

MEMORANDUM

DATE: DRAFT

TO: Katherine Vasquez, Rules Coordinator
Rules and Policies Assistance Unit
Department of Social and Health Services

FROM: Kathy Sayre, Rules Manager
Division of Behavioral Health and Recovery
Department of Social and Health Services

SUBJECT: Small Business Economic Impact Statement and Cost Benefit Analysis
for Proposed Rules in New Chapter 388-877 WAC, Behavioral Health
Services Administrative Requirements

SUMMARY OF PROPOSED RULES

The Department of Social and Health Services (the department's) Division of Behavioral Health and Recovery (DBHR) is proposing a new chapter, chapter 388-877 WAC, Behavioral Health Services Administrative Requirements.

The purpose and scope of this chapter is to establish administrative standards, and support the specific requirements for the licensing and certification of behavioral health agencies that provide chemical dependency, mental health, and/or problem and pathological gambling treatment services.

Chapter 388-877 WAC:

- 1) Allows for a single set of agency administrative, personnel, and clinical policies and procedures that address specific treatment populations and levels of care.
- 2) Supports clinical staff competency, individual rights, an initial assessment, a treatment service plan and treatment service plan review, clinical documentation, a discharge plan, a continuing care plan, patient records, a complaint procedure, and quality management.
- 3) Supports the specific program rules in chapter 388-805 WAC for chemical dependency, chapter 388-816 WAC for problem and pathological gambling, and chapter 388-865 WAC for mental health.
- 4) Provides general and specific information for agency licensure and certification, including information on applications, deeming, renewals, on-site reviews and plans of correction, approvals and provisional approvals, effective dates of licensures and certification, denials, suspensions, restrictions, and revocations, adding branch sites, adding a new service,

change in ownership, change in location, fee requirements, and appealing a department decision.

- 5) Provides general and specific governing body requirements for agencies including administrator key responsibilities, policies and procedures, and treatment facility requirements.
- 6) Provides general and specific personnel requirements including agency policies and procedures, agency record requirements, supervision of trainees and interns, and agency requirements for volunteers and student practicum.
- 7) Provides general and specific requirements for clinical requirements, including individual rights, initial assessments, individual service plans, individual records, and record content.

INVOLVEMENT OF STAKEHOLDERS AND SMALL BUSINESSES

In September 2010, DBHR's director sent a letter to stakeholders and included a copy of DBHR's "CHARTER FOR DBHR INTEGRATED WAC: CHEMICAL DEPENDENCY TREATMENT AGENCIES AND COMMUNITY MENTAL HEALTH AGENCIES." This letter and charter informed stakeholders of the department's intent to codify one set of rules rather than multiple sets of rules for DBHR-licensed and/or certified agencies that treat individuals with substance use, gambling, and/or mental health conditions. A copy of this letter and the charter were posted on the DBHR internet website. The letter invited stakeholders to attend a meeting in Yakima Conference Center on October 4, 2010 to exchange thoughts and ideas about the principles the new WAC should address. At this meeting, input was solicited and considered and e-mails to the department were encouraged. Each e-mail was responded to individually.

On December 17, 2010, DBHR invited fifteen members from the Community Partner Advisory Group to Olympia to discuss stakeholder participation in the drafting of this rule. DBHR solicited and addressed stakeholder concerns at this meeting.

The department filed a CR-101 (pre-proposal statement of inquiry) under WSR 11-09-067 on April 19, 2011. On April 27, 2011, copies of the CR-101 were sent to tribal leaders and all stakeholders and providers listed in DBHR's list serve data base.

DBHR contracted with Northwest Resource Associates (NWRA) of Seattle to facilitate stakeholder and DBHR meetings and the drafting/content of the new rules. NWRA interviewed potential stakeholders from a list provided by DBHR of possible work group members. Volunteer participates for three work groups representing agencies statewide that provide chemical dependency, mental health, and/or problem and pathological gambling treatment program services were assembled to draft the rules. Three independent facilitators were contracted by NWRA to represent each work group in the following areas: 1) Agency licensure/certification and Personnel; 2) Agency administration; and 3) Clinical.

A second statewide stakeholder evening meeting was hosted on June 9, 2011 at the Yakima Convention Center. NWRA and DBHR staff provided a general overview of the project charter and the project's goals and timeline. Stakeholders were invited to ask questions and offer comments and suggestions.

On June 14, 2011 at the Criminal Justice Center in Burien, WA, NWRA hosted the first of several all-day meetings attended by volunteer members of the three work groups and DBHR

staff. The groups worked on drafting the rules and NWRA distributed the drafts for review and discussion at the next meeting.

