



RULE-MAKING ORDER EMERGENCY RULE ONLY

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

CODE REVISER USE ONLY

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STATE OF WASHINGTON
FILED

DATE: June 05, 2020

TIME: 12:48 PM

WSR 20-13-011

Agency: Health Care Authority

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: This rulemaking is required to comply with the requirements in 2ESHB 1388 which changed the designation of the state Behavioral Health Services, effective July 1, 2018. The single bed certification rules were previously filed under Preproposal Statement of Inquiry WSR-18-14-080 and Emergency Rulemaking Order WSR 19-13-057, as WAC 182-538D-0526.

The rulemaking under WSR 18-14-080 was finalized under WSR 19-24-063. Rulemaking for single bed certification will be continued through a separate rulemaking progress as the agency has additional work to do to develop the program. Single bed certification has also been renumbered from WAC 182-538D-0526 to WAC 182-100-0200 to reflect that it is not solely a service under Medicaid.

Since the emergency rulemaking filed under WSR 20-05-021, the agency completed the external review portion of the permanent rulemaking process, is currently reviewing the comments received as part of this review, and plans to file the proposed rules or a public hearing soon.

Citation of rules affected by this order:

- New: 182-100-0200
- Repealed:
- Amended:
- Suspended:

Statutory authority for adoption: RCW 41.05.021, 41.05.160, 2ESBH 1388 (Chapter 201, Laws of 2018)

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: 2ESHB 1388 directs the transfer of the Behavioral Health Authority to the Health Care Authority, effective July 1, 2018.

**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>1</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 on 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	<u>1</u>	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>1</u>	Amended	___	Repealed	___

Date Adopted: June 5, 2020

Name: Wendy Barcus

Title: HCA Rules Coordinator

Signature:



NEW SECTION

WAC 182-100-0200 Single bed certification. At the discretion of the health care authority, an exception may be granted to allow timely and appropriate treatment in a facility that is not certified under chapter 246-341 WAC to a person on a seventy-two hour detention, a five-day detention pending a revocation proceeding, or a fourteen-day commitment. An exception may also be granted for a maximum of thirty days to allow a community facility to provide treatment to a person on a ninety- or one hundred eighty-day inpatient involuntary commitment order or to a person 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 246-341 WAC 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 behavioral health administrative services organization (BH-ASO) or a designee must submit a written request for a single bed certification to the health care authority. In the case of a child, the facility must submit the written request to the health care authority. The request must be submitted and approved by the health care authority for a facility to accept a person for timely and appropriate treatment under this section. If the health care authority has assumed the duties assigned to a nonparticipating BH-ASO, an entity designated by the health care authority 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 a person:

(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 person for whom the single bed certification is sought; and

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

(i) The person 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 person's individual treatment needs;

(ii) The person 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 person 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 182-538D-0200, and licensed physicians are available for consultation and communication with both the person 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 person. If the person 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 182-538D-0200, or collaboration with members of the person's support system as identified by the person.

(ii) A mental health professional, as defined in RCW 71.05.020 or WAC 182-538D-0200, has had contact with each involuntarily detained person at least daily for the purposes of:

(A) Observation and evaluation; and

(B) Assessing whether the person 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. A person has a right to make an informed decision regarding the use of antipsychotic medication consistent with RCW 71.05.215.

(4) If a person requires medical services that are not generally available at a facility certified under this chapter, or at a state psychiatric hospital, or 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 person as follows:

(a) The single bed certification request must adequately describe why the person requires medical services that are not available at a facility certified under this chapter, a state psychiatric hospital, or 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 BH-ASO assigns a mental health professional to provide the person appropriate mental health treatment at the facility, including observation and evaluation, during the period of time the person is provided medical services; or

(ii) The hospital provides medical services and a plan that addresses the person's mental health treatment needs until the person is medically stable and the BH-ASO or a designee identifies an appropriate facility for the person 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 person's needs under the single bed certification criteria in this section.

(d) If a qualified medical professional determines that mental health treatment for the person is not clinically indicated, the requirements in (c) of this subsection do not apply. When the person is

determined to be medically stable, the facility must ensure the requirements in (c) of this subsection are met.

(5) The health care authority 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 person 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; or

(b) To a state hospital if on a ninety- or one hundred eighty-day inpatient commitment, or if the person's less restrictive alternative order or conditional release was revoked, as soon as the attending physician considers the person 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 person.

(7) The health care authority 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 health care authority determines that the violation places people in imminent jeopardy, immediate revocation of this exception can occur.

(8) The BH-ASO retains the responsibility for ensuring due process required by RCW 71.24.300 (6) (b).

(9) Neither a person nor a facility has fair hearing rights as defined under chapter 182-526 WAC regarding single bed certification decisions by the health care authority staff.