



RULE-MAKING ORDER

CR-103E (July 2011)
(Implements RCW 34.05.350)

Agency: Department of Social and Health Services, Behavioral Health and Service Integration Administration

Emergency Rule Only

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
 - No
- If Yes, explain:

Purpose: The department is amending WAC 388-865-0526 as a result of the Washington Supreme Court decision in *In re the Detention of D.W., et.al.*, No. 90110-4. This section contains the department's rules for single bed certification which allows for the inpatient treatment of adults and children in facilities that are not certified as inpatient evaluation and treatment facilities. The amendment: (1) allows residential treatment facilities, psychiatric hospitals, hospitals with a psychiatric unit, and hospitals that can provide timely and appropriate mental health treatment to be recognized for single bed certification; (2) requires that any facility which is the site of a proposed single bed certification confirm that it is willing to provide treatment services; (3) articulates standards that facilities must meet while operating under a single bed certification; and (4) clarifies that the regional support networks retain responsibility for ensuring that the rights of patients are protected while in single bed certifications.

Citation of existing rules affected by this order:

Repealed: None
 Amended: WAC 388-865-0526
 Suspended: None

Statutory authority for adoption: RCW 71.05.560, 71.24.035, and 71.34.380

Other authority : NA

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.
- That in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012, or 2013, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this finding: This emergency rule supersedes the emergency rule filed as WSR 15-01-193 on December 24, 2014. The emergency rule allows for certain appropriate consumers to be certified to facilities that they previously would not have been able to, thus creating new bed opportunities and preventing the inappropriate release of consumers who need involuntary mental health treatment. The department filed a CR-101 under WSR 14-22-016 on October 23, 2014 and continues to work with stakeholders in developing final language which was sent for external review mid-April. The department anticipates filing the CR 102 proposal in May with a June 2015 public hearing for the permanent adoption.

Date adopted: April 16, 2015

NAME (TYPE OR PRINT)

Katherine Vasquez

SIGNATURE

TITLE

DSHS Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: April 21, 2015

TIME: 10:28 AM

WSR 15-09-122

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	<u>1</u> _____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	<u>1</u> _____	Repealed	_____

WAC 388-865-0526 Single bed certification. At the discretion of the ~~((mental health division))~~ department, an exception may be granted to allow timely and appropriate treatment to an adult on a seventy-two hour detention or fourteen-day commitment in a facility that is not certified under WAC 388-865-0500; or for a maximum of thirty days to allow a community facility to provide treatment to an adult on a ninety- or one hundred eighty-day inpatient involuntary commitment order. For involuntarily detained or committed children, the exception may be granted to allow timely and appropriate treatment in a facility not certified under WAC 388-865-0500 until the child's discharge from that setting to the community, or until they transfer to a bed in a children's long-term inpatient program (CLIP).

(1) The regional support network (RSN) or its designee must submit a written request for a single bed certification to the ~~((mental health division prior to the commencement of the order))~~ department. In the case of a child, the facility must submit the written request ~~((directly))~~ to the ~~((mental health division))~~ department. The request must be submitted and approved by the department for a facility to accept an individual for timely and appropriate treatment under this section. If the ~~((DSHS secretary))~~ department has assumed the duties assigned to a nonparticipating ~~((regional support network))~~ RSN, ~~((a single bed certification may be requested by a mental health division designee contracted to provide inpatient authorization or designated crisis response services))~~ an entity designated by the department will perform the functions described in this section.

(2) ~~((The facility receiving the single bed certification must meet all requirements of this section unless specifically waived by the mental health division.))~~

~~((3))~~ A single bed certification may be issued to the facility for timely and appropriate mental health treatment when the following requirements are met in each instance where such certification is sought for an individual:

(a) The facility that is the site of the proposed single bed certification confirms that it is willing and able to provide directly, or by direct arrangement with other public or private agencies, timely and appropriate mental health treatment to the consumer for whom the single bed certification is sought; and

(b) The request for single bed certification ~~((must describe))~~ describes why the consumer meets at least one of the following criteria:

~~((a))~~ (i) ~~((The consumer requires medical services that are not available at a facility certified under this chapter or a state psychiatric hospital; or~~

~~((b))~~ The consumer is expected to be ready for discharge from inpatient services within the next thirty days and being at a community facility would facilitate continuity of care, consistent with the consumer's individual treatment needs~~((-))~~;

(ii) The consumer can receive appropriate mental health treatment in a residential treatment facility, as defined in WAC 246-337-005, and the single bed certification will be only to that facility; or

(iii) The consumer can receive appropriate mental health treatment in a hospital with a psychiatric unit, or a hospital that is willing and able to provide timely and appropriate mental health

treatment, or a psychiatric hospital, and the single bed certification will apply only to that facility.

