



RULE-MAKING ORDER PERMANENT RULE ONLY

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

CODE REVISER USE ONLY

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STATE OF WASHINGTON
FILED

DATE: May 27, 2021

TIME: 9:48 AM

WSR 21-12-061

Agency: Department of Social and Health Services, Developmental Disabilities Administration (DDA)

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
 - No
- If Yes, explain:

Purpose: The Developmental Disabilities Administration repealed WAC 388-101D-0360 to remove the requirement for providers to maintain a psychotropic medication treatment plan. Amendments to WAC 388-101D-0355 establish requirements for what must be in a client’s record if the client is prescribed a psychotropic medication. Amendments to WAC 388-101D-0405, and WAC 388-101D-0410 state when functional assessments and positive behavior support plans are required and establish criteria for their development and implementation.

Citation of rules affected by this order:

- New:
- Repealed: WAC 388-101D-0360
- Amended: WAC 388-101D-0355, WAC 388-101D-0405, WAC 388-101D-0410
- Suspended:

Statutory authority for adoption: RCW 71A.12.030

Other authority: RCW 71A.12.120

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 21-05-066 on February 16, 2021 (date).
Describe any changes other than editing from proposed to adopted version:

To address commenter confusion, and for clarification purposes, DDA edited WAC 388-101D-0410(1)(a) and (1)(a)(vii) to make non-substantive changes in nomenclature as shown below:

- (1) The provider must complete a functional assessment of a client's behavior if:
- (a) ~~The client's supports intensity scale results~~ exceptional behavior support needs section of the client's person-centered service plan indicates extensive support is necessary to prevent:
 - (i) Self-injury;
 - (ii) Sexual aggression;
 - (iii) Suicide attempt;
 - (iv) Emotional outburst;
 - (v) Property destruction;
 - (vi) Assault or injury to others; or
 - (vii) A behavior identified ~~by question seventeen the case manager's comments~~ in the client's person-centered service plan under "prevention of other serious behavior problem(s)-specify";

DDA removed "intensity" from WAC 388-101D-0410 (2)(a)(iv), (6)(a)(ii), (6)(b)(ii), and (8). These deletions are non-substantive because they do not remove the requirement to collect data. Removing "intensity" addresses commenter concern that "intensity" is similar to "impact" yet "impact" is easier to quantify.

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

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**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

| | | | | | | |
|----------------------------------|-----|-----|---------|-----|----------|-----|
| Federal statute: | New | ___ | Amended | ___ | Repealed | ___ |
| Federal rules or standards: | New | ___ | Amended | ___ | Repealed | ___ |
| Recently enacted state statutes: | New | ___ | Amended | ___ | Repealed | ___ |

The number of sections adopted at the request of a nongovernmental entity:

| | | | | | |
|-----|-----|---------|-----|----------|-----|
| New | ___ | Amended | ___ | Repealed | ___ |
|-----|-----|---------|-----|----------|-----|

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 | <u>3</u> | Repealed | <u>1</u> |
|-----|-----|---------|----------|----------|----------|

The number of sections adopted using:

| | | | | | | |
|--------------------------------|-----|-----|---------|----------|----------|----------|
| Negotiated rule making: | New | ___ | Amended | ___ | Repealed | ___ |
| Pilot rule making: | New | ___ | Amended | ___ | Repealed | ___ |
| Other alternative rule making: | New | ___ | Amended | <u>3</u> | Repealed | <u>1</u> |

Date Adopted: May 27, 2021

Name: Donald Clintsman

Title: Acting Secretary

Signature:



WAC 388-101D-0355 ((Psychoactive)) What must a client record contain if the client is prescribed a psychotropic medication ((treatment plan.))?

~~(1) If the ((assessing treatment professional recommends psychoactive medications, the prescribing professional or service provider must document this in)) client is prescribed psychotropic medication, the client's ((psychoactive medication treatment plan. The service provider)) record must ((ensure the plan includes the following)) contain:~~

~~(a) ((A description of the behaviors, symptoms or conditions for which the medication is prescribed and a mental health diagnosis, if available)) The date the client met with the prescriber;~~

~~(b) ((The name, dosage, and frequency of the medication and subsequent changes in dosage must be documented in the person's medical record)) Whether the provider was present when the prescriber examined the client;~~

