



PROPOSED RULE MAKING

CR-102 (August 2017)
(Implements RCW 34.05.320)
Do **NOT** use for expedited rule making

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FILED

DATE: October 12, 2017

TIME: 1:28 PM

WSR 17-21-039

Agency: Health Care Authority, Washington Apple Health

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 16-19-032 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject)

182-543-1000 DME and related supplies, complex rehabilitation technology, prosthetics and orthotics, medical supplies and related services - Definitions

182-543-2000 DME, CRT, P & O, Medical Supplies – Eligible providers and provider requirements

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
November 21, 2017	10:00 AM	Health Care Authority Cherry Street Plaza Sue Crystal 106A Conf Rm 626 8 th Ave, Olympia WA 98504	Metered public parking is available street side around building. A map is available at: www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling: (360) 725-1000

Date of intended adoption: Not sooner than November 22, 2017 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: HCA Rules Coordinator

Address: PO Box 42716, Olympia WA 98504-2716

Email: arc@hca.wa.gov

Fax: (360) 586-9727

Other:

By (date) November 21, 2017

Assistance for persons with disabilities:

Contact Amber Lougheed

Phone: (360) 725-1349

Fax: (360) 586-9727

TTY: (800) 848-5429 or 711

Email: amber.lougheed@hca.wa.gov

Other:

By (date) November 17, 2017

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The agency is amending WAC 182-543-1000 to align with 42 CFR Part 440.70, which modified the description of medical supplies and equipment. In WAC 182-543-2000, the agency is also: 1) clarifying that the requirement for a valid prescription applies to DME and related supplies, complex rehabilitation technology, prosthetics, orthotics, medical supplies and related services in subsection (2)(c); 2) fixing an incorrect hyperlink in subsection (2)(c)(A); and 3) adding complex rehabilitation technology (CRT) to the list in subsection (2)(g).

Reasons supporting proposal: See Purpose

Statutory authority for adoption: RCW 41.05.021, 41.05.160

Statute being implemented: RCW 41.05.021, 41.05.160

Is rule necessary because of a:

Federal Law?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION: 42 CFR Sec. 440.70

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: N/A

Name of proponent: (person or organization) Health Care Authority

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Melinda Froud	PO Box 42716, Olympia WA 98504-2716	360-725-1408
Implementation:	Erin Mayo	PO Box 45506, Olympia, WA 98504-5506	360-725-1729
Enforcement:	Erin Mayo	PO Box 45506, Olympia, WA 98504-5506	360-725-1729

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Is a cost-benefit analysis required under RCW 34.05.328?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

No: Please explain: RCW 34.05.328 does not apply to Health Care Authority rules unless requested by the Joint Administrative Rules Review Committee or applied voluntarily.

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- RCW 34.05.310 (4)(b) (Internal government operations)
- RCW 34.05.310 (4)(c) (Incorporation by reference)
- RCW 34.05.310 (4)(d) (Correct or clarify language)
- RCW 34.05.310 (4)(e) (Dictated by statute)
- RCW 34.05.310 (4)(f) (Set or adjust fees)
- RCW 34.05.310 (4)(g) ((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES


If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. This rule **does not impose** compliance costs (or does not impose more-than-minor costs) on businesses.

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

Date: October 12, 2017	Signature: 
Name: Wendy Barcus	
Title: HCA Rules Coordinator	

WAC 182-543-1000 DME and related supplies, complex rehabilitation technology, prosthetics, and orthotics, medical supplies and related services—Definitions. The following definitions and abbreviations and those found in chapter 182-500 WAC apply to this chapter.

"By-report (BR)" - See WAC 182-500-0015.

"Complex needs patient" - An individual with a diagnosis or medical condition that results in significant physical or functional needs and capacities.

"Complex rehabilitation technology (CRT)" - Wheelchairs and seating systems classified as durable medical equipment within the medicare program that:

(1) Are individually configured for individuals to meet their specific and unique medical, physical, and functional needs and capacities for basic activities as medically necessary to prevent hospitalization or institutionalization of a complex needs patient;

(2) Are primarily used to serve a medical purpose and generally not useful to a person in the absence of an illness or injury; and

(3) Require certain services necessary to allow for appropriate design, configuration, and use of such item, including patient evaluation and equipment fitting.

