

PACKET #1

External Review

of

BEHAVIORAL HEALTH SERVICES ADMINISTRATIVE DRAFT RULES
CHAPTER 388-877 WAC

Section One--Behavioral Health Services--Purpose and Scope

NEW SECTION

WAC 388-877-0100 Behavioral health services--Purpose and scope. The rules in chapter 388-877 WAC:

(1) Establish the following for agencies that provide behavioral health services:

- (a) Licensure requirements;
- (b) Agency administrative requirements;
- (c) Agency personnel requirements; and
- (d) Agency clinical policies and procedures.

(2) Support the program-specific rules in chapter 388-877A WAC for mental health, chapter 388-877B WAC for chemical dependency, and chapter 388-877C WAC for problem and pathological gambling.

Section two—Behavioral health services—Definitions.

NEW SECTION

WAC 388-877-0200 Behavioral health services—Definitions.

The definitions in this section contain words and phrases used in chapter 388-877 WAC for behavioral health services programs. These definitions also apply to the program-specific rules for mental health services in chapter 388-877A WAC, chemical dependency rules in chapter 388-877B WAC, and problem and pathological gambling rules in chapter 388-877C WAC.

“Added service” means the addition of a new service or level of care to an existing licensed behavioral health agency at an approved location.

“Administrative (fair) hearing” means a proceeding before an administrative law judge that gives a party an opportunity to be heard in disputes about DSHS programs and services.

“Administrator” means the designated person responsible for the operation of the licensed treatment agency and/or certified treatment service.

“Adult” means an individual eighteen years of age or older. For an individual eligible for the medicaid program, adult means an individual twenty-one years of age or older.

“Agency” means an entity licensed by the department to provide behavioral health services.

“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.

”Behavioral health” means the prevention, treatment of, and recovery from chemical dependency, mental health and/or problem and pathological gambling disorders.

“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.

“Case management” means the services provided to assist individuals residing in a community setting or transitioning to a community setting to gain access to needed medical, social, educational, entitlements and other applicable services.

“Certified peer counselor” means a current or former recipient of behavioral health services, who has met the experience and training requirements of, satisfactorily passed the examination given by, and is recognized by the division of behavioral health and recovery as a certified peer counselor under WAC [388-865-0107](#).

“Certified” means the status given to chemical dependency, mental health, and problem and pathological gambling program-specific services.

"Certified problem and pathological gambling treatment provider" means a Washington state 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:

- (1) The ownership of a licensed behavioral health agency changes from one distinct legal owner to another distinct legal owner;

- (2) The type of business changes from one type to another, such as, from a sole proprietorship to a corporation; or
- (3) The current ownership takes on a new owner of five per cent or more of the organizational assets.

“Clinical record” means a paper and/or electronic file 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 an appropriate level of professional for clinical staff. 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.

"Community mental health agency (CMHA)" means a behavioral health agency certified by the department to provide a mental health service.

"Community relations plan" means a plan to minimize the impact of an opiate substitution treatment program as defined by the Center for Substance Abuse Guidelines for the Accreditation of Opioid Treatment Programs, section 2.C.(4).

“Complaint” means the expression of a dissatisfaction with a service or program which may be investigated by the department.

“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 non-treatment. Informed consent must be provided in a terminology that the person can reasonably be expected to understand.

“Criminal background check” means a search for any record of an individual’s conviction or civil adjudication related to crimes against children or other persons, including developmentally disabled and vulnerable adults. A background check includes a search and review of current and past background check applicant self-disclosures, Washington state patrol criminal history data, Washington courts criminal history data, civil adjudication proceedings, department of health disciplinary board final decisions, out-of-state court or law enforcement records, and department of corrections information. A background check may include a national fingerprint-based background check, including a federal bureau of investigation criminal history search.

“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 individual’s mental or physical health, or to prevent referral to a significantly higher level of care.

