

External Review due: **Noon Friday, November 3, 2017**

**STATE OF WASHINGTON**  
**DEPARTMENT OF SOCIAL AND HEALTH SERVICES**  
Behavioral Health Administration  
Division of Behavioral Health and Recovery  
PO Box 45330, Olympia, WA 98504-5330

**Draft - MEMORANDUM**

**Date:**

**To:** Interested stakeholders and  
Katherine Vasquez, DSHS Rules Coordinator

**From:** Dennis Malmer, Deputy Director, DBHR  
Tony O'Leary, Office Chief, DBHR Licensing and Certification

**Subject:** Cost-Benefit Analysis for Proposed Amendments to Chapters 388-865,  
388-877, 388-877A, 388-877B, and 388-877C WAC Regarding  
Behavioral Health Agency Certification

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**Summary of Proposed Rules**

The Division of Behavioral Health in the Recovery (DBHR) of the Behavioral Administration in the Department of Social and Health Services is proposing to create, amend, and repeal rules in chapters 388-865, 388-877, 388-877A, 388-877B, and 388-877C WAC regarding the licensure and certification of behavioral health agencies.

DBHR is making this rule change at the advice of stakeholders and at the direction of the 2017 Washington State Legislature, in E2SHB 1819 (Chapter 207, Laws of 2017, which became RCW 71.24.870). This new statute tasks the department with consolidating behavioral health certification rules into one single set of regulations for behavioral health agencies to follow.

In this rule change, DBHR has, with the help of stakeholders, consolidated rules regarding the certification of behavioral health agencies from the five WAC chapters into the main chapter for behavioral health agencies, chapter 388-877 WAC. Also with the help of stakeholders, DBHR has identified areas in which duplicative or inefficient documentation, assessment, and other requirements could be eliminated or streamlined for providers, and is eliminating as many of those as possible.

Keeping in mind the ongoing integration of Washington State's physical and behavioral health systems, DBHR has taken this opportunity to organize the rules so that behavioral health agency certification rules are separate from rules regarding the operation of Behavioral Health Organizations and Managed Care Plans.

## **Involvement of Stakeholders**

DBHR involved stakeholders at all stages of the formation of this rule change. These efforts included the following activities:

- A Co-occurring Disorder Workgroup led by DBHR that met over many months to establish the best path forward for the delivery of services to individuals with co-occurring disorders.
- Meetings and conference calls with Legislative staff and representatives as well as stakeholders and advocates that were behind E2SHB 1819.
- A Focus Group of interested stakeholders that include people from the above two groups plus those that responded to the department's CR 101 and other invitations to be involved in the project.
- An external review of the WAC draft, including distribution via e-mail to hundreds of interested parties and posting the draft on the DBHR public web page.

The goal of this rule change is to lessen the regulatory burden on behavioral health providers and in the process, to make it easier to deliver services to individuals who have co-occurring disorders (co-existing mental health and substance use disorders). The anticipated outcome of this is to have cost efficiencies for business of all sizes. DBHR asked the Focus Group, which included individuals from behavioral health agencies, Behavioral Health Organizations, client advocates, clinicians, representatives from statewide medical and behavioral health associations, and staff from several state government agencies about any unforeseen anticipated costs from this rule change.

## **Small Business Economic Impact Statement—Determination of Need**

Chapter 19.85 RCW, The Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses. The statute defines small businesses as those businesses that employ fifty or fewer people and are independently owned and operated. These proposed rules impact behavioral health agencies certified by DBHR and the Behavioral Health Organizations that contract with these agencies.

According to RCW 19.820303(1)(a) an agency shall prepare a small business economic impact statement if the proposed rule will impose more than minor costs on businesses in an industry. For DSHS, minor cost means a cost per business that is less than fifty dollars of annual cost per client (RCW 19.85.020). DBHR and our representative partners have analyzed the proposed rule amendments and conclude that the new costs that are imposed by these rules meet the definition of minor costs. Therefore, DBHR has determined that the preparation of a comprehensive SBEIS is not required.

## **Evaluation of Probable Costs and Probable Benefits**

Since the proposed rule change “establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit” under RCW 34.05.328(5)(c)(iii) (B), DBHR has determined the proposed rules to be “significant” as defined by the legislature. As required by RCW 34.05.328(1)(d), DBHR has analyzed the probable costs and probable

benefits of the proposed amendments, taking into account both the qualitative and quantitative benefits and costs.

### **Costs**

Our representative stakeholders have suggested that the implementation of these rules and the intent behind the 2017 bill E2SHB 1819 would result in overall reduced costs. Any costs were determined to be short term, or one-time minor costs.

Initial minor costs for providers:

- Development of new policies and procedures;
- Training;
- Data sets.

Initial minor costs for Behavioral Health Organizations:

- Contracting
- Data sets

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

### **Benefits**

Numerous benefits will result from the adoption of the proposed amendments:

- Representatives from Washington regions who have begun the adoption of the delivery of behavioral health services through Managed Care Organizations in a physical health environment have suggested that this proposed rule change will facilitate efforts toward the further integration into the world of physical health.
- Clients who experience co-occurring disorders will have increased ability to find treatment solutions with more centrally located and coordinated options.
- Providers who have been looking forward to the ability to deliver and bill for behavioral health services delivered to individuals with co-occurring disorders anticipate the ability to quickly enhance the array of services they are able to deliver to clients who desperately need them.
- Providers of children's behavioral health services anticipate that the removal of regulatory and administrative barriers might greatly help with their challenges in retaining a competent and competitive workforce.

External Review due: **Noon Friday, November 3, 2017**

- Representatives from Behavioral Health Organizations anticipate these rule changes will help increase the array of services that both mental health providers and substance use disorder providers are willing and able to offer under their current credentials.

### **Conclusion**

DBHR concludes that the probable benefits of the proposed rule amendments exceed the probable cost. DBHR has complied with the appropriate sections of the Administrative Procedure Act and is prepared to proceed with the rule filing.

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