DEFINITIONS

### NEW SECTION

**WAC 246-341-0200 Behavioral health services—Definitions.** The definitions in this section contain words and phrases used for behavioral health services.

"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.

"Administrator" means the designated person responsible for the operation of either the licensed treatment agency, 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.

"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.

"Authority" means the Washington state health care authority.

"Background check" means a search for criminal history record information that includes nonconviction data. 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, or problem and pathological gambling disorders.

"Behavioral health agency" or "agency" means an entity licensed by the department to provide behavioral health services.

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

"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 provide 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 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, 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 a professional licensed or certified under Title 18 RCW practicing within their scope of practice. 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" means the same as "behavioral health agency."

"Community relations plan" means a plan to minimize the impact of an 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;

(i) Psychotherapy;

(j) Assuring transfer of relevant patient information between service providers;

(k) Recovery services; and

(l) Other services determined by behavioral health organizations.

"Complaint" means an alleged violation of licensing or certification requirements under chapters 71.05, 71.12, 71.24, 71.34 RCW, and this chapter, which has been authorized by the department for investigation.

"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, that must be provided in a terminology that the person can reasonably be expected to understand.

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

"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 individ-

ual'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:

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

(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;

(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;

(d) A bomb threat;

(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;

(f) Suicide attempt at the facility;

(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

(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 the department.

"Department" means the Washington state department of health.

"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.

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

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

(b) Is regarded as having such impairment.

"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.

"Grievance" means the same as defined in WAC 182-538D-0655.

"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 services from an agency licensed by the department.

"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 under chapters 71.05, 71.12, 71.34, and 71.24 RCW and its authority to certify problem and pathological gambling treatment programs 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 health care 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" or "MHP" means a designation given by the department to an agency staff member or an attestation by the licensed behavioral health agency that the person meets the following:

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

(b) A person who is licensed by the department as a mental health counselor or mental health counselor associate,

marriage and family therapist, or marriage and family therapist associate;

(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 recognized by the department or attested to by the licensed behavioral health agency;

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

(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.

"Minor" means 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 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.

"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 the same as defined in WAC 182-538D-0200.

"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.

"Recovery" means the process in which 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.

"Secretary" means the secretary of the department of health.

"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 and certified by the department of health 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 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 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 and certified by the department 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 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 any time. 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 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" has the same meaning as defined in chapter 74.34 RCW.

"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 the same as "child."

### SECTION THREE—BEHAVIORAL HEALTH SERVICES—AGENCY LICENSURE AND CERTIFICATION

#### NEW SECTION

**WAC 246-341-0300 Agency licensure and certification—General information.** The department licenses agencies to provide behavioral health treatment services. To gain and maintain licensure, an applicant must meet the requirements of this chapter, applicable local and state rules, and state and federal statutes. In addition, the applicant must meet the applicable specific program requirements for all behavioral health services certified by the department.

(1) An 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 246-341-0310.

(2) 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.

(3) 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 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 246-341-0370 do not apply to exemption to rule decisions.

(4) 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.

(5) 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 department 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 the department 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, 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 department 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.

#### NEW SECTION

**WAC 246-341-0305 Agency licensure and certification—Application.** To apply for licensure to provide any behavioral health service, an 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 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 applicant is seeking certification;

(c) A copy of the report of findings from a 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 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;

(g) A copy of a current department residential treatment facility certificate if the applicant is providing substance use disorder residential treatment or mental health residential treatment; and

(h) Payment of associated fees.

(2) The department conducts an on-site review as part of the initial licensing or certification process (see WAC 246-341-0320).

#### NEW SECTION

**WAC 246-341-0310 Agency licensure and certification—Deeming.** (1) If an agency is currently accredited by a national accreditation organization that is recognized by and has a current agreement with the department, the department must deem the agency to be in compliance with state standards for licensure and certification.

(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 a copy of any reports regarding accreditation from the accrediting agency;

(b) Must meet the requirements in WAC 246-341-0325 and 246-341-0345 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 246-341-0340; and

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

#### NEW SECTION

**WAC 246-341-0315 Agency licensure and certification—Renewals.** A department issued license and certification of behavioral health services expires twelve months from its 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 246-341-0365).

(2) The department may conduct an on-site review as part of the renewal process (see WAC 246-341-0320).

#### NEW SECTION

**WAC 246-341-0320 Agency licensure and certification—On-site reviews and plans of correction.** To obtain and maintain a department-issued license and to continue to provide department-certified behavioral health services, 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, or both, that demonstrates how the agency evaluates program effectiveness and individual participant satisfaction; and

(vi) Any other information, including the criteria in WAC 246-341-0335 (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 a discussion of findings.

(3) The department will send the agency a statement of deficiencies report that will include instructions and time frames for submission of a plan of correction.

(4) 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 health and safety concerns require immediate corrective action.

#### NEW SECTION

**WAC 246-341-0325 Agency licensure and 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 246-341-0305(1);

(b) An on-site review is conducted under WAC 246-341-0320 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 246-341-0330 for license and program-specific certification effective dates.

(4) See WAC 246-341-0315 for agency requirements for renewing licensure.

#### NEW SECTION

**WAC 246-341-0330 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.

#### NEW SECTION

**WAC 246-341-0335 Agency licensure and 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 a founded child 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 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 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

including the reason(s) for the decision and the agency's right to appeal a department decision according to the provisions of RCW 43.70.115, chapter 34.05 RCW, and chapter 246-10 WAC.

(4) The department may summarily suspend an agency's license or certification of a behavioral health service when an immediate danger to the public health, safety, or welfare requires emergency action.

(5) 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 or federally funded program or both; and

(c) Notify the authority, the 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).

#### NEW SECTION

**WAC 246-341-0340 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 Americans with Disabilities 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 246-341-0365).

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

(a) Suitable for the purposes intended;

(b) Not a personal residence; and

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

#### NEW SECTION

**WAC 246-341-0342 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 department; 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.

NEW SECTION

**WAC 246-341-0345 Agency licensure and 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 additional 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 246-341-0365).

(2) The agency is subject to an on-site review under WAC 246-341-0320 before the department:

(a) Certifies the new behavioral health service(s); and

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

NEW SECTION

**WAC 246-341-0350 Agency licensure and certification—Change in ownership.** (1) When a licensed behavioral health agency changes ownership, the department requires:

(a) A new license application (see WAC 246-341-0305);

(b) Payment of fees (see WAC 246-341-0365); and

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

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

NEW SECTION

**WAC 246-341-0355 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 246-341-0305); and

(c) Payment of fees (see WAC 246-341-0365).

(2) The agency:

(a) Is subject to an on-site review under WAC 246-341-0320 when changing locations.

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

NEW SECTION

**WAC 246-341-0360 Agency licensure and certification—Facility remodel.** When a licensed behavioral health agency changes the accessibility of the facility by remodeling, the department requires the agency to:

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

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

NEW SECTION

**WAC 246-341-0365 Agency licensure and 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

Application fees for agency certification for approved substance use disorder treatment programs	
Initial and annual certification fees for withdrawal management, residential, and nonresidential services	
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 246-341-0310
Nonresidential services	\$750 per year for agencies not renewing certification through deeming
	\$200 per year for agencies certified through deeming per WAC 246-341-0310
Complaint/critical incident investigation fees	
All agencies	\$1,000 per substantiated complaint investigation and \$1,000 per substantiated critical incident investigation that results in a requirement for corrective action

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

- (a) The number of licensed 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 the department	\$500 annual licensing fee

Initial licensing application fee for mental health treatment programs	
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 department's current published "Service Encounter Reporting Instructions for BHOs" and the "Consumer Information System (CIS) Data Dictionary for BHOs."

(a) Existing licensed agencies must compute the annual service 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) Agencies providing inpatient evaluation and treatment services 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.

NEW SECTION

**WAC 246-341-0370 Agency licensure and certification—Appealing a department decision.** An agency may appeal a decision made by the department regarding agency licensure or certification of a behavioral health service according to WAC 246-341-0335.

**SECTION FOUR—BEHAVIORAL HEALTH SERVICES—AGENCY ADMINISTRATION**

NEW SECTION

**WAC 246-341-0400 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) Notify the department within thirty days of changes of the administrator.

NEW SECTION

**WAC 246-341-0410 Agency administration—Administrator key responsibilities.** (1) The agency administrator is responsible for the day-to-day operation of the agency's 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;

(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 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.

#### NEW SECTION

**WAC 246-341-0420 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 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 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, the department of social and health services, the health care authority, and the department of health; 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 organi-



zation (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 246-341-0600.

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

(a) Right to report an alleged violation of chapters 71.05, 71.12, 71.24, 71.34 RCW, and this chapter consistent with WAC 246-341-0605;

(b) Grievance or appeal consistent with WAC 182-538D-0654 through 182-538D-0680.

#### NEW SECTION

**WAC 246-341-0425 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 246-341-0650.

#### NEW SECTION

**WAC 246-341-0430 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 not a personal residence;

(2) Has adequate private space for personal consultation with an individual, staff charting, and therapeutic and social activities, as appropriate;

(3) Has secure storage of active or closed confidential records; and

(4) Has separate secure, locked storage of poisonous external chemicals and caustic materials.

### **SECTION FIVE—BEHAVIORAL HEALTH SERVICES—PERSONNEL**

#### NEW SECTION

**WAC 246-341-0500 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) 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.

(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 web site 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.

(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.

(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.

(5) Staff training. A description of how the agency provides training within thirty days of an employee's hire date and annually thereafter.

NEW SECTION

**WAC 246-341-0510 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.

(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 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 grievances.

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

(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 246-341-0515 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 the department; 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, physician assistant, advanced registered nurse practitioner (ARNP), 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-credentialed 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 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 postcertification or postregistration 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.

(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.

#### NEW SECTION

**WAC 246-341-0520 Personnel—Agency requirements for supervision of trainees, 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, interns, volunteers, and students:

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

(2) Each trainee, 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. The assigned supervisor:

(a) Must be credentialed by the department 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.

### **SECTION SIX—BEHAVIORAL HEALTH SERVICES—CLINICAL**

#### NEW SECTION

**WAC 246-341-0600 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 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 according to WAC 182-538D-0654 through 182-538D-0680 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) Submit a report to the department when you feel the agency has violated a WAC requirement regulating 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 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 182-538D-0654 through 182-538D-0680 apply to an individual who receives behavioral health services funded through a federal medicaid program or sources other than a federal medicaid program.

#### NEW SECTION

**WAC 246-341-0605 Complaint process.** (1) Any person may submit a report to the department of an alleged violation of licensing and certification laws and rules.

(2) Health care professionals credentialed by the department must comply with the mandatory reporting requirements in chapters 18.130 RCW and 246-16 WAC.

(3) If the department determines a report should be investigated, the report becomes a complaint. If the department conducts a complaint investigation, agency representatives must cooperate to allow department 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 personnel file; and

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

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

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

(a) Individual or individual's representative for making a report with the department or being interviewed by the department about a complaint;

(b) A witness involved in the complaint issue; or

(c) An employee of the agency.

(5) The department may assess a fee under RCW 43.70.250, or deny, suspend, or modify a license or certification under RCW 43.70.115, if:

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

(b) The department's finding that the individual or individual's representative, a witness, or employee of the agency experienced an act of retaliation by the agency as described in subsection (4) of this section during or after a complaint investigation.

#### NEW SECTION

**WAC 246-341-0610 Clinical—Assessment.** Each agency licensed by the department to provide any behavioral health service is responsible for an individual's assessment.

(1) The 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 problem and pathological gambling.

(2) The assessment must document that the clinician conducted an age-appropriate, strengths-based psychosocial assessment that considered current needs and the patient's relevant history according to best practices. Such information may include, if applicable:

(a) Identifying information;

(b) Presenting issues;

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

(d) Medical concerns;

(e) Medications currently taken;

(f) Mental health history;

(g) Substance use history, including tobacco;

(h) Problem and pathological gambling history;

(i) An assessment of any risk of harm to self and others, including suicide, 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;

(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 246-341-0300 for information about the exemption process.

