

NSMHA Contract Memorandum 2005-009

Date: July 15, 2005

To: Jess Jamieson, President APN and CEO, Compass Health
Charles Roxin, *bridgeways*
Michael Watson, Lake Whatcom RTC
Andy Byrne, Whatcom Counseling and Psychiatric Center
Tom MacIntyre, Catholic Community Services Northwest
Claudia D'Allegrì, Sea Mar
Janelle Sgrignoli, Snohomish County Human Services
Linda Carlson, Volunteers of America

From: Deirdre Ridgway, NSMHA Contracts Manager

Subject: Revised WACs

At the request of DSHS we are forwarding the following:

Amendments to WAC 388-865-0420, 0430, 0610, 0620 and 0630 to comply with RCW 71.05.445 and 71.05.390 as amended by Chapter 166, Laws of 2004 (E2SSB6358) have been submitted to the code revisers office and will become effective on July 31, 2005. These are the new requirements for mental health providers in their communication with the Department of Corrections and County Designated Mental Health Professionals. For more information please contact Robin Roberts at roberrl@dshs.wa.gov



RULE-MAKING ORDER

R-103 (June 2004)
(Implements RCW 34.05.360)

Agency: Department of Social and Health Services,

- Permanent Rule**
 Emergency Rule

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)

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 Mental Health Division intends to add new requirements to WAC 388-865-0420, 0430, 0610, 0620 and 0630 to comply with RCW 71.05.445 and 71.05.390 as amended by Chapter 166, Laws of 2004 (E2SSB6358). There are new requirements for mental health providers in their communication with the Department of Corrections and County Designated Mental Health Professionals.

Citation of existing rules affected by this order:

Repealed:
 Amended:
 Suspended:

Statutory authority for adoption: RCW 71.05.445 and 71.05.390 as amended by Chapter 166, Laws of 2004 (E2SSB6358)

Other authority :

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 04-24-044 on 4-19-05 (date)

Describe any changes other than editing from proposed to adopted version:

Proposed Rule Text

388-865-0430 Clinical Record

- (13) Documentation that an evaluation by a county designated mental health professional was requested when the mental health provider becomes aware of a violation of court ordered treatment if the consumer is both on an less restrictive alternative and is being supervised by the department of corrections;

Adopted Rule

388-865-0430 Clinical Record

- (13) When the mental health provider becomes aware of a violation that relates to public safety of court ordered treatment of a consumer who is both on a less restrictive alternative and is being supervised by the department of corrections; documentation that an evaluation by a county designated mental health professional was requested.

The changes were made because: Based on public testimony at the CR-102 hearing.

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

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

EMERGENCY RULE ONLY

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:

Date adopted:	COMPLETER REVISER USE ONLY
NAME (TYPE OR PRINT) Andy Fernando	
SIGNATURE	
TITLE Manager, Rules and Policies Assistance Unit	

(COMPLETE REVERSE SIDE)

**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: 5

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	<u>5</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>5</u>	Repealed	___

AMENDATORY SECTION (Amending WSR 01-12-047, filed 5/31/01, effective 7/1/01)

WAC 388-865-0420 Intake evaluation. The community support service provider must complete an intake evaluation in collaboration with the consumer within fourteen days of admission to service. If seeking this information presents a barrier to service, the item may be left incomplete provided that the reasons are documented in the clinical record. The following must be documented in the consumer's intake evaluation:

(1) A consent for treatment or copy of detention or involuntary treatment order;

(2) Consumer strengths, needs and desired outcomes in their own words. At the consumer's request also include the input of people who provide active support to the consumer;

(3) The consumer's age, culture/cultural history, and disability;

(4) History of substance use and abuse or other co-occurring disorders;

(5) Medical and mental health services history and a list of medications used;

(6) Documentation that consumers receiving court ordered treatment or treatment ordered by the department of corrections (DOC) have been asked if they are under supervision by the department of corrections. The consumer is required to disclose this information.

(7) For children:

(a) Developmental history; and

(b) Parent's goals and desired outcomes.

~~((7))~~ (8) Sufficient information to justify the diagnosis;

~~((8))~~ (9) Review of the intake evaluation by a mental health professional.

[Statutory Authority: RCW 71.05.560, 71.24.035 (5)(c), 71.34.800, 9.41.047, 43.20B.020, and 43.20B.335. 01-12-047, § 388-865-0420, filed 5/31/01, effective 7/1/01.]