“Critical incident” means any one of the following events that must be reported to the division:

- (1) Any death, serious injury, or sexual assault that occurs at an agency that is licensed by the department;
- (2) 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;
- (3) 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;
- (4) A bomb threat;
- (5) 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;
- (6) Suicide attempt at the facility;
- (7) An error in program-administered medication at an outpatient facility that results in adverse effects for the individual and requires urgent medical intervention; and
- (8) Any media event regarding an individual receiving services, or regarding a staff member or owner(s) of the agency.

“Cultural competence” means the ability to recognize and respond to health-related beliefs and cultural values, disease incidence and prevalence, and treatment efficacy. Examples of cultural 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 DBHR.

“Department” means the Washington state department of social and health services.

“Designated Chemical Dependency Specialist” means a person designated by the county alcoholism and/or other drug addiction program coordinator designated under RCW [70.96A.310](#) to perform the commitment duties described in chapters [70.96A](#) and [70.96B](#) RCW;

“Designated Mental Health Professional” means a mental health professional designated by the county or other authority authorized in rule to perform duties under the involuntary treatment act as described in RCW 10.77.010, 71.05.020, 71.24.025 and 71.34.020.

“Disability” means a physical or mental impairment that substantially limits one or more major life activities of the individual and the individual;

- (1) Has a record of such an impairment; or
- (2) Is regarded as having such impairment.

“Discrete treatment service” means a treatment service that is distinguished by:

- (1) The persons certified and/or licensed to deliver it; and
- (2) The supervision and oversight of the service.

“Division” means the division of behavioral health and recovery.

“Division of Behavioral Health and Recovery” means the division within the department of social and health services (formerly the mental health division and the division of alcohol and substance abuse) that administers mental health, problem gambling and substance abuse programs authorized by chapters 43.20A, 71.05, 71.24, 71.34, and 70.96 RCW.

“Essential requirement” means a critical element of behavioral health treatment service delivery that must be present in order to provide effective treatment services. Critical elements include assessment, treatment planning and documentation of an individual’s progress in treatment.

“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 an expression of dissatisfaction made by or on behalf of a publicly funded individual and referred to the agency or RSN for resolution.

“Individual” means a person receiving treatment services from a licensed behavioral health agency.

“Inpatient services” means twenty-four-hour-a-day behavioral health care provided to an individual within a general hospital, psychiatric hospital, or residential treatment facility.

“Less restrictive alternative” 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 under its authority to license and certify mental health programs RCW 71.05, RCW 71.34 RCW 71.24 and its authority to certify chemical dependency treatment programs RCW 70.96A.

“Medical practitioner” means a physician, advance registered nurse practitioner (ARNP), or certified physician’s 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 healthcare provider.

“Mental Health Professional (MHP)” means a designation given by the department to an agency staff member who is;

- (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 and recovery;
- (3) A person who meets the waiver criteria of RCW [71.24.260](#), which was granted prior to 1986;
- (4) A person who had an approved waiver to perform the duties of a mental health professional (MHP), that was requested by the regional support network (RSN) and granted by the mental health division prior to July 1, 2001; or
- (5) A person who has been granted a time-limited exception of the minimum requirements of a mental health professional by the division of behavioral health and recovery consistent with WAC [388-865-0265](#).

“Minor” means an individual who is not yet eighteen years of age.

“Offsite assessment/treatment” means the provision of services by a provider from a licensed behavioral health agency at a location where the assessment and/or treatment is not the primary purpose of the site, such as in schools, hospitals, long term care

facilities, correctional facilities or housing provide by or under an agreement with the agency.

“Outpatient services” means behavioral health treatment services provided to an individual in a nonresidential setting.

“Patient placement criteria (PPC)” means admission, continued service, and discharge criteria found in the patient placement criteria for the treatment of substance-related disorders as published by the American Society of Addiction Medicine (ASAM).

“Probation” means a licensing or certification status resulting from a finding of deficiencies that requires immediate corrective action to maintain licensure or certification.

“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 a process of change through which an individual improves their health and wellness, lives a self-directed life, and strives to reach their full potential.

