



# RULE-MAKING ORDER PERMANENT RULE ONLY

## CR-103P (December 2017) (Implements RCW 34.05.360)

CODE REVISER USE ONLY

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STATE OF WASHINGTON  
FILED

DATE: May 13, 2019

TIME: 4:51 PM

WSR 19-11-055

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

**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:** The department is repealing one section and amending other existing sections in chapter 388-875 WAC "Criminally insane person committed to the care of the department of social and health services – evaluation, placement, care and discharge".

**Citation of rules affected by this order:**

New: None

Repealed: WAC 388-875-0080

Amended: WAC 388-875-0010, WAC 388-875-0020, WAC 388-875-0030, WAC 388-875-0040, WAC 388-875-0050, WAC 388-875-0060, WAC 388-875-0070, WAC 388-875-0090, WAC 388-875-0110

Suspended: None

**Statutory authority for adoption:** Chapter 10.77 RCW, RCW 72.01.090, RCW 70.02.290, RCW 70.02.340, RCW 71.05.560, RCW 71.24.035(5)(c), RCW 71.34.380

**Other authority:**

**PERMANENT RULE (Including Expedited Rule Making)**

Adopted under notice filed as WSR 19-05-087 on February 20, 2019 (date).

Describe any changes other than editing from proposed to adopted version: In WAC 388-875-0020, the term "bachelor's" was changed to "master's".

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

Name:

Address:

Phone:

Fax:

TTY:

Email:

Web site:

Other:

**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Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___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New	___	Amended	___	Repealed	___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	<u>9</u>	Repealed	<u>1</u>
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	___	Amended	<u>9</u>	Repealed	<u>1</u>
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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>9</u>	Repealed	<u>1</u>

**Date Adopted:** May 8, 2019

**Name:** Katherine I. Vasquez

**Title:** DSHS Rules Coordinator

**Signature:**



AMENDATORY SECTION (Amending WSR 01-01-008, filed 12/6/00, effective 1/6/01)

**WAC 388-875-0010 Purpose.** (~~((These regulations are adopted pursuant to and in accordance with chapter 117, Laws of 1973 1st sess. They are adopted))~~) To provide procedures for the evaluation, restoration, placement, care, and discharge of persons committed to the care of the department of social and health services, required under ((the aforementioned act, relating to the criminally insane)) chapter 10.77 RCW.

AMENDATORY SECTION (Amending WSR 01-01-008, filed 12/6/00, effective 1/6/01)

**WAC 388-875-0020 Definitions.** "Administration" means the behavioral health administration, department of social and health services.

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

~~(("Division" means the mental health division, department of social and health services.))~~

"Director" means the director of the office of forensic mental health services.

"Evaluation" means the initial procedure when a court requests the department to provide an opinion if a person charged with a crime is competent to stand trial or, if indicated and appropriate, if the person was suffering under a mental disease or defect excluding responsibility at the time of the commission of the crime.

"Indigent" means any person who is financially unable to obtain counsel or other necessary expert or professional services without causing substantial hardship to ((himself)) the person or his or her family.

"Office" means the office of forensic mental health services, department of social and health services.

**"Professional person" means:**

(1) A psychiatrist. This is defined as a person having a license as a physician and surgeon in this state, who has in addition, completed three years of graduate training in psychiatry in a program approved by the American Medical Association or the American Osteopathic Association and who is certified or is eligible to be certified by the American Board of Psychiatry and Neurology or the American Osteopathic Board of Neurology and Psychiatry.

(2) A psychologist. This is defined as a person who has been licensed as a psychologist (~~(pursuant to)~~) under chapter 18.83 RCW.

(3) A social worker. This is defined as a person with a master's or further advanced degree from an accredited school of social work (~~(or a degree deemed equivalent under rules adopted by the secretary))~~ educational program accredited and approved under RCW 18.320.010.

"Secretary" means the secretary of the department of social and health services or his or her designee.

"Superintendent" means the person responsible for the functioning of a treatment facility.

"Treatment" means any currently standardized medical or mental health procedure including medication.

"Treatment facility" means any facility operated or approved by the department of social and health services ~~((for the treatment of))~~ that provides services for the criminally insane or persons receiving competency services. ~~((Such))~~ This definition ~~((shall))~~ does not include any state correctional institution or facility.

AMENDATORY SECTION (Amending WSR 01-01-008, filed 12/6/00, effective 1/6/01)

**WAC 388-875-0030 ~~((Mental health division))~~ Evaluation & treatment.** ~~(1)~~ The secretary designates to the ~~((division))~~ administration the responsibility for:

~~((1))~~ (a) Evaluation and treatment of any person committed to the secretary for evaluation or treatment, under chapter 10.77 RCW; and

(b) Determination of which treatment facility must have custody of the persons committed to the secretary under chapter 10.77 RCW.

