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: October 11, 2019
TIME: 2:13 PM

WSR 19-21-066

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 implements 2ESHB 1388 which changed the designation of the state Behavioral Health Authority from the Department of Social and Health Services to the Health Care Authority, effective July 1, 2018. The Health Care Authority is the single state Medicaid agency responsible for state health care purchasing. These emergency rules are substantially the same as the rules in Chapter 388-865 and a few sections regarding the grievance processes in Chapter 388-877 that were repealed by the Department of Social and Health Services. WAC 182-538D-0526 for Single Bed Certification has been removed from this emergency filing and filed under a separate rulemaking project (WSR 19-21-063 and WSR 19-21-065) while the agency continues to develop that program.

Citation of rules affected by this order:

New: 182-100-0100, 182-538D-0200, 182-538-0232, 182-538D-0234, 182-538D-0236, 182-538D-0242, 182-538D-0246, 182-538D-0248, 182-538D-0252, 182-538D-0254, 182-538D-0256, 182-538D-0258, 182-538D-0262, 182-538D-0264, 182-538D-0266, 182-538D-0268, 182-538D-0272, 182-538D-0370, 182-538D- 0375, 182-538D-0380, 182-538D-0385, 182-538D-0600, 182-538D-0620, 182-538D-0630, 182-538D-0640, 182-538D-0654, 182-538D-0655, 182-538D-0660, 182-538D-0665, 182-538D-0670, 182-538D-0675, 182-538D-0680

Repealed:

Amended:

Suspended:

Statutory authority for adoption: RCW 41.05.021, 41.05.160, 2ESHB 1388

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. This emergency filing is necessary to continue the current emergency rules filed under WSR 19-13-057, which are set to expire on October 12, 2019, while the agency moves through the permanent rulemaking process. Since the last emergency filing, the agency has scheduled a public hearing of November 5, 2019 under WSR 19-20-125.

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	32	Amended		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	32	Amended		Repealed	

Date Adopted: October 11, 2019	**Signature:** 
Name: Wendy Barcus	
Title: HCA Rules Coordinator	

Chapter 182-100 WAC
PROBLEM GAMBLING

NEW SECTION

WAC 182-100-0100 Problem and pathological gambling treatment services. (1) Under RCW 43.20A.890, the Washington state health care authority (HCA) administers a program for:

(a) The prevention and treatment of problem and pathological gambling; and

(b) The training of professionals in the identification and treatment of problem and pathological gambling, to be administered by a qualified person who has training and experience in problem gambling or the organization and administration of treatment services for persons suffering from problem gambling.

(2) HCA tracks program participation and participant outcomes.

(3) To receive treatment under this program, a person must:

(a) Need treatment for problem or pathological gambling, or because of the problem or pathological gambling of a family member, but is unable to afford treatment; and

(b) Be identified by HCA as being most amenable to treatment.

(4) Treatment under this section is available only to the extent of the funds appropriated or otherwise made available to HCA for this purpose.

(5) Problem and pathological gambling treatment services include diagnostic screening and assessment, and individual, group, couples, and family counseling and case management.

(6) A person must have an assessment before receiving problem and pathological gambling services. The purpose of the assessment is to determine if a gambling disorder exists and if there are services available to address the person's needs. The assessment must follow the requirements in WAC 246-341-0610.

(7) An agency providing problem and pathological gambling services must meet the behavioral health agency licensure, certification, administration, personnel, clinical, and outpatient requirements in WAC 246-341-0754 and 246-341-0300 through 246-341-0650.

(8) Definitions for the purposes of this section only.

(a) **"Pathological gambling"** means a mental disorder characterized by loss of control over gambling, progression in preoccupation with gambling and in obtaining money to gamble, and continuation of gambling despite adverse consequences;

(b) **"Problem gambling"** means an earlier stage of pathological gambling which compromises, disrupts, or damages family or personal relationships, or vocational pursuits.

Chapter 182-538D WAC
BEHAVIORAL HEALTH SERVICES

NEW SECTION

WAC 182-538D-0200 Behavioral health services—Definitions. The following definitions and those found in chapter 182-500 WAC apply to this chapter. If conflict exists, this chapter takes precedence.

"Adult" means a person age eighteen or older. For purposes of the medicaid program, adult means a person age twenty-one or older.

"Assessment" means the process of obtaining all pertinent biopsychosocial information, as identified by the person, and family and collateral sources, for determining a diagnosis and to plan individualized services and supports.

"Behavioral health" means the prevention, treatment of, and recovery from substance use disorders, mental health disorders or problem and pathological gambling disorders.

"Behavioral health organization" or **"BHO"** means any county authority or group of county authorities or other entity recognized by the director in contract in a defined region.

"Behavioral health organization (BHO) managed care organization (MCO)" is the entity that operates the prepaid inpatient health plan (PIHP) for medicaid behavioral health services.

"Chemical dependency professional" or **"CDP"** means a person credentialed by the department of health as a chemical dependency professional (CDP) with primary responsibility for implementing an individualized service plan for substance use disorder services.

"Child" means a person under the age of eighteen. For the purposes of the medicaid program, child means a person who is under the age of twenty-one.

"Clinical record" means a paper or electronic file that is maintained by the behavioral health organization and contains pertinent psychological, medical, and clinical information for each person served.

"Community support services" means services authorized, planned, and coordinated through resource management services including, at a minimum, assessment, diagnosis, emergency crisis intervention available twenty-four hours, seven days a week; prescreening determinations for people who are mentally ill being considered for placement in nursing homes as required by federal law; screening for patients being considered for admission to residential services; diagnosis and treatment for children who are mentally or severely emotionally disturbed discovered under screening through the federal Title XIX early and periodic screening, diagnosis, and treatment (EPSDT) program; investigation, legal, and other nonresidential services under chapter 71.05 RCW; case management services; psychiatric treatment including medication supervision; counseling; psychotherapy; assuring transfer of relevant patient information between service providers; recovery services; and other services determined by behavioral health organizations.

"Complaint" means the expression of a dissatisfaction with a service or program which may be investigated by the health care authority.

"Consent" means agreement given by a person after the person is provided with a description of the nature, character, anticipated results of proposed treatments and the recognized serious possible risks, complications, and anticipated benefits, including alternatives and nontreatment. Informed consent must be provided in a terminology that the person can reasonably be expected to understand.

"Consultation" means the clinical review and development of recommendations regarding activities, or decisions of, clinical staff, contracted employees, volunteers, or students by people with appropriate knowledge and experience to make recommendations.

"County authority" means the board of county commissioners, county council, or county executive having authority to establish a community mental health program, or two or more of the county authorities specified in this subsection which have entered into an agreement to provide a community mental health program.

"Crisis" means an actual or perceived urgent or emergent situation that occurs when a person's stability or functioning is disrupted and there is an immediate need to resolve the situation to prevent a serious deterioration in the individual's mental or physical health, or to prevent the need for referral to a significantly higher level of care.

"Cultural competence" or **"culturally competent"** means the ability to recognize and respond to health-related beliefs and cultural values, disease incidence and prevalence, and treatment efficacy. Examples of culturally competent care include striving to overcome cultural, language, and communications barriers, providing an environment in which people from diverse cultural backgrounds feel comfortable discussing their cultural health beliefs and practices in the context of negotiating treatment options, encouraging people to express their spiritual beliefs and cultural practices, and being familiar with and respectful of various traditional healing systems and beliefs and, where appropriate, integrating these approaches into treatment plans.

"Designated crisis responder (DCR)" means a mental health professional appointed by a behavioral health organization (BHO) to perform the duties described in RCW 70.96A.140.

"Disability" means a physical or mental impairment that substantially limits one or more major life activities of a person and the person:

(a) Has a record of such an impairment; or

(b) Is regarded as having such impairment.

"Ethnic minority" or **"racial/ethnic groups"** means, for the purposes of this chapter, any of the following general population groups:

(a) African American;

(b) An American Indian or Alaskan native, which includes:

(i) A person who is a member or considered to be a member in a federally recognized tribe;

(ii) A person determined eligible to be found Indian by the secretary of interior;

(iii) An Eskimo, Aleut, or other Alaskan native; and

(iv) An unenrolled Indian meaning a person considered Indian by a federally or nonfederally recognized Indian tribe or off-reservation Indian/Alaskan native community organization.

(c) Asian/Pacific Islander; or

(d) Hispanic.

"Governing body" means the entity with legal authority and responsibility for the operation of the behavioral health agency, to include its officers, board of directors or the trustees of a corporation or limited liability company.

"Housing services" means the active search and promotion of individual access to, and choice in, safe and affordable housing that is appropriate to the person's age, culture, and needs.

