



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: June 01, 2021

TIME: 3:36 PM

WSR 21-12-090

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

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 21-08-091 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) Chapter 388-878 WAC, Outpatient Competency Restoration Program

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
July 6 th , 2021	10:00 a.m.	Office Building 2 DSHS Headquarters 1115 Washington Olympia, WA 98504 Or virtually	Public parking at 11 th and Jefferson. A map is available at: https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2 Due to the COVID 19 pandemic, hearing may be held via virtual, see DSHS website for more up to date information: https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings

Date of intended adoption: Not earlier than July 7, 2021 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: DSHS Rules Coordinator

Address: PO Box 45850

Olympia, WA 98504

Email: DSHSRPAURulesCoordinator@dshs.wa.gov

Fax: 360-664-6185

Other:

By (date) 5:00 pm on July 6, 2021.

Assistance for persons with disabilities:

Contact Katherine Vasquez, DSHS Rules Coordinator

Phone: 360-664-6097

Fax: 360-664-6185

TTY: 711 Relay Service

Email: vasquki@dshs.wa.gov

Other:

By (date) June 22, 2021

Purpose of the proposal and its anticipated effects, including any changes in existing rules: This rulemaking is to develop rules for the conditions of participation in the outpatient competency restoration program, within the framework of the forensic mental health care system. This rulemaking will include but not be limited to detailing the eligibility requirements for a person to receive outpatient competency restoration, medication management, regular urinalysis testing for defendants with substance use disorder.

Reasons supporting proposal: The proposed rule is necessary for administering inpatient and outpatient competency restoration programs which are run by the Department of Social and Health Services and the Health Care Authority, respectively.

Statutory authority for adoption: RCW 10.77.086, RCW 72.01.090,

Statute being implemented: RCW 10.77.086

Is rule necessary because of a:

- Federal Law? Yes No
- Federal Court Decision? Yes No
- State Court Decision? Yes No

If yes, CITATION: *Trueblood et. al. v Washington State DSHS*

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

Name of proponent: (person or organization) Department of Social and Health Services Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Nora Selander	PO Box 45525, Olympia, WA 98504	360-902-7637
Implementation:	Nora Selander	PO Box 45525, Olympia, WA 98504	360-902-7637
Enforcement:	Nora Selander	PO Box 45525, Olympia, WA 98504	360-902-7637

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

Is a cost-benefit analysis required under RCW 34.05.328?

- Yes: A preliminary cost-benefit analysis may be obtained by contacting:
 - Name: Nora Selander
 - Address: 1115 Washington St. NE
PO Box 45525
Olympia, WA 98504
 - Phone: 360-902-7637

Fax:
TTY:
Email: nora.selander@dshs.wa.gov
Other:

No: Please explain:

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

RCW 34.05.310 (4)(b)
(Internal government operations)

RCW 34.05.310 (4)(e)
(Dictated by statute)

RCW 34.05.310 (4)(c)
(Incorporation by reference)

RCW 34.05.310 (4)(f)
(Set or adjust fees)

RCW 34.05.310 (4)(d)
(Correct or clarify language)

RCW 34.05.310 (4)(g)
(i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. This rule does not impact any small businesses..

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

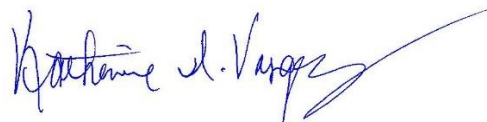
Name: Nora Selander
Address: 1115 Washington St NE
PO Box 45525
Olympia, WA 98504
Phone: 360-902-7637
Fax:
TTY:
Email: nora.selander@dshs.wa.gov
Other:

Date: May 27, 2021

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



**Chapter 388-878 WAC
Outpatient competency restoration program.**

NEW SECTION

WAC 388-878-0010 Introduction and overview. (1) Outpatient competency restoration program (OCRCP) is one of the elements of the True-blood Settlement managed by the health care authority in collaboration with the department of social and health services office of forensic mental health services.

(2) The OCRCP provides an option for courts to order competency restoration services in the community for persons who the court determines are not competent to stand trial and are appropriate for community-based treatment.

