



**RULE-MAKING ORDER
EMERGENCY RULE ONLY**

**CR-103E (December 2017)
(Implements RCW 34.05.350
and 34.05.360)**

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: May 30, 2018

TIME: 9:06 AM

WSR 18-12-040

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

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) June 8, 2018

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 "Single bed certification" by emergency rule to immediately provide clearer means for individuals who have a less restrictive alternative order or conditional release revocation to be granted an exception to allow timely and appropriate treatment under a single bed certification in a facility that is not certified as an Evaluation and Treatment facility. This filing extends the emergency rule filed as WSR 18-05-009 on February 8, 2018 to give time to work on the development of the permanent rule and also to assist with transitioning this rule to the Health Care Authority on July 1, 2018 according to 2ESHB 1388. A CR-101 Preproposal Statement of Inquiry was filed as WSR 18-03-096 on January 17, 2018. The department has created a draft rule and has circulated it to some key external and internal stakeholders for initial review.

Citation of rules affected by this order:

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- Repealed: None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

Statutory authority for adoption: RCW 71.05.745, RCW 71.05.560, RCW 71.24.035, RCW 71.34.380, and chapter 71.05 RCW

Other authority:

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.

Reasons for this finding: The department finds that some courts are not recognizing single bed certifications as applying to less restrictive alternative order revocations because revocations are not specifically mentioned in WAC 388-865-0526. This emergency rule is needed to immediately provide clarification that individuals who have a less restrictive alternative order or conditional release revocation may be granted an exception to allow timely and appropriate treatment under a single bed certification in a facility that is not certified as an Evaluation and Treatment facility. Clarifying the language of the WAC will help remove treatment barriers for individuals who have a less restrictive alternative order or conditional release revocation.

**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	1	Repealed	___

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

New ____ Amended ____ Repealed ____

The number of sections adopted on the agency's own initiative:

New ____ Amended ____ Repealed ____

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

New ____ Amended ____ Repealed ____

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	____

Date Adopted: May 1, 2018

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



WAC 388-865-0526 Single bed certification. At the discretion of the department, an exception may be granted to allow timely and appropriate treatment in a facility that is not certified under chapter 388-877 WAC to an ~~((adult))~~ individual on a seventy-two hour detention, a five-day detention pending a revocation proceeding, or a fourteen-day commitment ~~((in a facility that is not certified under WAC 388-865-0500; or))~~. An exception may also be granted for a maximum of thirty days to allow a community facility to provide treatment to an ~~((adult))~~ individual on a ninety- or one hundred eighty-day inpatient involuntary commitment order or to an individual who has been revoked from a less restrictive alternative order or conditional release. For involuntarily detained or committed children, the exception may be granted to allow timely and appropriate treatment in a facility not certified under chapter 388-877 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)))~~ behavioral health organization (BHO) or behavioral health administrative services organization (BH-ASO) or its designee must submit a written request for a single bed certification to the department. In the case of a child, the facility must submit the written request to the 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 department has assumed the duties assigned to a nonparticipating ~~((RSN))~~ BHO, an entity designated by the department will perform the functions described in this section.

(2) 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 describes why the consumer meets at least one of the following criteria:

(i) 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~~)) 388-865-0238, 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~~)) 388-865-0238, 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~~)) 388-865-0238, 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)) BHO/BH-ASO 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 consumer is medically stable and the ((RSN)) BHO/BH-ASO 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 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 or state law.

(6) A consumer who receives services under a single bed certification under this section must be transferred:

(a) To an evaluation and treatment facility if on a seventy-two hour detention, a five-day detention pending a revocation proceeding, or a fourteen-day commitment((7)); or

(b) To a state hospital if on a ninety- or one hundred eighty-day inpatient commitment or their less restrictive alternative order or conditional release was revoked, 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 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 department determines that the violation places consumers in imminent jeopardy, immediate revocation of this exception can occur.

(8) The ((RSN)) BHO/BH-ASO 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 department staff.