



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: March 15, 2019

TIME: 10:20 AM

WSR 19-07-050

Agency: Health Care Authority

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 18-20-013 ; 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 182-535A-0040—Orthodontic treatment and orthodontic-related services—Covered, noncovered, and limitations to coverage; WAC 182-535A-0060—Orthodontic treatment and orthodontic-related services—Payment.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
April 23, 2019	10:00 AM	Health Care Authority Cherry Street Plaza Pear Conference 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 April 24, 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) April 23, 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) April 19, 2019.

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The agency is revising these sections to clarify coverage and authorization criteria, as well as limitation extension requirements. The agency is also revising this section to update limited and comprehensive treatment payment methodology in order for providers to receive more timely payments.

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:	Janice Tadeo	PO Box 45502, Olympia WA 98504-2716	360-725-1583
Enforcement:	Janice Tadeo	PO Box 45502, Olympia WA 98504-2716	360-725-1583

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: March 15, 2019

Name: Wendy Barcus

Title: HCA Rules Coordinator

Signature:



WAC 182-535A-0040 Orthodontic treatment and orthodontic-related services—Covered, noncovered, and limitations to coverage. Coverage and authorization of covered services is subject to the requirements and limitations in this chapter and other applicable WAC.

(1) (~~Subject to the limitations in this section and other applicable WAC,~~) The medicaid agency covers orthodontic treatment and orthodontic-related services for a client who has one of the medical conditions listed in (a) and (b) of this subsection. Treatment and follow-up care must be performed only by an orthodontist or agency-recognized craniofacial team (~~and do not require prior authorization~~).

(a) Cleft lip and palate, cleft palate, or cleft lip with alveolar process involvement.

(b) The following craniofacial anomalies including, but not limited to:

- (i) Hemifacial microsomia;
- (ii) Craniosynostosis syndromes;
- (iii) Cleidocranial dental dysplasia;
- (iv) Arthrogryposis;
- (v) Marfan syndrome;
- (vi) Treacher Collins syndrome;
- (vii) Ectodermal dysplasia; or
- (viii) Achondroplasia.

(2) (~~Subject to prior authorization requirements and the limitations in this section and other applicable WAC, the agency covers~~) The agency authorizes orthodontic treatment and orthodontic-related services (~~for~~) when the following criteria are met:

(a) Severe malocclusions with a Washington Modified Handicapping Labiolingual Deviation (HLD) Index Score of twenty-five or higher (~~The agency determines the final HLD Index Score based on documentation submitted by the provider~~) as determined by the agency;

(b) The client has established caries control; and

(c) The client has established plaque control.

(3) The agency may cover orthodontic treatment for dental malocclusions other than those listed in subsections (1) and (2) of this section on a case-by-case basis and when prior authorized. The agency determines medical necessity based on documentation submitted by the provider.

(4) The agency does not cover the following orthodontic treatment or orthodontic-related services:

(a) Orthodontic treatment for cosmetic purposes;

(b) Orthodontic treatment that is not medically necessary (as defined in WAC 182-500-0070);

(c) Orthodontic treatment provided out-of-state, except as stated in WAC 182-501-0180 (see also WAC 182-501-0175 for medical care provided in bordering cities);

(d) Orthodontic treatment and orthodontic-related services that do not meet the requirements of this section or other applicable WAC; or

(e) Case studies that do not include a definitive orthodontic treatment plan.

(5) The agency covers the following orthodontic treatment and orthodontic-related services with prior authorization (~~(, subject to the following limitations (providers must bill for these services according to WAC 182-535A-0060):~~

~~(a) Panoramic radiographs (X-rays) when medically necessary.~~

~~(b)) when medically necessary:~~

~~(a) Interceptive orthodontic treatment ((, when medically necessary)).~~

~~((e)) (b) Limited orthodontic treatment ((, when medically necessary.~~

~~(i) Approval for limited orthodontic treatment includes up to twelve months of treatment. (See subsection (7)(a) of this section for information on limitation extensions.)~~

~~(ii) The agency may approve a single impacted tooth for limited orthodontic treatment.~~

~~(d)) . The agency may approve limited orthodontic treatment for treatment of a single impacted tooth.~~

~~(c) Comprehensive full orthodontic treatment on adolescent dentition ((, when medically necessary. The treatment must be completed within thirty months from the date of the original appliance placement)) (see subsection ((7)) (8)(a) of this section for information on limitation extensions).~~

~~((e) Replacement retainers after the first replacement retainer and within six months of debanding.~~

~~(f) Orthodontic appliance removal as a stand-alone service only when:~~

~~(i) The client's appliance was placed by a different provider or dental clinic; and~~

~~(ii) The provider has not furnished any other orthodontic treatment or orthodontic-related services to the client.~~

~~(g) Other medically necessary) (d) Case study.~~

~~(e) Other orthodontic treatment ((and orthodontic-related services)) subject to review for medical necessity as determined by the agency.~~

~~(6) The ((treatment must meet industry standards and correct the medical issue. If treatment is discontinued prior to completion, or treatment objectives are not obtained, clear documentation must be kept in the client's record explaining why treatment was discontinued or not completed or why treatment goals were not achieved.~~

~~(7)) agency covers the following orthodontic-related services with prior authorization when medically necessary:~~

~~(a) Clinical oral evaluations according to WAC 182-535-1080.~~

~~(b) Cephalometric films that are of diagnostic quality, dated, and labeled with the client's name.~~

~~(c) Replacement retainer.~~

~~(d) Orthodontic appliance removal as a stand-alone service only when:~~

~~(i) The client's appliance was placed by a different provider or dental clinic; and~~

~~(ii) The provider has not furnished any other orthodontic treatment or orthodontic-related services to the client.~~

~~(7) The treatment must meet industry standards and correct the medical issue. If treatment is discontinued prior to completion, or treatment objectives are not achieved, the provider must:~~

~~(a) Keep clear documentation in the client's record explaining why treatment was discontinued or not completed, or why treatment goals were not achieved.~~

(b) Notify the agency.

