



PROPOSED RULE MAKING

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

Do NOT use for expedited rule making

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FILED

DATE: December 31, 2019

TIME: 11:20 AM

WSR 20-02-102

Agency: Health Care Authority

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 19-20-108 ; 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 182-546-5100 Nonemergency transportation (NEMT) – Definitions

WAC 182-546-5550 NEMT – Exclusions and limitations

WAC 182-546-5900 NEMT – Meals, lodging, escort/guardian

WAC 182-546-6200 NEMT - Reimbursement

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
February 4, 2020	10:00 AM	Health Care Authority Cherry Street Plaza Sue Crystal Room 106A 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 February 5, 2020 (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) February 4, 2020

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) January 24, 2020

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The agency is revising these sections as follows:

WAC 182-546-5100

(1) Adding "and related" to broker definition

(2) Revising the definition of "extended stay" to mean a period of time spanning 30 consecutive days, revising the definition of "short stay" to mean a period of time up to 29 days, and adding a definition for service animal;

(3) Revising transportation mode definition to public bus and commercial bus

WAC 182-546-5550

- (1) Revising subsection (1)(e) to include "such as braces/crutches, wheelchairs" for DME
- (2) Revising section -5550 (exclusion and limitations) to include substance use disorder;
- (3) Revising where nonemergency transportation is not provided;
- (4) Clarifying that nonemergency transportation for clients in the Program of All-Inclusive Care for Elderly (PACE) program is the responsibility of the PACE contractor and is not provided through brokers;
- (5) Removing MCS limitations to avoid confusion about MCS program's scope of coverage
- (6) Adding that service animals can be transported with clients

WAC 182-546-5900

- (1) Adding a requirement that brokers may not authorize payment for alcohol, cannabis, or other nonfood items;
- (2) Clarifying that for short stays, the cost of meals may not exceed the state per diem rate;

WAC 182-546-6200

- (1) Revising subsection (3) to "transportation-related services" require itemized receipts.

Reasons supporting proposal: See purpose

Statutory authority for adoption: RCW 41.05.021, 41.05.160, 42 CFR 431.53, 42 CFR 440.170

Statute being implemented: RCW 41.05.021, 41.05.160, 42 CFR 431.53, 42 CFR 440.170

Is rule necessary because of a:

- Federal Law? Yes No
- Federal Court Decision? Yes No
- State Court Decision? Yes 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

- Private
- Public
- Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Valerie Freudenstein	PO Box 42716, Olympia WA 98504-2716	360-725-1344
Implementation:	James Walters	PO Box 45530, Olympia, WA 98504-5530	360-725-1721
Enforcement:	James Walters	PO Box 45530, Olympia, WA 98504-5530	360-725-1721

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)(e)
(Dictated by statute)

RCW 34.05.310 (4)(c)
(Incorporation by reference)

RCW 34.05.310 (4)(f)
(Set or adjust fees)

RCW 34.05.310 (4)(d)
(Correct or clarify language)

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 proposed rule does not impose any 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: December 31, 2019	Signature: 
Name: Wendy Barcus	
Title: HCA Rules Coordinator	

WAC 182-546-5100 Nonemergency transportation—Definitions. The following definitions and those found in chapter 182-500 WAC apply to nonemergency medical brokered transportation. Unless otherwise defined in WAC 182-546-5200 through 182-546-6000, medical terms are used as commonly defined within the scope of professional medical practice in the state of Washington.

"Ambulance" - See WAC 182-546-0001.

"Broker" - An organization or entity contracted with the medicaid agency to arrange nonemergency transportation and related services for clients.

"Drop off point" - The location authorized by the transportation broker for the client's trip to end.

"Escort" - A person authorized by the transportation broker to accompany and be transported with a client to a health care service. An escort's transportation may be authorized depending on the client's age, mental state or capacity, safety requirements, mobility skills, communication skills, or cultural issues.