"Date of delivery" - The date the client actually took physical possession of an item or equipment.

"Digitized speech" (also referred to as devices with whole message speech output) - Words or phrases that have been recorded by an individual other than the speech generating device (SGD) user for playback upon command of the SGD user.

"Disposable supplies" - Supplies which may be used once, or more than once, but are time limited.

"Durable medical equipment (DME)" - Equipment and appliances that:

~~(1) ((Can withstand repeated use;~~

~~(2) Is))~~ Are primarily and customarily used to serve a medical purpose;

~~((3))~~ (2) Generally ~~((is))~~ are not useful to a person in the absence of a disability, illness, or injury; ~~((and~~

~~(4) Is appropriate))~~

(3) Can withstand repeated use;

(4) Can be reusable or removable; and

(5) Are suitable for use in ((the client's place of residence)) any setting in which normal life activities take place.

"EPSDT" - See WAC 182-500-0030.

"Expedited prior authorization (EPA)" - See WAC 182-500-0030.

"Fee-for-service (FFS)" - See WAC 182-500-0035.

"Health care common procedure coding system (HCPCS)" - A coding system established by the Health Care Financing Administration (HCFA) to define services and procedures. HCFA is now known as the Centers for Medicare and Medicaid Services (CMS).

"Home" - For the purposes of this chapter, means location, other than hospital or skilled nursing facility where the client receives care.

"House wheelchair" - A skilled nursing facility wheelchair that is included in the skilled nursing facility's per-patient-day rate under chapter 74.46 RCW.

"Individually configured" - A device has a combination of features, adjustments, or modifications specific to a complex needs patient that a qualified complex rehabilitation technology supplier provides by measuring, fitting, programming, adjusting, or adapting the device as appropriate so that the device is consistent with an assessment or evaluation of the complex needs patient by a health care professional and consistent with the complex needs patient's medical condition, physical and functional needs and capacities, body size, period of need, and intended use.

"Limitation extension" - A client-specific authorization by the agency for additional covered services beyond the set amount allowed under agency rules. See WAC 182-501-0169.

"Manual wheelchair" - See "Wheelchair - Manual."

"Medical supplies" - (~~Supplies that are~~) Health care-related items that:

(1) (~~Primarily and customarily used to service a medical purpose; and~~

(2) ~~Generally not useful to a person in the absence of illness or injury.~~) Are consumable or disposable or cannot withstand repeated use by more than one person;

(2) Required to address an individual disability, illness, or injury; and

(3) Are suitable for use in any setting in which normal life activities take place.

"Medically necessary" - See WAC 182-500-0070.

"National provider indicator (NPI)" - See WAC 182-500-0075.

"Other durable medical equipment (other DME)" - All durable medical equipment, excluding wheelchairs and wheelchair-related items.

"Orthotic device" or "orthotic" - A corrective or supportive device that:

(1) Prevents or corrects physical deformity or malfunction; or

(2) Supports a weak or deformed portion of the body.

"Personal or comfort item" - An item or service which primarily serves the comfort or convenience of the client or caregiver.

"Power-drive wheelchair" - See "Wheelchair - Power."

"Pricing cluster" - A group of manufacturers' list prices for brands/models of DME, medical supplies and nondurable medical equipment that the agency considers when calculating the reimbursement rate for a procedure code that does not have a fee established by medicare.

"Prior authorization" - See WAC 182-500-0085.

"Prosthetic device" or "prosthetic" - See WAC 182-500-0085.