"Less restrictive alternative (LRA)" means court ordered outpatient treatment in a setting less restrictive than total confinement.

"Licensed" means the status given to behavioral health agencies by the department of health under its authority to license and certify mental health programs chapters 71.05, 71.34, and 71.24 RCW and its authority to certify substance use disorder treatment programs chapter 70.96A RCW.

"Mental health professional" means a person who meets the following:

(a) A psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner (ARNP), psychiatric nurse, or social worker as defined in chapters 71.05 and 71.34 RCW;

(b) A person who is licensed by the department of health as a mental health counselor, mental health counselor associate, marriage and family therapist, or marriage and family therapist associate;

(c) A person with a master's degree or further advanced degree in counseling or one of the social sciences from an accredited college or university who has at least two years of experience in direct treatment of people with mental illness or emotional disturbance, experience that was gained under the supervision of a mental health professional recognized by the department of health or attested to by the licensed behavioral health agency;

(d) A person who meets the waiver criteria of RCW 71.24.260, and the waiver was granted prior to 1986; or

(e) A person who had an approved waiver to perform the duties of a mental health professional (MHP) that was requested by a behavioral health organization (BHO) and granted by the department of social and health services mental health division prior to July 1, 2001.

"Mental health specialist" means:

(a) A **"child mental health specialist"** is defined as a mental health professional with the following education and experience:

(i) A minimum of one hundred actual hours (not quarter or semester hours) of special training in child development and the treatment of children and youth with serious emotional disturbance and their families; and

(ii) The equivalent of one year of full-time experience in the treatment of seriously emotionally disturbed children and youth and their families under the supervision of a child mental health specialist.

(b) A **"geriatric mental health specialist"** is defined as a mental health professional who has the following education and experience:

(i) A minimum of one hundred actual hours (not quarter or semester hours) of specialized training devoted to the mental health problems and treatment of people age sixty and older; and

(ii) The equivalent of one year of full-time experience in the treatment of people age sixty and older, under the supervision of a geriatric mental health specialist.

(c) An **"ethnic minority mental health specialist"** is defined as a mental health professional who has demonstrated cultural competence

attained through major commitment, ongoing training, experience and/or specialization in serving ethnic minorities, including evidence of one year of service specializing in serving the ethnic minority group under the supervision of an ethnic minority mental health specialist; and

(i) Evidence of support from the ethnic minority community attesting to the person's commitment to that community; or

(ii) A minimum of one hundred actual hours (not quarter or semester hours) of specialized training devoted to ethnic minority issues and treatment of ethnic minority individuals.

(d) A **"disability mental health specialist"** is defined as a mental health professional with special expertise in working with an identified disability group. For purposes of this chapter only, "disabled" means a person with a disability other than a mental illness, including a developmental disability, serious physical handicap, or sensory impairment.

(i) If the consumer is deaf, the specialist must be a mental health professional with:

(A) Knowledge about the deaf culture and psychosocial problems faced by people who are deaf; and

(B) Ability to communicate fluently in the preferred language system of the consumer.

(ii) The specialist for people with developmental disabilities must be a mental health professional who:

(A) Has at least one year experience working with people with developmental disabilities; or

(B) Is a developmental disabilities professional as defined in RCW 71.05.020.

"Peer counselor" means a person recognized by DBHR as a person who:

(a) Is a self-identified consumer of mental health services;

(b) Is a counselor credentialed under chapter 18.19 RCW;

(c) Has completed specialized training provided by or contracted through DBHR. If the person was trained by trainers approved by the department of social and health services before October 1, 2004, and has met the requirements in (a), (b) and (d) of this subsection by January 31, 2005, the person is exempt from completing this specialized training;

(d) Has successfully passed an examination administered by DBHR or an authorized contractor; and

(e) Has received a written notification letter from DBHR stating that DBHR recognizes the person as a "peer counselor."

"Quality assurance and quality improvement" means a focus on compliance to minimum requirements in rules and contracts, and activities to perform above minimum standards and achieve reasonably expected levels of performance, quality, and practice.

"Quality strategy" means an overarching system and/or process whereby quality assurance and quality improvement activities are incorporated and infused into all aspects of a behavioral health organization's (BHO's) operations.

"Recovery" means a process of change through which people improve their health and wellness, lives a self-directed life, and strives to reach their full potential.

"Residential services" means a complete range of residences and supports authorized by resource management services and which may involve a facility, a distinct part thereof, or services which support community living, for people who are acutely mentally ill, adults who

are chronically mentally ill, children who are severely emotionally disturbed, or adults who are seriously disturbed and determined by the behavioral health organization to be at risk of becoming acutely or chronically mentally ill.

"Resource management services" means the planning, coordination, and authorization of residential services and community support services for people who are:

(a) Adults and children who are acutely mentally ill;

(b) Adults who are chronically mentally ill;

(c) Children who are severely emotionally disturbed; or

(d) Adults who are seriously disturbed and determined solely by a behavioral health organization to be at risk of becoming acutely or chronically mentally ill.

"Service area" means the geographic area covered by each behavioral health organization (BHO) for which it is responsible.

"State minimum standards" means minimum requirements established by rules adopted by the secretary and necessary to implement this chapter for delivery of behavioral health services.

"Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms indicating that a person continues using the substance despite significant substance-related problems. The diagnosis of a substance use disorder is based on a pathological pattern of behaviors related to the use of the substances.

"Supervision" means the regular monitoring of the administrative, clinical, or clerical work performance of a staff member, trainee, student, volunteer, or employee on contract by a person with the authority to give direction and require change.

"Youth" means a person who is age seventeen or younger.

BEHAVIORAL HEALTH ORGANIZATIONS

NEW SECTION

WAC 182-538D-0232 Behavioral health organizations—General. (1) A behavioral health organization (BHO) contracts with the division of behavioral health and recovery (DBHR) to administer behavioral health services within its service area.

(2) A BHO operates only in areas of the state that have not implemented the Washington apple health fully integrated managed care (FIMC) program. See chapter 182-538A WAC for rules that govern the FIMC program.

(3) BHOs, behavioral health agencies, and the BHO managed care organization (MCO) must:

(a) Comply with chapters 70.96A, 71.05, 71.24, 71.34, and 71.36 RCW, which contain laws regarding substance use disorders, mental illness, and community mental health services.

(b) Meet the requirements in this chapter and chapter 246-341 WAC regarding the licensure of behavioral health agencies and the certification of behavioral health services. An exemption of any section or subsection may be requested, subject to the criteria in WAC 182-538D-0236. DBHR does not exempt any requirement that is part of statute.

(4) A BHO is responsible to ensure behavioral health services are responsive in an age and culturally competent manner to the substance use disorder treatment and mental health needs of its community.

(5) DBHR administers behavioral health services regionally if the criteria in WAC 182-538D-0234 apply.

(6) The BHO MCO is the entity that operates the prepaid inpatient health plan (PIHP) medicaid behavioral health services.

(7) WAC 182-538D-0200 contains definitions for terms and phrases used in the BHO and the BHO MCO rules.

NEW SECTION

WAC 182-538D-0234 Behavioral health organizations—When the division of behavioral health and recovery administers regional behavioral health services. (1) If a currently operating behavioral health organization (BHO) chooses to stop functioning as a BHO, fails to meet state minimum standards specified in rule, or does not meet the requirements under RCW 71.24.045, the following is implemented:

(a) Under RCW 71.24.035(16), the director of the health care authority:

(i) Is designated as the BHO until a new BHO is designated; and

(ii) Assumes the duties assigned to the region without a participating BHO.

(b) The division of behavioral health and recovery (DBHR):

(i) Administers behavioral health services within the region without a participating BHO; and

(ii) Continues to apply the BHO requirements in WAC 182-538D-0232 through 182-538D-0272 and the BHO managed care organization requirements in WAC 182-538D-0370 through 182-538D-0385.

(2) A person who resides within the service area of a region without a participating BHO:

(a) May receive services, within available resources as defined in RCW 71.24.025(2), from any provider of behavioral health services that is contracted with DBHR and licensed by the department of health; and

(b) Who is a Title XIX medicaid client entitled to receive medically necessary behavioral health services without charge to the client.

(3) This section does not apply to a region in which the health care authority operates the Washington apple health fully integrated managed care (FIMC) program which provides fully integrated physical and behavioral health services to medicaid clients through a health care authority-contracted managed care organization. See chapter 182-538A WAC for information on Washington apple health FIMC.