“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.

“Summary suspension” means the immediate suspension of a facility’s license and/or program-specific certification 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.

“Vulnerable adult” means an individual who receives services from the department and has at least one of the following characteristics:

(1) Sixty years of age or older with a functional, mental, or physical inability to care for himself or herself;

(2) Found legally incapacitated under chapter 11.88 RCW;

- (3) Developmentally disabled as defined under RCW 71A.10.020;
- (4) Admitted to any facility that is operated by the department;
- (5) Receiving services through an individual provider, or a department-contracted, -authorized, -certified, or -licensed provider, except those providers certified under RCW 70.96A;
- (6) Receiving services through home health, hospice, or home care agencies licensed under RCW 70.127;
- (7) A vulnerable adult as defined in RCW 74.34;
- (8) Admitted for detoxification or detained or committed to an involuntary treatment facility that is certified by the division.

“Youth” means an individual who is seventeen years of age or younger.

Section three--Behavioral health services--Agency licensure

NEW SECTION

WAC 388-877-0300 Agency licensure--General information. The department licenses agencies to provide behavioral health treatment services. To gain and maintain licensure, an agency must meet the requirements of chapter 388-877 WAC, applicable local and state rules, and federal statutes. In addition, the agency must meet the program specific certification requirements of chapter 388-805 WAC for chemical dependency, chapter 388-816 WAC for problem and pathological gambling, and/or chapter 388-865 WAC for mental health.

(1) An agency currently accredited by a national accreditation agency recognized by and having a current agreement with the department may be eligible for deeming. See WAC 388-877-0310.

(2) Initial applications and renewal forms for behavioral health agency licensure or certification may be downloaded at <http://www.dshs.wa.gov/dbhr/daforms.shtml>. Completed application packets, forms, and requests for deeming or other services should be mailed to: Division of Behavioral Health and Recovery, P.O. Box 45320, Olympia, WA 98504 5320.

(3) An agency must report to the department any changes that occur during the initial or renewal 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 or renewal application was submitted.

(4) 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 agency 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 388-877-0370 do not apply to exemption to rule decisions.

(5) In the event of an agency closure or the cancellation of a program-specific certification, the agency must provide each individual:

(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.

NEW SECTION

WAC 388-877-0305 Agency licensure--Application. To apply for licensure to provide any behavioral health service, an agency must submit an initial application that is signed by the agency's designated official.

(1) The application must include the following:

(a) A copy of the agency'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 agency is seeking certification.

(c) The name of the administrator providing management or supervision of services.

(d) A copy of the report of findings from a criminal background check of the administrator and any owner of five percent or more of the organizational assets;

(e) The physical address of any agency operated facility where behavioral health services will be provided;

(f) A statement assuring the agency meets American Disability Act (ADA) standards and that the facility is appropriate for providing the proposed services;

(g) A copy of the policies and procedures specific to the agency;

(h) A staff roster, including each staff member's credentials under department of health rules for professional standards and licensing if credentials are required for the position;

(i) A copy of a current department of health (DOH) residential treatment facility certificate if the agency is providing chemical dependency residential treatment or mental health residential treatment; and

(j) Payment of associated fees.

(2) The department conducts an on-site review as part of the initial licensing or certification process (see WAC 388-877-0320).

NEW SECTION

WAC 388-877-0310 Agency licensure--Deeming. (1) The department may deem an agency to be in compliance with state minimum standards for licensure and program specific certification based on the agency being currently accredited by a

national accreditation agency recognized by and having a current agreement with the department.

(2) To be considered for deeming, an agency must submit a request to the department signed by the agency's designated official.

(3) Deeming will be in accordance with the established written agreement between the accrediting agency and the department.

(4) Specific licensing and program 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 program specific certification is not eligible for deeming.

(6) Any service added to an agency's existing services is:

(a) Considered provisional until the requirements in WAC 388-877-0345 are met and the department approves the service; and

(b) Not eligible for deeming until the service has been reviewed by the accrediting agency.