#### NEW SECTION

**WAC 246-341-0620 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

(iii) Problem and pathological gambling services.

(b) Address 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 made available to the individual;

(e) Contain measurable goals or objectives, or both, and interventions; and

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

(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.

(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 246-341-0300 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.

#### NEW SECTION

**WAC 246-341-0640 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 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 is in compliance with RCW 71.05.445 regarding mental health services for individuals under department of corrections supervision;

(6) Documentation the individual was informed of applicable federal and state confidentiality requirements;

(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.

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

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

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

(11) Medication records, if applicable;

(12) Laboratory reports, if applicable;

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

(14) Copies of applicable correspondence;

(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.

(16) A copy of any report required by entities such as the courts, department of corrections, department of licensing, and the department of health, 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 and credential 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.

#### NEW SECTION

**WAC 246-341-0650 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, or legal representative, or both. The agency must:

(a) Ensure that any material confidential to another person, agency, or provider 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.

(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.

## SECTION SEVEN—OUTPATIENT SERVICES

### NEW SECTION

#### **WAC 246-341-0700 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 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 246-341-0702 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 246-341-0300 through 246-341-0650.

### NEW SECTION

#### **WAC 246-341-0704 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 246-341-0300 through 246-341-0650.

### NEW SECTION

#### **WAC 246-341-0706 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 246-341-0300 through 246-341-0650, an agency certified to provide group mental health services must:

- (1) Have a written description of each group's purpose;
- (2) Ensure group therapy services are provided with a staff ratio of one staff member for every sixteen individuals;
- (3) Ensure any group containing more than twelve individuals has at least one facilitator or cofacilitator that is an appropriately credentialed professional; and
- (4) Ensure group notes are recorded in each individual's clinical record and include the requirements of WAC 246-341-0640(15) for discharge information.

### NEW SECTION

#### **WAC 246-341-0708 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, or both, in attendance, 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 246-341-0300 through 246-341-0650.

NEW SECTION

**WAC 246-341-0710 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 support individual employment, education, and participation in other daily activities appropriate to the individual's age, gender, and culture, and assist individuals in resolving crises in the least restrictive setting.

(2) Rehabilitative case management services include specific rehabilitative services provided to:

(a) Assist in an individual's discharge from an inpatient facility; and

(b) Minimize the risk of readmission to an inpatient setting.

(3) An agency certified to provide rehabilitative case management services must meet the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650.

NEW SECTION

**WAC 246-341-0712 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 246-341-0700 (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 the department 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;

(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);

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

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

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

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

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

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

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

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

(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.

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

NEW SECTION

**WAC 246-341-0714 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, prevocational, 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 246-341-0300 through 246-341-0650.

NEW SECTION

**WAC 246-341-0716 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 under chapter 246-337 WAC; and

(2) Be certified for and provide the following:

(a) Rehabilitative case management services (see WAC 246-341-0710);

(b) Less restrictive alternative (LRA) support services (see WAC 246-341-0805) if serving individuals on an LRA court order or conditional release; and

(c) Psychiatric medication services and medication support services (see WAC 246-341-0712).

NEW SECTION

**WAC 246-341-0718 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 246-341-0700. 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.

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

NEW SECTION

**WAC 246-341-0720 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 246-341-0718.

(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 of social and health services' 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 of social and health services' 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 246-341-0722 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 246-341-0718.

(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 sublease.

#### NEW SECTION

**WAC 246-341-0724 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 246-341-0718.

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

(a) Are recognized by the authority as a "peer counselor" as defined in WAC 182-538D-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 246-341-0726 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 246-341-0718, 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.

(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 246-341-0620);

(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;

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

(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 246-341-0728 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 246-341-0718 for recovery support services;

(b) Specific agency staff requirements in WAC 246-341-0718(4); and

(c) Specific clinical record content and documentation requirements in WAC 246-341-0640 and 246-341-0718(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 246-341-0730 Outpatient services—Consumer-run recovery support—Clubhouses—Required clubhouse components.** (1) The department 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.

(2) 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 246-341-0732 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 colocated 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 246-341-0734 Outpatient services—Consumer-run recovery support—Clubhouses—Certification process.** The department grants certification based on compliance with the minimum standards in WAC 246-341-0730 through 246-341-0736.

(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 the department.

(c) Successfully complete an on-site certification review by the department 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 plan of correction approved by the department.

(3) Probationary certification may be issued by the department 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) The department 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 plan of correction with the department.

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

(a) To appeal a decision, the clubhouse must follow the procedure outlined in WAC 246-341-0370 and include the name, signature, and address of the clubhouse director.

(b) The hearing decision will be made according to the provisions of chapters 34.05 RCW and 246-10 WAC.

#### NEW SECTION

**WAC 246-341-0736 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.
- (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 246-341-0738 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 246-341-0300 through 246-341-0650.

(3) An agency certified to provide level one outpatient substance use disorder services must ensure both of the following:

- (a) Group therapy services are provided with a staff ratio of one staff member for every sixteen individuals; and
- (b) A group counseling session with twelve to sixteen youths includes a second staff member.

#### NEW SECTION

**WAC 246-341-0740 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 246-341-0300 through 246-341-0650.

(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.

(3) An agency certified to provide level two intensive outpatient substance use disorder services must ensure both of the following:

- (a) Group therapy services are provided with a staff ratio of one staff member for every sixteen individuals; and
- (b) A group counseling session with twelve to sixteen youths includes a second staff member.

#### NEW SECTION

**WAC 246-341-0742 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 246-341-0820.

(2) An agency certified to provide assessment only services must meet the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650 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 246-341-0620.

(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 246-341-0342.

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

#### NEW SECTION

**WAC 246-341-0744 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 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 246-341-0640.

(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 246-341-0746 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 246-341-0744, 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 246-341-0748 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 246-341-0744, 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 246-341-0750 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 246-341-0744, 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 246-341-0752 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 246-341-0744, 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 246-341-0754 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 246-341-0300 through 246-341-0650 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 sixteen individuals; and

(4) Maintain a written procedure for the response to medical and psychiatric emergencies.

### **SECTION EIGHT—INVOLUNTARY AND COURT-ORDERED OUTPATIENT TREATMENT**

#### NEW SECTION

**WAC 246-341-0800 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 246-341-0805 Involuntary and court-ordered—Less restrictive alternative (LRA) or conditional release support behavioral health services.** Less restrictive alternative (LRA) support and conditional release behavioral 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, substance use disorder treatment, and medical components of community support services. In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650, 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 health disorder or substance use 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 or medication assisted treatment for the assessment and prescription of psychotropic medications or substance use disorder treatment 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 for a mental health disorder or a chemical dependency professional for substance use disorder treatment, 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 246-341-0810 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 246-341-0300 through 246-341-0650, 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.

(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 246-341-0815 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 246-341-0300 through 246-341-0650, 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 use disorder. 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 246-341-0820 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 246-341-0300 through 246-341-0650, 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 246-341-0620; 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 subsection (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.

## SECTION NINE—CRISIS OUTPATIENT MENTAL HEALTH SERVICES

### NEW SECTION

#### **WAC 246-341-0900 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 246-341-0300 through 246-341-0650 except the initial assessment,

individual service plan, and clinical record requirements in WAC 246-341-0610, 246-341-0620, and 246-341-0640.

(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.

(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 246-341-0905 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 deescalation and referral.

(1) In addition to meeting the general requirements for crisis services in WAC 246-341-0900, 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 246-341-0910 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 246-341-0900, 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.

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

#### NEW SECTION

**WAC 246-341-0915 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 246-341-0900, 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 246-341-0920 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 246-341-0900, an agency certified to provide crisis peer support services must:

(a) Ensure services are provided by a person recognized by the authority as a peer counselor, as defined in WAC 246-341-0200, 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.

### SECTION TEN—OPIOID TREATMENT PROGRAMS (OTP)

#### NEW SECTION

**WAC 246-341-1000 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 246-341-1005 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 246-341-0300 through 246-341-0650; and

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

(i) General requirements in WAC 246-341-0420; and

(ii) Program-specific requirements in WAC 246-341-1000 through 246-341-1025.

(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) Bloodborne 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.

(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 ser-

vices 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 of children, youth, and families, when applicable;

(b) Ensure that a group counseling session with twelve to sixteen 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 246-341-1005 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.

(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 246-341-1010 Opioid treatment programs (OTP)—Agency staff requirements.** In addition to meeting the agency administrative and personnel requirements in WAC 246-341-0400 through 246-341-0530, 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 the department 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 246-341-1015 Opioid treatment programs (OTP)—Clinical record content and documentation requirements.** In addition to the general clinical record content requirements in WAC 246-341-0640, 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 246-341-1020 and 246-341-1025 regarding program physician responsibility and medication management).

NEW SECTION

**WAC 246-341-1020 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 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 246-341-1025 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 treat-

ment of opioid addiction. The following opioid treatment medications 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.

(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).

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

### NEW SECTION

**WAC 246-341-1100 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 246-341-1104.

(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 246-341-1102).

(2) An agency providing withdrawal management services to an individual must:

(a) Be a facility licensed by the department under one of the following 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 246-341-0300 through 246-341-0650; 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 246-341-0640, 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 246-341-1102 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 246-341-0300 through 246-341-0650 and the adult withdrawal management requirements in WAC 246-341-1100, 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 of children, youth, and families.
- (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 coeducational 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 246-341-1104 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 246-341-0300 through 246-341-0650, an agency must:

(a) Meet the requirements for withdrawal management services in WAC 246-341-1100; 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 at least daily contact between each in-voluntary individual and a chemical dependency professional or a trained professional person for the purpose of:



- (i) Observation;
- (ii) Evaluation;
- (iii) Release from involuntary commitment to accept treatment on a voluntary basis; and
- (iv) Discharge from the facility to accept voluntary treatment upon referral.

(g) Procedures to assure the protection of individual and family rights as described in WAC 246-341-1122, rights related to antipsychotic medication in WAC 246-341-1124, and rights as described in chapters 71.05 and 71.34 RCW;

(h) 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;

(i) Procedures to assure that a chemical dependency professional and licensed physician, physician assistant, or advanced registered nurse practitioner (ARNP) are available for consultation and communication with the direct patient care staff twenty-four hours a day, seven days a week;

(j) 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;

(k) Procedures to ensure that individuals detained for up to fourteen, ninety, or one hundred eighty 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 reviewed by a nurse, as defined in chapter 18.79 RCW, or medical practitioner 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 246-341-1106 Secure withdrawal management and stabilization services—Youth.** In addition to the requirements for secure withdrawal and stabilization services in WAC 246-341-1100, and requirements for adult secure withdrawal management and stabilization services in WAC 246-341-1104, 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 246-341-1102;

(2) Requirements for the posting of individual rights for minors in WAC 246-341-1120; and

(3) Requirements for inpatient services for minors found in WAC 246-341-1128, 246-341-1130, and 246-341-1132.

#### NEW SECTION

**WAC 246-341-1108 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 the department 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 246-341-0300 through 246-341-0650;

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

(i) General requirements in WAC 246-341-0420; and

(ii) Specific applicable requirements in WAC 246-341-1110 through 246-341-1116.

(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) Bloodborne 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 sixteen 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.

(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 246-341-0820.

#### NEW SECTION

#### **WAC 246-341-1110 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 246-341-0300 through 246-341-0650 and the residential treatment services requirements in WAC 246-341-1108, 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 246-341-1112 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 246-341-0300 through 246-341-0650 and the residential treatment services requirements in WAC 246-341-1108, 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 246-341-1114 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 246-341-0300 through 246-341-0650 and the residential treatment services requirements in WAC 246-341-1108 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 reentry living skills to include seeking and obtaining safe housing.
- (e) Conduct and document an individual service plan review at least monthly.

