



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: February 07, 2019

TIME: 1:32 PM

WSR 19-05-015

Agency: Health Care Authority

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 18-21-010 ; 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); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) WAC 182-545-400—Habilitative services.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
March 26, 2019	10:00 AM	Health Care Authority Cherry Street Plaza Pear Conf Room 107 626 8 th Ave, Olympia WA 98504	Metered public parking is available street side around building. A map is available at: https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf or directions can be obtained by calling: (360) 725-1000

Date of intended adoption: Not sooner than March 27, 2019 (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) March 26, 2019

Assistance for persons with disabilities:

Contact Amber Lougheed

Phone: (360) 725-1349

Fax: (360) 586-9727

TTY: Telecommunication Relay Services (TRS): 711

Email: amber.lougheed@hca.wa.gov

Other:

By (date) March 20, 2019

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The agency is striking the outdated requirement in this section for a diagnosis of one of the qualifying conditions listed in the agency's provider guide for habilitative services. The agency does not require the diagnosis of a specific condition for an eligible client to receive habilitative services and has removed the list from the billing guide.

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 type="checkbox"/> Yes	<input checked="" 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:

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:	Michael Williams	PO Box 42716, Olympia WA 98504-2716	360-725-1346
Implementation:	Tonja Nichols	PO Box 42716, Olympia WA 98504-2716	360-725-1658
Enforcement:	Tonja Nichols	PO Box 42716, Olympia WA 98504-2716	360-725-1658

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. The revisions to this rule do not impose additional compliance costs or requirements on providers.
- 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: February 7, 2019	Signature: 
Name: Wendy Barcus	
Title: HCA Rules Coordinator	

WAC 182-545-400 Habilitative services. (1) Habilitative services 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. To the extent practical, habilitative services maximize the client's ability to function in the client's environment.

(2) Eligibility is limited to clients who are enrolled in the Washington apple health alternative benefits plan defined in WAC 182-501-0060 (~~(and who have a diagnosis which is one of the qualifying conditions listed in the agency's 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 care 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 therapy assistants supervised by a licensed physical therapist;
- (f) Speech-language pathologists who have been granted a certificate of clinical competence by the American Speech-Language-Hearing 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 benefits 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 care 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 provider guides;
- (h) Billed under this chapter, chapters 182-501 and 182-502 WAC, and the agency's published provider guides; 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 pay 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) The limitations in subsection (7) of this section do not apply to eligible clients under age twenty-one.

(7) For eligible clients age twenty-one and older, the agency covers habilitative services that include an ongoing management plan for the client or the client's caregiver to support continued client progress. The agency limits 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 (EPA), up to twenty-four additional units of occupational therapy may be available when the therapy is required as part of an initial botulinum toxin injection protocol for spasticity or dystonia and 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 EPA, up to twenty-four additional units of physical therapy may be available when the therapy is required as part of an initial botulinum toxin injection protocol for spasticity or dystonia and 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 EPA, up to six additional units of speech therapy may be available when:

(A) The therapy is required as part of an initial botulinum toxin injection protocol for spasticity or dystonia and 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 equipment for habilitative purposes (~~to treat conditions that qualify~~) 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 the provider to assess prosthetic or orthotic use, per 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 habilitative services that exceed the limitations in this section under WAC 182-501-0169, for clients age twenty-one and older. For clients age nineteen and twenty, the agency evaluates such requests for medical necessity under chapter 182-534 WAC. The agency requires prior authorization for additional units when:

(a) The criteria for EPA 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 agency does not cover the following:

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

(b) Services to assist basic needs;

(c) Vocational services;

(d) Custodial services;

(e) Respite care;

(f) Recreational care;

(g) Residential treatment;

(h) Social services; and

(i) Educational services of any kind.