(7) Any branch site added to an existing agency:

(a) Must meet the requirements in WAC 388-877-0340; and

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

NEW SECTION

WAC 388-877-0315 Agency licensure--Renewals. A department-issued license, including the program-specific certification expires twelve months from the effective date. To renew a license or certification, an agency must submit a renewal request signed by the agency's designated official.

(1) The 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 388-877-0365).

(2) The department may conduct an on-site review as part of the renewal process (see WAC 388-877-0320).

NEW SECTION

WAC 388-877-0320 Agency licensure--On-site reviews and plans of correction. To obtain and maintain licensure to provide behavioral health services, including program-specific certification, each agency is subject to an on-site review to determine if the agency is in compliance with 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 requirements;
(v) The agency's internal quality management process that demonstrates how the agency evaluates program effectiveness and individual participant satisfaction; and

(vi) Any other information, including the criteria in WAC 388-877-0335(1)(b), that the department determines to be necessary to confirm compliance with the minimum standards of this chapter.

(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, if applicable:

- (a) A discussion of findings;
(b) A statement of deficiencies requiring a plan of correction; and
(c) A plan of correction signed by the agency's designated official and the department review team representative.

(3) 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 consumer health and safety concerns require immediate corrective action.

NEW SECTION

WAC 388-877-0325 Agency licensure and program-specific 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 388-877-0305(1);
(b) An on-site review is conducted under WAC 388-877-0320 and the agency corrects any noted deficiencies within the agreed upon time frame; and
(c) The department determines the agency is in compliance with licensure and program-specific certification standards.

(2) The agency must post the department-issued license in a conspicuous place on the facility's premises, and on the agency's branch site premises, if applicable.

(3) See WAC 388-877-0330 for license and program-specific certification effective dates.

(4) See WAC 388-877-0315 for agency requirements for renewing licensure.

NEW SECTION

WAC 388-877-0330 Agency licensure--Effective dates. An agency's license is effective for twelve months from the effective date, subject to the agency maintaining

compliance with minimum licensure and program-specific certification standards in this chapter and chapters 388-877A, 388-877B, and 388-877C WAC.

NEW SECTION

WAC 388-877-0335 Agency licensure and program-specific certification--Denials, suspensions, restrictions, revocations, and penalties. (1) The department may deny issuing or renewing a license or a specific program certification, place an agency on probation, or suspend, restrict, or revoke an agency's license or specific program certification for any of the following reasons, as applicable:

(a) The agency fails to meet the requirements or other applicable state minimum standards or federal laws.

(b) 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 substantiated child abuse;

(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 regulations 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 criminal background check requirements;

(xv) Fails to provide satisfactory application materials; or

(xvi) Advertises the agency as licensed or certified for services when licensing or certification has not been granted, or has been revoked or canceled.

(c) The department determines there is imminent risk to consumer health and safety.

(d) The agency's license 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.

(e) The agency voluntarily cancels licensure or certification.

(f) The agency fails to pay the required license or certification fees.

(g) The agency stops providing the services for which the agency is certified.

(h) The agency changes ownership without notifying the department.

(i) The agency relocates without notifying the department.

(2) The department sends a written notice to deny, suspend, revoke, or modify the licensure or certification status (see RCW 43.20A.205) that includes the reason(s) for the decision and the agency's right to appeal a department decision (refer to WAC 388-877-0370).

(3) 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 a program that is state- and/or federally-funded; and

(c) Notify the county alcohol and drug coordinator, regional support network, and/or local media of stopped referrals, involuntary cancellation, suspensions, revocations, or nonrenewal of the agency's license or program-specific certification(s).

NEW SECTION

WAC 388-877-0340 Agency licensure--Adding a branch site. To add a branch site, an existing licensed behavioral health agency must notify the department and submit an application 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 American Disability 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 388-877-0365).