#### NEW SECTION

**WAC 246-341-1116 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 246-341-0300 through 246-341-0650 and the residential treatment services requirements in WAC 246-341-1108 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 coeducational treatment services are provided.
- (2) Ensure group counseling sessions with twelve to sixteen 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 deescalation;
  - (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 of children, youth, and families.

(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 246-341-1118 Mental health inpatient services—General.** (1) Inpatient services include the following types of behavioral health services certified by the department:

- (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 the department under one of the following 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 246-341-0100 through 246-341-0650;

(d) Meet the applicable inpatient services requirements in WAC 246-341-1118 through 246-341-1132;

(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) Deescalation 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 department.

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

(5) This chapter does not apply to state psychiatric hospitals as defined in chapter 72.23 RCW or facilities owned or operated by the department of veterans affairs or other agencies of the United States government.

#### NEW SECTION

**WAC 246-341-1120 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 246-341-1122 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 246-341-1124 Mental health inpatient services—Rights related to antipsychotic medication.** All individuals have a right to make an informed decision regarding 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 246-341-1126 Mental health inpatient services—Policies and procedures—Adult.** In addition to meeting the agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0100 through 246-341-0650, and the applicable inpatient service requirements in WAC 246-341-1118 through 246-341-1132, 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, physician assistant, or psychiatric advanced registered nurse practitioner (ARNP) 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, ninety, or one hundred and eighty 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 psychiatric 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 246-341-0620;

(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 246-341-1128 Mental health inpatient services—Policies and procedures—Minors.** In addition to meeting the agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0100 through 246-341-0650 and the applicable inpatient services requirements in WAC 246-341-1118 through 246-341-1132, 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 under chapter 71.12 RCW, meets the following notification require-

ments 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.

(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 246-341-1130 Mental health inpatient services—Treatment of a minor without consent of parent.** An inpatient evaluation and treatment facility, 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 246-341-1132 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 246-341-1134 Mental health inpatient services—Evaluation and treatment services.** In addition to meeting the agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0100 through 246-341-0650, and the applicable inpatient services requirements in WAC 246-341-1118 through 246-341-1132 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 246-341-1136 Mental health inpatient services—Exception—Long-term certification.** (1) For adults: At the discretion of the department, 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 the department, 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 the department 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 246-341-1134.

(5) The exception certification must be signed by the secretary or secretary's designee. 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 the department determines are necessary for the best interests of residents.

(6) The department 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 the department 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 246-341-1138 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 246-341-0100 through 246-341-0650, the applicable inpatient services requirements in WAC 246-341-1118 through 246-341-1322, and the evaluation and treatment service requirements of WAC 246-341-1134, 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 children, youth, and families 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 246-341-1140 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 246-341-0100 through 246-341-0650 and the applicable inpatient services requirements in WAC 246-341-1118 through 246-341-1132, an agency certified to provide crisis stabilization unit services must meet all of the following criteria:

(1) Be licensed by the department.

(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, physician assistant, or psychiatric advanced registered nurse practitioner (ARNP) 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 246-341-1122, 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 246-341-1142 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.

(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 246-341-1144 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 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 the department.

(1) In addition to meeting the agency licensure, certification, administration, personnel, and clinical requirements in

WAC 246-341-0100 through 246-341-0650 and the applicable inpatient services requirements in WAC 246-341-1118 through 246-341-1132, an agency certified to provide triage services must:

(a) Be licensed by the department 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 246-341-1146 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 246-341-1152(2) for additional requirements for an individual brought to a triage involuntary placement facility by a peace officer. See WAC 246-341-1152(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. 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 246-341-1144(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 246-341-1144 (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 246-341-1148 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 246-341-1146.

(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 246-341-1150 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 246-341-1152 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.

- (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 246-341-1154 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 certifies the services.

(1) In addition to meeting the agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0100 through 246-341-0650 and the inpatient services requirements in WAC 246-341-1118 through 246-341-1132, an agency providing competency evaluation and restoration services must be licensed by the department as:

(a) A residential treatment facility consistent with chapter 246-337 WAC;

(b) A 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 246-341-1134 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 246-341-1156; 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 246-341-1158.

(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 246-341-1156 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) Upon request, receive a copy of the agency's internal procedures for addressing reported concerns that may amount to a complaint or grievance; and

(j) Submit a report to 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 pri-

mary 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 246-341-1158 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.

**WSR 19-05-053**  
**EMERGENCY RULES**  
**HEALTH CARE AUTHORITY**

[Filed February 15, 2019, 11:37 a.m., effective February 15, 2019, 11:37 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This rule making implements 2ESHB 1388 which changed the designation of the state behavioral health authority from the department of social and health services to the health care authority, effective July 1, 2018. The health care authority is the single state medicaid agency responsible for state health care purchasing. These emergency rules are substantially the same as the rules in chapter 388-865 WAC and a few sections regarding the grievance processes in chapter 388-877 WAC that were repealed by the department of social and health services.

Citation of Rules Affected by this Order: New WAC 182-100-0100, 182-538D-0200, 182-538D-0232, 182-538D-0234, 182-538D-0236, 182-538D-0242, 182-538D-0246, 182-538D-0248, 182-538D-0252, 182-538D-0254, 182-538D-0256, 182-538D-0258, 182-538D-0262, 182-538D-0264, 182-538D-0266, 182-538D-0268, 182-538D-0272, 182-538D-0370, 182-538D-0375, 182-538D-0380, 182-538D-0385, 182-538D-0526, 182-538D-0600, 182-538D-0620, 182-538D-0630, 182-538D-0640, 182-538D-0654, 182-538D-0655, 182-538D-0660, 182-538D-0665, 182-538D-0670, 182-538D-0675, and 182-538D-0680.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, 2ESHB 1388.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: 2ESHB 1388 directs the transfer of the behavioral health authority to the health care authority, effective July 1, 2018. This emergency filing is necessary to continue the current emergency rule filed under WSR 18-21-132, which is set to expire on February 16, 2019, while the agency moves through permanent rule-making process. The agency is currently working with subject matter experts to revise and refine the rules. Since the last emergency filing, the agency has expanded the work to include a broader range of subject matter experts.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 33, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 33, Amended 0, Repealed 0.

Date Adopted: February 15, 2019.

Wendy Barcus  
Rules Coordinator

**Chapter 182-100 WAC**  
**PROBLEM GAMBLING**

NEW SECTION

**WAC 182-100-0100 Problem and pathological gambling treatment services.** (1) Under RCW 43.20A.890, the Washington state health care authority (HCA) administers a program for:

(a) The prevention and treatment of problem and pathological gambling; and

(b) The training of professionals in the identification and treatment of problem and pathological gambling, to be administered by a qualified person who has training and experience in problem gambling or the organization and administration of treatment services for persons suffering from problem gambling.

(2) HCA tracks program participation and participant outcomes.

(3) To receive treatment under this program, a person must:

(a) Need treatment for problem or pathological gambling, or because of the problem or pathological gambling of a family member, but is unable to afford treatment; and

(b) Be identified by HCA as being most amenable to treatment.

(4) Treatment under this section is available only to the extent of the funds appropriated or otherwise made available to HCA for this purpose.

(5) Problem and pathological gambling treatment services include diagnostic screening and assessment, and individual, group, couples, and family counseling and case management.

(6) A person must have an assessment before receiving problem and pathological gambling services. The purpose of the assessment is to determine if a gambling disorder exists and if there are services available to address the person's needs. The assessment must follow the requirements in WAC 246-341-0610.

(7) An agency providing problem and pathological gambling services must meet the behavioral health agency licensure, certification, administration, personnel, clinical, and outpatient requirements in WAC 246-341-0754 and 246-341-0300 through 246-341-0650.

(8) Definitions for the purposes of this section only.

(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"** means an earlier stage of pathological gambling which compromises, disrupts, or damages family or personal relationships, or vocational pursuits.

**Chapter 182-538D WAC**

**BEHAVIORAL HEALTH SERVICES**

NEW SECTION

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

**"Adult"** means a person age eighteen or older. For purposes of the medicaid program, adult means a person age twenty-one or older.

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

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

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

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

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

**"Child"** means a person under the age of eighteen. For the purposes of the medicaid program, child means a person who is under the age of twenty-one.

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

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

service providers; recovery services; and other services determined by behavioral health organizations.

**"Complaint"** means the expression of a dissatisfaction with a service or program which may be investigated by the health care authority.

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

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

**"County authority"** means the board of county commissioners, county council, or county executive having authority to establish a community mental health program, or two or more of the county authorities specified in this subsection which have entered into an agreement to provide a community mental health program.

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

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

**"Designated crisis responder (DCR)"** means a mental health professional appointed by a behavioral health organization (BHO) to perform the duties described in RCW 70.96A.140.

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

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

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

- (a) African American;
- (b) An American Indian or Alaskan native, which includes:
  - (i) A person who is a member or considered to be a member in a federally recognized tribe;

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

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

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

- (c) Asian/Pacific Islander; or

- (d) Hispanic.

**"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.

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

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

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

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

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

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

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

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

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

**"Mental health specialist"** means:

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

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



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

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

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

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

(c) An **"ethnic minority mental health specialist"** is defined as a mental health professional who has demonstrated cultural competence attained through major commitment, ongoing training, experience and/or specialization in serving ethnic minorities, including evidence of one year of service specializing in serving the ethnic minority group under the supervision of an ethnic minority mental health specialist; and

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

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

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

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

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

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

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

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

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

**"Peer counselor"** means a person recognized by DBHR as a person who:

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

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

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

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

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

**"Quality assurance and quality improvement"** means a focus on compliance to 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 and/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 process of change through which people improve their health and wellness, lives a self-directed life, and strives to reach their full potential.

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

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

(a) Adults and children who are acutely mentally ill;

(b) Adults who are chronically mentally ill;

(c) Children who are severely emotionally disturbed; or

(d) Adults who are seriously disturbed and determined solely by a behavioral health organization to be at risk of becoming acutely or chronically mentally ill.

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

**"State minimum standards"** means minimum requirements established by rules adopted by the secretary 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 a person continues using the substance despite significant substance-related problems. The diagnosis of a substance use disorder is based on a pathological pattern of behaviors related to the use of the substances.

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

**"Youth"** means a person who is age seventeen or younger.

**BEHAVIORAL HEALTH ORGANIZATIONS**NEW SECTION

**WAC 182-538D-0232 Behavioral health organizations—General.** (1) A behavioral health organization (BHO) contracts with the division of behavioral health and recovery (DBHR) to administer behavioral health services within its service area.

(2) A BHO operates only in areas of the state that have not implemented the Washington apple health fully integrated managed care (FIMC) program. See chapter 182-538A WAC for rules that govern the FIMC program.

(3) BHOs, behavioral health agencies, and the BHO managed care organization (MCO) must:

(a) Comply with chapters 70.96A, 71.05, 71.24, 71.34, and 71.36 RCW, which contain laws regarding substance use disorders, mental illness, and community mental health services.

(b) Meet the requirements in this chapter and chapter 246-341 WAC regarding the licensure of behavioral health agencies and the certification of behavioral health services. An exemption of any section or subsection may be requested, subject to the criteria in WAC 182-538D-0236. DBHR does not exempt any requirement that is part of statute.

(4) A BHO is responsible to ensure behavioral health services are responsive in an age and culturally competent manner to the substance use disorder treatment and mental health needs of its community.

(5) DBHR administers behavioral health services regionally if the criteria in WAC 182-538D-0234 apply.

(6) The BHO MCO is the entity that operates the prepaid inpatient health plan (PIHP) medicaid behavioral health services.

(7) WAC 182-538D-0200 contains definitions for terms and phrases used in the BHO and the BHO MCO rules.

NEW SECTION

**WAC 182-538D-0234 Behavioral health organizations—When the division of behavioral health and recovery administers regional behavioral health services.** (1) If a currently operating behavioral health organization (BHO) chooses to stop functioning as a BHO, fails to meet state minimum standards specified in rule, or does not meet the requirements under RCW 71.24.045, the following is implemented:

(a) Under RCW 71.24.035(16), the director of the health care authority:

(i) Is designated as the BHO until a new BHO is designated; and

(ii) Assumes the duties assigned to the region without a participating BHO.