~~(2)~~ The secretary designates to the office the responsibility for:

(a) Assisting the court in obtaining nondepartmental experts or professional persons to participate in the evaluation or a hearing on behalf of the defendant and ~~((supervising the procedure whereby))~~ providing quality standards in addition to compensating such professionals ~~((will be compensated))~~, according to ~~((fee))~~ payment schedule published under WAC 388-875-0040 if the person being evaluated or treated is an indigent person;

~~((3) Assuring)~~ (b) Ensuring that any nondepartmental expert or professional person requesting compensation has maintained adequate evaluation and treatment records, as determined by the office, which justify compensation;

~~((4))~~ (c) Assisting the court by designation of experts or professional persons to examine the defendant and report to the court when the defendant is not committed to the secretary; and

~~((5) Determination of what treatment facility shall have custody of persons committed to the secretary under chapter 10.77 RCW.~~

~~(6) If the court is advised by any party that the defendant may be developmentally disabled, at least one of the experts or professional persons appointed shall be a)~~ (d) Assisting the court by designating an expert or professional person who is a developmental disabilities professional to examine the defendant if the court is advised by any party that the defendant may be developmentally disabled.

AMENDATORY SECTION (Amending WSR 01-01-008, filed 12/6/00, effective 1/6/01)

**WAC 388-875-0040 Schedule of ~~((maximum))~~ payment for defendant expert or professional person.** Department payments to an expert or professional person for department services an indigent person receives ~~((shall not exceed))~~ must occur as follows:

~~(1) ((One hundred dollars an hour for services; or~~

~~(2) Eight hundred dollars total payment for services.))~~

The department (~~shall only approve an exception to this section ruling when the exception is approved, in writing, by the division director~~) must publish a schedule of hourly fees, and travel time, in amounts that the department determines to be fair and reasonable. The department will review the hourly reimbursement schedule annually and make adjustments as appropriate. This schedule may be found online at: <https://www.dshs.wa.gov/bha/office-service-integration/office-forensic-mental-health-services>.

(2) Under RCW 10.77.140, the department (~~shall~~) must only approve payment for one mental health examination per indigent person in each six month period.

(3) All invoices for court-ordered services must be submitted using the department's invoicing procedure, with each service itemized by hour and quarter-hour increments. Forensic evaluation reports conducted by a professional person and submitted for payment are subject to accounting and quality review by the office prior to approving payment.

AMENDATORY SECTION (Amending WSR 01-01-008, filed 12/6/00, effective 1/6/01)

**WAC 388-875-0050 Time limitations and requirements.** If a person is committed to the secretary as criminally insane, commitment and treatment (~~cannot~~) must not exceed the maximum possible sentence for any offense charged. Therefore:

(1) The (~~superintendent~~) administration, (~~if no superintendent then the division,~~) with the assistance of the office of the attorney general where necessary (~~shall~~) must determine at the time of commitment the maximum possible sentence for any offense charged, and thereby compute a maximum release date for every individual so committed.

(2) If the committed person has not been released by court order six months prior to the expiration of the maximum possible release date, the (~~superintendent~~) administration, (~~if no superintendent, the division, shall~~) must notify the committing court and prosecuting attorney of its computation of maximum release date and the requirement that the person must be released on that date unless civil proceedings are instituted or the court determines that the computation of maximum release date is incorrect.

AMENDATORY SECTION (Amending WSR 01-01-008, filed 12/6/00, effective 1/6/01)

**WAC 388-875-0060 Individualized treatment.** (1) Whenever a person is committed to the secretary as criminally insane, the treatment facility to which the person is assigned (~~shall~~) must, within fifteen days of admission to the facility, evaluate and diagnose the committed person for the purpose of devising an individualized treatment program.

(2) Every person, committed to the secretary as criminally insane, (~~shall~~) must have an individualized treatment plan formulated

by the treatment facility. This plan shall be developed by appropriate treatment team members and implemented as soon as possible but no later than fifteen days after the ~~((person's admission))~~ person is admitted to the treatment facility ~~((as criminally insane))~~. Each individualized treatment plan ~~((shall))~~ must include, but not be limited to:

(a) A statement of the nature of the specific problems and specific needs of the patient;

(b) A statement of the physical setting necessary to achieve the purposes of commitment;

(c) A description of intermediate and long-range treatment goals, with a projected timetable for their attainment;

(d) A statement and rationale for the plan of treatment for achieving these intermediate and long-range goals;

(e) A specification of staff responsibility and a description of proposed staff involvement with a patient in order to attain these treatment goals; and

(f) Criteria for recommendation to the court for release.

(3) This individualized treatment plan ~~((shall))~~ must be reviewed by the treatment facility periodically, at least every six months ~~((and a copy of the))~~.

(4) This individualized treatment plan ((shall)) must be ((sent)) made available to the committing court, and other authorized persons or entities, upon request.