NEW SECTION

WAC 182-538D-0236 Behavioral health organizations—How to request an exemption of a minimum standard. (1) A behavioral health organization (BHO), a licensed behavioral health agency, and the behavioral health organization (BHO) managed care organization (MCO) subject to the BHO and BHO MCO rules may request an exemption of a minimum standard in WAC 182-538D-0232 through 182-538D-0272 and 182-538D-0370 through 182-538D-0385 by submitting a request in writing to the director of the division of behavioral health and recovery (DBHR).

(2) The exemption request must include:

(a) The name and address of the entity that is making the request;

(b) The specific section or subsection of the rule for which an exemption is being requested;

(c) The reason why the exemption is necessary, or the method the entity will use to meet the desired outcome of the section or subsection in a more effective and efficient manner;

(d) A description of the plan and timetable to achieve compliance with the minimum standard or to implement, test, and report results of an improved way to meet the intent of the section or subsection;

(e) Documentation that the quality review team or behavioral health ombuds office was consulted and any resulting recommendations are included in the request; and

(f) A description of how people affected by the exemption will be notified.

(3) DBHR's review of the request considers whether approving the exemption will impact accountability, accessibility, efficiency, individual satisfaction, and quality of care, or will violate state or federal law. The requestor receives a determination notice from DBHR within thirty days from the date the exemption request was received.

(a) If DBHR grants the exemption request, the notice includes:

(i) The section or subsection of rule exempted;

(ii) The conditions of acceptance;

(iii) The time frame for which the exemption is approved; and

(iv) Notification that the exemption may be renewed upon request of the party that initially asked for the exemption. In this case, the requestor must submit a renewal request to the director of DBHR before the time frame of the initial exemption expires, and meet the applicable requirements of subsection (1) of this section.

(b) If DBHR denies the exemption request, the notice includes the reason for the denial.

(4) DBHR cannot exempt any minimum standard that is required by:

(a) Statute; or

(b) Another state agency.

NEW SECTION

WAC 182-538D-0242 Behavioral health organizations—Payment for behavioral health services. Within available resources as defined in RCW 71.24.025(4), a behavioral health organization (BHO) must ensure a

person's eligibility for and payment for behavioral health services meet the following:

(1) A person who is eligible for medicaid is entitled to receive covered medically necessary behavioral health services without charge to the person, consistent with the state's medicaid state plan or federal waiver authorities. A medicaid recipient is also entitled to receive behavioral health services from a behavioral health organization (BHO) managed care organization (MCO) without charge.

(2) A person who is not eligible for medicaid is entitled to receive behavioral health services consistent with priorities established by the health care authority. The person, the parent(s) of the person under age eighteen, the person's legal guardian, or the estate of the person:

(a) Is responsible for payment for services provided; and

(b) May apply to the following entities for payment assistance:

(i) The health care authority for medical assistance;

(ii) The behavioral health service provider for payment responsibility based on a sliding fee scale; or

(iii) The BHO MCO for authorization of payment for involuntary evaluation and treatment services.

NEW SECTION

WAC 182-538D-0246 Behavioral health organizations—Public awareness of behavioral health services. A behavioral health organization (BHO) or its designee must provide public information on the availability of mental health and substance use disorder services. The BHO must:

(1) Maintain information on available services, including crisis services and the recovery help line in telephone directories, public websites, and other public places in easily accessible formats;

(2) Publish and disseminate brochures and other materials or methods for describing services and hours of operation that are appropriate for all people, including those who may be visually impaired, limited-English proficient, or unable to read; and

(3) Post and make information available to people regarding the behavioral health ombuds office consistent with WAC 182-538D-0262, and local advocacy organizations that may assist people in understanding their rights.

NEW SECTION

WAC 182-538D-0248 Behavioral health organizations—Governing body responsible for oversight. The behavioral health organization (BHO) must establish a governing body responsible for oversight of the BHO. The governing body must:

(1) Be free from conflict of interest and all appearance of conflict of interest between personal, professional and fiduciary interests of a governing body member and the best interests of the BHO and the people it serves.

(2) Have rules about:

(a) When a conflict of interest becomes evident;

(b) Not voting or joining a discussion when a conflict of interest is present; and

(c) When the governing body can assign the matter to others, such as staff members or advisory bodies.

NEW SECTION

WAC 182-538D-0252 Behavioral health organizations—Advisory board membership. (1) A behavioral health organization (BHO) must appoint advisory board members and maintain an advisory board in order to:

(a) Promote active engagement with people with behavioral health disorders, their families, and behavioral health agencies; and

(b) Solicit and use the advisory board members input to improve service delivery and outcome.

(2) The BHO must appoint advisory board members and maintain an advisory board that:

(a) Broadly represents the demographic character of the service area;

(b) Is composed of at least fifty-one percent representation of one or more of the following:

(i) People with lived experience;

(ii) Parents or legal guardians of people with lived experience; or

(iii) Self-identified as people in recovery from a behavioral health disorder.

(c) Includes law enforcement representation; and

(d) Includes tribal representation, upon request of a tribe.

(3) When the BHO is not a function of county government, the advisory board must include no more than four county elected officials.

(4) The advisory board:

(a) May have members who are employees of subcontracted agencies, as long as there are written rules that address potential conflicts of interest.

(b) Has the discretion to set rules in order to meet the requirements of this section.

(c) Membership is limited to three years per term for time served, per each advisory board member. Multiple terms may be served by a member if the advisory board rules allow it.

(5) The advisory board independently reviews and provides comments to either the BHO, the BHO governing board, or both, on plans, budgets, and policies developed by the BHO to implement the requirements of this section, chapters 71.05, 71.24, 71.34 RCW, and applicable federal laws.

NEW SECTION

WAC 182-538D-0254 Behavioral health organizations—Voluntary inpatient services and involuntary evaluation and treatment services. A behavioral health organization (BHO) must develop and implement age and culturally competent behavioral health services that are consistent with chapters 70.96A, 71.24, 71.05, and 71.34 RCW.

(1) For voluntary inpatient services, the BHO must develop and implement formal agreements with inpatient services funded by the BHO regarding:

(a) Referrals;

(b) Admissions; and

(c) Discharges.

(2) For involuntary evaluation and treatment services, the BHO:

(a) Must ensure that people in their regional service area have access to involuntary inpatient care; and

(b) Is responsible for coordinating discharge planning with the treating inpatient facility.

(3) The BHO must:

(a) Ensure periodic reviews of the evaluation and treatment service facilities consistent with BHO procedures and notify the appropriate authorities if it believes that a facility is not in compliance with applicable rules and laws.

(b) Authorize admissions into inpatient evaluation and treatment services for people from:

(i) State psychiatric hospitals:

(A) Western state hospital;

(B) Eastern state hospital; and

(C) The child study and treatment center.

(ii) Community hospitals.

(iii) Certified inpatient evaluation and treatment facilities licensed by the department of health as adult residential treatment facilities.

(iv) The children's long-term inpatient program (CLIP).

(c) Receive prior approval from the division of behavioral health and recovery (DBHR) in the form of a single bed certification for services to be provided to people on a ninety- or one hundred eighty-day community inpatient involuntary commitment order consistent with the exception criteria in WAC 246-341-1136.

NEW SECTION

WAC 182-538D-0256 Behavioral health organizations—Community support, residential, housing, and employment services. (1) **Community support services** as defined in WAC 182-538D-0200. A behavioral health organization (BHO) must:

(a) Develop and coordinate age and culturally appropriate community support services that are consistent with chapters 71.05, 71.24, and 71.34 RCW to ensure that the mental health and substance use disorder services listed in chapter 246-341 WAC can be accessed by all eligible people in the BHO's service area and are provided to eligible people directly, or by contract.

(b) Ensure prescreening determinations are conducted for providing community support services for people with mental illness who are being considered for placement in nursing facilities as required by RCW 71.24.025(8).

(2) **Residential services** as defined in WAC 182-538D-0200. A BHO must:

(a) Ensure active search and promotion of access to, and choice in, safe and affordable independent housing that is appropriate to the person's age, culture, and residential needs. This includes:

(i) Providing services to families of people who are homeless or at imminent risk of becoming homeless as defined in Public Law 100-77, through outreach, engagement and coordination of linkage of services with shelter and housing; and

(ii) Assuring the availability of community support services, with an emphasis on supporting people in their own home or where they live in the community, with residences and residential supports prescribed in the individual service plan, including a full range of residential services as defined in RCW 71.24.025(23).

(b) Ensure that people in licensed residential facilities receive behavioral health services consistent with their individual service plan and are advised of their rights, including long-term care rights under chapter 70.129 RCW.