(b) The division of behavioral health and recovery (DBHR):

(i) Administers behavioral health services within the region without a participating BHO; and

(ii) Continues to apply the BHO requirements in WAC 182-538D-0232 through 182-538D-0272 and the BHO man-

aged care organization requirements in WAC 182-538D-0370 through 182-538D-0385.

(2) A person who resides within the service area of a region without a participating BHO:

(a) May receive services, within available resources as defined in RCW 71.24.025(2), from any provider of behavioral health services that is contracted with DBHR and licensed by the department of health; and

(b) Who is a Title XIX medicaid client entitled to receive medically necessary behavioral health services without charge to the client.

(3) This section does not apply to a region in which the health care authority operates the Washington apple health fully integrated managed care (FIMC) program which provides fully integrated physical and behavioral health services to medicaid clients through a health care authority-contracted managed care organization. See chapter 182-538A WAC for information on Washington apple health FIMC.

NEW SECTION

**WAC 182-538D-0236 Behavioral health organizations—How to request an exemption of a minimum standard.** (1) A behavioral health organization (BHO), a licensed behavioral health agency, and the behavioral health organization (BHO) managed care organization (MCO) subject to the BHO and BHO MCO rules may request an exemption of a minimum standard in WAC 182-538D-0232 through 182-538D-0272 and 182-538D-0370 through 182-538D-0385 by submitting a request in writing to the director of the division of behavioral health and recovery (DBHR).

(2) The exemption request must include:

(a) The name and address of the entity that is making the request;

(b) The specific section or subsection of the rule for which an exemption is being requested;

(c) The reason why the exemption is necessary, or the method the entity will use to meet the desired outcome of the section or subsection in a more effective and efficient manner;

(d) A description of the plan and timetable to achieve compliance with the minimum standard or to implement, test, and report results of an improved way to meet the intent of the section or subsection;

(e) Documentation that the quality review team or behavioral health ombuds office was consulted and any resulting recommendations are included in the request; and

(f) A description of how people affected by the exemption will be notified.

(3) DBHR's review of the request considers whether approving the exemption will impact accountability, accessibility, efficiency, individual satisfaction, and quality of care, or will violate state or federal law. The requestor receives a determination notice from DBHR within thirty days from the date the exemption request was received.

(a) If DBHR grants the exemption request, the notice includes:

(i) The section or subsection of rule exempted;

(ii) The conditions of acceptance;

(iii) The time frame for which the exemption is approved; and

(iv) Notification that the exemption may be renewed upon request of the party that initially asked for the exemption. In this case, the requestor must submit a renewal request to the director of DBHR before the time frame of the initial exemption expires, and meet the applicable requirements of subsection (1) of this section.

(b) If DBHR denies the exemption request, the notice includes the reason for the denial.

(4) DBHR cannot exempt any minimum standard that is required by:

(a) Statute; or

(b) Another state agency.

#### NEW SECTION

**WAC 182-538D-0242 Behavioral health organizations—Payment for behavioral health services.** Within available resources as defined in RCW 71.24.025(4), a behavioral health organization (BHO) must ensure a person's eligibility for and payment for behavioral health services meet the following:

(1) A person who is eligible for medicaid is entitled to receive covered medically necessary behavioral health services without charge to the person, consistent with the state's medicaid state plan or federal waiver authorities. A medicaid recipient is also entitled to receive behavioral health services from a behavioral health organization (BHO) managed care organization (MCO) without charge.

(2) A person who is not eligible for medicaid is entitled to receive behavioral health services consistent with priorities established by the health care authority. The person, the parent(s) of the person under age eighteen, the person's legal guardian, or the estate of the person:

(a) Is responsible for payment for services provided; and

(b) May apply to the following entities for payment assistance:

(i) The health care authority for medical assistance;

(ii) The behavioral health service provider for payment responsibility based on a sliding fee scale; or

(iii) The BHO MCO for authorization of payment for involuntary evaluation and treatment services.

#### NEW SECTION

**WAC 182-538D-0246 Behavioral health organizations—Public awareness of behavioral health services.** A behavioral health organization (BHO) or its designee must provide public information on the availability of mental health and substance use disorder services. The BHO must:

(1) Maintain information on available services, including crisis services and the recovery help line in telephone directories, public web sites, and other public places in easily accessible formats;

(2) Publish and disseminate brochures and other materials or methods for describing services and hours of operation that are appropriate for all people, including those who may be visually impaired, limited-English proficient, or unable to read; and

(3) Post and make information available to people regarding the behavioral health ombuds office consistent with WAC 182-538D-0262, and local advocacy organizations that may assist people in understanding their rights.

#### NEW SECTION

**WAC 182-538D-0248 Behavioral health organizations—Governing body responsible for oversight.** The behavioral health organization (BHO) must establish a governing body responsible for oversight of the BHO. The governing body must:

(1) Be free from conflict of interest and all appearance of conflict of interest between personal, professional and fiduciary interests of a governing body member and the best interests of the BHO and the people it serves.

(2) Have rules about:

(a) When a conflict of interest becomes evident;

(b) Not voting or joining a discussion when a conflict of interest is present; and

(c) When the governing body can assign the matter to others, such as staff members or advisory bodies.

#### NEW SECTION

**WAC 182-538D-0252 Behavioral health organizations—Advisory board membership.** (1) A behavioral health organization (BHO) must appoint advisory board members and maintain an advisory board in order to:

(a) Promote active engagement with people with behavioral health disorders, their families, and behavioral health agencies; and

(b) Solicit and use the advisory board members input to improve service delivery and outcome.

(2) The BHO must appoint advisory board members and maintain an advisory board that:

(a) Broadly represents the demographic character of the service area;

(b) Is composed of at least fifty-one percent representation of one or more of the following:

(i) People with lived experience;

(ii) Parents or legal guardians of people with lived experience; or

(iii) Self-identified as people in recovery from a behavioral health disorder.

(c) Includes law enforcement representation; and

(d) Includes tribal representation, upon request of a tribe.

(3) When the BHO is not a function of county government, the advisory board must include no more than four county elected officials.

(4) The advisory board:

(a) May have members who are employees of subcontracted agencies, as long as there are written rules that address potential conflicts of interest.

(b) Has the discretion to set rules in order to meet the requirements of this section.

(c) Membership is limited to three years per term for time served, per each advisory board member. Multiple terms may be served by a member if the advisory board rules allow it.

(5) The advisory board independently reviews and provides comments to either the BHO, the BHO governing board, or both, on plans, budgets, and policies developed by the BHO to implement the requirements of this section, chapters 71.05, 71.24, 71.34 RCW, and applicable federal laws.

#### NEW SECTION

**WAC 182-538D-0254 Behavioral health organizations—Voluntary inpatient services and involuntary evaluation and treatment services.** A behavioral health organization (BHO) must develop and implement age and culturally competent behavioral health services that are consistent with chapters 70.96A, 71.24, 71.05, and 71.34 RCW.

(1) For voluntary inpatient services, the BHO must develop and implement formal agreements with inpatient services funded by the BHO regarding:

- (a) Referrals;
- (b) Admissions; and
- (c) Discharges.

(2) For involuntary evaluation and treatment services, the BHO:

(a) Must ensure that people in their regional service area have access to involuntary inpatient care; and

(b) Is responsible for coordinating discharge planning with the treating inpatient facility.

(3) The BHO must:

(a) Ensure periodic reviews of the evaluation and treatment service facilities consistent with BHO procedures and notify the appropriate authorities if it believes that a facility is not in compliance with applicable rules and laws.

(b) Authorize admissions into inpatient evaluation and treatment services for people from:

- (i) State psychiatric hospitals:
  - (A) Western state hospital;
  - (B) Eastern state hospital; and
  - (C) The child study and treatment center.
- (ii) Community hospitals.

(iii) Certified inpatient evaluation and treatment facilities licensed by the department of health as adult residential treatment facilities.

(iv) The children's long-term inpatient program (CLIP).

(c) Receive prior approval from the division of behavioral health and recovery (DBHR) in the form of a single bed certification for services to be provided to people on a ninety- or one hundred eighty-day community inpatient involuntary commitment order consistent with the exception criteria in WAC 246-341-1136.

#### NEW SECTION

**WAC 182-538D-0256 Behavioral health organizations—Community support, residential, housing, and employment services.** (1) **Community support services** as defined in WAC 182-538D-0200. A behavioral health organization (BHO) must:

(a) Develop and coordinate age and culturally appropriate community support services that are consistent with chapters 71.05, 71.24, and 71.34 RCW to ensure that the mental health and substance use disorder services listed in chapter 246-341 WAC can be accessed by all eligible people in the

BHO's service area and are provided to eligible people directly, or by contract.

(b) Ensure prescreening determinations are conducted for providing community support services for people with mental illness who are being considered for placement in nursing facilities as required by RCW 71.24.025(8).

(2) **Residential services** as defined in WAC 182-538D-0200. A BHO must:

(a) Ensure active search and promotion of access to, and choice in, safe and affordable independent housing that is appropriate to the person's age, culture, and residential needs. This includes:

(i) Providing services to families of people who are homeless or at imminent risk of becoming homeless as defined in Public Law 100-77, through outreach, engagement and coordination of linkage of services with shelter and housing; and

(ii) Assuring the availability of community support services, with an emphasis on supporting people in their own home or where they live in the community, with residences and residential supports prescribed in the individual service plan, including a full range of residential services as defined in RCW 71.24.025(23).

(b) Ensure that people in licensed residential facilities receive behavioral health services consistent with their individual service plan and are advised of their rights, including long-term care rights under chapter 70.129 RCW.

(3) **Housing services** as defined in WAC 182-538D-0200. A BHO must ensure active search and promotion of access to, and choice in, safe and affordable housing that is appropriate to the person's age, culture, and needs. This includes:

(a) Providing services to families of people who are homeless or at imminent risk of becoming homeless as defined in Public Law 100-77, through outreach, engagement and coordination of linkage of services with shelter and housing;

(b) Assuring the availability of community support services, with an emphasis on supporting people in their own home or where they live in the community, with residences and residential supports prescribed in the individual service plan; and

(c) Coordinating with public housing entities, homeless continuums of care, and affordable housing developers.

(4) **Employment services.** A BHO must coordinate with the health care authority or other local entities that support employment services to assure that people wanting to work are provided with recovery support-employment services under WAC 246-341-0720.

#### NEW SECTION

**WAC 182-538D-0258 Behavioral health organizations—Administration of the Mental Health Involuntary Treatment Act and Substance Use Disorders Involuntary Treatment Act.** A behavioral health organization (BHO) must establish policies and procedures for administration of the Mental Health Involuntary Treatment Act and Substance Use Disorders Involuntary Treatment Act, including investigation, detention, transportation, court-related, and other ser-

vices required by chapters 70.96A, 71.05 and 71.34 RCW. This includes:

(1) Ensuring that designated crisis responders (DCRs) perform the duties of involuntary investigation and detention in accordance with the requirements of chapters 70.96A, 71.05 and 71.34 RCW.

(2) Documenting the person's compliance with the conditions of mental health less restrictive alternative court orders by:

(a) Ensuring periodic evaluation of each committed person for release from or continuation of an involuntary treatment order. Evaluations must be recorded in the clinical record, and must occur at least monthly for ninety-day commitments and one hundred eighty-day commitments.

(b) Notifying the DCR if noncompliance with the less restrictive alternative order impairs the person sufficiently to warrant detention or evaluation for detention and petitioning for revocation of the less restrictive alternative court order.

(3) Ensuring that the requirements of RCW 71.05.700 through 71.05.715 are met.