NEW SECTION

WAC 388-878-0020 Outpatient competency restoration program (OCRCP)—Definitions. "Competency evaluation" means an evaluation performed to determine whether an individual is competent to stand trial.

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

"Forensic navigator" means department staff who are officers of the court who assist the individual to access services related to diversion and the outpatient competency restoration program.

"Health care authority" or "HCA" means the Washington state health care authority, any division, section, office, unit or other entity of HCA, or any of the officers or other officials lawfully representing HCA.

"Inpatient competency restoration" means competency restoration services performed in an inpatient setting, including a state psychiatric hospital or residential treatment facility.

"Outpatient competency restoration program" or "OCRCP" means competency restoration services that are provided on an outpatient basis to clients who are on conditional release from custody.

"Provider" means the HCA-contracted provider of outpatient competency restoration services, its employees and agents.

NEW SECTION

WAC 388-878-0030 Clinically appropriate for outpatient competency restoration services. (1) The court may order a client into OCRCP when it determines the client is clinically appropriate to receive outpatient competency restoration services. Clinical appropriateness for OCRCP means a likelihood of being restored to competency in an outpatient setting.

(2) A client may not be clinically appropriate for outpatient competency restoration services if the client exhibits any of the following:

- (a) Is not medically stable;
- (b) Has current suicidal ideation with intent;
- (c) Is at heightened risk of harming others;
- (d) Psychiatric symptoms at a severity that suggests that the client will not be able to care for their basic needs or health and safety in the community even with clinically appropriate housing and case management services; or
- (e) Other concerning behavior or factors which indicates the client is not appropriate for outpatient competency restoration services.

NEW SECTION

WAC 388-878-0040 Assignment of clients and initial intake. (1) The forensic navigator will inquire into a provider's capacity before informing the court that the provider is able to accept a case assignment. Subject to capacity limitations, the designated provider will accept all clients ordered by the court.

(2) Immediately following the case assignment, the provider will make arrangements for the client to attend an initial intake appointment to be conducted by the provider.

(a) The date of this appointment is the program start date.

(b) The provider will develop an initial treatment plan based on the clinical barriers to competency assessed upon intake, and plan for commencing support or clinical services.

(c) The provider will commence OCRP services for the client as soon as practicable after the initial intake appointment, even if the assessment and initial treatment plan are still being completed.

NEW SECTION

WAC 388-878-0050 Conditions of participation. Every client in receipt of modified conditions of release from the criminal court and ordered for outpatient competency restoration must be clinically appropriate for outpatient competency restoration services, and must be substantially compliant with the following conditions of participation:

- (1) Taking medications or receiving prescribed intramuscular medication, if applicable;
- (2) Abstaining from alcohol and unprescribed drugs;
- (3) Participating in regular urinalysis or other drug testing for clients who have a current substance use disorder diagnosis; and
- (4) Engaging in their care and treatment.

NEW SECTION

WAC 388-878-0060 OCRP provider reporting. (1) The provider will submit a weekly status update to the assigned forensic navigator via secure email.

(2) The provider will submit a behavioral concern report when there is concern about a client's behavior. The report must be submitted to the forensic navigator via direct notification in person or by phone same day, and additionally by secure email within twenty-four hours of concern.

NEW SECTION

WAC 388-878-0070 Early competency evaluation. The provider will promptly request an early competency evaluation when the provider determines the client may meet one of the following criteria:

(1) Client exhibits barriers to competency to stand trial that are minimal or not present; or

(2) Client determined to be not restorable to competency to stand trial.

NEW SECTION

WAC 388-878-0080 Program removal. (1) If a client fails to comply with the conditions of the outpatient competency restoration program such that restoration is no longer appropriate in that setting or the client is no longer clinically appropriate as determined by the department, the department will remove the client from the program and place the client in an appropriate facility for inpatient competency restoration.

(2) If the provider determines that the client may no longer meet the conditions of participation, the provider will promptly contact the forensic navigator to consider removal from the program.

NEW SECTION

WAC 388-878-0090 Program end. (1) The provider will no longer serve the client in the program following the last date on which the program may legally provide services to the client.

(2) The provider must contact the forensic navigator to make a plan for coordinated transition or continuing outpatient behavioral health services.