



RULE-MAKING ORDER

CR-103E (July 2011)
(Implements RCW 34.05.350)

Agency: Health Care Authority, Washington Apple Health

Emergency Rule Only

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 rule creates a habilitative services section (WAC 182-545-400) as required under the Patient Protection and Affordable Care Act. WAC 182-545-900 and WAC 551-2110 must be updated to reflect the creation of habilitative services.

Citation of existing rules affected by this order:

Repealed:

Amended: 182-545-900, 182-551-2110

Suspended:

Statutory authority for adoption: RCW 41.05.021

Other authority: Patient Protection and Affordable Care Act (Public Law 111-148)

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.
- That in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012, or 2013, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this finding: This rule is necessary to create a habilitative services section by January 1, 2014, to timely comply with service requirements in the Patient Protection and Affordable Care Act, and to update related sections to reflect the creation of habilitative services.

Following the adoption of the first emergency filing (WSR 14-02-082), the agency filed CR101 (WSR 14-02-089) to begin the permanent rulemaking process. The agency is currently working with stakeholders to develop the permanent rule and expects to complete the permanent rulemaking process in mid-2014.

Date adopted:

April 29, 2014

NAME (TYPE OR PRINT)

Kevin M. Sullivan

SIGNATURE

TITLE

HCA Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: April 29, 2014

TIME: 3:26 PM

WSR 14-10-037

(COMPLETE REVERSE SIDE)

**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	<u>1</u>	Amended	<u>2</u>	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

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

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	<u>1</u>	Amended	<u>2</u>	Repealed	_____

NEW SECTION

WAC 182-545-400 Habilitative services. (1) Habilitative services are medically necessary services to assist the client in partially or fully attaining, learning, maintaining, or improving developmental-age appropriate skills that were not fully acquired as a result of a congenital, genetic, or early acquired health condition, and are required to maximize, to the extent practical, the client's ability to function in his or her environment.

(2) Eligibility is limited to clients who are enrolled in the alternative benefits plan defined in WAC 182-501-0060 and who have a diagnosis which is one of the qualifying conditions listed in the medic-aid provider guide for habilitative services. Clients enrolled in an agency-contracted managed care organization (MCO) must arrange for habilitative services through their MCO.

(3) The following licensed health professionals may enroll with the agency to provide habilitative services within their scope of practice to eligible clients:

- (a) Psychiatrists;
- (b) Occupational therapists;
- (c) Occupational therapy assistants supervised by a licensed occupational therapist;
- (d) Physical therapists;
- (e) Physical therapist assistants supervised by a licensed physical therapist;
- (f) Speech-language pathologists who have been granted a certificate of clinical competence by the American Speech, Hearing and Language Association; and

(g) Speech-language pathologists who have completed the equivalent educational and work experience necessary for such a certificate.

(4) The agency pays for habilitative services that are:

- (a) Covered within the scope of the client's alternative benefit plan under WAC 182-501-0060;
- (b) Medically necessary;
- (c) Within currently accepted standards of evidence-based medical practice;
- (d) Ordered by a physician, physician assistant, or an advanced registered nurse practitioner;
- (e) Begun within thirty calendar days of the date ordered;
- (f) Provided by one of the health professionals listed in subsection (3) of this section;
- (g) Authorized under this chapter, chapters 182-501 and 182-502 WAC, and the agency's published medicaid provider guides and published provider notices;
- (h) Billed under this chapter, chapters 182-501 and 182-502 WAC, and the agency's published medicaid provider guides and published provider notices; and
- (i) Provided as part of a habilitative treatment program:
 - (i) In an office or outpatient hospital setting;
 - (ii) In the home, by a home health agency as described in chapter 182-551 WAC; or
 - (iii) In a neurodevelopmental center, as described in WAC 182-545-900.

(5) For billing purposes under this section:

- (a) Each fifteen minutes of timed procedure code equals one unit.