#### NEW SECTION

**WAC 182-538D-0262 Behavioral health organizations—Behavioral health ombuds office.** A behavioral health organization (BHO) must provide unencumbered access to and maintain the independence of the behavioral health ombuds service as set forth in the contract between the BHO and the division of behavioral health and recovery (DBHR). The BHO and DBHR must ensure the inclusion of representatives of client advocate organizations when revising the terms of the contract regarding the requirements of this section. Behavioral health ombuds members must be current consumers of the mental health or substance use disorder system, or past consumers or family members of past consumers. The BHO must maintain a behavioral health ombuds office that:

(1) Is responsive to the age and demographic character of the region and assists and advocates for people with resolving issues, grievances, and appeals at the lowest possible level;

(2) Is independent of BHO service providers;

(3) Supports people, family members, and other interested parties regarding issues, grievances, and appeals;

(4) Is accessible to people, including having a toll-free, independent phone line for access;

(5) Is able to access service sites and records relating to people with appropriate releases so that it can reach out to people and help to resolve issues, grievances, and appeals;

(6) Receives training and adheres to confidentiality consistent with this chapter and chapters 70.96A, 71.05, 71.24, and 70.02 RCW;

(7) Continues to be available to advocate and support people through the grievance, appeal and administrative hearing processes;

(8) Involves other people, at the person's request;

(9) Supports people in the pursuit of a formal resolution;

(10) If necessary, continues to assist the person through the administrative hearing process;

(11) Coordinates and collaborates with allied services to improve the effectiveness of advocacy and to reduce duplication when serving the same person;

(12) Provides information on grievances to DBHR and BHO quality strategy; and

(13) Provides reports and formalized recommendations at least biennially to DBHR and BHO advisory and governing boards, local consumer and family advocacy groups, the BHO quality review team, and the BHO provider network.

#### NEW SECTION

**WAC 182-538D-0264 Behavioral health organizations—Quality strategy.** A behavioral health organization (BHO) must implement a quality strategy for continuous quality improvement in the delivery of culturally competent mental health services. The BHO must submit a quality assurance and improvement plan to the division of behavioral health and recovery (DBHR). All changes to the quality assurance and improvement plan must be submitted to DBHR for approval prior to implementation. The plan must include all of the following:

(1) Roles, structures, functions and interrelationships of all the elements of the quality strategy including, but not limited to, the BHO governing board, clinical and management staff, advisory board, behavioral health ombuds service, and quality review teams.

(2) Procedures to ensure that quality assurance and improvement activities are effectively and efficiently carried out with clear management and clinical accountability, including methods to:

(a) Collect, analyze and display information regarding:

(i) The capacity to manage resources and services, including financial and cost information and compliance with statutes, regulations and contracts;

(ii) System performance indicators;

(iii) Quality and intensity of services;

(iv) Incorporation of feedback from people, allied service systems, community providers, the behavioral health ombuds office and quality review team;

(v) Clinical care and service usage including participant outcome measures; and

(vi) Recommendations and strategies for system and clinical care improvements, including information from exit interviews of people and providers;

(b) Monitor management information system data integrity;

(c) Monitor complaints, grievances and adverse incidents for people;

(d) Monitor contractors and to notify DBHR of observations and information indicating that providers may not be in compliance with licensing or certification requirements;

(e) Immediately investigate and report allegations of fraud and abuse of the contractor or subcontractor to DBHR;

(f) Monitor delegated administrative activities;

(g) Identify necessary improvements;

(h) Interpret and communicate practice guidelines to providers;

(i) Implement change;

(j) Evaluate and report results;

(k) Demonstrate incorporation of all corrective actions to improve the system;

(l) Consider system improvements based on recommendations from all on-site monitoring, evaluation, accreditation, and certification reviews; and

(m) Review, update, and make the plan available to community stakeholders.

(3) Targeted improvement activities, including:

(a) Performance measures that are objective, measurable, and based on either current knowledge or best practice, or both, including at least those defined by DBHR in the contract with the BHO;

(b) An analysis of consumer care covering a representative sample of at least ten percent of consumers or five hundred consumers, whichever is smaller;

(c) Efficient use of human resources; and

(d) Efficient business practices.

#### NEW SECTION

**WAC 182-538D-0266 Behavioral health organizations—Quality review teams.** A behavioral health organization (BHO) must establish and maintain unencumbered access to and maintain the independence of a quality review team as described in this section and in the contract between the BHO and the division of behavioral health and recovery (DBHR). The quality review team must include people who currently receive or have in the past received behavioral health services, and may also include the family members of such people. The BHO must assure that quality review teams:

(1) Fairly and independently review the performance of the BHO and service providers in order to evaluate systemic issues as measured by objective indicators of participant outcomes in rehabilitation and recovery, including all of the following:

(a) Quality of care;

(b) The degree to which services are focused on the person and are age and culturally appropriate;

(c) The availability of alternatives to hospitalization, cross-system coordination and range of treatment options; and

(d) The effectiveness of the BHO's coordination with allied systems including, but not limited to, schools, state and local hospitals, jails and shelters.

(2) Have the authority to enter and monitor any behavioral health agency contracted with a BHO.

(3) Meet with interested people and family members, allied service providers, including state or community psychiatric hospitals, BHO contracted service providers, and people that represent the age and ethnic diversity of the BHO's service area to:

(a) Determine if services are accessible and address the needs of people based on sampled people's perception of services using a standard interview protocol. The protocol will query the sampled people regarding ease of accessing services, the degree to which services address medically necessary needs, and the benefit of the service received; and

(b) Work with interested people and other people, if requested by the person, service providers, the BHO, and DBHR to resolve identified problems.

(4) Provide reports and formalized recommendations at least biennially to DBHR, the behavioral health advisory committee and the BHO advisory and governing boards and ensure that input from the quality review team is integrated into the overall BHO quality strategy, behavioral health ombuds office services, local consumer and family advocacy groups, and provider network.

(5) Receive training in and adhere to applicable confidentiality standards.

#### NEW SECTION

**WAC 182-538D-0268 Behavioral health organizations—Standards for contractors and subcontractors.** A behavioral health organization (BHO) must not contract or subcontract for clinical services to be provided using public funds unless the contractor or subcontractor is licensed by the department of health for those services, or is individually licensed by the department of health as defined in chapter 18.57, 18.71, 18.83, or 18.79 RCW. The BHO must:

(1) Require and maintain documentation that contractors and subcontractors are licensed, certified, or registered in accordance with state and federal laws;

(2) Follow applicable requirements of the BHO contract with the division of behavioral health and recovery (DBHR);

(3) Demonstrate that it monitors contractors and subcontractors and notifies DBHR of observations and information indicating that providers may not be in compliance with licensing or certification requirements; and

(4) Terminate its contract or subcontract with a provider if DBHR notifies the BHO of a provider's failure to attain or maintain licensure.

#### NEW SECTION

**WAC 182-538D-0272 Behavioral health organizations—Operating as a behavioral health agency.** A behavioral health organization (BHO) may operate as a behavioral health agency when the BHO:

(1) Meets the criteria in RCW 71.24.045(2) and chapters 70.96A and 71.24 RCW; and

(2) Maintains a current license as a behavioral health agency from the department of health.

### **MENTAL HEALTH PREPAID HEALTH PLANS**

#### NEW SECTION

**WAC 182-538D-0370 Behavioral health organization managed care organization—Minimum standards.** To be eligible to contract with the division of behavioral health and recovery (DBHR), the behavioral health organization (BHO) managed care organization (MCO) must comply with all applicable local, state, and federal rules and laws. The BHO MCO must:

(1) Provide documentation of a population base of sixty thousand medicaid eligible people covered within the service area or receive approval from DBHR based on submittal of an actuarially sound risk management profile;

(2) If the BHO is not a county-based organization, the BHO must maintain licensure by the Washington state office

of the insurance commissioner as a health care service contractor under chapter 48.44 RCW;

(3) Provide medically necessary behavioral health services that are age and culturally appropriate for all medicaid clients in the service area within a capitated rate;

(4) Demonstrate working partnerships with tribal authorities for the delivery of services that blend with tribal values, beliefs and culture;

(5) Develop and maintain written subcontracts that clearly recognize that legal responsibility for administration of the service delivery system remains with the BHO MCO, as identified in the contract with DBHR;

(6) Retain responsibility to ensure that applicable standards of this chapter, other state rules, and federal laws are met even when it delegates duties to subcontractors; and

(7) Ensure the protection of individual and family rights as described in chapters 70.96A, 71.05 and 71.34 RCW.

#### NEW SECTION

**WAC 182-538D-0375 Behavioral health organization managed care plan—Utilization management.** Utilization management is the way the behavioral health organization (BHO) managed care organization (MCO) authorizes or denies substance use disorder treatment or mental health services, monitors services, and follows the level of care guidelines. To demonstrate the impact on access to care of adequate quality, a BHO must provide utilization management of the behavioral health rehabilitation services under 42 C.F.R. Sec. 440.130(d) that is independent of service providers. This process must:

(1) Provide effective and efficient management of resources;

(2) Assure capacity sufficient to deliver appropriate quality and intensity of services to people without a wait list consistent with the contract with the division of behavioral health and recovery (DBHR);

(3) Plan, coordinate, and authorize community support services;

(4) Ensure that services are provided according to the individual service plan;

(5) Ensure assessment and monitoring processes are in place by which service delivery capacity responds to changing needs of the community and the person;

(6) Develop, implement, and enforce written level of care guidelines for admissions, placements, transfers and discharges into and out of services including:

(a) A clear process for the BHO MCO's role in the decision-making process about admission and continuing stay at various levels is available in language that is clearly understood by all parties involved in a person's care, including laypersons;

(b) Criteria for admission into various levels of care, including community support, inpatient and residential services that are clear and concrete;

(c) Methods to ensure that services are individualized to meet the needs of all people served, including methods that address different ages, cultures, languages, civil commitment status, physical abilities, and unique service needs; and

(d) Assurance that the BHO MCO retains a sufficiently strong and regular oversight role to assure decisions are being made appropriately, to the extent authorization of care at any level of care or at continuing stay determinations is delegated.

(7) Collect data that measures the effectiveness of the criteria in ensuring that all eligible people get services that are appropriate to their needs; and

(8) Report to DBHR any knowledge it gains that the BHO MCO or behavioral health service provider is not in compliance with a state or federal rule or law.

#### NEW SECTION

**WAC 182-538D-0380 Behavioral health organization managed care organization—Choice of primary provider.** (1) The behavioral health organization (BHO) managed care organization (MCO) must:

(a) Ensure that each person receiving nonemergency behavioral health rehabilitation services has a primary provider who is responsible to carry out the individual service plan; and

(b) Allow people, parents of people age twelve and younger, and guardians of people of all ages to select a primary provider from the available primary provider staff within the BHO MCO.

(2) For a person with an assigned case manager, the case manager is the primary provider.

(3) If the person does not select a primary provider, the BHO MCO or its designee must assign a primary provider not later than fifteen working days after the person requests services.

(4) The BHO MCO or its designee must allow a person to change primary providers at any time for any reason. The person must notify the BHO MCO or its designee of the request for a change, and inform the MCO of the name of the new primary provider.

#### NEW SECTION

**WAC 182-538D-0385 Behavioral health organization managed care organization—Behavioral health screening for children.** The behavioral health organization (BHO) managed care organization (MCO) is responsible for conducting behavioral health screening and treatment for children eligible under the federal Title XIX early and periodic screening, diagnosis, and treatment (EPSDT) program. This includes:

(1) Providing resource management services for children eligible under the EPSDT program as specified in contract with the division of behavioral health and recovery; and

(2) Developing and maintaining an oversight committee for the coordination of the EPSDT program that must include representation from parents of medicaid-eligible children.

