



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: July 03, 2019

TIME: 11:21 AM

WSR 19-14-123

Agency: Health Care Authority

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 18-09-021 ; 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)

182-547-0100, General; 182-547-0200, Definitions; 182-547-0700, Eligibility; 182-547-0800, Coverage—Clients age twenty years and younger; 182-547-0850, Coverage—Clients age twenty-one and older; 182-547-0900, Noncovered services—Clients age twenty one and older; 182-547-1000, Prior authorization—Clients age twenty and younger; 182-547-1050, Prior authorization—Clients age twenty-one and older; 182-547-1100, Reimbursement

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
August 6, 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 August 7, 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) August 6, 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) August 2, 2019

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The agency is amending Chapter 182-547 WAC - Hearing aids, to implement E2SSB 5179, which restores coverage of hearing instruments for adults.

Reasons supporting proposal: See purpose.

Statutory authority for adoption: RCW 41.05.021, 41.05.160, and E2SSB 5179, 65th Legislature, 2018 Regular Session

Statute being implemented: RCW 41.05.021, 41.05.160, and E2SSB 5179, 65th Legislature, 2018 Regular Session

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:	Jason Crabbe	PO Box 42716, Olympia WA 98504-2716	360-725-9563
Implementation:	Jean Gowenl	PO Box 45506, Olympia WA 98504-5506	360-725-2005
Enforcement:	Jean Gowenl	PO Box 45506, Olympia WA 98504-5506	360-725-2005

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.
- 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: July 2, 2019

Name: Wendy Barcus

Title: HCA Rules Coordinator

Signature:



AMENDATORY SECTION (Amending WSR 13-20-013, filed 9/20/13, effective 10/21/13)

WAC 182-547-0100 (~~(Hearing aids General For clients twenty years of age and younger.)~~) **General.** (~~(Unless otherwise defined in WAC 182-547-0200, the terms within this chapter are intended to correspond with the terms in chapter 18.35 RCW.)~~)

(1) The medicaid agency covers the hearing aids listed in this chapter, according to agency rules and subject to the limitations and requirements in this chapter. See also WAC 182-531-0375 audiology services.

(2) The agency pays for hearing aids when:

(a) Covered;

(b) Within the scope of an eligible client's medical care program;

(c) Medically necessary as defined under WAC 182-500-0070;

(d) Authorized, as required within this chapter, chapters 182-501 and 182-502 WAC, and the agency's published billing instructions and provider notices;

(e) Billed according to this chapter, chapters 182-501 and 182-502 WAC, and the agency's published billing instructions and provider notices; ~~((and))~~

(f) The client ~~((is twenty years of age or younger and))~~ completes a hearing evaluation, including an audiogram ~~((and/or))~~ or developmentally appropriate diagnostic physiologic test ~~((results performed and/or))~~, that is administered by and the results interpreted by a hearing health care professional; and

(g) The licensed audiologist, hearing aid specialist, otolaryngologist, or otologist concludes that the client may benefit from a hearing aid.

(3) The agency requires prior authorization for covered hearing aids when the clinical criteria set forth in this chapter are not met. The agency evaluates these requests on a case-by-case basis to determine whether they are medically necessary, according to the process found in WAC 182-501-0165.

AMENDATORY SECTION (Amending WSR 13-20-013, filed 9/20/13, effective 10/21/13)

WAC 182-547-0200 (~~(Hearing aids)~~) **Definitions.** The following definitions, the definitions found in RCW 18.35.010, and those found in chapter 182-500 WAC apply to this chapter.

"Bone-anchored hearing aid" or "bone conduction hearing device" means a type of hearing aid that transmits sound vibrations through bones in the head. The inner ear translates the vibrations the same way a normal ear translates sound waves. These devices can be surgically implanted or worn on headbands.

"Cochlear implant" means an electrical device that receives sound and transmits the resulting signal to electrodes implanted in the cochlea. That signal stimulates the cochlea so that hearing impaired persons can perceive sound.

"Digital hearing aids" (~~(---Hearing aids)~~) means wearable sound-amplifying devices that use a digital circuit to analyze and process sound.

"Hearing aids" (~~(---)~~) means wearable sound-amplifying devices that are intended to compensate for hearing loss. These devices use a digital circuit to analyze and process sound. Hearing aids are described by where they are worn in the ear as in-the-ear (ITE), behind-the-ear (BTE), etc. (~~(Hearing aids can also be described by how they process the amplified signal. This would include analog conventional, analog programmable, digital conventional, and digital programmable.)~~)

"Hearing health care professional" (~~(---)~~) means an audiologist or hearing aid ((fitter/dispenser)) specialist licensed under chapter 18.35 RCW, or ((an otorhinolaryngologist or otologist)) a physician specializing in diseases and disorders of the ear licensed under chapter 18.71 RCW.

"Maximum allowable fee" (~~(---)~~) means the maximum dollar amount that the medicaid agency will pay a provider for specific services, supplies and equipment.