(3) **Housing services** as defined in WAC 182-538D-0200. A BHO must ensure active search and promotion of access to, and choice in, safe and affordable housing that is appropriate to the person's age, culture, and needs. This includes:

(a) Providing services to families of people who are homeless or at imminent risk of becoming homeless as defined in Public Law 100-77, through outreach, engagement and coordination of linkage of services with shelter and housing;

(b) Assuring the availability of community support services, with an emphasis on supporting people in their own home or where they live in the community, with residences and residential supports prescribed in the individual service plan; and

(c) Coordinating with public housing entities, homeless continuums of care, and affordable housing developers.

(4) **Employment services.** A BHO must coordinate with the health care authority or other local entities that support employment services to assure that people wanting to work are provided with recovery support-employment services under WAC 246-341-0720.

NEW SECTION

WAC 182-538D-0258 Behavioral health organizations—Administration of the Mental Health Involuntary Treatment Act and Substance Use Disorders Involuntary Treatment Act. A behavioral health organization (BHO) must establish policies and procedures for administration of the Mental Health Involuntary Treatment Act and Substance Use Disorders Involuntary Treatment Act, including investigation, detention, transportation, court-related, and other services required by chapters 70.96A, 71.05 and 71.34 RCW. This includes:

(1) Ensuring that designated crisis responders (DCRs) perform the duties of involuntary investigation and detention in accordance with the requirements of chapters 70.96A, 71.05 and 71.34 RCW.

(2) Documenting the person's compliance with the conditions of mental health less restrictive alternative court orders by:

(a) Ensuring periodic evaluation of each committed person for release from or continuation of an involuntary treatment order. Evaluations must be recorded in the clinical record, and must occur at least monthly for ninety-day commitments and one hundred eighty-day commitments.

(b) Notifying the DCR if noncompliance with the less restrictive alternative order impairs the person sufficiently to warrant detention or evaluation for detention and petitioning for revocation of the less restrictive alternative court order.

(3) Ensuring that the requirements of RCW 71.05.700 through 71.05.715 are met.

NEW SECTION

WAC 182-538D-0262 Behavioral health organizations—Behavioral health ombuds office. A behavioral health organization (BHO) must provide unencumbered access to and maintain the independence of the behavioral health ombuds service as set forth in the contract between the BHO and the division of behavioral health and recovery (DBHR). The BHO and DBHR must ensure the inclusion of representatives of client advocate organizations when revising the terms of the contract regarding the requirements of this section. Behavioral health ombuds members must be current consumers of the mental health or substance use disorder system, or past consumers or family members of past consumers. The BHO must maintain a behavioral health ombuds office that:

(1) Is responsive to the age and demographic character of the region and assists and advocates for people with resolving issues, grievances, and appeals at the lowest possible level;

(2) Is independent of BHO service providers;

(3) Supports people, family members, and other interested parties regarding issues, grievances, and appeals;

(4) Is accessible to people, including having a toll-free, independent phone line for access;

(5) Is able to access service sites and records relating to people with appropriate releases so that it can reach out to people and help to resolve issues, grievances, and appeals;

(6) Receives training and adheres to confidentiality consistent with this chapter and chapters 70.96A, 71.05, 71.24, and 70.02 RCW;

(7) Continues to be available to advocate and support people through the grievance, appeal and administrative hearing processes;

(8) Involves other people, at the person's request;

(9) Supports people in the pursuit of a formal resolution;

(10) If necessary, continues to assist the person through the administrative hearing process;

(11) Coordinates and collaborates with allied services to improve the effectiveness of advocacy and to reduce duplication when serving the same person;

(12) Provides information on grievances to DBHR and BHO quality strategy; and

(13) Provides reports and formalized recommendations at least biennially to DBHR and BHO advisory and governing boards, local consumer and family advocacy groups, the BHO quality review team, and the BHO provider network.

NEW SECTION

WAC 182-538D-0264 Behavioral health organizations—Quality strategy. A behavioral health organization (BHO) must implement a quality strategy for continuous quality improvement in the delivery of culturally competent mental health services. The BHO must submit a quality assurance and improvement plan to the division of behavioral health and recovery (DBHR). All changes to the quality assurance and improvement plan must be submitted to DBHR for approval prior to implementation. The plan must include all of the following:

(1) Roles, structures, functions and interrelationships of all the elements of the quality strategy including, but not limited to, the BHO governing board, clinical and management staff, advisory board, behavioral health ombuds service, and quality review teams.

(2) Procedures to ensure that quality assurance and improvement activities are effectively and efficiently carried out with clear management and clinical accountability, including methods to:

(a) Collect, analyze and display information regarding:

(i) The capacity to manage resources and services, including financial and cost information and compliance with statutes, regulations and contracts;

(ii) System performance indicators;

(iii) Quality and intensity of services;

(iv) Incorporation of feedback from people, allied service systems, community providers, the behavioral health ombuds office and quality review team;

(v) Clinical care and service usage including participant outcome measures; and

(vi) Recommendations and strategies for system and clinical care improvements, including information from exit interviews of people and providers;

(b) Monitor management information system data integrity;

(c) Monitor complaints, grievances and adverse incidents for people;

(d) Monitor contractors and to notify DBHR of observations and information indicating that providers may not be in compliance with licensing or certification requirements;

(e) Immediately investigate and report allegations of fraud and abuse of the contractor or subcontractor to DBHR;

(f) Monitor delegated administrative activities;

(g) Identify necessary improvements;

(h) Interpret and communicate practice guidelines to providers;

(i) Implement change;

(j) Evaluate and report results;

(k) Demonstrate incorporation of all corrective actions to improve the system;

(l) Consider system improvements based on recommendations from all on-site monitoring, evaluation, accreditation, and certification reviews; and

(m) Review, update, and make the plan available to community stakeholders.

(3) Targeted improvement activities, including:

(a) Performance measures that are objective, measurable, and based on either current knowledge or best practice, or both, including at least those defined by DBHR in the contract with the BHO;

(b) An analysis of consumer care covering a representative sample of at least ten percent of consumers or five hundred consumers, whichever is smaller;

(c) Efficient use of human resources; and

(d) Efficient business practices.

NEW SECTION

WAC 182-538D-0266 Behavioral health organizations—Quality review teams. A behavioral health organization (BHO) must establish and maintain unencumbered access to and maintain the independence of a quality review team as described in this section and in the contract between the BHO and the division of behavioral health and recovery (DBHR). The quality review team must include people who currently receive or have in the past received behavioral health services, and may also include the family members of such people. The BHO must assure that quality review teams:

(1) Fairly and independently review the performance of the BHO and service providers in order to evaluate systemic issues as measured by objective indicators of participant outcomes in rehabilitation and recovery, including all of the following:

(a) Quality of care;

(b) The degree to which services are focused on the person and are age and culturally appropriate;

(c) The availability of alternatives to hospitalization, cross-system coordination and range of treatment options; and

(d) The effectiveness of the BHO's coordination with allied systems including, but not limited to, schools, state and local hospitals, jails and shelters.

(2) Have the authority to enter and monitor any behavioral health agency contracted with a BHO.

(3) Meet with interested people and family members, allied service providers, including state or community psychiatric hospitals, BHO contracted service providers, and people that represent the age and ethnic diversity of the BHO's service area to:

(a) Determine if services are accessible and address the needs of people based on sampled people's perception of services using a standard interview protocol. The protocol will query the sampled people regarding ease of accessing services, the degree to which services address medically necessary needs, and the benefit of the service received; and

(b) Work with interested people and other people, if requested by the person, service providers, the BHO, and DBHR to resolve identified problems.

(4) Provide reports and formalized recommendations at least biennially to DBHR, the behavioral health advisory committee and the BHO advisory and governing boards and ensure that input from the quality review team is integrated into the overall BHO quality strategy, behavioral health ombuds office services, local consumer and family advocacy groups, and provider network.

(5) Receive training in and adhere to applicable confidentiality standards.

NEW SECTION

WAC 182-538D-0268 Behavioral health organizations—Standards for contractors and subcontractors. A behavioral health organization (BHO) must not contract or subcontract for clinical services to be provided using public funds unless the contractor or subcontractor is licensed by the department of health for those services, or is individually licensed by the department of health as defined in chapter 18.57, 18.71, 18.83, or 18.79 RCW. The BHO must:

(1) Require and maintain documentation that contractors and subcontractors are licensed, certified, or registered in accordance with state and federal laws;

(2) Follow applicable requirements of the BHO contract with the division of behavioral health and recovery (DBHR);

(3) Demonstrate that it monitors contractors and subcontractors and notifies DBHR of observations and information indicating that providers may not be in compliance with licensing or certification requirements; and

(4) Terminate its contract or subcontract with a provider if DBHR notifies the BHO of a provider's failure to attain or maintain licensure.