**INPATIENT AND EVALUATION  
TREATMENT FACILITIES**

NEW SECTION

**WAC 182-538D-0526 Single bed certification.** At the discretion of the health care authority, an exception may be granted to allow timely and appropriate treatment in a facility that is not certified under chapter 246-341 WAC to a person on a seventy-two hour detention, a five-day detention pending a revocation proceeding, or a fourteen-day commitment. An exception may also be granted for a maximum of thirty days to allow a community facility to provide treatment to a person on a ninety- or one hundred eighty-day inpatient involuntary commitment order or to a person who has been revoked from a less restrictive alternative order or conditional release. For involuntarily detained or committed children, the exception may be granted to allow timely and appropriate treatment in a facility not certified under chapter 246-341 WAC until the child's discharge from that setting to the community, or until they transfer to a bed in a children's long-term inpatient program (CLIP).

(1) The behavioral health organization (BHO) or (BHO) managed care organization (MCO) or a designee must submit a written request for a single bed certification to the health care authority. In the case of a child, the facility must submit the written request to the health care authority. The request must be submitted and approved by the health care authority for a facility to accept a person for timely and appropriate treatment under this section. If the health care authority has assumed the duties assigned to a nonparticipating BHO, an entity designated by the health care authority will perform the functions described in this section.

(2) A single bed certification may be issued to the facility for timely and appropriate mental health treatment when the following requirements are met in each instance where such certification is sought for a person:

(a) The facility that is the site of the proposed single bed certification confirms that it is willing and able to provide directly, or by direct arrangement with other public or private agencies, timely and appropriate mental health treatment to the person for whom the single bed certification is sought; and

(b) The request for single bed certification describes why the person meets at least one of the following criteria:

(i) The person is expected to be ready for discharge from inpatient services within the next thirty days and being at a community facility would facilitate continuity of care, consistent with the person's individual treatment needs;

(ii) The person can receive appropriate mental health treatment in a residential treatment facility, as defined in WAC 246-337-005, and the single bed certification will be only to that facility; or

(iii) The person can receive appropriate mental health treatment in a hospital with a psychiatric unit, or a hospital that is willing and able to provide timely and appropriate mental health treatment, or a psychiatric hospital, and the single bed certification will apply only to that facility.

(3) In order to provide timely and appropriate mental health treatment, the facility receiving the single bed certifi-

cation, or the public or private agency the facility has a direct arrangement with to provide mental health treatment, must:

(a) Implement standards for administration that include written procedures to assure that a mental health professional, as defined in RCW 71.05.020 or WAC 182-538D-0200, and licensed physicians are available for consultation and communication with both the person and the direct patient care staff;

(b) Use a plan of care/treatment. The medical or clinical record must contain documentation that:

(i) An individualized mental health treatment plan was developed, when possible, collaboratively with the person. If the person is unwilling or unable to participate in development of the plan, documentation must be made in the record. Development of this plan may include participation of a multidisciplinary team, a mental health professional, as defined in RCW 71.05.020 or WAC 182-538D-0200, or collaboration with members of the person's support system as identified by the person.

(ii) A mental health professional, as defined in RCW 71.05.020 or WAC 182-538D-0200, has had contact with each involuntarily detained person at least daily for the purposes of:

(A) Observation and evaluation; and

(B) Assessing whether the person is appropriate for release from involuntary commitment to accept treatment on a voluntary basis.

(c) Have standards for administration and monitoring of medication, including psychiatric medications. A person has a right to make an informed decision regarding the use of antipsychotic medication consistent with RCW 71.05.215.

(4) If a person requires medical services that are not generally available at a facility certified under this chapter, or at a state psychiatric hospital, or a facility that meets the requirements of subsections (2) and (3) of this section, a single bed certification may be issued to that facility for the person as follows:

(a) The single bed certification request must adequately describe why the person requires medical services that are not available at a facility certified under this chapter, a state psychiatric hospital, or a facility that meets the requirements of subsections (2) and (3) of this section;

(b) The facility that is the site of the requested single bed certification must confirm that it is willing and able to provide the medical services; and

(c) The facility has documented that one of the following has been met:

(i) With the authorization of the hospital, and consistent with any applicable hospital policies and procedures, the BHO or BHO MCO assigns a mental health professional to provide the person appropriate mental health treatment at the facility, including observation and evaluation, during the period of time the person is provided medical services; or

(ii) The hospital provides medical services and a plan that addresses the person's mental health treatment needs until the person is medically stable and the BHO, BHO MCO, or a designee identifies an appropriate facility for the person that is one of the following:

(A) The hospital providing services;



(B) A facility that is certified as an evaluation and treatment (E&T) facility; or

(C) A facility that can meet the person's needs under the single bed certification criteria in this section.

(d) If a qualified medical professional determines that mental health treatment for the person is not clinically indicated, the requirements in (c) of this subsection do not apply. When the person is determined to be medically stable, the facility must ensure the requirements in (c) of this subsection are met.

(5) The health care authority makes the decision and gives written notification to the requesting entity in the form of a single bed certification. The single bed certification must not contradict a specific provision of federal or state law.

(6) A person who receives services under a single bed certification under this section must be transferred:

(a) To an evaluation and treatment facility if on a seventy-two hour detention, a five-day detention pending a revocation proceeding, or a fourteen-day commitment; or

(b) To a state hospital if on a ninety- or one hundred eighty-day inpatient commitment, or if the person's less restrictive alternative order or conditional release was revoked, as soon as the attending physician considers the person medically stable and a bed becomes available, unless the treating facility consents to continue treatment and continued treatment in the current setting is consistent with the best clinical interests of the person.

(7) The health care authority may make site visits at any time to verify that the terms of the single bed certification are being met. Failure to comply with any term of this exception may result in corrective action. If the health care authority determines that the violation places people in imminent jeopardy, immediate revocation of this exception can occur.

(8) The BHO or BHO MCO retains the responsibility for ensuring due process required by RCW 71.24.300 (6)(b).

(9) Neither a person nor a facility has fair hearing rights as defined under chapter 182-526 WAC regarding single bed certification decisions by the health care authority staff.

#### **DEPARTMENT OF CORRECTIONS ACCESS TO CONFIDENTIAL MENTAL HEALTH INFORMATION**

##### NEW SECTION

**WAC 182-538D-0600 Purpose.** In order to enhance and facilitate the department of corrections' ability to carry out its responsibility of planning and ensuring community protection, mental health records and information, as defined in this section, that are otherwise confidential shall be released by any mental health service provider to the department of corrections personnel for whom the information is necessary to carry out the responsibilities of their office as authorized in RCW 71.05.445. Department of corrections personnel must use records only for the stated purpose and must assure that records remain confidential and subject to the limitations on disclosure outlined in chapter 71.05 RCW, except as provided in RCW 72.09.585.

##### NEW SECTION

**WAC 182-538D-0620 Scope.** Many records and reports are updated on a regular or as needed basis. The scope of the records and reports to be released to the department of corrections are dependent upon the reason for the request.

(1) For the purpose of a presentence investigation release only the most recently completed or received records of those completed or received within the twenty-four-month period before the date of the request; or

(2) For all other purposes including risk assessments release all versions of records and reports that were completed or received within the ten year period prior to the date of the request that are still available.

##### NEW SECTION

**WAC 182-538D-0630 Time frame.** The mental health service provider will provide the requested relevant records, reports and information to the authorized department of corrections person in a timely manner, according to the purpose of the request:

(1) Presentence investigation - Within seven days of the receipt of the request. If some or all of the requested relevant records, reports and information are not available within that time period the mental health service provider shall notify the authorized department of corrections person prior to the end of the seven-day-period and provide the requested relevant records, reports or information within a mutually agreed to time period; or

(2) All other purposes - Within thirty days of the receipt of the request. If some or all of the requested relevant records, reports and information are not available within that time period the mental health service provider shall notify the authorized department of corrections person prior to the end of the thirty-day period and provide the requested relevant records, reports or information within a mutually agreed to time period; or

(3) Emergent situation requests - When an offender subject has failed to report for department of corrections supervision or in an emergent situation that poses a significant risk to the public, the mental health provider shall upon request, release information related to mental health services delivered to the offender and, if known, information regarding the whereabouts of the offender. Requests if oral must be subsequently confirmed in writing the next working day, which includes email or facsimile so long as the requesting person at the department of corrections is clearly defined. The request must specify the information being requested. Disclosure of the information requested does not require the consent of consumer.

Information that can be released is limited to:

(a) A statement as to whether the offender is or is not being treated by the mental health services provider; and

(b) Address or information about the location or whereabouts of the offender.

NEW SECTION

**WAC 182-538D-0640 Written requests.** The written request for relevant records, reports and information must include:

- (1) Verification that the person for whom records, reports and information are being requested is under the authority of the department of corrections, per chapter 9.94A RCW, and the expiration date of that authority;
- (2) Sufficient information to identify the person for whom records, reports and information are being requested including name and other identifying data;
- (3) Specification as to which records and reports are being requested and the purpose for the request;
- (4) Specification as to what relevant information is requested and the purpose for the request;
- (5) Identification of the department of corrections person to whom the records, reports and information shall be sent, including the person's name, title and address;
- (6) Name, title and signature of the requestor and date of the request.

**BEHAVIORAL HEALTH SERVICES-  
ADMINISTRATIVE REQUIREMENTS**

NEW SECTION

**WAC 182-538D-0654 How people may express concern about their rights, services, or treatment.** (1) People who apply for, are eligible for, or receive behavioral health services authorized by a behavioral health organization (BHO), may access the BHO's grievance and appeal system to express concern about their rights, services, or treatment.

- (2) The BHO's grievance and appeal system includes:
  - (a) A grievance process as described in WAC 182-538D-0660;
  - (b) An appeal process as described in WAC 182-538D-0670; and
  - (c) Access to administrative hearings as described in WAC 182-538D-0675.
- (3) People must exhaust the appeal process before they have access to an administrative hearing.
- (4) People may also use the free and confidential ombuds services under WAC 182-538D-0262 through the BHO that contracts with the behavioral health agency in which they receive behavioral health services. Ombuds services are provided independent of BHOs and behavioral health agencies and are offered to people at any time to help them with resolving issues or problems at the lowest possible level during the grievance, appeal, or administrative hearing process.
- (5) In handling grievances and appeals, each BHO and behavioral health agency must give people any reasonable assistance in completing forms and taking other procedural steps related to grievance or appeal. This includes, but is not limited to, auxiliary aids and services, upon request, such as providing interpreter services and toll-free numbers that have adequate TTY/TTD and interpreter capability.

NEW SECTION

**WAC 182-538D-0655 Grievance and appeal system and administrative hearings—Definitions.** The terms and definitions in this section apply to the behavioral health organization (BHO) grievance and appeal system and administrative hearing rules. Other definitions that apply to behavioral health services may be found at WAC 182-538D-0200.

- (1) "Administrative hearing" means a proceeding before an administrative law judge to review an adverse benefit determination or a BHO decision to deny or limit authorization of a requested nonmedicaid service communicated on a notice of determination.
- (2) "Adverse benefit determination" means, in the case of medicaid services administered by the BHO, any one or more of the following:
  - (a) The denial or limited authorization of a requested service, including determinations based on the type or level of service, requirements for medical necessity, appropriateness, setting, or effectiveness of a covered benefit;
  - (b) The reduction, suspension, or termination of a previously authorized service;
  - (c) The denial, in whole or in part, of payment for a service;
  - (d) The failure to provide services in a timely manner, as defined by the state;
  - (e) The failure of a BHO to act within the grievance and appeal system time frames as provided in WAC 182-538D-0660 through 182-538D-0670 regarding the standard resolution of grievances and appeals;
  - (f) For a resident of a rural area with only one BHO, the denial of a person's request to exercise the right to obtain services outside the network; or
  - (g) The denial of a person's request to dispute a financial liability, including cost sharing, copayments, premiums, deductibles, coinsurance, and other enrollee financial liabilities.
- (3) "Appeal" means a review by a behavioral health organization (BHO) of an adverse benefit determination, as defined in this section.
- (4) "Grievance" means an expression of dissatisfaction about any matter other than an adverse benefit determination. Grievances may include, but are not limited to, a person's right to dispute an extension of time proposed by the BHO to make an authorization decision, the quality of care or services provided, aspects of interpersonal relationships such as rudeness of a behavioral health provider or employee, and failure to respect the person's rights regardless of whether a specific action is requested by the person.
- (5) "Grievance and appeal system" means the processes a BHO implements to handle appeals of adverse benefit determinations and grievances as well as the processes to collect and track information about them. The BHO must establish the grievance and appeal system and meet the requirements of 42 C.F.R. Sec. 438, Subpart F (2017).
- (6) "Person" means a person who applies for, is eligible for, or receives BHO-authorized behavioral health services from an agency licensed by the department of health as a behavioral health agency. For the purposes of accessing the grievance and appeal system and the administrative hearing

process, when another person is acting on a person's behalf, the definition of a person also includes any of the following:

- (a) In the case of a minor, the person's parent or, if applicable, the person's custodial parent;
- (b) The person's legal guardian;
- (c) The person's representative if the person gives written consent;
- (d) The person's behavioral health provider if the person gives written consent, except that the behavioral health provider cannot request continuation of benefits on the person's behalf.