"Qualified complex rehabilitation technology supplier" - A company or entity that:

(1) Is accredited by a recognized accrediting organization as a supplier of CRT;

(2) Meets the supplier and quality standards established for durable medical equipment suppliers under the medicare program;

(3) For each site that it operates, employs at least one CRT professional, certified by the rehabilitation engineering and assistive technology society of North America as an assistive technology professional, to analyze the needs and capacities of clients, and provide training in the use of the selected covered CRT items;

(4) Has the CRT professional physically present for the evaluation and determination of the appropriate individually configured CRT for the complex needs patient;

(5) Provides service and repairs by qualified technicians for all CRT products it sells; and

(6) Provides written information to the complex needs patient at the time of delivery about how the individual may receive service and repair of the delivered CRT.

"Resource-based relative value scale (RBRVS)" - A scale that measures the relative value of a medical service or intervention, based on the amount of physician resources involved.

"Reusable supplies" - Supplies which are to be used more than once.

"Scooter" - A federally approved, motor-powered vehicle that:

- (1) Has a seat on a long platform;
- (2) Moves on either three or four wheels;
- (3) Is controlled by a steering handle; and
- (4) Can be independently driven by a client.

"Specialty bed" - A pressure reducing support surface, such as foam, air, water, or gel mattress or overlay.

"Speech generating device (SGD)" - An electronic device or system that compensates for the loss or impairment of a speech function due to a congenital condition, an acquired disability, or a progressive neurological disease. The term includes only that equipment used for the purpose of communication. Formerly known as "augmentative communication device (ACD)."

"Synthesized speech" - Is a technology that translates a user's input into device-generated speech using algorithms representing linguistic rules, unlike prerecorded messages of digitized speech. A SGD that has synthesized speech is not limited to prerecorded messages but rather can independently create messages as communication needs dictate.

"Three- or four-wheeled scooter" - A three- or four-wheeled vehicle meeting the definition of scooter (see "scooter") and which has the following minimum features:

- (1) Rear drive;
- (2) A twenty-four volt system;
- (3) Electronic or dynamic braking;
- (4) A high to low speed setting; and
- (5) Tires designed for indoor/outdoor use.

"Trendelenburg position" - A position in which the patient is lying on his or her back on a plane inclined thirty to forty degrees. This position makes the pelvis higher than the head, with the knees flexed and the legs and feet hanging down over the edge of the plane.

"Usual and customary charge" - See WAC 182-500-0110.

"Warranty-period" - A guarantee or assurance, according to manufacturers' or provider's guidelines, of set duration from the date of purchase.

"Wheelchair - Manual" - A federally approved, nonmotorized wheelchair that is capable of being independently propelled and fits one of the following categories:

- (1) Standard:
 - (a) Usually is not capable of being modified;
 - (b) Accommodates a person weighing up to two hundred fifty pounds; and
 - (c) Has a warranty period of at least one year.
- (2) Lightweight:

- (a) Composed of lightweight materials;
- (b) Capable of being modified;
- (c) Accommodates a person weighing up to two hundred fifty pounds; and
- (d) Usually has a warranty period of at least three years.
- (3) High-strength lightweight:
 - (a) Is usually made of a composite material;
 - (b) Is capable of being modified;
 - (c) Accommodates a person weighing up to two hundred fifty pounds;
 - (d) Has an extended warranty period of over three years; and
 - (e) Accommodates the very active person.
- (4) Hemi:
 - (a) Has a seat-to-floor height lower than eighteen inches to enable an adult to propel the wheelchair with one or both feet; and
 - (b) Is identified by its manufacturer as "Hemi" type with specific model numbers that include the "Hemi" description.
- (5) Pediatric: Has a narrower seat and shorter depth more suited to pediatric patients, usually adaptable to modifications for a growing child.
- (6) Recliner: Has an adjustable, reclining back to facilitate weight shifts and provide support to the upper body and head.
- (7) Tilt-in-space: Has a positioning system, which allows both the seat and back to tilt to a specified angle to reduce shear or allow for unassisted pressure releases.
- (8) Heavy duty:
 - (a) Specifically manufactured to support a person weighing up to three hundred pounds; or
 - (b) Accommodating a seat width of up to twenty-two inches wide (not to be confused with custom manufactured wheelchairs).
- (9) Rigid: Is of ultra-lightweight material with a rigid (nonfolding) frame.
- (10) Custom heavy duty:
 - (a) Specifically manufactured to support a person weighing over three hundred pounds; or
 - (b) Accommodates a seat width of over twenty-two inches wide (not to be confused with custom manufactured wheelchairs).
- (11) Custom manufactured specially built:
 - (a) Ordered for a specific client from custom measurements; and
 - (b) Is assembled primarily at the manufacturer's factory.