NEW SECTION

WAC 182-538D-0272 Behavioral health organizations—Operating as a behavioral health agency. A behavioral health organization (BHO) may operate as a behavioral health agency when the BHO:

(1) Meets the criteria in RCW 71.24.045(2) and chapters 70.96A and 71.24 RCW; and

(2) Maintains a current license as a behavioral health agency from the department of health.

NEW SECTION

WAC 182-538D-0370 Behavioral health organization managed care organization—Minimum standards. To be eligible to contract with the division of behavioral health and recovery (DBHR), the behavioral health organization (BHO) managed care organization (MCO) must comply with all applicable local, state, and federal rules and laws. The BHO MCO must:

(1) Provide documentation of a population base of sixty thousand medicaid eligible people covered within the service area or receive approval from DBHR based on submittal of an actuarially sound risk management profile;

(2) If the BHO is not a county-based organization, the BHO must maintain licensure by the Washington state office of the insurance commissioner as a health care service contractor under chapter 48.44 RCW;

(3) Provide medically necessary behavioral health services that are age and culturally appropriate for all medicaid clients in the service area within a capitated rate;

(4) Demonstrate working partnerships with tribal authorities for the delivery of services that blend with tribal values, beliefs and culture;

(5) Develop and maintain written subcontracts that clearly recognize that legal responsibility for administration of the service delivery system remains with the BHO MCO, as identified in the contract with DBHR;

(6) Retain responsibility to ensure that applicable standards of this chapter, other state rules, and federal laws are met even when it delegates duties to subcontractors; and

(7) Ensure the protection of individual and family rights as described in chapters 70.96A, 71.05 and 71.34 RCW.

NEW SECTION

WAC 182-538D-0375 Behavioral health organization managed care plan—Utilization management. Utilization management is the way the behavioral health organization (BHO) managed care organization (MCO) authorizes or denies substance use disorder treatment or mental health services, monitors services, and follows the level of care guidelines. To demonstrate the impact on access to care of adequate quality, a BHO must provide utilization management of the behavioral health rehabilitation services under 42 C.F.R. Sec. 440.130(d) that is independent of service providers. This process must:

(1) Provide effective and efficient management of resources;

(2) Assure capacity sufficient to deliver appropriate quality and intensity of services to people without a wait list consistent with the contract with the division of behavioral health and recovery (DBHR);

(3) Plan, coordinate, and authorize community support services;

(4) Ensure that services are provided according to the individual service plan;

(5) Ensure assessment and monitoring processes are in place by which service delivery capacity responds to changing needs of the community and the person;

(6) Develop, implement, and enforce written level of care guidelines for admissions, placements, transfers and discharges into and out of services including:

(a) A clear process for the BHO MCO's role in the decision-making process about admission and continuing stay at various levels is available in language that is clearly understood by all parties involved in a person's care, including laypersons;

(b) Criteria for admission into various levels of care, including community support, inpatient and residential services that are clear and concrete;

(c) Methods to ensure that services are individualized to meet the needs of all people served, including methods that address different ages, cultures, languages, civil commitment status, physical abilities, and unique service needs; and

(d) Assurance that the BHO MCO retains a sufficiently strong and regular oversight role to assure decisions are being made appropriately, to the extent authorization of care at any level of care or at continuing stay determinations is delegated.

(7) Collect data that measures the effectiveness of the criteria in ensuring that all eligible people get services that are appropriate to their needs; and

(8) Report to DBHR any knowledge it gains that the BHO MCO or behavioral health service provider is not in compliance with a state or federal rule or law.

NEW SECTION

WAC 182-538D-0380 Behavioral health organization managed care organization—Choice of primary provider. (1) The behavioral health organization (BHO) managed care organization (MCO) must:

(a) Ensure that each person receiving nonemergency behavioral health rehabilitation services has a primary provider who is responsible to carry out the individual service plan; and

(b) Allow people, parents of people age twelve and younger, and guardians of people of all ages to select a primary provider from the available primary provider staff within the BHO MCO.

(2) For a person with an assigned case manager, the case manager is the primary provider.

(3) If the person does not select a primary provider, the BHO MCO or its designee must assign a primary provider not later than fifteen working days after the person requests services.

(4) The BHO MCO or its designee must allow a person to change primary providers at any time for any reason. The person must notify

the BHO MCO or its designee of the request for a change, and inform the MCO of the name of the new primary provider.

NEW SECTION

WAC 182-538D-0385 Behavioral health organization managed care organization—Behavioral health screening for children. The behavioral health organization (BHO) managed care organization (MCO) is responsible for conducting behavioral health screening and treatment for children eligible under the federal Title XIX early and periodic screening, diagnosis, and treatment (EPSDT) program. This includes:

(1) Providing resource management services for children eligible under the EPSDT program as specified in contract with the division of behavioral health and recovery; and

(2) Developing and maintaining an oversight committee for the coordination of the EPSDT program that must include representation from parents of medicaid-eligible children.

INPATIENT AND EVALUATION TREATMENT FACILITIES

DEPARTMENT OF CORRECTIONS ACCESS TO CONFIDENTIAL MENTAL HEALTH INFORMATION

NEW SECTION

WAC 182-538D-0600 Purpose. In order to enhance and facilitate the department of corrections' ability to carry out its responsibility of planning and ensuring community protection, mental health records and information, as defined in this section, that are otherwise confidential shall be released by any mental health service provider to the department of corrections personnel for whom the information is necessary to carry out the responsibilities of their office as authorized in RCW 71.05.445. Department of corrections personnel must use records only for the stated purpose and must assure that records remain confi-

dential and subject to the limitations on disclosure outlined in chapter 71.05 RCW, except as provided in RCW 72.09.585.

NEW SECTION

WAC 182-538D-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 before 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.

NEW SECTION

WAC 182-538D-0630 Time frame. The mental health service provider will 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 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 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 email 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.

Information that can be released is limited to:

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

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

NEW SECTION

WAC 182-538D-0640 Written requests. The written request for relevant records, reports and information must include:

(1) Verification that the person for whom records, reports and information are being requested is under the authority of the department of corrections, per chapter 9.94A RCW, and the expiration date of that authority;

(2) Sufficient information to identify the person for whom records, reports and information are being requested including name and other identifying data;

(3) Specification as to which records and reports are being requested and the purpose for the request;

(4) Specification as to what relevant information is requested and the purpose for the request;

(5) Identification of the department of corrections person to whom the records, reports and information shall be sent, including the person's name, title and address;

(6) Name, title and signature of the requestor and date of the request.

BEHAVIORAL HEALTH SERVICES-ADMINISTRATIVE REQUIREMENTS

NEW SECTION

WAC 182-538D-0654 How people may express concern about their rights, services, or treatment. (1) People who apply for, are eligible for, or receive behavioral health services authorized by a behavioral health organization (BHO), may access the BHO's grievance and appeal system to express concern about their rights, services, or treatment.

(2) The BHO's grievance and appeal system includes:

(a) A grievance process as described in WAC 182-538D-0660;

(b) An appeal process as described in WAC 182-538D-0670; and

(c) Access to administrative hearings as described in WAC 182-538D-0675.

(3) People must exhaust the appeal process before they have access to an administrative hearing.

(4) People may also use the free and confidential ombuds services under WAC 182-538D-0262 through the BHO that contracts with the behav-

ioral health agency in which they receive behavioral health services. Ombuds services are provided independent of BHOs and behavioral health agencies and are offered to people at any time to help them with resolving issues or problems at the lowest possible level during the grievance, appeal, or administrative hearing process.

(5) In handling grievances and appeals, each BHO and behavioral health agency must give people any reasonable assistance in completing forms and taking other procedural steps related to grievance or appeal. This includes, but is not limited to, auxiliary aids and services, upon request, such as providing interpreter services and toll-free numbers that have adequate TTY/TTD and interpreter capability.

NEW SECTION

WAC 182-538D-0655 Grievance and appeal system and administrative hearings—Definitions. The terms and definitions in this section apply to the behavioral health organization (BHO) grievance and appeal system and administrative hearing rules. Other definitions that apply to behavioral health services may be found at WAC 182-538D-0200.

(1) "Administrative hearing" means a proceeding before an administrative law judge to review an adverse benefit determination or a BHO decision to deny or limit authorization of a requested nonmedicaid service communicated on a notice of determination.