Several all-day meetings hosted by NWRA were held at Renton Technical School, Renton, WA. The work groups continued to draft language and NWRA distributed the drafts to all participants, soliciting review and input.

On October 3, 2011, a third statewide stakeholder meeting was held at the Yakima Convention Center to allow stakeholders attending the Co-Occurring Disorder Conference to review the draft rule and participate in discussion of the rule's content.

On April 23, 2012, work group participants were invited to Lacey, WA, to discuss the final draft of the Behavioral Health Services Administrative proposed rules. Twelve workgroup members attended this meeting and three appeared by conference call. The draft rules were distributed and discussed and several comments were offered and discussed.

In April 2012, the department sent an External Review draft of the proposed language to all interested stakeholders who responded to the CR-101 (Pre-proposal Statement of Inquiry) and other reviewers, including tribal leaders. The department responds to each comment received.

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 and it outlines the information that must be included in a Small Business Economic Impact Statement (SBEIS). Preparation of a SBEIS is required when a proposed rule has the potential of placing a disproportionate economic impact on small businesses. The statute defines small businesses as those business entities that employ fifty or fewer people and are independently owned and operated.

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These proposed rules impact behavioral health agencies that provide chemical dependency treatment services, mental health treatment services, and/or problem and pathological gambling treatment services. These businesses fall under the North American Industry Classification System (NAICS) codes:

- 622210 – Psychiatric and substance abuse hospitals
- 623220 – Residential substance abuse facilities
- 621420 – Outpatient substance abuse and mental health centers
- 623220 -- Residential mental health facilities
- 621330 – Problem and pathological gambling

The department previously determined that there were 126 existing for-profit chemical dependency treatment agencies that meet the criteria for small businesses under RCW 19.85.020. Subsequently, the department decided to consider economic impacts on all for-profit and publicly-funded department- certified chemical dependency treatment agencies. Therefore, the industry analysis includes 580 certified chemical dependency treatment

agencies. The department further determined there are about 180 business entities that provide mental health treatment services at 420 specific locations. Of the estimated 1,000 services sites providing chemical dependency and mental health treatment services, about 160 business organizations maintain both a certificate for chemical dependency treatment services and a license for mental health treatment services. The department also determined there are 26 certified entities providing problem and pathological gambling treatment services. Of the 26 entities, four are private individual providers. The other 22 sites are located within certified chemical dependency treatment agencies.

EVALUATION OF PROBABLE COSTS AND PROBABLE BENEFITS

Since the proposed rules in the new chapter “make significant amendments to a policy or regulatory program” under RCW 34.05.328(5)(c)(iii), the department has determined the proposed rules to be “significant” as defined by the Washington State Legislature.

As required by RCW 34.05.328(1)(d), the department has analyzed the probable costs and probable benefits of the proposed amendments, taking into account both the qualitative and quantitative benefits and costs. The department’s analysis shows the costs and benefits of the proposed rules to those impacted by the rules. Impacted groups include:

- DBHR-certified chemical dependency service programs owned by non-profit businesses, for-profit businesses, public non-profit providers, and tribal programs.
- DBHR-licensed and/or -certified mental health service programs owned by non-profit businesses, public non-profit providers, or tribal programs.
- Sole proprietors that choose to become a certified problem and pathological gambling treatment program.

COSTS

The department’s analysis determined that new costs imposed by the proposed rules would be minor. Costs include:

- 1) One-time cost for developing a policy and procedures manual that meets the requirements of the new rules.
- 2) Updating/creating required forms.
- 3) Assuring facility meets structural accessibility for current mental health programs.
- 4) Complying with application requirements for added services or branch sites.
- 5) Notification requirements of facility remodeling, approval for change of ownership, and voluntary program suspension or closure.
- 6) Updating electronic health records.

BENEFITS

The benefits to the implementation of these rules include individual care, programmatic, administrative, and improved cross-systems collaboration.

- 1) The new rules in chapter 388-877 WAC will integrate similar functions, such as individual service plans and rules for agency administrative, personnel, and clinical requirements.
- 2) The rules provide an agency with a streamlined certification and/or licensure process for

chemical dependency, mental health, and/or program and pathological gambling treatment programs.

- 3) The rules allow an individual needing more than one behavioral health treatment service to have one client record.
- 4) The rules allow a single audit for all behavioral health services programs provided by an agency, and eliminate the need for multiple audits for agencies providing more than one behavioral health service.
- 5) The rules provide standardization to all behavioral health services programs.