"Extended stay" - A period of time spanning (~~seven~~) thirty consecutive days or longer for which a client receives health care services outside of (~~his or her~~) their local community and for which (~~he or she~~) they may request assistance with meals and lodging.

"Guardian" - A person who is legally responsible for a client and who may be required to be present when a client is receiving health care services.

"Local community" - The client's city or town of residence or nearest location to residence.

"Local provider" - A provider, as defined in WAC 182-500-0085, who delivers covered health care service within the client's local community, and the treatment facility where the services are delivered within the client's local community.

"Lodging and meals" - Temporary housing and meals provided during a client's out-of-area medical stay.

"Mode" - A method of transportation assistance used by the general public that an individual client can use in a specific situation. Methods that may be considered include, but are not limited to:

- Air transport;
- (~~Bus fares~~) Public bus;
- Commercial bus;
- Ferries/water taxis;
- Gas vouchers/gas cards;
- Grouped or shared-ride vehicles;
- Mileage reimbursement;
- Parking;
- Stretcher vans or cars;
- Taxi;
- Tickets;
- Tolls;
- Train;
- Volunteer drivers;
- Walking or other personal conveyance; and
- Wheelchair vans.

"Noncompliance or noncompliant" - When a client:

- Fails to appear at the pickup point of the trip at the scheduled pickup time;
- Misuses or abuses agency-paid medical, transportation, or other services;
- Fails to comply with the rules, procedures, or policies of the agency or those of the agency's transportation brokers, the brokers' subcontracted transportation providers, or health care service providers;
- Poses a direct threat to the health or safety of self or others; or
- Engages in violent, seriously disruptive, or illegal conduct.

"Pickup point" - The location authorized by the agency's transportation broker for the client's trip to begin.

"Return trip" - The return of the client to the client's residence, or another authorized drop-off point, from the location where a covered health care service has occurred.

"Service animal" - An animal individually trained to work or perform tasks for an individual with a disability. The work or task an animal has been trained to provide must be directly related to the individual's disability. Animals whose sole function is to provide comfort or emotional support do not qualify as service animals under the American with Disabilities Act.

"Short stay" - A period of time (~~(spanning one to six)~~) up to twenty-nine days for which a client receives health care services outside of (~~(his or her)~~) their local community and for which (~~(he or she)~~) they may request assistance with meals and lodging.

"Stretcher car or van" - A vehicle that can legally transport a client in a prone or supine position when the client does not require medical attention en route.

"Stretcher trip" - A transportation service that requires a client to be transported in a prone or supine position without medical attention during the trip. This may be by stretcher, board, gurney, or other appropriate device. Medical or safety requirements must be the basis for transporting a client in the prone or supine position.

"Transportation provider" - A person or company under contract with a broker to provide trips to eligible clients.

"Trip" - Transportation one-way from the pickup point to the drop off point by an authorized transportation provider.

"Urgent care" - An unplanned appointment for a covered medical service with verification from an attending physician or facility that the client must be seen that day or the following day.

AMENDATORY SECTION (Amending WSR 16-12-022, filed 5/20/16, effective 6/20/16)

WAC 182-546-5550 Nonemergency transportation—Exclusions and limitations. (1) The following service categories listed in WAC 182-501-0060 are subject to the following exclusions and limitations:

(a) Adult day health (ADH) - Nonemergency transportation for ADH services is not provided through the brokers. ADH providers are responsible for arranging or providing transportation to ADH services.

(b) Ambulance - Nonemergency ambulance transportation is not provided through the brokers except as specified in WAC 182-546-5200 (2) (e).

(c) Emergency department (ED) - When a client is discharged from the ED, brokers may provide transportation to another medicaid-covered service or to the client's residence only.

(d) Hospice services - Nonemergency transportation is not provided through the brokers when the health care service is related to a client's hospice diagnosis. See WAC 182-551-1210.