(2) "Adverse benefit determination" means, in the case of medicaid services administered by the BHO, any one or more of the following:

(a) The denial or limited authorization of a requested service, including determinations based on the type or level of service, requirements for medical necessity, appropriateness, setting, or effectiveness of a covered benefit;

(b) The reduction, suspension, or termination of a previously authorized service;

(c) The denial, in whole or in part, of payment for a service;

(d) The failure to provide services in a timely manner, as defined by the state;

(e) The failure of a BHO to act within the grievance and appeal system time frames as provided in WAC 182-538D-0660 through 182-538D-0670 regarding the standard resolution of grievances and appeals;

(f) For a resident of a rural area with only one BHO, the denial of a person's request to exercise the right to obtain services outside the network; or

(g) The denial of a person's request to dispute a financial liability, including cost sharing, copayments, premiums, deductibles, coinsurance, and other enrollee financial liabilities.

(3) "Appeal" means a review by a behavioral health organization (BHO) of an adverse benefit determination, as defined in this section.

(4) "Grievance" means an expression of dissatisfaction about any matter other than an adverse benefit determination. Grievances may include, but are not limited to, a person's right to dispute an extension of time proposed by the BHO to make an authorization decision, the quality of care or services provided, aspects of interpersonal relationships such as rudeness of a behavioral health provider or em-

ployee, and failure to respect the person's rights regardless of whether a specific action is requested by the person.

(5) "Grievance and appeal system" means the processes a BHO implements to handle appeals of adverse benefit determinations and grievances as well as the processes to collect and track information about them. The BHO must establish the grievance and appeal system and meet the requirements of 42 C.F.R. Sec. 438, Subpart F (2017).

(6) "Person" means a person who applies for, is eligible for, or receives BHO-authorized behavioral health services from an agency licensed by the department of health as a behavioral health agency. For the purposes of accessing the grievance and appeal system and the administrative hearing process, when another person is acting on a person's behalf, the definition of a person also includes any of the following:

(a) In the case of a minor, the person's parent or, if applicable, the person's custodial parent;

(b) The person's legal guardian;

(c) The person's representative if the person gives written consent;

(d) The person's behavioral health provider if the person gives written consent, except that the behavioral health provider cannot request continuation of benefits on the person's behalf.

(7) "Notice of adverse benefit determination" is a written notice a BHO provides to a person to communicate an adverse benefit determination.

(8) "Notice of determination" means a written notice that must be provided to a person to communicate denial or limited authorization of a nonmedicaid service offered by the BHO. A notice of determination must contain the following:

(a) The reason for denial or offering of alternative services;

(b) A description of alternative services, if available; and

(c) The right to request an administrative hearing, how to request a hearing, and the time frames for requesting a hearing as identified in WAC 182-538D-0675.

NEW SECTION

WAC 182-538D-0660 Filing a grievance. (1) A person or person's representative may file a grievance to express dissatisfaction in person, orally, or in writing about any matter other than an adverse benefit determination, as defined in WAC 182-538D-0655, to:

(a) The behavioral health agency providing the behavioral health services; or

(b) The behavioral health organization (BHO), if the agency is contracted with the BHO.

(2) If a person receives behavioral health services through a behavioral health agency that is not contracted with a BHO, the agency, through its internal process, is responsible to handle the person's grievances.

(3) There is no time limit to file a grievance.

(4) The ombuds may assist the person in resolving the grievance at the lowest possible level.

(5) **Filing a grievance with a behavioral health agency.** If a person first files a grievance with the behavioral health agency and the

person is not satisfied with the agency's written decision on the grievance, or if the person does not receive a copy of that decision from the agency within the time required under subsection (7) of this section, the person may then choose to file the grievance with the BHO. The BHO's written decision on the grievance is the final decision. The grievance cannot progress to an administrative hearing except under circumstances described in subsection (9) of this section.

(6) **Filing a grievance with a BHO.** If the person first files a grievance with the BHO and not the agency, and the person is not satisfied with the BHO's written decision on the grievance, the person cannot file the same grievance with the behavioral health agency, even if that agency or its staff member(s) is the subject of the grievance. The BHO's written decision on the grievance is the final decision. The grievance cannot progress to an administrative hearing except under circumstances described in subsection (9) of this section.

(7) When a person files a grievance, the behavioral health agency or BHO that receives the grievance must:

(a) Acknowledge the receipt of the grievance in writing within five business days;

(b) Investigate the grievance;

(c) At the person's request, give the person reasonable assistance in taking any procedural steps;

(d) Inform the person about ombuds services and how to access these services;

(e) Apply the rules in subsection (8) of this section; and

(f) Send the person who filed the grievance a written notice describing the decision no longer than ninety days from the date the behavioral health agency or BHO receives the grievance.

(8) The behavioral health agency or BHO that receives the grievance must ensure all of the following:

(a) Other people are allowed to participate in the grievance process, if the person chooses;

(b) That a grievance is resolved even if the person is no longer receiving behavioral health services;

(c) That the people who make decisions on a grievance:

(i) Were neither involved in any previous level of review or decision making nor are subordinates of any person who reviewed or decided on a previous level of the grievance;

(ii) Are mental health or chemical dependency professionals who have appropriate clinical expertise in the type of behavioral health service if deciding a grievance concerning denial of an expedited resolution of an appeal or a grievance that involves any clinical issues; and

(iii) Consider all comments, documents, records, and other information submitted by the person or the person's representative.

(d) That the person and, if applicable, the person's representative, receives a written notice containing the decision no later than ninety days from the date the agency or BHO receives a grievance. This time frame can be extended up to an additional fourteen days:

(i) If requested by the person or the person's representative; or

(ii) By the agency or BHO when additional information is needed and the agency or BHO is able to demonstrate to the health care authority upon the health care authority's request that it needs additional information and the added time is in the person's interest. The BHO must:

(A) Make reasonable efforts to give the person prompt oral notice of the delay; and

(B) Within two days, give the person written notice of the reason for the decision to extend the time frame and inform the person of the right to file a grievance if the person disagrees with that decision.

(e) That the written notice includes the resolution of the grievance, the reason for the decision, and the date the decision was made and is in an easily understood format following 42 C.F.R. Sec. 438.10 (2017), which requires that each notice:

(i) Is written in the person's non-English language, if applicable;

(ii) Contains the BHO's toll-free and TTY/TDD telephone number; and

(iii) Explains the availability of free written translation, oral interpretation to include any non-English language, auxiliary aids such as American sign language and TTY/TDD telephone services, and alternative formats to include large print and Braille.

(f) That full records of all grievances and materials received or compiled in the course of processing and attempting to resolve the grievance are:

(i) Kept for a period of no less than ten years after the completion of the grievance process;

(ii) Made available to the health care authority upon request as part of the state quality strategy and made available upon request to the Centers for Medicare and Medicaid Services (CMS);

(iii) Kept in confidential files separate from the person's clinical record;

(iv) Not disclosed without the person's written permission, except to the health care authority or as necessary to resolve the grievance; and

(g) Are accurately maintained and contain, at a minimum, all of the following information:

(i) A general description of the reason for the grievance;

(ii) The date received;

(iii) The date of each review or, if applicable, review meeting;

(iv) Resolution at each level of the grievance, if applicable;

(v) Date of resolution at each level, if applicable; and

(vi) Name of the covered person for whom the grievance was filed.

(9) When the BHO does not act within the grievance process time frames described in this section, the person is considered to have exhausted the appeal process and has a right to request an administrative hearing.

NEW SECTION

WAC 182-538D-0665 Notice of adverse benefit determination. (1) A behavioral health organization's (BHO's) notice of adverse benefit determination provided to a person must be in writing and in an easily understood format following 42 C.F.R. Sec. 438.10 (2017), which requires that each notice:

(a) Be written in the person's non-English language, if applicable;

(b) Contains the BHO's toll-free and TTY/TDD telephone number; and

(c) Explains the availability of free written translation, oral interpretation to include any non-English language, auxiliary aids

such as American sign language, TTY/TDD telephone services, and alternative formats to include large print and Braille.

(2) The notice of adverse benefit determination must, at a minimum, explain the following:

(a) The adverse benefit determination the BHO has made or intends to make;

(b) The reasons for the adverse benefit determination, including citation of the rule(s) and criteria used for the basis of the decision;

(c) The right of the person to be provided reasonable access to and copies of all documents, records, and other information relevant to the person's adverse benefit determination upon request and free of charge;

(d) The person's right to file an appeal of the adverse benefit determination with the BHO, including information on exhausting the BHO's one level of appeal and the person's right to request an administrative hearing;

(e) The circumstances under which an expedited appeal process is available and how to request it; and

(f) The person's right to receive behavioral health services while an appeal is pending, how to make the request, and that the person may be held liable for the cost of services received while the appeal is pending if the appeal decision upholds the decision in the notice of adverse benefit determination.

