



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

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

Permanent Rule Only

Effective date of rule:

Permanent Rules

31 days after filing.

Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

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

Yes No If Yes, explain:

Purpose: To comply with Second Engrossed Second Substitute Senate Bill (2E2SSB) 5177 (Chapter 7, Laws of 2015 1st sp. sess.) which requires, in part, the department to develop alternative locations and increased access to competency evaluation and restoration treatment services under chapter 10.77 RCW, and to meet the requirements of the court decision in *Trueblood v. DSHS*.

Citation of existing rules affected by this order:

Repealed: None
Amended: None
Suspended: None

Statutory authority for adoption: RCW 10.77.290 and RCW 71.24.035

Other authority: Chapter 10.77 RCW; 2E2SSB 5177 (Chapter 7, Laws of 2015 1st sp. sess.); *Trueblood et. al. v. DSHS et. al.*, Case No. C14-1178 MJP, U.S. District Court, Western District of Washington of Seattle

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 16-01-124 on December 18, 2015.
Describe any changes other than editing from proposed to adopted version:

The department made the following changes and additions. New language is underlined and deleted language is lined through:

WAC 388-865-0950(1)(b) A copy of the discovery ~~packet~~ materials, including, at a minimum, a statement of the individual's criminal history.

WAC 388-865-0950(6) If a state hospital transfers an individual to an agency for competency restoration treatment, the agency must review the individual's completed admission assessment from the state hospital to assure it meets the requirements of subsection (3) of this section for initial assessments. The agency must update the assessment as needed. If the state hospital has not completed or has only partially completed an assessment for the individual, the agency must complete the assessment according to the requirements in subsections (2) and (3) of this section.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting: N/A

Name: _____ phone () _____
Address: _____ fax () _____
e-mail _____

Date adopted:

March 15, 2016

NAME (TYPE OR PRINT)

Patricia Lashway

SIGNATURE

TITLE

DSHS Acting Secretary

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: March 15, 2016
TIME: 11:55 AM
WSR 16-07-061

**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	<u>8</u>	Amended	_____	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	<u>8</u>	Amended	_____	Repealed	_____

NEW SECTION

WAC 388-865-0900 Competency evaluation and restoration treatment services — General. (1) WAC 388-865-0900 through 388-865-0970 contains rules for agencies to gain and maintain certification to provide competency evaluation and restoration treatment services. When used in these rules, "agency" means:

- (a) A residential treatment facility (RTF);
- (b) A general hospital;
- (c) A private psychiatric hospital; or
- (d) An inpatient evaluation and treatment facility.

(2) Competency evaluation and restoration treatment services may be provided to an individual by an agency when the agency meets:

- (a) The certification and fee requirements in WAC 388-865-0910;
- (b) The administrative policy and procedure requirements in WAC 388-865-0920;
- (c) The agency staff requirements in WAC 388-865-0930;
- (d) The individual participant rights requirements in WAC 388-865-0940;
- (e) The admission and initial assessment requirements in WAC 388-865-0950;
- (f) The individual service plan requirements in WAC 388-865-0960;
- (g) The seclusion and restraint requirements in WAC 388-865-0970;
- (h) The agency is willing and able to provide treatment to the individual; and
- (i) All applicable federal, state, tribal, and local codes and ordinances.

(3) WAC 388-865-0900 through 388-865-0970 does not apply to state psychiatric hospitals as defined in chapter 72.23 RCW, facilities owned or operated by the department of veterans affairs, or United States government agencies.