AMENDATORY SECTION (Amending WSR 16-13-087, filed 6/15/16, effective 7/16/16)

**WAC 388-875-0070 Transfer of a patient between ~~((state-operated))~~ treatment facilities ~~((for persons with mental illness))~~.** In some instances, it is appropriate for the department to transfer a patient currently residing in a state facility to another state facility for ongoing treatment. The department accomplishes the transfer with the utmost care given to the therapeutic needs and legal status of the patient. This section describes the procedures for handling a patient transfer between state facilities in a manner consistent with the best interest of the patient.

(1) The department uses the following criteria when determining the appropriateness of a patient transfer:

(a) The patient's family resides within the receiving facility's service area; ~~((or))~~

(b) The patient's primary home of residence is in the receiving facility's service area; ~~((or))~~

(c) A particular service or need of the patient is better met at the receiving facility; ~~((or))~~

(d) Transfer to the receiving facility may facilitate ~~((community discharge due to the availability of community service in the receiving facility's service area))~~ continuity of care; or

(e) The ~~((county, behavioral health organization (BHO), or patient))~~ prosecutor, defense counsel, or the court requests a transfer.

(2) Prior to any proposed transfer of a patient, the ~~((state))~~ treatment facility must comply with the following:

(a) The sending facility, at the request of the ~~((chief executive officer (CEO))~~ superintendent, must have forwarded in writing information necessary to make a decision on whether transfer is appropriate

to the receiving facility's attending physician or the physician's designee (~~(and the (BHO) liaison)~~), copying the prosecutor and defense counsel on that communication;

(b) The receiving facility's attending physician or the physician's designee (~~(and the BHO liaison)~~) must have recommended appropriate action to the ((CEO)) superintendent of the sending facility in writing within five calendar days of receipt of the request, and where exigent circumstances exist, necessitating immediate transfer of a patient, these communications must be made immediately as well;

(c) If the receiving facility accepts the proposed patient transfer, the sending facility must notify the patient, guardian, (~~(BHO liaison, and attorney, if known)~~) prosecutor, and defense counsel, at least five days before the proposed patient transfer;

(d) The sending facility is responsible for all patient transfer arrangements, such as, transportation and staff escort, and coordinates the day and time of arrival with the receiving facility; and

(e) The sending facility arranges for the transfer of patient's medical record to the receiving facility.

(3) The sending facility must document the following in the patient's record:

(a) That the physician documented the medical suitability of the patient for transfer; and

(b) That the ((social worker)) facility documented:

(i) Justification as to why the transfer is considered in the patient's best interests; and

(ii) The patient's wishes regarding transfer.

(4) The sending facility must contact the prosecuting attorney's office of the committing county, and defense counsel before the transfer. Where court orders need to be amended as a result of transfer of a patient, the relevant court must also be contacted in order to affect such amendments.

AMENDATORY SECTION (Amending WSR 01-01-008, filed 12/6/00, effective 1/6/01)

**WAC 388-875-0090 Conditional release.** (1) Any person committed to the secretary as criminally insane may make application to the secretary for conditional release.

(2) ~~The ((secretary designates the superintendent of the treatment facility, if no superintendent, then the director of the division, as the person to receive and act on such application))~~ administration is responsible for receiving and acting on applications for conditional release.

(3) The person making application for conditional release ((shall)) must not, under any circumstances, be released until there is a court hearing on the application, and recommendations and a court order authorizing conditional release has been issued.

(4) If conditional release is denied by the court the person making the applications may reapply after a period of six months from the date of denial.

(5) If the court grants conditional release and places the person making application under the supervision of ((a)) the department ((employee)), ((that supervising)) the department ((employee shall)) must make monthly reports((, unless indicated otherwise by the court,)) for

the first six months, and semi-annually thereafter, unless indicated otherwise by the committing court, concerning the conditionally released person's progress and compliance with the terms and conditions of conditional release. Such reports (~~shall~~) must be forwarded to the committing court, (~~the division,~~) the prosecuting attorney, and the treatment facility in which the person was most recently housed.

(6) The following persons are designated to exercise power and authority of the secretary contained in RCW 10.77.190:

(a) The assistant secretary of the behavioral health administration, the director or designee of the (~~division~~) office;

(b) The probation and parole office, if any, supervising the conditionally released person; and

(c) The treatment facility supervising the conditionally released person or from which the person was conditionally released.

AMENDATORY SECTION (Amending WSR 01-01-008, filed 12/6/00, effective 1/6/01)

**WAC 388-875-0110 Access to records by criminal justice agencies.**

Upon written request, criminal justice agencies (~~shall~~) must have access to the following documents developed pursuant to the procedures set forth in chapter 10.77 RCW. The most recent forensic:

(1) Psychiatric assessment;

(2) Release summary; and

(3) Pretrial report of the examination, either inpatient or outpatient.

Other relevant information may be provided by agreement between the requesting criminal justice agency and the treatment facility, subject to federal and state confidentiality provisions.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-875-0080 Restoration procedure for a former involuntarily committed person's right to firearm possession.