~~(c) ((The length of time considered sufficient to determine if the medication is effective)) Any medical or behavioral information the provider conveyed to the prescriber;~~

~~(d) ((The behavioral criteria to determine whether the medication is effective and what changes in behavior, mood, thought, or functioning are considered evidence that the medication is effective)) Any instructions the provider received from the prescriber; ((and))~~

~~(e) The ((anticipated schedule of visits with the prescribing professional)) drug information sheet obtained from the prescriber or dispensing pharmacy for the psychotropic medication prescribed;~~

~~(f) The date the provider sent the client's legal representative a copy of the psychotropic drug information sheet, if requested; and~~

~~(g) Any documentation required under WAC 388-101D-0340.~~

~~(2) If the ((service)) provider ((must make sure the treatment plan is updated when there is a change in psychoactive medication type, including intraclass changes)) does not attend the appointment, the provider must document in the client record whether the client attended the appointment independently or with a third party.~~

~~(3) The ((service)) provider must report to the prescriber if:~~

~~(a) ((Review the name, purpose, potential side effects and any known potential drug interactions of the psychoactive medication(s) with the client and his/her legal representative and document the review in the client record)) The medication does not appear to have the prescriber's intended effects; ((and)) or~~

~~(b) ((Have available to staff and clients an information sheet for each psychoactive medication that is being used by each client served by the provider)) Any changes in the client's behavior or health might be an adverse side effect of the medication.~~

~~((4) The service provider must assist the client in obtaining and taking the medication when:~~

~~(a) The client's legal representative if any, is unavailable; and~~

~~(b) In the prescribing professional's opinion, medication is needed and no significant risks are associated with the use of the medication.~~

~~(5) If a client takes psychoactive medications to reduce challenging behaviors or to treat symptoms of a mental illness that are interfering with the client's ability to have positive life experien-~~

~~ees and form and maintain relationships, the service provider must develop and implement a positive behavior support plan.))~~

AMENDATORY SECTION (Amending WSR 16-14-058, filed 6/30/16, effective 8/1/16)

WAC 388-101D-0405 When is a functional assessment((-)) required?

(1) ~~The ((service)) provider must ((conduct and document))~~ complete a functional assessment ((before developing and implementing)) of a ((client's positive behavior support plan)) client's behavior if:

(a) The exceptional behavior support needs section of the client's person-centered service plan indicates extensive support is necessary to prevent:

(i) Self-injury;

(ii) Sexual aggression;

(iii) Suicide attempt;

(iv) Emotional outburst;

(v) Property destruction;

(vi) Assault or injury to others; or

(vii) A behavior identified in the client's person-centered service plan under "prevention of other serious behavior problem(s)-specify";

(b) The client is prescribed a psychotropic medication on a pro re nata (PRN or as needed) basis to change a target behavior; or

(c) The provider uses—or plans to use—restrictive procedures or physical restraints as defined in WAC 388-101-3000.

~~(2) ((The service provider must start the functional assessment when the client begins to engage in challenging behaviors that interfere with the client's ability to have positive life experiences and form and maintain relationships))~~ Target behavior means a behavior identified by the provider that needs to be modified or replaced to meet the client's health and safety needs.

~~(3) The ((service provider must ensure that a)) client's ((written))~~ functional assessment ((addresses)) must:

(a) ((A description of the client and pertinent history)) Be based on two or more of the following:

(i) Direct observation;

(ii) Interview with anyone who has personal knowledge of the client;

(iii) Questionnaire; or

(iv) Record review;

(b) ((The client's overall quality of life)) Describe:

(i) Client history and antecedents pertinent to the target behavior;

(ii) The client's current status;

(iii) The target behavior; and

(iv) The apparent function of the target behavior; and

(c) ((The behaviors that are considered challenging and/or are of concern)) Exist:

(i) In draft form before the effective date of the client being added to the provider's contract; and

(ii) In final form no later than forty-five calendar days after the effective date of the client being added to the provider's contract

~~((d) The factors or events which increase the likelihood of challenging behaviors;~~

~~(e) When and where the challenging behavior(s) occurs most frequently;~~

~~(f) The factors or events which increase the likelihood of appropriate behavior;~~

~~(g) An analysis and assessment of the possible functions or purpose the challenging behavior(s) serve for the client including what he or she obtains or avoids by engaging in the behavior(s); and~~

~~(h) A concluding summary of the functions or purpose that each challenging behavior serves for the client)).~~

(4) A draft functional assessment must define the target behavior and its apparent function.