(2) Each nonresidential 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 388-877-0345 Agency licensure program specific certification--Adding a new service. To add a new service, a licensed behavioral health agency must request and submit an abbreviated application that is signed by the agency's designated official. The application must include the following:

- (1) The name of the administrator providing management or supervision of services;
 - (2) The physical address of the agency-operated facility where the new service will be provided;
 - (3) A description of the agency's policies and procedures relating to the new service;
 - (4) The name and credentials of each staff member providing the new service;
- and
- (5) Payment of fees (see WAC 388-877-0365).

NEW SECTION

WAC 388-877-0350 Agency licensure--Change in ownership. When a licensed behavioral health agency changes ownership, the department requires:

- (1) A new license application (see WAC 388-877-0305);
- (2) Payment of fees (see WAC 388-877-0365).
- (3) A statement regarding the disposition and management of clinical records in accordance with applicable state and federal laws.

NEW SECTION

WAC 388-877-0355 Agency licensure--Change in location. When a licensed behavioral health agency relocates to another address, the department requires:

- (1) The agency to notify the department in writing of the new address at least thirty days before moving;
- (2) A new license application (see WAC 388-877-0305); and
- (3) Payment of fees (see WAC 388-877-0365).

NEW SECTION

WAC 388-877-0360 Agency licensure--Facility remodel. When a licensed behavioral health agency changes the accessibility of the facility by remodeling, the department requires the agency to:

- (1) To notify the department in writing of the facility remodel at least thirty days before the day the remodeling begins; and
- (2) To ensure the facility's remodel meets all city and county codes, and state accessibility requirements.

NEW SECTION

WAC 388-877-0365 Agency licensure and program-specific 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 program-specific certification is denied, revoked, or suspended.

(5) The department charges the following fees for approved chemical dependency treatment programs:

Application Fees for Agency Certification for Approved Chemical Dependency Treatment Programs

New agency application	\$1,000
Branch agency application	\$500
Application to add one or more services	\$200
Application to change ownership	\$500

Initial and Annual Certification Fees for Detoxification, Residential, and Nonresidential Services

Detoxification 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 <u>388-877-0310</u>
Nonresidential services	\$750 per year for agencies not renewing certification through deeming
	\$200 per year for agencies certified through deeming per WAC <u>388-877-0310</u>

Complaint/Incident Investigation Fees

All agencies	\$1,000 per substantiated complaint investigation and \$1,000 per substantiated incident investigation
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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 detoxification and residential beds; and
- (b) The agency provider's national accreditation status.

(6) 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 Certification Fees	
Evaluation and treatment (E&T) bed fees	\$90 initial certification fee, per bed \$90 annual certification fee, per bed
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 DBHR	\$500 annual licensing fee
Complaint/Incident Investigation Fee	
All residential and nonresidential agencies	\$1,000 per substantiated complaint investigation and \$1,000 per substantiated incident investigation

Agencies providing nonresidential mental health services must report the number of annual service hours provided based on the division of behavioral health and recovery's (DBHR's) current published "Service Encounter Reporting Instructions for RSNs" and the "Consumer Information System (CIS) Data Dictionary for RSNs." These publications are available at the DBHR website at: <http://www.dshs.wa.gov/dbhr/mhpublications.shtml>.

- (a) Existing licensed agencies must compute the annual services 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.

NEW SECTION

WAC 388-877-0370 Agency licensure and program-specific certification--Appealing a department decision. (1) To appeal a decision made by the department, an agency must file a written request for a hearing:

(a) Signed by the agency's administrator.

(b) Within twenty-eight days of the date of the department's written decision.

(c) To the Board of Appeals, P.O. Box 2465, Olympia, WA 98504, with a method that shows proof of receipt.

(d) That includes all of the following:

(i) A copy of the department's decision that is being contested.

(ii) The agency's reason for contesting the decision.

(iii) The specific rules, laws, and policy the agency believes are being violated.

(2) A decision will be made following the requirements of the Administrative Procedure Act, chapter 34.05 RCW, and chapter 388-02 WAC.