(7) "Notice of adverse benefit determination" is a written notice a BHO provides to a person to communicate an adverse benefit determination.

(8) "Notice of determination" means a written notice that must be provided to a person to communicate denial or limited authorization of a nonmedicaid service offered by the BHO. A notice of determination must contain the following:

- (a) The reason for denial or offering of alternative services;
- (b) A description of alternative services, if available; and
- (c) The right to request an administrative hearing, how to request a hearing, and the time frames for requesting a hearing as identified in WAC 182-538D-0675.

#### NEW SECTION

**WAC 182-538D-0660 Filing a grievance.** (1) A person or person's representative may file a grievance to express dissatisfaction in person, orally, or in writing about any matter other than an adverse benefit determination, as defined in WAC 182-538D-0655, to:

- (a) The behavioral health agency providing the behavioral health services; or
  - (b) The behavioral health organization (BHO), if the agency is contracted with the BHO.
- (2) If a person receives behavioral health services through a behavioral health agency that is not contracted with a BHO, the agency, through its internal process, is responsible to handle the person's grievances.
- (3) There is no time limit to file a grievance.
- (4) The ombuds may assist the person in resolving the grievance at the lowest possible level.

(5) **Filing a grievance with a behavioral health agency.** If a person first files a grievance with the behavioral health agency and the person is not satisfied with the agency's written decision on the grievance, or if the person does not receive a copy of that decision from the agency within the time required under subsection (7) of this section, the person may then choose to file the grievance with the BHO. The BHO's written decision on the grievance is the final decision. The grievance cannot progress to an administrative hearing except under circumstances described in subsection (9) of this section.

(6) **Filing a grievance with a BHO.** If the person first files a grievance with the BHO and not the agency, and the person is not satisfied with the BHO's written decision on the grievance, the person cannot file the same grievance with the behavioral health agency, even if that agency or its staff member(s) is the subject of the grievance. The BHO's written

decision on the grievance is the final decision. The grievance cannot progress to an administrative hearing except under circumstances described in subsection (9) of this section.

(7) When a person files a grievance, the behavioral health agency or BHO that receives the grievance must:

- (a) Acknowledge the receipt of the grievance in writing within five business days;
- (b) Investigate the grievance;
- (c) At the person's request, give the person reasonable assistance in taking any procedural steps;
- (d) Inform the person about ombuds services and how to access these services;
- (e) Apply the rules in subsection (8) of this section; and
- (f) Send the person who filed the grievance a written notice describing the decision no longer than ninety days from the date the behavioral health agency or BHO receives the grievance.

(8) The behavioral health agency or BHO that receives the grievance must ensure all of the following:

- (a) Other people are allowed to participate in the grievance process, if the person chooses;
- (b) That a grievance is resolved even if the person is no longer receiving behavioral health services;
- (c) That the people who make decisions on a grievance:
  - (i) Were neither involved in any previous level of review or decision making nor are subordinates of any person who reviewed or decided on a previous level of the grievance;
  - (ii) Are mental health or chemical dependency professionals who have appropriate clinical expertise in the type of behavioral health service if deciding a grievance concerning denial of an expedited resolution of an appeal or a grievance that involves any clinical issues; and
  - (iii) Consider all comments, documents, records, and other information submitted by the person or the person's representative.

(d) That the person and, if applicable, the person's representative, receives a written notice containing the decision no later than ninety days from the date the agency or BHO receives a grievance. This time frame can be extended up to an additional fourteen days:

- (i) If requested by the person or the person's representative; or
- (ii) By the agency or BHO when additional information is needed and the agency or BHO is able to demonstrate to the health care authority upon the health care authority's request that it needs additional information and the added time is in the person's interest. The BHO must:

(A) Make reasonable efforts to give the person prompt oral notice of the delay; and

(B) Within two days, give the person written notice of the reason for the decision to extend the time frame and inform the person of the right to file a grievance if the person disagrees with that decision.

(e) That the written notice includes the resolution of the grievance, the reason for the decision, and the date the decision was made and is in an easily understood format following 42 C.F.R. Sec. 438.10 (2017), which requires that each notice:

- (i) Is written in the person's non-English language, if applicable;

(ii) Contains the BHO's toll-free and TTY/TDY telephone number; and

(iii) Explains the availability of free written translation, oral interpretation to include any non-English language, auxiliary aids such as American sign language and TTY/TDY telephone services, and alternative formats to include large print and Braille.

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

(i) Kept for a period of no less than ten years after the completion of the grievance process;

(ii) Made available to the health care authority upon request as part of the state quality strategy and made available upon request to the Centers for Medicare and Medicaid Services (CMS);

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

(iv) Not disclosed without the person's written permission, except to the health care authority or as necessary to resolve the grievance; and

(g) Are accurately maintained and contain, at a minimum, all of the following information:

(i) A general description of the reason for the grievance;

(ii) The date received;

(iii) The date of each review or, if applicable, review meeting;

(iv) Resolution at each level of the grievance, if applicable;

(v) Date of resolution at each level, if applicable; and

(vi) Name of the covered person for whom the grievance was filed.

(9) When the BHO does not act within the grievance process time frames described in this section, the person is considered to have exhausted the appeal process and has a right to request an administrative hearing.

**Reviser's note:** The typographical errors in 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.

#### NEW SECTION

**WAC 182-538D-0665 Notice of adverse benefit determination.** (1) A behavioral health organization's (BHO's) notice of adverse benefit determination provided to a person must be in writing and in an easily understood format following 42 C.F.R. Sec. 438.10 (2017), which requires that each notice:

(a) Be written in the person's non-English language, if applicable;

(b) Contains the BHO's toll-free and TTY/TDY telephone number; and

(c) Explains the availability of free written translation, oral interpretation to include any non-English language, auxiliary aids such as American sign language, TTY/TDY telephone services, and alternative formats to include large print and Braille.

(2) The notice of adverse benefit determination must, at a minimum, explain the following:

(a) The adverse benefit determination the BHO has made or intends to make;

(b) The reasons for the adverse benefit determination, including citation of the rule(s) and criteria used for the basis of the decision;

(c) The right of the person to be provided reasonable access to and copies of all documents, records, and other information relevant to the person's adverse benefit determination upon request and free of charge;

(d) The person's right to file an appeal of the adverse benefit determination with the BHO, including information on exhausting the BHO's one level of appeal and the person's right to request an administrative hearing;

(e) The circumstances under which an expedited appeal process is available and how to request it; and

(f) The person's right to receive behavioral health services while an appeal is pending, how to make the request, and that the person may be held liable for the cost of services received while the appeal is pending if the appeal decision upholds the decision in the notice of adverse benefit determination.

(3) When the BHO or its contracted behavioral health agency does not reach service authorization decisions within the required time frame, or fails to provide services in a timely manner, it is considered an adverse benefit determination. In these cases, the BHO sends a formal notice of adverse benefit determination, which includes the person's right to request an administrative hearing. When the BHO does not act within the grievance and appeal system time frames as identified within this chapter, it is considered exhaustion of the appeals process and the person has a right to request an administrative hearing.

**Reviser's note:** The typographical errors in 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.

#### NEW SECTION

**WAC 182-538D-0670 Filing an appeal.** (1) A person may file an appeal to ask the behavioral health organization (BHO) to review an adverse benefit determination that the BHO has communicated on a written notice of adverse benefit determination as defined in WAC 182-538D-0655. A person's representative may appeal an adverse benefit determination with the person's written consent. If a written notice of adverse benefit determination was not received, an appeal may still be filed.

(2) The person requesting review of an adverse benefit determination must file an appeal and receive a notice of the resolution from the BHO before requesting an administrative hearing.

(3) Appeals may be:

(a) Standard as described in subsections (6) and (7) of this section; or

(b) Expedited if the criteria in subsection (8) of this section are met.

(4) The appeal process must:

(a) Provide a person a reasonable opportunity to present evidence and make legal and factual arguments in person as

well as in writing. The BHO must inform the person of the limited time available.

(b) Provide the person opportunity, free of charge and sufficiently in advance to examine the person's clinical record, including examining new or additional evidence, medical records, and any other documents and records considered during the appeal process.

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

- (i) The person, the person's representative, or both; or
- (ii) The legal representative of a deceased person's estate.

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

(a) Were not involved in any previous level of review or decision making nor are subordinates of any person who reviewed or decided on a previous level of appeal;

(b) Are mental health or chemical dependency professionals who have appropriate clinical expertise in the type of behavioral health service if deciding an appeal of an adverse benefit determination concerning medical necessity or an appeal that involves any clinical issues; and

(c) Consider all comments, documents, records, and other information submitted by the person regardless of whether the information was considered in the initial review.

**(6) Standard appeals for adverse benefit determination - Continued services not requested.** A person who disagrees with a decision communicated on a notice of adverse benefit determination may file an appeal orally or in writing. An oral filing of an appeal must be followed with a written and signed appeal. The BHO must use the date of an oral appeal as the official filing date to establish the earliest possible filing date. All of the following apply:

(a) The person must file the appeal within sixty days from the date on the notice of adverse benefit determination.

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

(c) The BHO must send the person a written notice of the resolution as expeditiously as the person's health condition requires, and no longer than thirty days from the day the BHO received the appeal. This time frame may be extended up to fourteen additional days if the person requests an extension or the BHO is able to demonstrate to the health care authority upon the health care authority's request that it needs additional information and that the added time is in the person's interest. The BHO must:

(i) Make reasonable efforts to give the person prompt oral notice of the delay; and

(ii) Within two days, give the person written notice of the reason for the decision to extend the time frame and inform the person of the right to file a grievance if the person disagrees with that decision.

(d) The written notice of the resolution must include all the information listed in subsection (9) of this section.

**(7) Standard appeals for termination, suspension, or reduction of previously authorized services - Continued services requested.** A person who receives a notice of adverse benefit determination from the BHO that terminates, suspends, or reduces previously authorized services may file an appeal orally or in writing and request continuation of

those services pending the BHO's decision on the appeal. An oral filing of an appeal and request for continuation of services must be followed with a written and signed appeal and include a written request for continuation of services pending the BHO's decision on the appeal. The BHO must use the date of an oral appeal as the official filing date to establish the earliest possible filing date. All of the following apply:

(a) The person must:

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

(A) Within ten days of the date on the notice of adverse benefit determination; or

(B) The intended effective date of the BHO's proposed adverse benefit determination; and

(ii) Request continuation of services.

(b) The BHO must:

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

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

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

(c) The BHO's written notice of the resolution must contain all of the information listed in subsection (9) of this section.

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

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

(i) The adverse benefit determination must be for denial of a requested service, termination, suspension, or reduction of previously authorized behavioral health services;

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

(A) Ten days of the BHO's mailing the written notice of adverse benefit determination or the intended effective date of the BHO's proposed adverse benefit determination, if the person is requesting continued benefits; or

(B) Sixty days from the date on the BHO's written notice of adverse benefit determination if the person is not requesting continued benefits.

