

WSR 21-12-090
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Behavioral Health Administration)
[Filed June 1, 2021, 3:36 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-08-091.

Title of Rule and Other Identifying Information: Chapter 388-878 WAC, Outpatient competency restoration program.

Hearing Location(s): On July 6, 2021, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Due to the COVID-19 pandemic, hearing may be held via virtual, see DSHS website for more up-to-date information <https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings>.

Date of Intended Adoption: Not earlier than July 7, 2021.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m. on July 6, 2021.

Assistance for Persons with Disabilities: Contact Katherine Vasquez, DSHS rules coordinator, phone 360-664-6097, fax 360-664-6185, TTY 711 relay service, email vasquki@dshs.wa.gov, by June 22, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: 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 making will include but not be limited to detailing the eligibility requirements for a person to receive outpatient competency restoration, medication management, regular urinalysis testing for defendants with substance use disorder.

Reasons Supporting Proposal: The proposed rule is necessary for administering inpatient and outpatient competency restoration programs which are run by DSHS and the health care authority, respectively.

Statutory Authority for Adoption: RCW 10.77.086, 72.01.090.

Statute Being Implemented: RCW 10.77.086.

Rule is necessary because of federal court decision, *Trueblood et. al. v. Washington State DSHS*.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Nora Selander, P.O. Box 45525, Olympia, WA 98504, 360-902-7637.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Nora Selander, 1115 Washington Street N.E., P.O. Box 45525, Olympia, WA 98504, phone 360-902-7637, email nora.selander@dshs.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. This rule does not impact any small businesses.

A copy of the detailed cost calculations may be obtained by contacting Nora Selander, 1115 Washington Street N.E., P.O. Box 45525,

Olympia, WA 98504, phone 360-902-7637, email
nora.selander@dshs.wa.gov.

May 27, 2021
Katherine I. Vasquez
Rules Coordinator

SHS-4865.2

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. "**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 OCRP when it determines the client is clinically appropriate to receive outpatient competency restoration services. Clinical appropriateness for OCRP 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 OCRP 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 be clinically ap-

propriate for outpatient competency restoration services, and must be 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 behavioral 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 following the last date on which the program may legally provide services to the client.

(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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