AMENDATORY SECTION (Amending WSR 01-12-047, filed 5/31/01, effective 7/1/01)

WAC 388-865-0430 Clinical record. The community support service provider must maintain a clinical record for each consumer and safeguard the record against loss, defacement,

tampering, or use by unauthorized persons. The clinical record must contain:

- (1) An intake evaluation;
- (2) Evidence that the consumer rights statement was provided to the consumer;
- (3) A copy of any advance directives, powers of attorney or letters of guardianship provided by the consumer;
- (4) The crisis treatment plan when appropriate;
- (5) The individualized service plan and all changes in the plan;
- (6) Documentation that services are provided by or under the clinical supervision of a mental health professional;
- (7) Documentation that services are provided by, or under the clinical supervision, or the clinical consultation of a mental health specialist. Consultation must occur within thirty days of admission and periodically thereafter as specified by the mental health specialist;
- (8) Periodic documentation of the course of treatment and objective progress toward established goals for rehabilitation, recovery and reintegration into the mainstream of social, employment and educational choices;
- (9) A notation of extraordinary events affecting the consumer;
- (10) Documentation of mandatory reporting of abuse, neglect, or exploitation of consumers consistent with chapters 26.44 and 74.34 RCW;
- (11) Documentation that the department of corrections was notified by the provider when a consumer on an less restrictive alternative or department of corrections order mental health treatment informs them that they are under supervision by department of corrections. Notification can be either written or oral. If oral notification, it must be confirmed by a written notice, including e-mail and fax. The disclosure to department of corrections does not require the person's consent;
- (12) If the consumer has been given relief by the committing court it must be confirmed in writing;
- (13) When the mental health provider becomes aware of a violation that relates to public safety of court ordered treatment of a consumer who is both in a less restrictive alternative and is being supervised by the department of corrections, documentation that an evaluation by a county designated mental health professional was requested;
- (14) Documentation of informed consent to treatment and medications by the consumer or legally responsible other;
- ~~((12))~~ (15) Documentation of confidential information that has been released without the consent of the consumer including, but not limited to provisions in RCW 70.02.050, 71.05.390 and 71.05.630.

[Statutory Authority: RCW 71.05.560, 71.24.035 (5)(c), 71.34.800, 9.41.047, 43.20B.020, and 43.20B.335. 01-12-047, § 388-865-0430, filed 5/31/01, effective 7/1/01.]

AMENDATORY SECTION (Amending WSR 01-12-047, filed 5/31/01, effective 7/1/01)

WAC 388-865-0610 Definitions. Relevant records and reports includes written documents obtained from other agencies or sources, often referred to as third-party documents, as well as documents produced by the agency receiving the request. Relevant records and reports do not include the documents restricted by either federal law or federal regulation related to treatment for alcoholism or drug dependency or the Health Insurance Portability and Accountability Act or state law related to sexually transmitted diseases, as outlined in RCW 71.05.445 and 71.34.225.

(1) **"Relevant records and reports"** means:

(a) Records and reports of inpatient treatment:

(i) Inpatient psychosocial assessment - Any initial, interval, or interim assessment usually completed by a person with a master's degree in social work (or equivalent) or equivalent document as established by the holders of the records and reports;

(ii) Inpatient intake assessment - The first assessment completed for an admission, usually completed by a psychiatrist or other physician or equivalent document as established by the holders of the records and reports;

(iii) Inpatient psychiatric assessment - Any initial, interim, or interval assessment usually completed by a psychiatrist (or professional determined to be equivalent) or equivalent document as established by the holders of the records and reports;

(iv) Inpatient discharge/release summary - Summary of a hospital stay usually completed by a psychiatrist (or professional determined to be equivalent) or equivalent document as established by the holders of the records and reports;

(v) Inpatient treatment plan - A document designed to guide multidisciplinary inpatient treatment or equivalent document as established by the holders of the records and reports;

(vi) Inpatient discharge and aftercare plan data base - A document designed to establish a plan of treatment and support following discharge from the inpatient setting or equivalent document as established by the holders of the records and

reports.

(vii) Forensic discharge review - A report completed by a state hospital for individuals admitted for evaluation or treatment who have transferred from a correctional facility or is or has been under the supervision of the department of corrections.