COST OF COMPLIANCE

Under Chapter 19.85 RCW, DBHR has considered annual costs to small businesses that are \$50 or more per client. The department estimates that the costs for the proposed new rules in Chapter 388-877 WAC will affect treatment services provided at approximately one thousand sites that meet the definition of a small business.

GENERAL COSTS

The department's analysis revealed that there are costs imposed by the proposed amendments.

Agencies that wish to become department-licensed or -certified to provide behavioral health services must submit either a new agency or added service application to the department's Division of Behavioral Health and Recovery (DBHR).

The proposed implementation of chapter 388-877 WAC includes the requirements for individual providers that are not already certified or licensed by the department, or for programs that are currently certified or licensed under chapter 388-816 WAC, chapter 388-805 WAC, or chapter 388-865 WAC to obtain and implement policy and procedures manuals to become a behavioral health treatment agency.

The department has determined that approximately one thousand programs would currently be affected by this requirement. The estimated costs for the agency's policy and procedures manual would be \$1,000 to \$5,000, depending on the agency's current chemical dependency or mental health certification or licensure.

The following table identifies the types of programs and corresponding changes and estimated costs an agency may incur to implement these rules:

Types of Programs	Probable Required Changes and/or Revisions	Estimated Costs
Certified Chemical Dependency Program	<ul style="list-style-type: none"> • Policy and Procedures Manual • Form revision • Electronic Health Record revision 	\$0 - \$5,000
Licensed and/or Certified Mental Health Programs	<ul style="list-style-type: none"> • Policy and Procedures Manual • Form revision • Electronic Health Record revision 	\$0 - \$5,000
Certified Problem and Pathological Gambling Programs (applies only if the program is not part of a Certified Chemical Dependency Program or Licensed Mental Health Program)	<ul style="list-style-type: none"> • Policy and Procedures Manual • Form revision • Electronic Health Record revision 	\$0 - \$5,000

Mitigating Costs

Costs are determined to be minor under chapter 19.85 RCW. For the rules of the department of social and health services, “minor cost” means cost per business that is less than fifty dollars of annual cost per client or other appropriate unit of service.

The department plans to revise forms, as necessary, and post on the DBHR website for agencies to download and copy. The cost for manual changes/revisions will be a one-time cost to the agency. The department will have staff available to answer any questions an agency may have in order to implement these rules. Agencies that choose to serve more than one client population will no longer be required to maintain multiple sets of policies and procedures, clinical records, and separate forms. Clients served by these agencies will be able to receive more seamless care.

JOBS CREATED OR LOST

The department estimates that new jobs will be created as a result of small businesses complying with these rules. This opinion is supported by department-hosted stakeholder/provider discussions held at statewide stakeholder meetings and by several all-day work group sessions attended by volunteer stakeholders and DBHR staff members.

The rules in chapter 388-877 WAC require that all persons providing or supervising clinical services have an active Department of Health (DOH) license, registration or certification. If an agency elects to serve individuals in need of chemical dependency, mental health and/or problem and pathological gambling services, it must have the appropriate DOH-credentialed

staff to provide the specific service(s). Additionally the agency must be licensed under chapter 388-865 WAC to provide community mental health services, certified under chapter 388-805 to provide chemical dependency services, and/or meet the requirements under chapter 388-816 WAC for problem and pathological gambling. The agency providing mental health treatment services must employ or contract credentialed chemical dependency staff and the agency providing chemical dependency treatment services must employ or contract credentialed mental health practitioners, or be licensed under chapter 388-865 WAC and have staff member(s) who meet the requirements of a Mental Health Professional.

- “Agency” means an agency or facility operated, licensed, or certified by the state of Washington
- “Mental Health Professional” includes:
 - (1) A psychiatrist, psychologist, psychiatric nurse or social worker as defined in chapters 71.05 and 71.34 RCW.
 - (2) 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, that was gained under the supervision of a mental health professional and is recognized by the division of behavioral health and recovery.

CONCLUSION

The department has given careful consideration to the impact of proposed rules in chapter 388-877 WAC on small businesses. To comply with the Regulatory Fairness Act (Chapter 19.85 RCW), the department has analyzed impacts on small businesses and proposed ways to mitigate costs. The department has determined the costs to be minor and has determined the probable benefits outweigh the probable costs.

Please contact me if you have any questions at 360-725-1342, toll free at 1-877-301-4557, or by email at kathy.sayre@dshs.wa.gov.