

## WSR 21-20-037

## PERMANENT RULES

## DEPARTMENT OF

## SOCIAL AND HEALTH SERVICES

(Behavioral Health Administration)

[Filed September 27, 2021, 12:59 p.m., effective October 28, 2021]

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

Purpose: The proposed rule is necessary for administering inpatient and outpatient competency restoration programs which are run by the department of social and health services and the health care authority, respectively. As directed by RCW 10.77.086, this rule making is to develop rules for the conditions of participation in the outpatient competency restoration program, within the framework of the forensic mental health care system.

This rule adds definitional language; describes factors that, if present, may make a client clinically inappropriate for outpatient competency restoration services; outlines initial intake requirements and conditions of participation; requires certain reporting for outpatient competency restoration providers; allows for providers to request early competency evaluation; and provides a framework for removal from the program and when the program ends.

Citation of Rules Affected by this Order: New WAC 388-878-0010, 388-878-0020, 388-878-0030, 388-878-0040, 388-878-0050, 388-878-0060, 388-878-0070, 388-878-0080, and 388-878-0090.

Statutory Authority for Adoption: RCW 10.77.086, 10.77.088.

Adopted under notice filed as WSR 21-12-090 on June 1, 2021.

Changes Other than Editing from Proposed to Adopted Version: Added to WAC 388-878-0020 Outpatient competency restoration program (OCRCP)—Definitions, "**Behavior concern report**" means a report regarding behavioral concerns that may compromise conditional release, program progress, or both. This must include any noncompliance with the conditions of participation, even if such noncompliance does not rise to the level of removal from the program."

Amended WAC 388-878-0060 OCRCP provider reporting, to say "behavior concern report" instead of "behavioral concern report."

Amended WAC 388-878-0050 Conditions of participation, to say that participants must "remain" clinically appropriate for outpatient competency restoration services, and must "remain" substantially compliant [compliant] with conditions instead of "be" in each instance.

Amended WAC 388-878-0090 to delete "following the last date on which the program may legally provide services to the client" and inserted "upon expiration of the order for outpatient competency restoration services."

A final cost-benefit analysis is available by contacting Nora Selander, P.O. Box 45525, Olympia, WA 98504, phone 360-902-7637, email nora.selander@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 9, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 9, Amended 0, Repealed 0.  
Date Adopted: September 27, 2021.

Donald L. Clintsman  
Acting Secretary

SHS-4865.4

**Chapter 388-878 WAC**  
**Outpatient competency restoration program.**

NEW SECTION

**WAC 388-878-0010 Introduction and overview.** (1) Outpatient competency restoration program (OCRCP) is one of the elements of the Trueblood Settlement managed by the health care authority in collaboration with the department of social and health services office of forensic mental health services.

(2) The OCRCP provides an option for courts to order competency restoration services in the community for persons who the court determines are not competent to stand trial and are appropriate for community-based treatment.

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NEW SECTION

**WAC 388-878-0020 Outpatient competency restoration program (OCRCP)—Definitions.** "**Behavior concern report**" means a report regarding behavioral concerns that may compromise program progress. This must include any noncompliance with the conditions of participation, even if such noncompliance does not rise to the level of removal from the program.

"**Competency evaluation**" means an evaluation performed to determine whether an individual is competent to stand trial.

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

"**Forensic navigator**" means department staff who are officers of the court who assist the individual to access services related to diversion and the outpatient competency restoration program.

"**Health care authority**" or "**HCA**" means the Washington state health care authority, any division, section, office, unit or other entity of HCA, or any of the officers or other officials lawfully representing HCA.

**"Inpatient competency restoration"** means competency restoration services performed in an inpatient setting, including a state psychiatric hospital or residential treatment facility.

**"Outpatient competency restoration program"** or **"OCRCP"** means competency restoration services that are provided on an outpatient basis to clients who are on conditional release from custody.

**"Provider"** means the HCA-contracted provider of outpatient competency restoration services, its employees and agents.

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NEW SECTION

**WAC 388-878-0030 Clinically appropriate for outpatient competency restoration services.** (1) The court may order a client into OCRCP when it determines the client is clinically appropriate to receive outpatient competency restoration services. Clinical appropriateness for OCRCP means a likelihood of being restored to competency in an outpatient setting.

(2) A client may not be clinically appropriate for outpatient competency restoration services if the client exhibits any of the following:

- (a) Is not medically stable;
- (b) Has current suicidal ideation with intent;
- (c) Is at heightened risk of harming others;

(d) Psychiatric symptoms at a severity that suggests that the client will not be able to care for their basic needs or health and safety in the community even with clinically appropriate housing and case management services; or

(e) Other concerning behavior or factors which indicates the client is not appropriate for outpatient competency restoration services.

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NEW SECTION

**WAC 388-878-0040 Assignment of clients and initial intake.** (1) The forensic navigator will inquire into a provider's capacity before informing the court that the provider is able to accept a case assignment. Subject to capacity limitations, the designated provider will accept all clients ordered by the court.

(2) Immediately following the case assignment, the provider will make arrangements for the client to attend an initial intake appointment to be conducted by the provider.

(a) The date of this appointment is the program start date.

(b) The provider will develop an initial treatment plan based on the clinical barriers to competency assessed upon intake, and plan for commencing support or clinical services.

(c) The provider will commence OCRCP services for the client as soon as practicable after the initial intake appointment, even if the assessment and initial treatment plan are still being completed.

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NEW SECTION

**WAC 388-878-0050 Conditions of participation.** Every client in receipt of modified conditions of release from the criminal court and ordered for outpatient competency restoration must remain clinically appropriate for outpatient competency restoration services, and must remain substantially compliant with the following conditions of participation:

- (1) Taking medications or receiving prescribed intramuscular medication, if applicable;
- (2) Abstaining from alcohol and unprescribed drugs;
- (3) Participating in regular urinalysis or other drug testing for clients who have a current substance use disorder diagnosis; and
- (4) Engaging in their care and treatment.

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NEW SECTION

**WAC 388-878-0060 OCRP provider reporting.** (1) The provider will submit a weekly status update to the assigned forensic navigator via secure email.

(2) The provider will submit a behavior concern report when there is concern about a client's behavior. The report must be submitted to the forensic navigator via direct notification in person or by phone same day, and additionally by secure email within twenty-four hours of concern.

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NEW SECTION

**WAC 388-878-0070 Early competency evaluation.** The provider will promptly request an early competency evaluation when the provider determines the client may meet one of the following criteria:

- (1) Client exhibits barriers to competency to stand trial that are minimal or not present; or
- (2) Client determined to be not restorable to competency to stand trial.

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NEW SECTION

**WAC 388-878-0080 Program removal.** (1) If a client fails to comply with the conditions of the outpatient competency restoration program such that restoration is no longer appropriate in that setting or the client is no longer clinically appropriate as determined by the department, the department will remove the client from the program and place the client in an appropriate facility for inpatient competency restoration.

(2) If the provider determines that the client may no longer meet the conditions of participation, the provider will promptly contact the forensic navigator to consider removal from the program.

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NEW SECTION

**WAC 388-878-0090 Program end.** (1) The provider will no longer serve the client in the program upon expiration of the order for outpatient competency restoration services.

(2) The provider must contact the forensic navigator to make a plan for coordinated transition or continuing outpatient behavioral health services.

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