"Wheelchair - Power" - A federally approved, motorized wheelchair that can be independently driven by a client and fits one of the following categories:

- (1) Custom power adaptable to:
 - (a) Alternative driving controls; and
 - (b) Power recline and tilt-in-space systems.
- (2) Noncustom power: Does not need special positioning or controls and has a standard frame.
- (3) Pediatric: Has a narrower seat and shorter depth that is more suited to pediatric patients. Pediatric wheelchairs are usually adaptable to modifications for a growing child.

WAC 182-543-2000 DME and related supplies, complex rehabilitation technology, prosthetics, orthotics, medical supplies and related services—Eligible providers and provider requirements. (1) The medicaid agency pays qualified providers for durable medical equipment (DME) and related supplies, complex rehabilitation technology (CRT), prosthetics, orthotics, medical supplies, repairs, and related services on a fee-for-service basis as follows:

(a) DME providers who are enrolled with medicare for DME and related repair services;

(b) Qualified CRT suppliers who are enrolled with medicare for DME and related repair services;

(c) Medical equipment dealers who are enrolled with medicare, pharmacies who are enrolled with medicare, and home health agencies under their national provider identifier (NPI) for medical supplies;

(d) Prosthetics and orthotics providers who are licensed by the Washington state department of health in prosthetics and orthotics. Medical equipment dealers and pharmacies that do not require state licensure to provide selected prosthetics and orthotics may be paid for those selected prosthetics and orthotics only as long as the medical equipment dealers and pharmacies meet the medicare enrollment requirement;

(e) Occupational therapists providing orthotics who are licensed by the Washington state department of health in occupational therapy;

(f) Physicians who provide medical equipment and supplies in the office. The agency may pay separately for medical supplies, subject to the provisions in the agency's resource-based relative value scale fee schedule; and

(g) Out-of-state prosthetics and orthotics providers who meet their state regulations.

(2) Providers and suppliers of DME and related supplies, CRT, prosthetics, orthotics, medical supplies and related items must:

(a) Meet the general provider requirements in chapter 182-502 WAC;

(b) Have the proper business license and be certified, licensed and bonded if required, to perform the services billed to the agency;

(c) Have a valid prescription (~~for the DME~~).

(i) To be valid, a prescription must:

(A) Be written on the agency's Prescription Form (HCA 13-794). The agency's electronic forms are available online at(~~http://www.hca.wa.gov/medicaid/forms/Pages/index.aspx~~) www.hca.wa.gov/billers-providers/forms-and-publications;

(B) Be written by a physician, advanced registered nurse practitioner (ARNP), naturopathic physician, or physician's assistant certified (PAC);

(C) Be written, signed (including the prescriber's credentials), and dated by the prescriber on the same day and before delivery of the supply, equipment, or device. Prescriptions must not be back-dated;

(D) Be no older than one year from the date the prescriber signs the prescription; and

(E) State the specific item or service requested, diagnosis, estimated length of need (weeks, months, or years), and quantity.

(ii) For dual-eligible clients when medicare is the primary payer and the agency is being billed for only the copay, only the deductible, or both, subsection (2)(a) of this section does not apply.

(d) Provide instructions for use of equipment;

(e) Provide only new equipment to clients, which include full manufacturer and dealer warranties. See WAC 182-543-2250(3);

(f) Provide documentation of proof of delivery, upon agency request (see WAC 182-543-2200); and

(g) Bill the agency using only the allowed procedure codes listed in the agency's published DME and related supplies, complex rehabilitation technology (CRT) prosthetics and orthotics, medical supplies and related items billing instructions.