(b) Records and reports of outpatient treatment:

(i) Outpatient intake evaluation - Any initial or intake evaluation or summary done by any mental health practitioner or case manager the purpose of which is to provide an initial clinical assessment in order to guide outpatient service delivery or equivalent document as established by the holders of the records and reports;

(ii) Outpatient periodic review - Any periodic update, summary, or review of treatment done by any mental health practitioner or case manager. This includes, but is not limited to: Documents indicating diagnostic change or update; annual or periodic psychiatric assessment, evaluation, update, summary, or review; annual or periodic treatment summary; concurrent review; individual service plan as required by WAC 388-865-0425 through 388-865-0430, or equivalent document as established by the holders of the records and reports;

(iii) Outpatient crisis plan - A document designed to guide intervention during a mental health crisis or decompensation or equivalent document as established by the holders of the records and reports;

(iv) Outpatient discharge or release summary - Summary of outpatient treatment completed by a mental health professional or case manager at the time of termination of outpatient services or equivalent document as established by the holders of the records and reports;

(v) Outpatient treatment plan - A document designed to guide multidisciplinary outpatient treatment and support or equivalent document as established by the holders of the records and reports.

(c) Records and reports regarding providers and medications:

(i) Current medications and adverse reactions - A list of all known current medications prescribed by the licensed practitioner to the individual and a list of any known adverse reactions or allergies to medications or to environmental agents;

(ii) Name, address and telephone number of the case manager or primary clinician.

(d) Records and reports of other relevant treatment and evaluation:

(i) Psychological evaluation - A formal report, assessment, or evaluation based on psychological tests conducted by a

psychologist;

(ii) Neuropsychological evaluation - A formal neuropsychological report, assessment, or evaluation based on neuropsychological tests conducted by a psychologist;

(iii) Educational assessment - A formal report, assessment, or evaluation of educational needs or equivalent document as established by the holders of the records and reports;

(iv) Functional assessment - A formal report, assessment, or evaluation of degree of functional independence. This may include but is not limited to: Occupational therapy evaluations, rehabilitative services data base activities assessment, residential level of care screening, problem severity scale, instruments used for functional assessment or equivalent document as established by the holders of the records and reports;

(v) Forensic evaluation - An evaluation or report conducted pursuant to chapter 10.77 RCW;

(vi) Offender/violence alert - A any documents pertaining to statutory obligations regarding dangerous or criminal behavior or to dangerous or criminal propensities. This includes, but is not limited to, formal documents specifically designed to track the need to provide or past provision of: Duty to warn, duty to report child/elder abuse, victim/witness notification, violent offender notification, and sexual/kidnaping offender notification per RCW 4.24.550, 10.77.205, 13.40.215, 13.40.217, 26.44.330, 71.05.120, 71.05.330, 71.05.340, 71.05.425, 71.09.140, and 74.34.035;

(vii) Risk assessment - Any tests or formal evaluations including department of corrections risk assessments administered or conducted as part of a formal violence or criminal risk assessment process that is not specifically addressed in any psychological evaluation or neuropsychological evaluation.

(e) Records and reports of legal status -Legal documents are documents filed with the court or produced by the court indicating current legal status or legal obligations including, but not limited to:

(i) Legal documents pertaining to chapter 71.05 RCW;

(ii) Legal documents pertaining to chapter 71.34 RCW;

(iii) Legal documents containing court findings pertaining to chapter 10.77 RCW;

(iv) Legal documents regarding guardianship of the person;

(v) Legal documents regarding durable power of attorney;

(vi) Legal or official documents regarding a protective payee;

(vii) Mental health advance directive.

(2) **"Relevant information"** means descriptions of a consumer's participation in, and response to, mental health

treatment and services not available in a relevant record or report, including all statutorily mandated reporting or duty to warn notifications as identified in WAC 388-865-610 (1)(d)(vi), Offender/Violence alert, and all requests for evaluations for involuntary civil commitments under chapter 71.05 RCW. The information may be provided in verbal or written form at the discretion of the mental health service provider.

[Statutory Authority: RCW 71.05.560, 71.24.035 (5)(c), 71.34.800, 9.41.047, 43.20B.020, and 43.20B.335. 01-12-047, § 388-865-0610, filed 5/31/01, effective 7/1/01.]

AMENDATORY SECTION (Amending WSR 01-12-047, filed 5/31/01, effective 7/1/01)

WAC 388-865-0620 Scope. Many records and reports are updated on a regular or as needed basis. The scope of the records and reports to be released to the department of corrections are dependent upon the reason for the request.