(e) Medical equipment, durable (DME) - Nonemergency transportation is not provided through the brokers for DME services, except for complex rehabilitation technology (CRT) and DME equipment that needs to be fitted to the client (such as braces/crutches, wheelchairs).

(f) Medical nutrition services - Nonemergency transportation is not provided through the brokers to pick up medical nutrition products.

(g) Medical supplies/equipment, nondurable (MSE) - Nonemergency transportation is not provided through the brokers for MSE services.

(h) The following mental health and substance use disorder services:

(i) Nonemergency transportation brokers generally provide one round trip per day (~~(to or from a mental health service)~~). The broker must request agency approval for additional trips for off-site activities.

(ii) Nonemergency transportation of an involuntarily detained person under the Involuntary Treatment Act (ITA) is not a service provided or authorized by transportation brokers. Involuntary transportation is a service provided by an ambulance or a designated ITA transportation provider. (~~(See WAC 182-546-4000.~~

~~(i) Chemical dependency services~~) (iii) Nonemergency transportation is not provided through the brokers to or from (~~(the following:~~

~~(i) Residential treatment, intensive inpatient, or long-term treatment at certified facilities which are institutes for mental diseases (IMDs), as defined in WAC 182-500-0050;~~

~~(ii) Recovery house; and~~

~~(iii) Information and assistance services which include)~~ information and assistance services which include:

(A) Alcohol and drug information school;

(B) Information and crisis services; and

(C) Emergency service patrol.

(i) Program of all-inclusive care for the elderly (PACE)-nonemergency transportation for clients in the PACE program is not provided through the brokers. The PACE contractor is responsible for transportation to PACE services.

~~(2) ((Transportation may be provided to facilities identified by the agency as non-IMDs, and therefore eligible to receive medicaid funds (refer to the Catalog of Federal Domestic Assistance (CFDA) program number 93.778).~~

~~(3) The state-funded medical care services (MCS) program has a limitation on trips. Nonemergency transportation for mental health services and substance abuse services is not provided through the brokers. The medicaid agency does pay for nonemergency transportation to and from medical services listed in WAC 182-501-0060, excluding mental health services and substance abuse services, and subject to any other limitations in this chapter or other program rules)) Service animals as defined in WAC 182-546-5100 may be transported with clients.~~

~~((4))~~ (3) The following programs do not have a benefit for brokered nonemergency transportation through the agency:

(a) Federal medicare savings and state-funded medicare buy-in programs (see chapter 182-517 WAC);

(b) Family planning services - Nonemergency transportation is not provided for clients that are enrolled only in ~~((TAKE CHARGE OF))~~ family planning only services; and

(c) Alien emergency medical (AEM) - See WAC 182-507-0115.

AMENDATORY SECTION (Amending WSR 15-03-050, filed 1/14/15, effective 2/14/15)

WAC 182-546-5900 Nonemergency transportation—Meals, lodging, escort/guardian. (1) The medicaid agency may pay for meals and lodging for clients who must be transported to health care services outside of the client's local community. The agency's transportation brokers determine when meals and lodging are necessary based on a client's individual need.

(2) Brokers may authorize payment for meals and lodging for up to one calendar month. Extensions beyond the initial calendar month must be prior authorized by the broker on a month-to-month, week-to-week, or as-needed basis.

(3) Brokers may not authorize payment for alcohol, cannabis, or other nonfood items.

(4) Brokers follow the agency's guidelines in determining the reasonable costs of meals and lodging. The agency's guidelines are:

(a) The reasonable cost of lodging for short and extended stays is measured against state per diem rates.

(b) For short stays, the cost of meals ~~((is measured against))~~ may not exceed the state per diem rate.

(c) For extended stays, the reasonable cost of meals is measured against the state's basic food program. The maximum monthly allowable meal cost for extended stays is not to exceed the client's calculated monthly food benefit ~~((or state per diem rates))~~.