(3) The department may order a summary suspension of the agency's license or certification pending completion of the appeal process when the preservation of public health, safety, or welfare requires emergency action.

Section four--Behavioral health services--Agency administration

NEW SECTION

WAC 388-877-0400 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.

(3) Approve the mission statement for the services provided.

(4) Notify the department within thirty days of changes of the administrator.

NEW SECTION

WAC 388-877-0410 Agency administration--Administrator key responsibilities.

(1) The agency administrator is responsible for the day-to-day operation of the agency, 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, facility security, the safety of each individual and other identified needs of individuals receiving services.

(d) Ensure all persons providing clinical services are credentialed for their scope of practice as required by the department of health.

(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.

(g) Ensure that personnel records document that Washington state patrol background checks consistent with RCW 43.43.830 through 43.43.834 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 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 safety and the quality of care in response to all of the following:

(i) Critical incidents;

(ii) Complaints; and

(iii) Grievances.

NEW SECTION

WAC 388-877-0420 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:

(a) Includes the entity's name, firm name, or registered trade name; and

(b) Lists all addresses where the entity performs services.

(3) Organizational description. An organizational description detailing all positions and associated license or certification, updated as needed.

(4) Agency staffing and supervision. Documentation that shows the agency has staff members:

(a) Adequate in number to provide program-specific certified services to serve

the agency's caseload of individuals; and

(b) 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.

(a) Certified interpreters or other interpreter services must be available for individuals with limited English speaking proficiency and individuals who have sensory disabilities if required by agency's license or certification; 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 and vulnerable adult consistent with chapters 26.44 and 74.34 RCW.

(12) Protection of youth. Documentation of how the agency addresses the protection of youth participating in group or residential treatment with adults.

(13) Reporting the death of an individual seeking or receiving services. A description of how the agency directs staff to report to the department within one business day the death of any individual which occurs on the premises of a licensed agency.

(14) Reporting critical incidents involving individuals. A description of how the agency directs staff to report to the department within two business days any critical incident that occurs involving an individual, and actions taken as a result of the incident.

(15) A smoking policy. Documentation that a smoking policy consistent with the Washington Clean Indoor Air Act, Chapter 70.160 RCW, is in place.

(16) 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.
- (17) Individual rights. A description of how the agency has individual participation rights and policies consistent with WAC 388-877-0600.
- (18) Individual complaints and grievances. A description of how the agency addresses an individual's complaint and/or grievance.

NEW SECTION

WAC 388-877-0430 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 accessible to an individual with a disability.
- (2) Has a reception area separate from living and therapy areas.
- (3) Has adequate private space for personal consultation with an individual, staff charting, and therapeutic and social activities, as appropriate.
- (4) Has secure storage of an individual's active or closed confidential record.
- (5) Has secure, locked storage of poisonous external chemicals and caustic materials.

Section five--Behavioral health services--Personnel

NEW SECTION

WAC 388-877-0500 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) Hiring practices. Identification of how the agency:
 - (a) Ensures all persons providing or supervising clinical services have an active registration, certification, or license granted by the department of health consistent with the services provided; and
 - (b) Ensures the requirements of WAC 388-06-0170 are met if the agency provides services to youths.
- (2) 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.
- (3) 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 website 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.

(4) Drug free workplace. Identification of how the agency provides for a drug free work place that includes:

(a) A philosophy of no tolerance of illegal drug-related activity;

(b) Agency program standards of prohibited conduct; and

(c) Actions to be taken in the event a staff member misuses alcohol or other drugs.

(5) 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.

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

(a) Consistent with the agency's program-specific certified services.

(b) On cultural competency that assists staff in recognizing when cultural barriers interfere with clinical care.

(c) That includes a review of:

(i) Individual crisis response procedures;

(ii) Emergency procedures;

(iii) Program policies and procedures;

(iv) Rights for individuals receiving services and supports;

(v) Population-specific information; and

(vi) An overview of applicable community resources.