NEW SECTION

WAC 388-865-0910 Competency evaluation and restoration treatment services — Certification and fee requirements. (1) An agency described in WAC 388-865-0900(1) may provide competency evaluation and restoration treatment services to individuals under chapter 10.77 RCW when the department's division of behavioral health and recovery (DBHR) certifies the services. To obtain certification for these services, the agency must:

- (a) Be licensed by the department of health as:
 - (i) A residential treatment facility consistent with chapter 246-337 WAC;
 - (ii) A general hospital consistent with chapter 246-320 WAC;
 - (iii) A private psychiatric hospital consistent with chapter 246-322 WAC; or
 - (iv) An inpatient evaluation and treatment facility as provided in WAC 388-865-0511(1) and consistent with chapter 246-337 WAC.
- (b) Demonstrate to DBHR that the minimum requirements in WAC 388-865-0900 through 388-865-0970 have been met;

(c) Successfully complete a provisional and annual on-site review conducted by DBHR staff that determines the agency is in compliance with the minimum standards of WAC 388-865-0900 through 388-865-0970 and chapter 10.77 RCW; and

(d) Pay the required certification fees:

(i) Ninety dollars, per bed, due at the time of initial application; and

(ii) Ninety dollars, per bed, due twelve months after the date of the initial application approval and annually from that date forward.

(2) The agency must include the fees specified in subsection (1)(d) of this section with the initial application or a twelve month renewal application, as applicable.

(3) Payment of fees must be made by check, bank draft, electronic transfer, or money order, payable to the department of social and health services, and mailed to the department at the address listed on the applicable application packet or form.

(4) The department may refund one-half of the initial application fee or renewal application fee if an application is withdrawn before certification.

(5) The department will not refund fees when certification is denied, revoked, or suspended.

(6) For behavioral health agency licensure fees, program-specific certification fees, and other fees charged by the department, see WAC 388-877-0365.

NEW SECTION

WAC 388-865-0920 Competency evaluation and restoration treatment services — Administrative policies and procedures. (1) In order to provide competency evaluation and restoration treatment services, an agency described in WAC 388-865-0900(1) must develop, implement, and maintain administrative policies and procedures that:

(a) Are in accordance with chapter 10.77 RCW;

(b) Meet any applicable court orders; and

(c) Meet the minimum requirements of WAC 388-865-0900 through 388-865-0970.

(2) The administrative policies and procedures must include at a minimum all of the following:

(a) A description of the competency evaluation and restoration treatment services to be provided, ages of individuals to be served, and length of stay criteria;

(b) An organizational structure that includes clear lines of authority for management and clinical supervision;

(c) Designation of a psychiatrist as the professional person in charge of clinical services at the agency;

(d) A quality management plan to monitor, collect data, and develop improvements to meet the requirements of WAC 388-865-0900 through 388-865-0970; and

(e) A policy management structure that establishes:

(i) Procedures for maintaining and protecting an individual's clinical record consistent with chapter 70.02 RCW and the Health Insurance Portability and Accountability Act (HIPAA);

- (ii) Procedures for maintaining adequate fiscal accounting records consistent with generally accepted accounting principles (GAAP);
- (iii) Procedures for management of human resources to assure that an individual receives individualized treatment or care by an adequate number of staff members who are qualified and competent to carry out their assigned responsibilities;
- (iv) Procedures for admitting an individual needing competency evaluation and restoration treatment services, seven days a week, three hundred sixty-five days a year;
- (v) Procedures to assure access to necessary medical treatment, emergency life-sustaining treatment, and medication;
- (vi) Procedures to assure the protection of individual participant rights as described in WAC 388-865-0940;
- (vii) Procedures to inventory and safeguard the personal property of the individual;
- (viii) Procedures to assure that a mental health professional and licensed physician are available for consultation and communication with the direct patient care staff twenty-four hours a day, seven days a week;
- (ix) Procedures to assure that seclusion and restraint are used only to the extent necessary to ensure the safety of an individual, and in accordance with WAC 388-865-0970;
- (x) Procedures to provide warning to an identified person and law enforcement when an adult has made a threat against an identified victim;
- (xi) Procedures to provide notification to the appropriate prosecutor and law enforcement in the event of unauthorized leave; and
- (xii) Procedures to assure the rights of each individual to make mental health advance directives, and agency protocols for responding to individual and agent requests consistent with RCW 71.32.150.