(8) The agency evaluates a request for orthodontic treatment or orthodontic-related services:

(a) That are in excess of the limitations or restrictions listed in this section, according to WAC 182-501-0169; and

(b) That are listed as noncovered according to WAC 182-501-0160.

~~((8))~~ (9) The agency reviews requests for orthodontic treatment or orthodontic-related services for clients who are eligible for services under the EPSDT program according to the provisions of WAC 182-534-0100.

AMENDATORY SECTION (Amending WSR 17-20-097, filed 10/3/17, effective 11/3/17)

WAC 182-535A-0060 Orthodontic treatment and orthodontic-related services—Payment. (1) The medicaid agency pays providers for furnishing covered orthodontic treatment and orthodontic-related services described in WAC 182-535A-0040 according to this section and other applicable WAC.

(2) ~~((The agency considers that))~~ A provider who furnishes covered orthodontic treatment and orthodontic-related services to an eligible client accepts the agency's fees as published in the agency's fee schedules according to WAC 182-502-0010.

(3) ~~((The agency requires a provider to))~~ Providers must deliver services and procedures that are of acceptable quality to the agency. The agency may recoup payment for services ~~((that are))~~ determined to be below the standard of care or of an unacceptable product quality.

(4) **Interceptive orthodontic treatment.** The agency pays for interceptive orthodontic treatment on primary or transitional dentition in one payment that includes all professional fees, laboratory costs, and required follow-up.

(5) **Limited orthodontic treatment.** The agency pays for limited orthodontic treatment on transitional or adolescent dentition as follows:

(a) The first three months of treatment starts on the date the initial appliance is placed and includes active treatment for the first three months. The provider must bill the agency with the date of service that the initial appliance is placed.

(b) The agency's initial payment includes:

(i) The replacement of brackets and lost or broken orthodontic appliances;

(ii) Appliance removal;

(iii) The initial ~~((and the first replacement))~~ retainer fee ~~((s within the first six months after debanding))~~; and

(iv) The final records (photos, a panoramic X-ray, a cephalometric film, and final trimmed study models).

(c) Continuing follow-up treatment must be billed ~~((after each three-month treatment interval during the treatment))~~ as periodic orthodontic treatment visits.

(i) Payments are allowed once every six weeks during treatment, beginning three months after the initial appliance placement.

~~((d))~~ (ii) Payment for treatment provided ((after twelve months from the date the appliance is placed)) in addition to the six period-

ic orthodontic treatment visits requires a limitation extension. See WAC 182-535A-0040(~~((8))~~) (9).

(iii) If treatment is discontinued or treatment objectives are not achieved, providers must notify the agency. See WAC 182-535A-0040(7).

(6) **Comprehensive full orthodontic treatment.** The agency pays for comprehensive full orthodontic treatment on adolescent dentition as follows:

(a) The first (~~(six)~~) three months of treatment starts the date the initial appliance is placed and includes active treatment for the first (~~(six)~~) three months. The provider must bill the agency with the date of service that the initial appliance is placed.

(b) The agency's initial payment includes:

(i) The replacement of brackets and lost or broken orthodontic appliances;

(ii) Appliance removal;

(iii) The initial (~~(and the first replacement)~~) retainer fee(~~((s within six months after debanding))~~); and

(iv) The final records (photos, a panoramic X-ray, a cephalometric film, and final trimmed study models).

(c) Continuing follow-up treatment must be billed (~~(after each three-month treatment interval, with the first three-month interval beginning six)~~) as periodic orthodontic treatment visits.

(i) Payments are allowed once every six weeks during treatment, beginning three months after the initial appliance placement.

~~((d))~~ (ii) Payment for treatment provided ((after thirty months from the date the appliance is placed)) in addition to the fourteen periodic orthodontic treatment visits requires a limitation extension. See WAC 182-535A-0040(~~((8))~~) (9).

(iii) If treatment is discontinued or treatment objectives are not achieved, providers must notify the agency. See WAC 182-535A-0040(7).

(7) **Case study.** The agency pays for a case study, which includes:

(a) Preparation of comprehensive diagnostic records (additional photos, study casts, cephalometric examination film and panoramic film);

(b) Formation of diagnosis and treatment plan from such records;
and

(c) Formal case conference.

(8) Payment for orthodontic treatment and orthodontic-related services is based on the agency's published fee schedule.

~~((8))~~ (9) Orthodontic providers who are in agency-designated bordering cities must:

(a) Meet the licensure requirements of their state; and

(b) Meet the same criteria for payment as in-state providers, including the requirements to contract with the agency.

~~((9))~~ (10) If the client's eligibility for orthodontic treatment under WAC 182-535A-0020 ends before the conclusion of the orthodontic treatment, payment for any remaining treatment is the client's responsibility. The agency does not pay for these services.

~~((10) Any)~~ (11) The agency does not pay for orthodontic treatment provided after the client's twenty-first birthday ((will not be paid for by the agency and will become the client's financial responsibility.

(11)). Payment for treatment that continues after the client's twenty-first birthday is the responsibility of the client.

(12) The client is responsible for payment of any orthodontic service or treatment received during any period of medicaid ineligibility, even if the treatment was started when the client was eligible (~~(. The agency does not pay for these services)~~).

~~((12))~~ (13) See WAC 182-502-0160 and 182-501-0200 for when a provider or a client is responsible to pay for a covered service.