(d) To meet the requirements of this chapter.

NEW SECTION

WAC 388-877-0510 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 the following:

(a) Documentation of annual training, including documentation that the employee successfully completed training on cultural competency (see WAC 388-877-0500(6)(b)).

(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, within thirty days of hire, that includes:

(i) An overview of the administrative, personnel and clinical 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.

(iii) Staff ethical standards and conduct, including reporting of unprofessional

conduct to appropriate authorities.

(iv) The process for resolving client complaints and/or grievances.

(v) The facility evacuation plan.

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

(e) For noncontract staff, a copy of a current job description, signed and dated by the employee and supervisor which includes:

(i) A job title;

(ii) Minimum qualifications for the position; and

(iii) A summary of duties and responsibilities.

(f) For contract staff, formal agreements or personnel contracts that describe the nature and extent of patient care services may be substituted for job descriptions.

(g) Performance evaluations conducted by the immediate supervisor or designee.

(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 388-877-0520 Personnel--Agency requirements for supervision of trainees and interns. Each agency licensed by the department to provide any behavioral health service must ensure the following supervision requirements are met for trainees and interns:

(1) Each trainee and intern who receives training at an agency must be assigned a supervisor who has been approved by the agency administrator or designee.

(2) The assigned supervisor:

(a) Must be credentialed by the department of health 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.

NEW SECTION

WAC 388-877-0530 Personnel--Agency requirements for volunteers and student practicum. Each agency licensed by the department to provide any behavioral health service is responsible to provide orientation to any volunteer or student assisting the agency. In addition, the agency must ensure and document that:

(1) Each volunteer meets the qualifications of the position they are assigned.

(2) Each student who uses the agency as a setting for student practicum is supported by an educational institution.

(a) The agency and the educational institution must have a written agreement that describes:

- (i) The nature and scope of student activity at the treatment setting; and
 - (ii) The plan for supervision of student activities.
- (b) The agency must obtain and retain a confidentiality statement signed by the student and the student's academic supervisor.

Section six--Behavioral health services--Clinical

NEW SECTION

WAC 388-877-0600 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 71.12, 70.96A, 71.05, 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 complaint and/or grievance procedures upon request and to lodge a complaint or grievance with the provider if you believe your rights have been violated; and
- (j) File a complaint with 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 blind;
- (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) In addition to the requirements in this section, each agency receiving public funding must ensure an individual seeking or participating in behavioral health treatment services, or the person legally responsible for the individual:

(a) Is informed of their rights at time of admission and in a manner that is understandable to the individual or legally responsible person.

(b) Receives a written notice from the agency if the individual's services are denied, terminated, suspended, or changed. The agency must, within ten business days of the date of making the determination, ensure that the written notice:

(i) Is available in an alternative format for an individual who is blind;

(ii) Is translated to the language the individual understands, if applicable;

(iii) Contains a reference to the specific Washington Administrative Code (WAC) provision(s) upon which the denial for treatment or change in services is based;

(iv) Is sufficient in detail to enable the individual to learn why the department's action was taken;

(v) Contains administrative hearing rights, including information on how to request an administrative hearing and information regarding the right to receive continued benefits through the end of the month the administrative hearing decision is mailed;

(vi) Acknowledges that the individual may be represented at the administrative hearing by legal counsel or other representative; and

(vii) Informs the individual that the name and address of the nearest legal services office is available upon request.

(c) Is free of any act of retaliation if an administrative hearing is requested due to a department action.

(d) Is informed that if eligible for services under a medicaid program, their right to receive all services which are medically necessary and, if there is a disagreement, a right to a second opinion.

(e) Is informed that they have a right to make an advance directive in accordance with RCW 71.32 and 68.84, stating their choices and preferences regarding their physical and mental health treatment if they are unable to make informed decisions.

(f) Is informed that the 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.