~~((4))~~ (5) The agency pays for the transportation of an authorized escort, including meals and lodging, when all of the following apply:

(a) The client is present, except as stated in subsection (5) of this section; and

(b) The broker determines the transportation costs of an escort is necessary based upon the client's age, mental state or capacity, safety requirements, mobility requirements, communication or translation requirements, or cultural issues.

~~((5))~~ (6) The agency may authorize and pay for the transportation of an authorized escort or guardian, with or without the presence of the client, if the broker determines, and documents, that the presence of the authorized escort or guardian is necessary to ensure that the client has access to medically necessary care.

~~((6))~~ (7) Lodging and meals for all out-of-state nonemergency transportation must be prior authorized by the agency. Border areas as defined by WAC 182-501-0175 are considered in-state under this section and subsequent sections.

WAC 182-546-6200 Nonemergency transportation—Reimbursement.

(1) To be reimbursed for trips, meals, or lodging, the requestor must receive prior authorization from the broker at least two business days in advance of the client's travel.

(2) A client must request reimbursement of preauthorized expenditures for trips, meals, or lodging within thirty days after (~~his or her~~) their medical appointment. The broker may consider reimbursement requests beyond thirty days if a client shows good cause as defined in WAC 388-02-0020 for having not requested reimbursement within thirty days.

(3) To be reimbursed for (~~(mileage, fuel, parking, bridge tolls, or ferry fees)~~) transportation-related services, the requestor must provide the broker with legible copies of:

- (a) Itemized receipt(s);
- (b) The operator's valid driver's license;
- (c) Valid vehicle registration; and

(d) Proof of insurance for the vehicle/operator at the time of the trip.

(4) The medicaid agency or the broker may retroactively authorize and reimburse for transportation costs, including meals and lodging when:

(a) A client is approved for a delayed certification period as defined in WAC 182-500-0025, or for a retroactive eligibility period as defined in WAC 182-500-0095, or is retroactively eligible for a medically needy program which requires a spenddown as defined in WAC 182-500-0100;

(b) The transportation costs were not used to meet a client spenddown liability in accordance with WAC 182-519-0110;

(c) The transportation costs for which retroactive reimbursement is requested falls within the period of retroactive eligibility or delayed certification;

(d) The client received medically necessary services that were covered by the client's medical program for the date(s) of service for which retroactive reimbursement is requested; and

(e) The request for retroactive reimbursement is made within sixty days from the date of eligibility notification (award letter), not to exceed eight months from the date(s) of service for which reimbursement is requested.

(5) When transportation cost(s) are retroactively authorized, the reimbursement amount must not exceed the reimbursement amount that would have been authorized prior to the date(s) of service.

(6) To be paid by the broker for nonemergency transportation services:

(a) Ambulance providers must be subcontracted with the broker in accordance with WAC 182-546-5200.

(b) Nonambulance providers must be subcontracted with the broker in accordance with WAC 182-546-5200.

(7) The agency, through its contracted brokers, does not pay for nonemergency transportation when:

(a) The health care service the client is requesting transportation to or from is not a service covered by the client's medical program;

(b) The covered health care service is within three-quarters of a mile from the pick-up point, except when:

(i) The client's documented and verifiable medical condition and personal capabilities demonstrates that the client is not able to walk three-quarters mile distance;

(ii) The trip involves an area that the broker determines is not physically accessible to the client; or

(iii) The trip involves an area that the agency's broker considers to be unsafe for the client, other riders, or the driver.

(c) The client has personal or informal transportation resources that are available and appropriate to the clients' needs;

(d) Fixed-route public transportation service is available to the client within three-quarters of a mile walking distance. Exceptions to this rule may be granted by the transportation broker when the need for more specialized transportation is documented. Examples of such a need may be the client's use of a portable ventilator, a walker, or a quad cane; or

(e) The mode of transport that the client requests is not necessary, suitable, or appropriate to the client's medical condition.