(~~("Prior authorization" --- A form of authorization used by the provider to obtain approval for a specific hearing aid and service(s). The approval is based on medical necessity and must be received before the service(s) are provided to clients as a precondition for payment.)~~)

AMENDATORY SECTION (Amending WSR 13-20-013, filed 9/20/13, effective 10/21/13)

WAC 182-547-0700 (~~(Hearing aids Eligibility Clients twenty years of age and younger.)~~) **Eligibility.** (1) Clients (~~(twenty years of age and younger who are receiving services under a medical assistance program:~~

~~(a) Are eligible for covered hearing aids under this chapter and for the audiology services under WAC 182-531-0375;~~

~~(b) Must have a complete hearing evaluation, including an audiogram and/or developmentally appropriate diagnostic physiologic test results performed by a hearing health care professional; and~~

~~(c) Must be referred by a licensed audiologist, otorhinolaryngologist or otologist for a hearing aid)) covered by one of the Washington apple health programs as listed in the table in WAC 182-501-0060 are eligible for hearing aids and related services.~~

(2) Clients (~~(who are)~~) enrolled in (~~(an)~~) a medicaid agency-contracted managed care organization (MCO) ((are eligible under fee-for-service for covered hearing aid services that are not covered by their plan, subject to the provisions of this chapter and other applicable WAC. However)) must arrange for hearing aid and related services directly through the client's MCO. Additionally, clients enrolled in an agency-contracted MCO must obtain replacement parts for cochlear implants and bone-anchored hearing aids ((-BAHA-)), including batteries, through their MCO.

WAC 182-547-0800 ((Hearing aids)) Coverage—Clients age twenty years ((of age)) and younger. (1) The medicaid agency covers new, nonrefurbished, monaural or binaural hearing aid(s), which includes the ear molds, for eligible clients age twenty ((years of age)) and younger. In order for the provider to receive payment, the hearing aid must meet the client's specific hearing needs and carry a manufacturer's warranty for a minimum of one year.

(2) The agency pays for the following replacements as long as the need for replacement is not due to the client's carelessness, negligence, recklessness, deliberate intent, or misuse in accordance with WAC 182-501-0050((~~8~~)):

(a) Hearing aid(s), which includes the ear molds, when:

(i) The client's hearing aid(s) are:

(A) Lost;

(B) Beyond repair; or

(C) Not sufficient for the client's hearing loss; and

(ii) All warranties are expired.

(b) Ear mold(s) when the client's existing ear mold is damaged or no longer fits the client's ear.

(3) The agency pays for repairs of hearing aids that are less than five years old as follows:

(a) A maximum of two repairs, per hearing aid, per year, when the repair is less than fifty percent of the cost of a new hearing aid. To receive payment, all of the following must be met:

(i) All warranties are expired; and

(ii) The repair warranty is for a minimum of six months.

(b) A rental hearing aid(s) for up to thirty days while the client's own hearing aid is being repaired. In the case of a rental hearing aid(s), the agency pays separately for an ear mold(s).

(4) The agency pays for cochlear implant and ((BAHA)) bone-anchored hearing aid replacement parts when:

(a) The manufacturer's warranty has expired;

(b) The part is for immediate use, not a back-up part; and

(c) The part needs to be replaced due to normal wear and tear and is not related to misuse or abuse of the item (see WAC ((182-502-0160)) 182-501-0050).

(5) The agency covers cochlear implant external ((speech)) sound processors, including maintenance and repair.

(6) The agency covers ((BAHA)) bone-anchored hearing aid speech processors, including maintenance and repair.

(7) The agency covers batteries for hearing aids, cochlear implant external ((speech)) sound processors, and ((BAHA-speech)) bone-anchored hearing aid sound processors.

NEW SECTION

WAC 182-547-0850 Coverage—Clients age twenty-one and older.

(1) **Nonrefurbished, monaural hearing aids.** The medicaid agency covers

one new nonrefurbished monaural hearing aid, which includes the ear mold, every five years for clients age twenty-one and older.

(a) The client must have an average decibel loss of forty-five or greater in the better ear, based on a pure-tone audiometric evaluation by a licensed audiologist or a licensed hearing aid specialist at 1000, 2000, 3000, and 4000 hertz (Hz) with effective masking as indicated.

(b) The hearing aid must meet the client's specific hearing needs and carry a manufacturer's warranty for a minimum of one year.

(2) **Binaural hearing aids.** The agency covers binaural hearing aids with prior authorization (PA).

(3) **Replacement.** The agency covers the following replacements if the need for replacement is not due to the client's carelessness, negligence, recklessness, deliberate intent, or misuse under WAC 182-501-0050(7):

(a) One replacement hearing aid, including the ear mold, in a five-year period when the warranty is expired and the client's hearing aid(s) is:

(i) Lost; or

(ii) Broken and cannot be repaired.

(b) One replacement ear mold, per year, when the client's existing ear mold is damaged or no longer fits the client's ear.

(4) **Repair of hearing aids.** The agency covers two repairs, per hearing aid, per year, when the cost of the repair is less than fifty percent of the cost of a new hearing aid. To receive payment, all of the following must be met:

(a) All warranties are expired; and

(b) The repair is under warranty for a minimum of ninety days.