- (b) Each nontimed procedure code equals one unit, regardless of how long the procedure takes.
- (c) Duplicate services for habilitative services are not allowed for the same client when both providers are performing the same or similar procedure on the same day.
- (d) The agency does not reimburse a health care professional for habilitative services performed in an outpatient hospital setting when the health care professional is not employed by the hospital. The hospital must bill the agency for the services.
- (6) For eligible clients twenty years of age and younger, the agency covers unlimited outpatient habilitative services.
- (7) For eligible clients twenty-one years of age and older, the agency covers limited outpatient habilitative services that include an ongoing management plan for the client or the client's caregiver to support continued client progress. The agency limits outpatient habilitative services as follows:
 - (a) Occupational therapy, per client, per year:
 - (i) Without authorization:
 - (A) One occupational therapy evaluation;
 - (B) One occupational therapy reevaluation at time of discharge;
 - and
 - (C) Twenty-four units of occupational therapy (which equals approximately six hours).
 - (ii) With expedited prior authorization, up to twenty-four additional units of occupational therapy may be available to continue treatment when the client's diagnosis is cerebral palsy and the therapy is required as part of a botulinum toxin injection protocol when botulinum toxin has been authorized by the agency.
 - (b) Physical therapy, per client, per year:
 - (i) Without authorization:
 - (A) One physical therapy evaluation;
 - (B) One physical therapy reevaluation at time of discharge; and
 - (C) Twenty-four units of physical therapy (which equals approximately six hours).
 - (ii) With expedited prior authorization, up to twenty-four additional units of occupational therapy may be available to continue treatment when the client's diagnosis is cerebral palsy and the therapy is required as part of a botulinum toxin injection protocol when botulinum toxin has been authorized by the agency.
 - (c) Speech therapy, per client, per year:
 - (i) Without authorization:
 - (A) One speech language pathology evaluation;
 - (B) One speech language pathology reevaluation at the time of discharge; and
 - (C) Six units of speech therapy (which equals approximately six hours).
 - (ii) With expedited prior authorization, up to twenty-four additional units of occupational therapy may be available to continue treatment when:
 - (A) The client's diagnosis is cerebral palsy and the therapy is required as part of a botulinum toxin injection protocol when botulinum toxin has been authorized by the agency; or
 - (B) The client has a speech deficit caused by the qualifying condition which requires a speech generating device.
 - (d) Two durable medical equipment needs assessments, per client, per year. The agency covers devices and other durable medical equip-

ment for habilitative purposes to treat qualified conditions under chapter 182-543 WAC.

(e) Two program units of orthotics management and training of upper and lower extremities, per client, per day.

(f) Two program units for checkout for prosthetic or orthotic use, per established client, per year.

(g) One muscle testing procedure, per client, per day.

(h) One wheelchair-needs assessment, per client, per year.

(8) The agency evaluates requests for outpatient habilitative services that exceed the limitations in this section under WAC 182-501-0169. Prior authorization is required for additional units when:

(a) The criteria for expedited prior authorization do not apply;

(b) The number of available units under the EPA have been used and services are requested beyond the limits; or

(c) The provider requests it as a medically necessary service.

(9) The following services are not covered:

(a) Day habilitation services designed to provide training, structured activities, and specialized services to adults;

(b) Chore services to assist basic needs;

(c) Vocational services;

(d) Custodial services;

(e) Respite;

(f) Recreational care;

(g) Residential treatment;

(h) Social services; and

(i) Educational services of any kind.

AMENDATORY SECTION (Amending WSR 11-21-066, filed 10/17/11, effective 11/17/11)

WAC 182-545-900 Neurodevelopmental centers. (1) This section describes:

(a) Neurodevelopmental centers that may be reimbursed by the agency;

(b) Clients who may receive covered services at a neurodevelopmental center; and

(c) Covered services that may be provided at and reimbursed to a neurodevelopmental center.

(2) In order to provide and be reimbursed for the services listed in subsection (4) of this section, the agency requires a neurodevelopmental center provider to do all of the following:

(a) Be contracted with the department of health (DOH) as a neurodevelopmental center;

(b) Provide documentation of the DOH contract to the agency; and

(c) Have an approved core provider agreement with the agency.

(3) Clients, twenty years of age or younger, may receive outpatient rehabilitation and habilitative services (occupational therapy, physical therapy, and speech therapy) in agency-approved neurodevelopmental centers.

(4) The agency reimburses neurodevelopmental centers for providing the following services to clients:

(a) Outpatient rehabilitation and habilitative services as described in chapter 182-545 WAC (~~(182-545-200)~~); and

(b) Specific pediatric evaluations and team conferences that are:

(i) Attended by the center's medical director; and

(ii) Identified as payable in the agency's billing instructions.

(5) In order to be reimbursed, neurodevelopmental centers must meet the agency's billing requirements in WAC 182-502-0020, 182-502-0100 and 182-502-0150.

AMENDATORY SECTION (Amending WSR 11-21-066, filed 10/17/11, effective 11/17/11)

WAC 182-551-2110 Home health services—Covered specialized therapy. The agency covers specialized therapy (~~((also known as outpatient rehabilitation))~~), including outpatient rehabilitation and habilitative services, in an in-home setting by a home health agency. (~~(See chapter 182-545 WAC outpatient rehabilitation for coverage and limitations.)~~) Outpatient rehabilitation and habilitative services are described in chapter 182-545 WAC. Specialized therapy is defined in WAC 182-551-2010.