(5) The ((service)) provider ((must include the following sections in the format of each client's written)) may revise a functional assessment((+

~~(a) Description and pertinent history;~~

~~(b) Definition of challenging behaviors;~~

~~(c) Data analysis/assessment procedures; and~~

(d) Summary statement(s)) written by another provider. The provider must identify the adapted functional assessment as its own.

(6) If the provider identifies a new target behavior for a client, the provider must complete a functional assessment for that behavior within forty-five days.

(7) The provider may use a community protection participant's risk assessment in place of a functional assessment if it was completed in the past eighteen months and describes:

(a) The client's history pertinent to the target behavior;

(b) The client's current status;

(c) The target behavior; and

(d) The apparent function of the target behavior.

(8) A functional assessment is required for any target behavior not included in the client's community protection program risk assessment.

AMENDATORY SECTION (Amending WSR 16-14-058, filed 6/30/16, effective 8/1/16)

WAC 388-101D-0410 When is a positive behavior support plan((-)) required?

(1) If a client requires a functional assessment under WAC 388-101D-0405, the ((service)) provider must ((develop,)) train to((7)) and implement a written individualized positive behavior support plan ((for each client when:

~~(a) The client takes psychoactive medications to reduce challenging behavior or treat a mental illness currently interfering with the client's ability to have positive life experiences and form and maintain personal relationships; or~~

~~(b) Restrictive procedures, including physical restraints, identified in the residential services contract are planned or used)) based on that functional assessment.~~

(2) ~~The ((service provider))~~ client's positive behavior support plan must:

(a) ~~((Base each client's positive behavior support plan on the functional assessment required in WAC 388-101-3850))~~ Describe:

- (i) The target behavior;
- (ii) Actions that may be taken to prevent the target behavior;
- (iii) Actions that may be taken in response to the target behavior;
- (iv) Actions that may be taken if the target behavior increases in frequency, duration, or impact;
- (v) The replacement behavior that matches the target behavior's function;
- (vi) How to teach the replacement behavior;
- (vii) How to respond to the replacement behavior; and
- (viii) Benchmarks to evaluate the positive behavior support plan's effectiveness; and

(b) ~~((Complete and implement the client's positive behavior support plan within ninety days of identifying the client's symptoms and challenging behavior))~~ Exist:

- (i) In draft form before the effective date of the client being added to the provider's contract; and
- (ii) In final form no later than sixty calendar days after the effective date of the client being added to the provider's contract.

(3) A draft positive behavior support plan must include direction to direct-support professionals on how to respond to target behaviors.

(4) ~~The ((service)) provider ((must develop and implement))~~ may revise a positive behavior support plan ~~((that is consistent with the client's cross system crisis plan, if any))~~ written by another provider. ~~The provider must identify the adapted positive behavior support plan as its own.~~

~~((4))~~ (5) ~~If the ((service)) provider ((must include the following sections in the format of each client's written))~~ identifies a new target behavior for a client, the provider must implement a positive behavior support plan (:

- ~~(a) Prevention strategies;~~
- ~~(b) Teaching and training supports;~~
- ~~(c) Strategies for responding to challenging behaviors; and~~
- ~~(d) Data collection and monitoring methods)~~ addressing that behavior within sixty days.

~~((5) If data indicates that progress is not occurring after a reasonable time, but not longer than six months,)~~ (6) ~~The ((service)) provider must~~ collect data on:

- ~~(a) ((Evaluate the positive behavior support plan and the data collected))~~ The target behavior's:
 - (i) Frequency;
 - (ii) Duration;
 - (iii) Impact; and
- ~~(b) ((Conduct a new functional assessment when necessary))~~ The replacement behavior's:
 - (i) Frequency;
 - (ii) Duration; and
 - ~~((c) Develop and implement revisions as needed))~~ (iii) Impact.

(7) The provider must analyze the data collected under subsection (6) of this section at least every six months to determine the effectiveness of the positive behavior support plan.

(8) If the analysis under subsection (7) of this section indicates the target behavior is not decreasing in frequency, duration, or impact, the provider must:

(a) Revise the positive behavior support plan; or

(b) Document the reason revising the support plan is not indicated.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-101D-0360 Psychoactive medication monitoring.