



Addendum to the Designated Crisis Responder (DCR) Statewide Protocols

Second Substitute House Bill 1907; Chapter 446; Laws of 2019
December 1, 2019

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2019 Addendum to the Designated Crisis Responder (DCR) Statewide Protocols

All statutory and Washington Administrative Code references for substance use disorder detention and treatment will be updated.

All references to mental health disorder or substance use disorder, except where differentiation is noted, will be updated to read behavioral health disorder.

All references to a secure detoxification facility, or secure detox, will be updated to read secure withdrawal management and stabilization facility, or secure withdrawal management and stabilization treatment.

Glossary of Terminology

The definition for Behavioral Health Disorder will be added.

Behavioral Health Disorder: inclusive of mental disorders and substance use disorders

The definition for Secure Detoxification Facility is removed, to be replaced with the definition for Secure Withdrawal Management and Stabilization Facility from the current statute.

"Secure withdrawal management and stabilization facility" means a facility operated by either a public or private agency or by the program of an agency which provides care to voluntary individuals and individuals involuntarily detained and committed under this chapter for whom there is a likelihood of serious harm or who are gravely disabled due to the presence of a substance use disorder. Secure withdrawal management and stabilization facilities must:

(a) Provide the following services:

(i) Assessment and treatment, provided by certified substance use disorder professionals or co-occurring disorder specialists;

(ii) Clinical stabilization services;

(iii) Acute or subacute detoxification services for intoxicated individuals; and

(iv) Discharge assistance provided by certified substance use disorder professionals or co-occurring disorder specialists, including facilitating transitions to appropriate voluntary or involuntary inpatient services or to less restrictive alternatives as appropriate for the individual;

(b) Include security measures sufficient to protect the patients, staff, and community; and



(c) Be licensed or certified as such by the department of health; [RCW 71.05.020(50)]

The definition of a Substance Use Disorder Professional from the current statute is added.

(54) "Substance use disorder professional" means a person certified as a substance use disorder professional by the department of health under chapter 18.205 RCW;

Referrals

130–Referrals of a Person Using Alcohol and/or Drugs (until April 1, 2018) is amended to read:
130–Referrals of a Person with Substance Use Disorder.

The DCR may not rule out any referral for investigation solely because the person is under the influence of a substance. If there is sufficient evidence to indicate that the person is a danger to self or others, other's property, or is gravely disabled as a result of any behavioral health disorder, the DCR conducts an ITA investigation under RCW 71.05 or RCW 71.34. The DCR evaluates the person when referred. If the referral originates from an emergency room or inpatient hospital setting, it is clinically appropriate to consult with the treating physician regarding toxicology results, current intoxication and withdrawal symptoms, and medical risk due to substance use disorder. Depending on the circumstances and the individual's historical patterns of behavior (if known), symptoms, and risk, it may be most appropriate to assess the individual when they are experiencing intoxication or withdrawal.

If the person does not meet criteria for detention due to substance use disorder, the DCR also considers if they meet criteria for detention due to mental health disorder. If the person does not meet criteria for emergent detention due to a behavioral health disorder, the DCR also evaluates the person to determine if they meet criteria for non-emergent detention or AOT per RCW 71.05.156, and refers the person to an appropriate less restrictive treatment resource, to include substance use disorder treatment or co-occurring treatment as appropriate and available.

Investigation Process

Section 210–Evaluation to Determine the Presence of a Mental Disorder is amended to read:

210-Evaluation to Determine the Presence of a Behavioral Health Disorder

A formal diagnosis of a mental disorder as defined in RCW 71.05.020(36) and RCW 71.34.020(20), or a substance use disorder as defined in RCW 71.05.020 (53) and RCW 71.34.020(37) is not required to establish a mental, emotional or organic impairment, only that the disorder has a substantial adverse effect on cognitive or volitional functioning, results in a pathological pattern of behavior related to use of a substance, or continued use of a substance despite significant substance-related problems.

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To evaluate for the presence of a behavioral health disorder, a DCR assesses an individual's behavior, judgment, orientation, general intellectual functioning, specific cognitive deficits or abnormalities, memory, thought process, affect, and impulse control. The DCR also takes into consideration the individual's age, developmental stage, ethnicity, culture and linguistic abilities; history and patterns of behavior; and the duration, frequency and intensity of any behavioral health symptoms.