(b) The BHO must:

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

(ii) Send the person a written notice of the resolution no longer than seventy-two hours after receiving the request for an expedited appeal.

(c) The BHO may extend the time frames up to fourteen additional days if the person requests an extension or the BHO is able to demonstrate to the health care authority upon the health care authority's request that it needs additional information and that the added time is in the person's interest. In this case the BHO must:

(i) Make reasonable efforts to give the person prompt oral notice of the delay;

(ii) Within two days give the person written notice of the reason for the decision to extend the time frame and inform the person of the right to file a grievance if the person disagrees with that decision; and

(iii) Resolve the appeal as expeditiously as the person's health condition requires and no later than the date the extension expires.

(d) The BHO must ensure that punitive action is not taken against a behavioral health provider who requests an expedited resolution or who supports a person's appeal.

(9) The BHO's written notice of the resolution containing the decision on a standard appeal or expedited appeal must:

(a) Clearly state the BHO's decision on the appeal, the reason for the decision, and the date the decision was made;

(b) Inform the person of the right to an administrative hearing if the person disagrees with the decision, how to request a hearing, and the following time frames for requesting a hearing:

(i) Within ten days from the date on the notice of the resolution if the person is asking that services be continued pending the outcome of the hearing or if the person is asking for an expedited hearing;

(ii) Within one hundred twenty days from the date on the notice of the resolution if the person is not asking for continued services.

(c) Be in an easily understood format following 42 C.F.R. Sec. 438.10 (2017), which requires that each notice:

(i) Be written in the person's non-English language, if applicable;

(ii) Contains the BHO's toll-free and TTY/TDY telephone number; and

(iii) Explains the availability of free written translation, oral interpretation to include any non-English language, auxiliary aids such as American sign language and TTY/TDY telephone services, and alternative formats to include large print and Braille.

(10) When the BHO does not act within the appeal process time frames explained in this section, the person is considered to have exhausted the appeal process and has a right to request an administrative hearing.

**(11) Duration of continued services during the appeal process.** When a person has requested continued behavioral health services pending the outcome of the appeal process and the criteria in this section have been met, the BHO must ensure the services are continued until one of the following occurs:

(a) The person withdraws the appeal; or

(b) The BHO provides a written notice of the resolution that contains a decision that is not in favor of the person and the person does not request an administrative hearing within ten days from the date the BHO mails the notice; see WAC

182-538D-0675, administrative hearings, for rules on duration of continued services during the administrative hearing process.

**(12) Reversal of an adverse benefit determination.** If the final written notice of the resolution of the appeal or administrative hearing reverses the adverse benefit determination, the BHO must authorize or provide the behavioral health service(s) no later than seventy-two hours from the date it receives notice of the adverse benefit determination being overturned.

**(13) Recovery of the cost of behavioral health services in adverse decisions of appeals.** If the final written notice of the resolution of the appeal is not in favor of the person, the BHO may recover the cost of the behavioral health services furnished to the person while the appeal was pending to the extent that they were provided solely because of the requirements of this section. Recovery of the cost of medicaid services is limited to the first sixty days of services after the health care authority or the office of administrative hearings (OAH) receives an administrative hearing request. See RCW 74.09.741 (5)(g).

**(14) Recordkeeping and maintenance of appeals.** The BHO must ensure that full records of all appeals and materials received and compiled in the course of processing and attempting to resolve appeals are:

(a) Kept for a period of no less than ten years after the completion of the appeal process;

(b) Made available to the health care authority upon request as part of the state quality strategy and made available upon request to the Centers for Medicare and Medicaid Services (CMS);

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

(d) Not disclosed without the person's written permission, except to the health care authority or as necessary to resolve the appeal; and

(e) Accurately maintained and contain, at a minimum, all of the following information:

(i) A general description of the reason for the appeal;

(ii) The date received;

(iii) The date of each review or, if applicable, review meeting;

(iv) Resolution at each level of the appeal, if applicable;

(v) Date of resolution at each level, if applicable; and

(vi) Name of the covered person for whom the appeal was filed.

**Reviser's note:** The typographical errors in 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.

## NEW SECTION

**WAC 182-538D-0675 Administrative hearings.** (1) An administrative hearing is a proceeding before an administrative law judge (ALJ) that gives a person, as defined in WAC 182-538D-0655, an opportunity to be heard in disputes about adverse benefit determinations or a decision of a behavioral health organization (BHO) to deny or limit authorization of a requested nonmedicaid service communicated on a notice of determination.

(2) A person may request an administrative hearing for the following reasons:

(a) After a person receives notice that the BHO upheld an adverse benefit determination;

(b) After a person receives a BHO decision to deny or limit authorization of a requested nonmedicaid service communicated on a notice of determination; or

(c) If the BHO does not act within the grievance or appeal process time frames described in WAC 182-538D-0660 and 182-538D-0670. In this case, the person is considered to have exhausted the appeal process and has a right to request an administrative hearing.

(3) A person who requests an administrative hearing must do so within one of the following time frames:

(a) If continued services are not requested, a hearing must be requested within one hundred twenty days from the date on the written notice of the resolution received from the BHO at the end of the appeal process or one hundred twenty days from the date on the notice of determination.

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

(i) The person appealed a decision on the notice of adverse benefit determination for termination, suspension, or reduction of the person's behavioral health services;

(ii) The person appealed the adverse benefit determination and the BHO upheld the adverse benefit determination; and

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

(c) The BHO is not obligated to continue nonmedicaid services pending the result of an administrative hearing when available resources are exhausted, since services cannot be authorized without funding regardless of medical necessity.

(4) If a person or the person's behavioral health provider believes that the time taken for a standard administrative hearing could seriously jeopardize the person's life, physical or mental health, or ability to attain, maintain, or regain maximum function, an expedited hearing may be requested. Subsection (3)(b) and (c) of this section apply if continued behavioral health services are requested.

(5) The BHO's failure to issue an appeal decision in writing within the time frames in WAC 182-538D-0670 constitutes exhaustion of the appeal process and the person may request an administrative hearing.

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

(a) The person withdraws the hearing request;

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

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

after the health care authority or the office of administrative hearings (OAH) receives an administrative hearing request.

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

#### NEW SECTION

**WAC 182-538D-0680 A person's rights specific to medicaid recipients.** (1) Medicaid recipients have general rights and medicaid-specific rights when applying for, eligible for, or receiving behavioral health services authorized by a behavioral health organization (BHO).

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

(i) All applicable statutory and constitutional rights;

(ii) The participant rights provided under WAC 182-538D-0600; and

(iii) Applicable necessary supplemental accommodation services.

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

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

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

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

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

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

(vi) Receive age and culturally appropriate services.

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

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

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

(x) Refuse any proposed treatment.

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

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

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

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

(xv) Receive information about medical advance directives.

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

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

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

(xix) Be free from retaliation.

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

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

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

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

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

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

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

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

(xxviii) Receive a second opinion from a qualified professional within your BHO area at no cost, or to have one arranged outside the network at no cost to you, as provided in 42 C.F.R. Sec. 438.206(b)(3) (2015).

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

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

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

(xxxiii) File an appeal if the BHO fails to provide services in a timely manner as defined by the state.

(xxxiiii) Request an administrative (fair) hearing if your appeal is not resolved in your favor or if the BHO does not act within the grievance or appeal process time frames described in WAC 182-538D-0660 and 182-538D-0670.

(xxxv) Request services by the behavioral health ombuds office to help you file a grievance or appeal or request an administrative hearing.

(2) A behavioral health agency licensed by the division of behavioral health and recovery (DBHR) that provides DBHR-certified mental health services, DBHR-certified substance use disorder services, or both, must ensure the medic-aid rights described in subsection (1)(b) of this section are:

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

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

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

(d) Posted in public areas.

## WSR 19-05-079

### EMERGENCY RULES

### DEPARTMENT OF

### FISH AND WILDLIFE

[Order 19-30—Filed February 19, 2019, 4:09 p.m., effective February 19, 2019, 4:09 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial sea urchin harvest rules.

Citation of Rules Affected by this Order: Repealing WAC 220-340-75000L; and amending WAC 220-340-750.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency rule is needed to close commercial red sea urchin harvest in District 2 to prevent overharvest. Harvestable surpluses of sea urchin exist in the districts specified. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

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

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

Date Adopted: February 19, 2019.

Joe Stohr  
for Kelly Susewind  
Director



NEW SECTION

**WAC 220-340-75000M Commercial sea urchin fishery.** Notwithstanding the provisions of WAC 220-340-750, effective immediately, until further notice, it is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section:

(1) The following areas are open for red sea urchin harvest seven days-per-week: District 4 west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude.

(2) The following areas are open for green sea urchin harvest seven days-per-week: Sea Urchin District 3 east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude, District 4 west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude, District 6, and District 7 except all waters of Hale Passage and Wollochet Bay within the following lines: west of a line projected true south from the shoreline near Point Fosdick at 122 degrees 35 minutes west longitude to 47 degrees 14 minutes north latitude, and thence projected true west to the shoreline of Fox Island, and east of a line projected true south from the shoreline near Green Point at 122 degrees 41 minutes west longitude to 47 degrees 16.5 minutes north latitude, and thence projected true east to the shoreline of Fox Island.

(3) The maximum cumulative landings for red sea urchin and green sea urchin for each weekly fishery opening period is 1,500 pounds per species per valid designated sea urchin harvest license. Each fishery week begins Monday and extends through Sunday.

(4) It is unlawful to fish for, take, or possess red sea urchins smaller than 3.25 inches or larger than 5.0 inches. It is unlawful to fish for, take, or possess green sea urchins smaller than 2.25 inches. Sea urchin size is the largest test diameter exclusive of spines.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-340-75000L Commercial sea urchin fishery. (19-14)

**WSR 19-05-080****EMERGENCY RULES****DEPARTMENT OF****FISH AND WILDLIFE**

[Order 19-31—Filed February 19, 2019, 4:15 p.m., effective February 19, 2019, 4:15 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's

relationship with treaty Indian tribes and federal law governing Washington's relationship with Oregon.

Citation of Rules Affected by this Order: Repealing WAC 220-359-02000C; and amending WAC 220-359-020.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This rule is needed because a sufficient number of fish remain on the harvest guideline for the commercial gillnet fishery in John Day Pool. This rule is consistent with actions of the Columbia River compacts on January 29, February 12, and February 19, 2019. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River Compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; or

Recently Enacted State Statutes: New 1, Amended 0, Repealed 1.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

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

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

Date Adopted: February 19, 2019.

Joe Stohr  
for Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-359-02000D Columbia River salmon seasons above Bonneville Dam.** Notwithstanding the provisions of WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H. However, those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

(1) Open Areas: SMCRA 1H (John Day pool only)

(a) Season: Immediately through 6 PM Tuesday, February 27, 2019

(b) Gear: Gillnets with no minimum mesh size restriction.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon from 43 to 54 inches fork length in John Day pool may be sold or kept for subsistence purposes. Fish landed during the open periods are allowed to be sold after the period concludes.

(d) Standard river mouth and dam sanctuary closures remain in place for this gear.

(2) Open Areas: SMCRA 1F, 1G, 1H (Zone 6)

(a) Season: Immediately to 6 PM Thursday, March 21, 2019.

(b) Gear: Hoop nets/bag nets, dip nets, and rod and reel with hook and line.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools may be kept for subsistence purposes. Further, sturgeon within the legal size limit and caught in the platform and hook and line fishery may only be sold if caught during the open period and open pool of an open gillnet fishery. Fish

landed during the open periods are allowed to be sold after the period concludes.

(d) Standard river mouth and dam sanctuary closures remain in place for this gear.

(3) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-352-315, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

(4) Fish caught during the open period may be sold after the period concludes.

**Reviser's note:** The typographical errors in 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.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-359-02000C Columbia River salmon seasons above Bonneville Dam. (19-28)