(1) For the purpose of a presentence investigation release only the most recently completed or received records of those completed or received within the twenty-four-month period prior to the date of the request; or

(2) For all other purposes including risk assessments release all versions of records and reports that were completed or received within the ten year period prior to the date of the request that are still available.

[Statutory Authority: RCW 71.05.560, 71.24.035 (5)(c), 71.34.800, 9.41.047, 43.20B.020, and 43.20B.335. 01-12-047, § 388-865-0620, filed 5/31/01, effective 7/1/01.]

AMENDATORY SECTION (Amending WSR 01-12-047, filed 5/31/01, effective 7/1/01)

WAC 388-865-0630 Time frame. The mental health service provider shall provide the requested relevant records, reports and information to the authorized department of corrections person in a timely manner, according to the purpose of the request:

(1) Presentence investigation - within seven calendar days of the receipt of the request. If some or all of the requested

relevant records, reports and information are not available within that time period the mental health service provider shall notify the authorized department of corrections person prior to the end of the seven-day-period and provide the requested relevant records, reports or information within a mutually agreed to time period; or

(2) All other purposes - within thirty calendar days of the receipt of the request. If some or all of the requested relevant records, reports and information are not available within that time period the mental health service provider shall notify the authorized department of corrections person prior to the end of the thirty-day period and provide the requested relevant records, reports or information within a mutually agreed to time period; or

(3) Emergent situation requests - When an offender subject has failed to report for department of corrections supervision or in an emergent situation that poses a significant risk to the public, the mental health provider shall upon request, release information related to mental health services delivered to the offender and, if known, information regarding the whereabouts of the offender. Requests if oral must be subsequently confirmed in writing the next working day, which includes e-mail or facsimile so long as the requesting person at the department of corrections is clearly defined. The request must specify the information being requested. Disclosure of the information requested does not require the consent of consumer.

(a) Information that can be released is limited to:

(i) A statement as to whether the offender is or is not being treated by the mental health services provider; and

(ii) Address or information about the location or whereabouts of the offender.

[Statutory Authority: RCW 71.05.560, 71.24.035 (5)(c), 71.34.800, 9.41.047, 43.20B.020, and 43.20B.335. 01-12-047, § 388-865-0630, filed 5/31/01, effective 7/1/01.]

SUBJECT: CONCISE EXPLANATORY STATEMENT (RCW 34.05.325)

For Rules Proposed as WSR 05-09-080

WAC(s):

388-865-0420 Intake
388-865-0430 Clinical Record
388-865-0610 Definitions
388-865-0620 Scope, and
388-865-0630 Time Frame

REASON FOR ADOPTION:

To comply with RCW 71.05.445 and 71.05.390 as amended by Chapter 166, Laws of 2004 (E2SSB6358). The Mental Health Division is adding new requirements to WAC 388-865-0420, 0430, 0610, 0620 and 0630. There are new requirements for mental health providers in their communication with the Department of Corrections and County Designated Mental Health Professionals

WERE CHANGES MADE SINCE THE RULE WAS PROPOSED? (check one)

- The text being adopted does not differ from the text of the proposed rule.
- The text being adopted contains only editorial changes from the proposed rule.
- The text of the adopted rule varies from the text of the proposed rule. The changes (other than editing changes) follow:

Proposed Rule Text

388-865-0430 Clinical Record

(13) Documentation that an evaluation by a county designated mental health professional was requested when the mental health provider becomes aware of a violation of court ordered treatment if the consumer is both on an less restrictive alternative and is being supervised by the department of corrections;

Adopted Rule

388-865-0430 Clinical Record

(13) When the mental health provider becomes aware of a violation that relates to public safety of court ordered treatment of a consumer who is both on a less restrictive alternative and is being supervised by the department of corrections; documentation that an evaluation by a county designated mental health professional was requested.

The changes were made because: Based on public testimony at the CR-102 hearing.

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
<p>The requirement that the mental health provider request a evaluation by a county designated mental health professional (CDMHP) when there is any violation of court ordered treatment would create a unreasonable increase on the work load of CDMHP's. Recommended that the type, severity, and significance of the violation be considered.</p>	<p>This was the only comment that the Department received and it had been previously raised at stakeholder meetings. The Department reviewed the legislation and decided to make the requirement uniform with that identified in Section 15 (3) for designated chemical dependency specialists.</p>

cc: DSHS Rules Coordinator