(5) **Repair or replacement of external components of cochlear devices and bone-anchored hearing aids.** The agency covers the following with PA.

(a) Repair or replacement of external components of cochlear devices. If the client has bilateral cochlear devices, both devices are eligible for repair and replacement of external components; and

(b) Repair or replacement of external components of bone-anchored hearing aids, whether implanted or worn with a headband. If the client has bilateral bone-anchored hearing aids, both devices are eligible for repair and replacement of external components.

(6) **Rental of hearing aids.** The agency covers rental hearing aid(s) for up to two months while the client's own hearing aid(s) is being repaired. For rental hearing aid(s) only, the agency pays separately for an ear mold(s).

(7) **Second hearing aid.** The agency pays for a second hearing aid when the client either meets the following expedited prior authorization clinical criteria or PA for a limitation extension is requested:

(a) The client tries one hearing aid for a six-month period, but the hearing aid does not adequately meet the client's hearing need; and

(b) One of the following reasons is documented in the client's record:

(i) Inability or difficulty conducting job duties with only one hearing aid;

(ii) Inability or difficulty functioning in the school environment with only one hearing aid; or

(iii) Client is legally blind.

AMENDATORY SECTION (Amending WSR 13-20-013, filed 9/20/13, effective 10/21/13)

WAC 182-547-0900 ((Hearing aids—))Noncovered services—Clients ((twenty years of age and younger)) age twenty-one and older. ((1) The agency does not cover the following hearing and hearing aid-related items and services for clients twenty years of age and younger:

- ~~(a) Tinnitus maskers;~~
- ~~(b) Group screenings for hearing loss, except as provided under the early and periodic screening, diagnosis and treatment (EPSDT) program under WAC 182-534-0100; or~~
- ~~(c) FM systems, including the computer-aided hearing devices for FM systems.~~

~~(2) When EPSDT applies, the agency evaluates a noncovered service, equipment, or supply according to the process in WAC 182-501-0165 to determine if it is medically necessary, safe, effective, and not experimental (see WAC 182-534-0100 for EPSDT rules.)~~ (1) The medic-aid agency does not cover the following items:

- (a) Batteries only for clients age twenty-one and over;
- (b) Tinnitus maskers;
- (c) Frequency modulation (FM) systems, including the computer-aided hearing devices for FM systems; and
- (d) Nonprescription hearing aids or similar devices including, but not limited to:
 - (i) Personal sound amplification products (PSAPs);
 - (ii) Hearables; and
 - (iii) Pocket talkers or similar devices.

(2) The agency evaluates requests for noncovered hearing aids and related services according to WAC 182-501-0160.

AMENDATORY SECTION (Amending WSR 13-20-013, filed 9/20/13, effective 10/21/13)

WAC 182-547-1000 ((Hearing aids—))Prior authorization—Clients age twenty ((years of age)) and younger. (1) Prior authorization is not required for clients age twenty ((years of age and under)) and younger for hearing aid(s) and services. When billing, providers ((should)) must send claims for clients age twenty ((years of age)) and younger directly to the medicaid agency. Providers do not have to obtain authorization from the local children with special health care needs (CSHCN) coordinator.

(2) The agency evaluates requests for covered services that are subject to limitations or other restrictions and approves such services beyond those limitations or restrictions as described in WAC 182-501-0169.

NEW SECTION

WAC 182-547-1050 Prior authorization—Clients age twenty-one and older. (1) For covered services that require prior authorization (PA), the provider must properly request authorization in accordance with the medicaid agency's rules and billing instructions.

(2) The agency evaluates requests for covered services that are subject to limitations or other restrictions and considers such services beyond those limitations or restrictions as described in WAC 182-501-0169.

(3) When the agency authorizes hearing aids or hearing aid-related services, the PA indicates only that the specific service is medically necessary; it is not a guarantee of payment. The client must be eligible for covered services at the time those services are provided.

(4) To receive payment, providers must order and dispense hearing aids and hearing aid-related services within the authorized time frame.

AMENDATORY SECTION (Amending WSR 13-20-013, filed 9/20/13, effective 10/21/13)

WAC 182-547-1100 (~~(Hearing aids Reimbursement General.)~~) Reimbursement. (1) The medicaid agency's payment for purchased hearing aids includes all of the following:

- (a) ~~((A prefitting))~~ The audiometric evaluation;
- (b) An impression for an ear mold;
- (c) The ear mold; ((and
- ~~(c) A minimum of three post-fitting consultations.))~~
- (d) The dispensing fee;
- (e) A conformity evaluation, if done;
- (f) Three batteries; and
- (g) Up to three follow-up visits for the fitting, orientation, and checking of the hearing aid.

(2) The agency denies payment for hearing aids ~~((and/or))~~ and services when claims are submitted without the prior authorization number, when required, or the appropriate diagnosis or procedure code(s).

(3) The agency does not pay for hearing aid charges paid by insurance or other payer source.

(4) To receive payment, the provider must keep documentation in the client's medical file to support the medical necessity for the specific make and model of the hearing aid ordered for the client. This documentation must include the record of the audiology testing providing evidence that the client's hearing loss meets the eligibility criteria for a hearing aid.