The DCR will keep in mind the below statutory references that remain in effect in addition to the provisions for SUD detention effective April 1, 2018.

Persons with developmental disabilities, impaired by substance use disorder, or suffering from dementia shall not be detained for evaluation and treatment or judicially committed solely by reason of that condition unless such condition causes a person to be gravely disabled or as a result of a mental disorder such condition exists that constitutes a likelihood of serious harm. However, persons with developmental disabilities, impaired by substance use disorder, or suffering from dementia and who otherwise meet the criteria for detention or judicial commitment are not ineligible for detention or commitment based on this condition alone. [RCW 71.05.040].

For a minor, the presence of alcohol abuse, drug abuse, juvenile criminal history, antisocial behavior, or intellectual disabilities alone is insufficient to justify a finding of "mental disorder" within the meaning of this section [RCW 71.34.020(20)].

Detentions

Add section 317-Differentiation in Petitions for Detention due to Mental Health Disorder or Substance Use Disorder

The petition for initial detention cannot be written to both a Secure Withdrawal Management and Stabilization Facility and an Evaluation & Treatment Facility, even if the individual presents with co-occurring disorders. When the DCR makes the determination that an individual meets criteria for detention due to a Substance Use Disorder (and requires involuntary inpatient treatment in a Secure Withdrawal Management and Stabilization Facility), the petition must be written to reflect the specific symptoms and aspects of their presentation that evidence a substance use disorder, rather than a mental health disorder. The criteria for detention are the same for substance use disorder and mental health disorder, and both may present with similar symptoms (acute psychosis, suicidality, anxiety, disorientation, etc.). The DCR must document available history, collateral information, and circumstances (toxicology reports, information from witnesses or referents, SUD treatment history, etc.) that indicate the symptomology and risk factors result from a substance use disorder and not a mental health disorder.



Confidentiality

Section 500-General Provisions on Confidentiality is amended to read as follows:

Information gathered by the DCR is confidential under Washington State law and may not be disclosed to anyone unless specifically permitted by law, by a signed release, or by a court order signed by a judge. Statutory provisions related to confidentiality of mental health information and records can be found in multiple locations including, but not limited to RCW 70.02; RCW 70.02.230, RCW 71.05.445, RCW 71.05.620; RCW 10.77.065 and RCW 10.77.210, RCW 71.24; In the case of minors, RCW 70.02.240, RCW 70.02.265, and RCW 70.02.320.

In addition to mental health information under RCW 71.05 and RCW 71.34, state and federal laws also protect the confidentiality of health care information under RCW 70.02 and HIPAA; information about HIV or sexually transmitted diseases under RCW 70.24; and substance use disorder treatment information under RCW 70.02.265 and 42 CFR Part 2. These laws generally regulate the release of such information without written authorization. The unauthorized release of confidential information may subject the DCR to civil or criminal liability and penalties. Additional information regarding medical records – health care information access and disclosure can be found in Chapter 70.02 RCW.

During the course of an investigation it may be necessary to divulge limited information to third parties in order to complete an investigation. For example, when verifying a witness' allegations, the DCR may need to demonstrate an awareness of the problem so that the witness will talk about the situation. Referents may be advised that the investigation has been completed.

Both HIPAA and 42 CFR Part 2 have provisions allowing for disclosure of confidential information in medical emergencies.

HIPAA Privacy in Emergency Situations 45 CFR 164.512(j) Standard. Uses and disclosures to avert a serious threat to health or safety -

(1) Permitted disclosures. A covered entity may, consistent with applicable law and standards of ethical conduct, use or disclose protected health information, if the covered entity, in good faith, believes the use or disclosure:

(A) Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and (B) Is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat.

Code of Federal Regulations (CFR) 42 § 2.51 Medical emergencies. (a) General rule. Under the procedure required by paragraph (c) of the section, patient identifying information may be disclosed to medical personnel to the extent necessary to meet a bona fide medical emergency in which the patient's prior informed consent cannot be obtained.

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