(3) When the BHO or its contracted behavioral health agency does not reach service authorization decisions within the required time frame, or fails to provide services in a timely manner, it is considered an adverse benefit determination. In these cases, the BHO sends a formal notice of adverse benefit determination, which includes the person's right to request an administrative hearing. When the BHO does not act within the grievance and appeal system time frames as identified within this chapter, it is considered exhaustion of the appeals process and the person has a right to request an administrative hearing.

NEW SECTION

WAC 182-538D-0670 Filing an appeal. (1) A person may file an appeal to ask the behavioral health organization (BHO) to review an adverse benefit determination that the BHO has communicated on a written notice of adverse benefit determination as defined in WAC 182-538D-0655. A person's representative may appeal an adverse benefit determination with the person's written consent. If a written notice of adverse benefit determination was not received, an appeal may still be filed.

(2) The person requesting review of an adverse benefit determination must file an appeal and receive a notice of the resolution from the BHO before requesting an administrative hearing.

(3) Appeals may be:

(a) Standard as described in subsections (6) and (7) of this section; or

(b) Expedited if the criteria in subsection (8) of this section are met.

(4) The appeal process must:

(a) Provide a person a reasonable opportunity to present evidence and make legal and factual arguments in person as well as in writing. The BHO must inform the person of the limited time available.

(b) Provide the person opportunity, free of charge and sufficiently in advance to examine the person's clinical record, including examining new or additional evidence, medical records, and any other documents and records considered during the appeal process.

(c) Include the following, as applicable, as parties to the appeal:

(i) The person, the person's representative, or both; or

(ii) The legal representative of a deceased person's estate.

(5) The BHO must ensure that the people who make decisions on an appeal:

(a) Were not involved in any previous level of review or decision making nor are subordinates of any person who reviewed or decided on a previous level of appeal;

(b) Are mental health or chemical dependency professionals who have appropriate clinical expertise in the type of behavioral health service if deciding an appeal of an adverse benefit determination concerning medical necessity or an appeal that involves any clinical issues; and

(c) Consider all comments, documents, records, and other information submitted by the person regardless of whether the information was considered in the initial review.

(6) **Standard appeals for adverse benefit determination - Continued services not requested.** A person who disagrees with a decision communicated on a notice of adverse benefit determination may file an appeal orally or in writing. An oral filing of an appeal must be followed with a written and signed appeal. The BHO must use the date of an oral appeal as the official filing date to establish the earliest possible filing date. All of the following apply:

(a) The person must file the appeal within sixty days from the date on the notice of adverse benefit determination.

(b) The BHO must confirm receipt of the appeal in writing within five business days.

(c) The BHO must send the person a written notice of the resolution as expeditiously as the person's health condition requires, and no longer than thirty days from the day the BHO received the appeal. This time frame may be extended up to fourteen additional days if the person requests an extension or the BHO is able to demonstrate to the health care authority upon the health care authority's request that it needs additional information and that the added time is in the person's interest. The BHO must:

(i) Make reasonable efforts to give the person prompt oral notice of the delay; and

(ii) Within two days, give the person written notice of the reason for the decision to extend the time frame and inform the person of the right to file a grievance if the person disagrees with that decision.

(d) The written notice of the resolution must include all the information listed in subsection (9) of this section.

(7) **Standard appeals for termination, suspension, or reduction of previously authorized services - Continued services requested.** A person who receives a notice of adverse benefit determination from the BHO that terminates, suspends, or reduces previously authorized services may file an appeal orally or in writing and request continuation of those services pending the BHO's decision on the appeal. An oral

filing of an appeal and request for continuation of services must be followed with a written and signed appeal and include a written request for continuation of services pending the BHO's decision on the appeal. The BHO must use the date of an oral appeal as the official filing date to establish the earliest possible filing date. All of the following apply:

(a) The person must:

(i) File the appeal with the BHO on or before the later of the following:

(A) Within ten days of the date on the notice of adverse benefit determination; or

(B) The intended effective date of the BHO's proposed adverse benefit determination; and

(ii) Request continuation of services.

(b) The BHO must:

(i) Confirm receipt of the appeal and the request for continued services with the person orally or in writing within five business days;

(ii) Send a notice in writing that follows up on any oral confirmation made; and

(iii) Include in the notice that if the appeal decision is not in favor of the person, the BHO may recover the cost of the behavioral health services provided pending the BHO decision.

(c) The BHO's written notice of the resolution must contain all of the information listed in subsection (9) of this section.

(8) **Expedited appeal process.** If a person or the person's behavioral health provider feels that the time taken for a standard resolution of an appeal could seriously jeopardize the person's life, physical or mental health, or ability to attain, maintain, or regain maximum function, an expedited appeal and resolution of the appeal may be requested. If the BHO denies the request for the expedited appeal and resolution of an appeal, it must transfer the appeal to the time frame for standard resolutions under subsection (6) or (7) of this section, and make reasonable efforts to give the person prompt oral notice of the denial and follow up within two days with a written notice.

(a) Both of the following apply to expedited appeal requests:

(i) The adverse benefit determination must be for denial of a requested service, termination, suspension, or reduction of previously authorized behavioral health services;

(ii) The expedited appeal must be filed with the BHO, either orally or in writing and within:

(A) Ten days of the BHO's mailing the written notice of adverse benefit determination or the intended effective date of the BHO's proposed adverse benefit determination, if the person is requesting continued benefits; or

(B) Sixty days from the date on the BHO's written notice of adverse benefit determination if the person is not requesting continued benefits.

(b) The BHO must:

(i) Confirm receipt of the request for an expedited appeal in person or by telephone.

(ii) Send the person a written notice of the resolution no longer than seventy-two hours after receiving the request for an expedited appeal.

(c) The BHO may extend the time frames up to fourteen additional days if the person requests an extension or the BHO is able to demonstrate to the health care authority upon the health care authority's

request that it needs additional information and that the added time is in the person's interest. In this case the BHO must:

(i) Make reasonable efforts to give the person prompt oral notice of the delay;

(ii) Within two days give the person written notice of the reason for the decision to extend the time frame and inform the person of the right to file a grievance if the person disagrees with that decision; and

(iii) Resolve the appeal as expeditiously as the person's health condition requires and no later than the date the extension expires.

(d) The BHO must ensure that punitive action is not taken against a behavioral health provider who requests an expedited resolution or who supports a person's appeal.

(9) The BHO's written notice of the resolution containing the decision on a standard appeal or expedited appeal must:

(a) Clearly state the BHO's decision on the appeal, the reason for the decision, and the date the decision was made;

(b) Inform the person of the right to an administrative hearing if the person disagrees with the decision, how to request a hearing, and the following time frames for requesting a hearing:

(i) Within ten days from the date on the notice of the resolution if the person is asking that services be continued pending the outcome of the hearing or if the person is asking for an expedited hearing;

(ii) Within one hundred twenty days from the date on the notice of the resolution if the person is not asking for continued services.

(c) Be in an easily understood format following 42 C.F.R. Sec. 438.10 (2017), which requires that each notice:

(i) Be written in the person's non-English language, if applicable;

(ii) Contains the BHO's toll-free and TTY/TDD telephone number; and

(iii) Explains the availability of free written translation, oral interpretation to include any non-English language, auxiliary aids such as American sign language and TTY/TDD telephone services, and alternative formats to include large print and Braille.

(10) When the BHO does not act within the appeal process time frames explained in this section, the person is considered to have exhausted the appeal process and has a right to request an administrative hearing.

(11) **Duration of continued services during the appeal process.** When a person has requested continued behavioral health services pending the outcome of the appeal process and the criteria in this section have been met, the BHO must ensure the services are continued until one of the following occurs:

(a) The person withdraws the appeal; or

(b) The BHO provides a written notice of the resolution that contains a decision that is not in favor of the person and the person does not request an administrative hearing within ten days from the date the BHO mails the notice; see WAC 182-538D-0675, administrative hearings, for rules on duration of continued services during the administrative hearing process.

(12) **Reversal of an adverse benefit determination.** If the final written notice of the resolution of the appeal or administrative hearing reverses the adverse benefit determination, the BHO must authorize or provide the behavioral health service(s) no later than seventy-two hours from the date it receives notice of the adverse benefit determination being overturned.

(13) **Recovery of the cost of behavioral health services in adverse decisions of appeals.** If the final written notice of the resolution of the appeal is not in favor of the person, the BHO may recover the cost of the behavioral health services furnished to the person while the appeal was pending to the extent that they were provided solely because of the requirements of this section. Recovery of the cost of medicaid services is limited to the first sixty days of services after the health care authority or the office of administrative hearings (OAH) receives an administrative hearing request. See RCW 74.09.741 (5)(g).