(3) In order to provide timely and appropriate mental health treatment, the facility receiving the single bed certification, or the public or private agency the facility has a direct arrangement with to provide mental health treatment, must:

(a) Implement standards for administration that include written procedures to assure that a mental health professional, as defined in RCW 71.05.020 or WAC 388-865-0150, and licensed physicians are available for consultation and communication with both the consumer and the direct patient care staff;

(b) Use a plan of care/treatment. The medical or clinical record must contain documentation that:

(i) An individualized mental health treatment plan was developed, when possible, collaboratively with the consumer. If the consumer is unwilling or unable to participate in development of the plan, documentation must be made in the record. Development of this plan may include participation of a multidisciplinary team, a mental health professional, as defined in RCW 71.05.020 or WAC 388-865-0150, or collaboration with members of the consumer's support system as identified by the consumer.

(ii) A mental health professional, as defined in RCW 71.05.020 or WAC 388-865-0150, has had contact with each involuntarily detained consumer at least daily for the purposes of:

(A) Observation and evaluation; and

(B) Assessing whether the consumer is appropriate for release from involuntary commitment to accept treatment on a voluntary basis.

(c) Have standards for administration and monitoring of medication, including psychiatric medications. Consumers have a right to make an informed decision regarding the use of antipsychotic medication consistent with RCW 71.05.215.

(4) If a consumer requires medical services that are not generally available at a facility certified under this chapter, or at a state psychiatric hospital when a court has ordered a ninety- or one hundred eighty-day inpatient commitment, or at a facility that meets the requirements of subsections (2) and (3) of this section, a single bed certification may be issued to that facility for the consumer as follows:

(a) The single bed certification request must adequately describe why the consumer requires medical services that are not available at a facility certified under this chapter, or at a state psychiatric hospital when a court has ordered a ninety- or one hundred eighty-day inpatient commitment, or at a facility that meets the requirements of subsections (2) and (3) of this section;

(b) The facility that is the site of the requested single bed certification must confirm that it is willing and able to provide the medical services; and

(c) The facility has documented that one of the following has been met:

(i) With the authorization of the hospital, and consistent with any applicable hospital policies and procedures, the RSN assigns a mental health professional to provide the consumer appropriate mental health treatment at the facility, including observation and evaluation, during the period of time the consumer is provided medical services; or

(ii) The hospital provides medical services and a plan that addresses the consumer's mental health treatment needs until the consum-

er is medically stable and the RSN or its designee identifies an appropriate facility for the consumer that is one of the following:

(A) The hospital providing services;

(B) A facility that is certified as an evaluation and treatment (E & T) facility; or

(C) A facility that can meet the consumer's needs under the single bed certification criteria in this section.

(d) If a qualified medical professional determines that mental health treatment for the consumer is not clinically indicated, the requirements in (c) of this subsection do not apply. When the consumer is determined to be medically stable, the facility must ensure the requirements in (c) of this subsection are met.

(5) The ((mental health division director or the director's designee)) department makes the decision and gives written notification to the requesting entity in the form of a single bed certification. The single bed certification must not contradict a specific provision of federal ((law)) or state ((statute)) law.

((+5)) (6) A consumer who receives services under a single bed certification under this section must be transferred to an evaluation and treatment facility if on a seventy-two hour detention or fourteen-day commitment, or to a state hospital if on a ninety- or one hundred eighty-day inpatient commitment, as soon as the attending physician considers the consumer medically stable and a bed becomes available, unless the treating facility consents to continue treatment and continued treatment in the current setting is consistent with the best clinical interests of the consumer.

(7) The ((mental health division)) department may make site visits at any time to verify that the terms of the single bed certification are being met. Failure to comply with any term of this exception may result in corrective action. If the ((mental health division)) department determines that the violation places consumers in imminent jeopardy, immediate revocation of this exception can occur.

((+6)) (8) The RSN retains the responsibility for ensuring due process required by RCW 71.24.300(6)(b).

(9) Neither consumers nor facilities have fair hearing rights as defined under chapter 388-02 WAC regarding single bed certification decisions by ((mental health division)) department staff.