NEW SECTION

WAC 388-865-0930 Competency evaluation and restoration treatment services — Agency staff requirements. (1) In order to provide competency evaluation and restoration treatment services, an agency described in WAC 388-865-0900(1) must ensure the clinical supervisor and other staff members employed by the agency are qualified for the position they hold and have the education, experience, and skills to perform the job requirements. Each staff member providing services must:

- (a) Have a current job description;
- (b) Have a current credential issued by the department of health for their scope of practice;
- (c) Pass a Washington state patrol background check consistent with RCW 43.43.830 if the position requires contact with individuals receiving competency evaluation and restoration treatment services;
- (d) Have an annual performance evaluation; and
- (e) Have an individualized annual training plan that includes at a minimum:
 - (i) The skills needed for the job description and the population served;
 - (ii) Methods of resident care;

(iii) Management of assaultive and self-destructive behaviors, including proper and safe use of either seclusion or restraint procedures, or both; and

(iv) Meeting the protocols developed by the department in WAC 388-865-0900 through 388-865-0970 and other applicable requirements in state and federal law.

(2) If the agency contracts a staff member to provide direct competency evaluation and restoration treatment services to individuals, the agency and the contracted staff member must meet all the conditions in subsection (1) of this section.

NEW SECTION

WAC 388-865-0940 Competency evaluation and restoration treatment services — Individual participant rights. (1) An agency described in WAC 388-865-0900(1) that meets the department's requirements to provide competency evaluation and restoration treatment services must develop a statement of individual participant rights to ensure an individual's rights are protected. The statement must incorporate at a minimum the following. 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 services and, as an individual participant, the right to refuse participation in any religious practice;

(c) Reasonable accommodation in case of sensory or physical disability, limited ability to communicate, limited English proficiency, or cultural differences;

(d) Respect, dignity and privacy, except that agency staff members may conduct reasonable searches to detect and prevent possession or use of contraband on the premises;

(e) Be free of 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 rules and laws;

(h) Review your clinical record in the presence of the administrator or the administrator's designee and the opportunity to request amendments or corrections;

(i) Receive a copy of the agency complaint and grievance procedures upon request and to lodge a complaint or grievance with the agency if you believe your rights have been violated; and

(j) File a complaint with the department when you believe the agency has violated a Washington Administrative Code (WAC) requirement that regulates facilities.

(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) Posted in public areas;

(c) Available in alternative formats for an individual who is blind;

(d) Translated to a primary or preferred language identified by an individual who does not speak English as the primary language, and who has a limited ability to read, speak, write, or understand English; and

(e) Available to any individual upon request.

(3) Each agency must ensure all research concerning an individual whose cost of care is publicly funded is done in accordance with chapter 388-04 WAC, the protection of human research subjects, and other applicable state and federal rules and laws.

(4) In addition to the requirements in this section, each agency enrolled as a medicare and/or medicaid provider must ensure an individual seeking or participating in competency evaluation and/or restoration treatment services, or the person legally responsible for the individual is informed of the medicaid rights at time of admission in a manner that is understandable to the individual or legally responsible person.

NEW SECTION

WAC 388-865-0950 Competency evaluation and restoration treatment services — Admission and initial assessment. (1) In order to provide competency evaluation and restoration treatment services, an agency described in WAC 388-865-0900(1) must ensure that for each individual admitted for treatment, the agency obtains and includes in the individual's clinical record:

(a) A copy of the court order and charging documents. If the order is for competency restoration treatment and the competency evaluation was provided by a qualified expert or professional person who was not designated by the secretary, a copy of all previous court orders related to competency or criminal insanity provided by the state and a copy of any evaluation reports must be included;

(b) A copy of the discovery materials, including, at a minimum, a statement of the individual's criminal history; and

(c) A copy of the individual's medical clearance information.

(2) The agency is responsible for the individual's initial assessment. The initial assessment must be:

(a) Conducted in person; and

(b) Completed by a professional appropriately credentialed or qualified to provide mental health services as determined by state law.