(14) **Recordkeeping and maintenance of appeals.** The BHO must ensure that full records of all appeals and materials received and compiled in the course of processing and attempting to resolve appeals are:

(a) Kept for a period of no less than ten years after the completion of the appeal process;

(b) Made available to the health care authority upon request as part of the state quality strategy and made available upon request to the Centers for Medicare and Medicaid Services (CMS);

(c) Kept in confidential files separate from the person's clinical record;

(d) Not disclosed without the person's written permission, except to the health care authority or as necessary to resolve the appeal; and

(e) Accurately maintained and contain, at a minimum, all of the following information:

(i) A general description of the reason for the appeal;

(ii) The date received;

(iii) The date of each review or, if applicable, review meeting;

(iv) Resolution at each level of the appeal, if applicable;

(v) Date of resolution at each level, if applicable; and

(vi) Name of the covered person for whom the appeal was filed.

NEW SECTION

WAC 182-538D-0675 Administrative hearings. (1) An administrative hearing is a proceeding before an administrative law judge (ALJ) that gives a person, as defined in WAC 182-538D-0655, an opportunity to be heard in disputes about adverse benefit determinations or a decision of a behavioral health organization (BHO) to deny or limit authorization of a requested nonmedicaid service communicated on a notice of determination.

(2) A person may request an administrative hearing for the following reasons:

(a) After a person receives notice that the BHO upheld an adverse benefit determination;

(b) After a person receives a BHO decision to deny or limit authorization of a requested nonmedicaid service communicated on a notice of determination; or

(c) If the BHO does not act within the grievance or appeal process time frames described in WAC 182-538D-0660 and 182-538D-0670. In this case, the person is considered to have exhausted the appeal process and has a right to request an administrative hearing.

(3) A person who requests an administrative hearing must do so within one of the following time frames:

(a) If continued services are not requested, a hearing must be requested within one hundred twenty days from the date on the written notice of the resolution received from the BHO at the end of the appeal process or one hundred twenty days from the date on the notice of determination.

(b) If continued medicaid services are requested pending the outcome of the administrative hearing, all of the following apply:

(i) The person appealed a decision on the notice of adverse benefit determination for termination, suspension, or reduction of the person's behavioral health services;

(ii) The person appealed the adverse benefit determination and the BHO upheld the adverse benefit determination; and

(iii) The person requests an administrative hearing and continued behavioral health services within ten days of the date on the written notification of the resolution.

(c) The BHO is not obligated to continue nonmedicaid services pending the result of an administrative hearing when available resources are exhausted, since services cannot be authorized without funding regardless of medical necessity.

(4) If a person or the person's behavioral health provider believes that the time taken for a standard administrative hearing could seriously jeopardize the person's life, physical or mental health, or ability to attain, maintain, or regain maximum function, an expedited hearing may be requested. Subsection (3)(b) and (c) of this section apply if continued behavioral health services are requested.

(5) The BHO's failure to issue an appeal decision in writing within the time frames in WAC 182-538D-0670 constitutes exhaustion of the appeal process and the person may request an administrative hearing.

(6) When the criteria in this section are met for continued services, the BHO must continue the person's behavioral health treatment services during the administrative hearing process until one of the following occurs:

(a) The person withdraws the hearing request;

(b) The administrative law judge issues a hearing decision adverse to the person.

(7) If the administrative hearing decision is not in favor of the person, the BHO may recover the cost of the behavioral health services furnished to the person while the hearing was pending to the extent that they were provided solely because of the requirements of this section. Recovery of the cost of medicaid services is limited to the first sixty days of services after the health care authority or the office of administrative hearings (OAH) receives an administrative hearing request.

(8) Administrative hearings include adjudicative proceedings and any other similar term referenced under chapter 34.05 RCW, the Administrative Procedure Act, Title 182 WAC, chapter 10-08 WAC, or other law. Chapters 34.05 RCW and 182-526 WAC govern cases where a person has an issue involving a service that is funded by medicaid or is not funded by medicaid.

NEW SECTION

WAC 182-538D-0680 A person's rights specific to medicaid recipients. (1) Medicaid recipients have general rights and medicaid-specific rights when applying for, eligible for, or receiving behavioral health services authorized by a behavioral health organization (BHO).

(a) General rights that apply to all people, regardless of whether a person is or is not a medicaid recipient, include:

(i) All applicable statutory and constitutional rights;

(ii) The participant rights provided under WAC 182-538D-0600; and

(iii) Applicable necessary supplemental accommodation services.

(b) Medicaid-specific rights that apply specifically to medicaid recipients include the following. You have the right to:

(i) Receive medically necessary behavioral health services, consistent with access to care standards adopted by the health care authority in its managed care waiver with the federal government. Access to care standards provide minimum standards and eligibility criteria for behavioral health services and are available on the behavioral health administration's (BHA's) division of behavioral health and recovery (DBHR) website.

(ii) Receive the name, address, telephone number, and any languages offered other than English, of behavioral health providers in your BHO.

(iii) Receive information about the structure and operation of the BHO.

(iv) Receive emergency or urgent care or crisis services.

(v) Receive poststabilization services after you receive emergency or urgent care or crisis services that result in admission to a hospital.

(vi) Receive age and culturally appropriate services.

(vii) Be provided a certified interpreter and translated material at no cost to you.

(viii) Receive information you request and help in the language or format of your choice.

(ix) Have available treatment options and alternatives explained to you.

(x) Refuse any proposed treatment.

(xi) Receive care that does not discriminate against you.

(xii) Be free of any sexual exploitation or harassment.

(xiii) Receive an explanation of all medications prescribed and possible side effects.

(xiv) Make a mental health advance directive that states your choices and preferences for mental health care.

(xv) Receive information about medical advance directives.

(xvi) Choose a behavioral health care provider for yourself and your child, if your child is under thirteen years of age.

(xvii) Change behavioral health care providers at any time for any reason.

(xviii) Request and receive a copy of your medical or behavioral health services records, and be told the cost for copying.

(xix) Be free from retaliation.

(xx) Request and receive policies and procedures of the BHO and behavioral health agency as they relate to your rights.

(xxi) Receive the amount and duration of services you need.

(xxii) Receive services in a barrier-free (accessible) location.

(xxiii) Receive medically necessary services in accordance with the early and periodic screening, diagnosis and treatment (EPSDT) under WAC 182-534-0100, if you are twenty years of age or younger.

(xxiv) Receive enrollment notices, informational materials, materials related to grievances, appeals, and administrative hearings, and instructional materials relating to services provided by the BHO, in an easily understood format and non-English language that you prefer.

(xxv) Be treated with dignity, privacy, and respect, and to receive treatment options and alternatives in a manner that is appropriate to your condition.

(xxvi) Participate in treatment decisions, including the right to refuse treatment.

(xxvii) Be free from seclusion or restraint used as a means of coercion, discipline, convenience, or retaliation.

(xxviii) Receive a second opinion from a qualified professional within your BHO area at no cost, or to have one arranged outside the network at no cost to you, as provided in 42 C.F.R. Sec. 438.206(b)(3) (2015).

(xxix) Receive medically necessary behavioral health services outside of the BHO if those services cannot be provided adequately and timely within the BHO.

(xxx) File a grievance with the behavioral health agency or BHO if you are not satisfied with a service.

(xxxi) Receive a notice of adverse benefit determination so that you may appeal any decision by the BHO that denies or limits authorization of a requested service, that reduces, suspends, or terminates a previously authorized service, or that denies payment for a service, in whole or in part.

(xxxii) File an appeal if the BHO fails to provide services in a timely manner as defined by the state.

(xxxiii) Request an administrative (fair) hearing if your appeal is not resolved in your favor or if the BHO does not act within the grievance or appeal process time frames described in WAC 182-538D-0660 and 182-538D-0670.

(xxxiv) Request services by the behavioral health ombuds office to help you file a grievance or appeal or request an administrative hearing.

(2) A behavioral health agency licensed by the division of behavioral health and recovery (DBHR) that provides DBHR-certified mental health services, DBHR-certified substance use disorder services, or both, must ensure the medicaid rights described in subsection (1)(b) of this section are:

(a) Provided in writing to each medicaid recipient, and if appropriate, the recipient's legal representative, on or before admission;

(b) Upon request, given to the medicaid recipient in an alternative format or language appropriate to the recipient and, if appropriate, the recipient's legal representative;

(c) Translated to the most commonly used languages in the agency's service area; and

(d) Posted in public areas.