NEW SECTION

WAC 388-877-0610 Clinical--Initial assessment. Each agency licensed by the department to provide any behavioral health service is responsible for an individual's initial assessment.

(1) The initial assessment must be:

(a) Conducted face-to-face; and

(b) Completed by a professional appropriately credentialed to provide chemical dependency, mental health, and/or problem and pathological gambling services as determined by state law.

(2) The initial assessment must include and document:

- (a) Individual identifying information;
- (b) Presenting issues;
- (c) Name of the individual's medical provider(s);
- (d) Medical concerns;
- (e) Medications currently taken;
- (f) Brief mental health, substance use, and problem and pathological gambling histories;
- (g) Any identification of risk of harm to self and others, including suicide and/or homicide. A referral for provision of emergency/crisis services must be made if indicated in the risk assessment;
- (h) Information that a person is court ordered to treatment or is under the supervision of department of corrections; and
- (i) Treatment recommendations.

NEW SECTION

WAC 388-877-0620 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 to provide mental health, chemical dependency, and/or problem and pathological gambling services.
 - (b) Address age, gender, cultural, strengths and/or disability 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 is made available to the individual.
 - (e) Demonstrate the individual's participation in the development of the plan.
 - (f) Document participation of family or significant others, if participation is requested by the individual and is clinically appropriate.
 - (g) Contain measurable goals or objectives, or both.
 - (h) Be updated to address applicable changes in identified needs and achievement of goals and objectives.
- (2) When required by law, the agency must notify the required authority of a violation of a court order or nonparticipation in treatment, or both.

NEW SECTION

WAC 388-877-0630 Clinical--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; and

(2) Ensure that the individual's personal health information is shared or released only in compliance with applicable state and federal law.

NEW SECTION

WAC 388-877-0640 Clinical--Record content. Each agency licensed or certified 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 established under RCW 18.19.060.

(2) Demographic information.

(3) An initial 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 chemical dependency treatment.

(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 met all the following requirements when an individual informs the agency that the individual is under supervision by DOC due to a less restrictive alternative or DOC order for treatment:

(a) The agency notified DOC orally or in writing. The agency must confirm an oral notification with a written notice by electronic mail or fax.

(b) The agency obtained a copy of the court order from the individual and placed it in the record when the individual has been given relief from disclosure by the committing court.

(c) When appropriate, the agency requested an evaluation by a designated mental health professional (DMHP) when the provider becomes aware of a violation of the court-ordered treatment and the violation concerns public safety.

(6) The initial and any subsequent individual service plan that include:

(a) All revisions to the plan, consistent with the service(s) the individual receives; and

(b) Documentation of objective progress towards established goals as outlined in the plan.

(7) Documentation the individual was informed of applicable federal and state confidentiality requirements.

(8) Documentation of confidential information that has been released without the consent of the individual under RCW 70.02.050, 71.05.390, and 71.05.630, and the Health Insurance Portability and Accountability Act (HIPPA).

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

(10) If treatment is not court ordered, documentation of consent to treatment by the individual or individual's parent, or other legal representative.

(11) If treatment is court ordered, a copy of the detention or involuntary treatment order.

- (12) Documentation of coordination of care, as needed.
- (13) Documentation of all service encounters.
- (14) Medication records, if applicable.
- (15) Laboratory reports, if applicable.
- (16) Properly completed authorizations for release of information, if applicable.
- (17) Copies of applicable correspondence.
- (18) Discharge information.

NEW SECTION

WAC 388-877-0650 Clinical--Access to clinical records. Each agency licensed by the department to provide behavioral health services must:

(1) Provide access to an individual's clinical record at the request of the individual or, if applicable, the individual's designated representative, and/or legal representative. The agency must:

(a) Review the clinical record before making the record available in order to identify and remove:

- (i) Any material confidential to another person, agency, or provider; and
- (ii) Reports not originated by the agency.

(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) Charge for copying at a rate not higher than defined in RCW 70.02.010(12).

(2) Make an individual's clinical record available to department staff as required for department program review.