(3) The initial assessment must include and document:

(a) The individual's:

(i) Identifying information;

(ii) Specific barriers to competence;

(iii) Medical provider's name or medical providers' names;

(iv) Medical concerns;

(v) Medications currently taken;

(vi) Brief mental health history; and

(vii) Brief substance use history, including tobacco use;

(b) The identification of any risk of harm to self and others, including suicide and homicide; and

(c) Treatment recommendations or recommendations for additional program-specific assessment.

(4) To determine the nature of the disorder and the treatment necessary, the agency must ensure that the individual receives the following assessments and document in the client's record the date provided:

(a) A health assessment of the individual's physical condition to determine if the individual needs to be transferred to an appropriate hospital for treatment;

(b) An examination and medical evaluation within twenty-four hours by a physician, advanced registered nurse practitioner, or physician assistant;

(c) A psychosocial evaluation by a mental health professional; and

(d) A competency to stand trial evaluation conducted by a licensed psychologist, or a copy of a competency to stand trial evaluation using the most recent competency evaluation, if an evaluation has already been conducted.

(5) The agency must also ensure the development of an individual service plan as described in WAC 388-865-0960.

(6) If a state hospital transfers an individual to an agency for competency restoration treatment, the agency must review the individual's completed admission assessment from the state hospital to assure it meets the requirements of subsection (3) of this section for initial assessments. The agency must update the assessment as needed. If the state hospital has not completed or has only partially completed an assessment for the individual, the agency must complete the assessment according to the requirements in subsections (2) and (3) of this section.

NEW SECTION

WAC 388-865-0960 Competency evaluation and restoration treatment services — Individual service plan. (1) An agency described in WAC 388-865-0900(1) that meets the department's requirements to provide competency evaluation and restoration treatment services must ensure each individual admitted to the agency for restoration treatment services has an individual service plan:

(a) Completed within seven days of admission; and

(b) Updated every ninety days.

(2) The individual's clinical record must contain copies of or documentation of the following:

(a) All diagnostic and therapeutic services prescribed by the attending clinical staff members;

(b) The individualized treatment plan that identifies specific targets and strategies for restoring competency to include periodic assessments of gains on these targets; and

(c) Participation of a multidisciplinary team that includes at a minimum:

(i) A physician, advanced registered nurse practitioner (ARNP), or physician assistant certified (PA-C);

(ii) A nurse, if the person in (i) of this subsection is not an ARNP; and

(iii) A mental health professional.

(3) Participation of other multidisciplinary team members, which may include a psychologist and chemical dependency professional.

NEW SECTION

WAC 388-865-0970 Competency evaluation and restoration treatment services — Seclusion and restraint. (1) An individual receiving either competency evaluation or restoration treatment services, or both, from an agency described in WAC 388-865-0900(1) has the right to be free from seclusion and restraint, including chemical restraint except as otherwise provided in this section or otherwise provided by law. The agency must:

(a) Develop, implement, and maintain policies and procedures to ensure that seclusion and restraint procedures are used only to the extent necessary to ensure the safety of an individual and in accordance with WAC 246-322-180 or 246-337-110, whichever is applicable.

(b) Ensure that the use of seclusion or restraint occurs only when there is imminent danger to self or others and less restrictive measures have been determined to be ineffective to protect the individual or other from harm and the reasons for the determination are clearly documented in the individual's clinical record.

(c) Ensure staff members notify and receive authorization by a physician or advanced registered nurse practitioner (ARNP) within one hour of initiating an individual's seclusion or restraint.

(d) Ensure the individual is informed of the reasons for use of seclusion or restraint and the specific behaviors which must be exhibited in order to gain release from a seclusion or restraint procedure.

(e) Ensure that an appropriate clinical staff member observes the individual at least every fifteen minutes and the observation is recorded in the individual's clinical record.

(f) If the use of seclusion or restraint exceeds twenty-four hours, ensure that a physician has assessed the individual and has written a new order if the intervention will be continued. This procedure must be repeated for each twenty-four hour period that seclusion or restraint is used.

(2) The agency must ensure all assessments and justification for the use of either seclusion or restraint, or both, are documented in the individual's clinical record.