



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: January 07, 2020

TIME: 8:06 AM

WSR 20-03-028

Agency: Health Care Authority

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 19-21-044 ; 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)

182-531-1550, Sterilization physician-related services; other related rules as appropriate.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
February 25, 2020	10:00 AM	Health Care Authority Cherry Street Plaza Sue Crystal Conf 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 26, 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 25, 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) February 14, 2020

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

The agency is amending WAC 182-531-550 to remove coverage of hysteroscopic sterilizations. The Federal Drug Administration restricted the sale and distribution of the Class III contraceptive device used in this procedure.

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? 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:	Jason Crabbe	PO Box 42716, Olympia WA 98504-2716	360-725-9563
Implementation:	Melissa Kundur	PO Box 45506, Olympia WA 98504-5506	360-725-5297
Enforcement:	Melissa Kundur	PO Box 45506, Olympia WA 98504-5506	360-725-5297

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 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: January 7, 2020

Name: Wendy Barcus

Title: HCA Rules Coordinator

Signature:



WAC 182-531-1550 Sterilization physician-related services. (1)

For purposes of this section, sterilization is any medical procedure, treatment, or operation for the purpose of rendering a client permanently incapable of reproducing.

Hysterectomy results in sterilization and is not covered by the medicaid agency solely for that purpose. (See WAC 182-531-0150 and 182-531-0200 for more information about hysterectomies.)

STERILIZATION

(2) The ((~~medicaid~~)) agency covers sterilization when all of the following apply:

(a) The client is at least eighteen years of age at the time an agency-approved consent form is signed;

(b) The client is a mentally competent individual;

(c) The client participates in a medical assistance program (see WAC 182-501-0060);

(d) The client has voluntarily given ((~~informed consent~~)) informed consent; and

(e) The date the client signed a sterilization consent is at least thirty days and not more than one hundred eighty days before the date of the sterilization procedure.

(3) Any medicaid provider who is licensed to do sterilizations within their scope of practice may provide vasectomies and tubal ((~~ligations~~)) sterilizations to any medicaid client. ((~~See subsections (10), (11), and (12) of this section for additional qualifications of providers performing hysteroscopic sterilizations.~~))

(4) The ((~~medicaid~~)) agency requires at least a seventy-two hour waiting period rather than the usual thirty-day waiting period for sterilization in either of the following circumstances:

(a) At the time of a premature delivery when the client gave consent at least thirty days before the expected date of delivery. (The expected date of delivery must be documented on the consent form.)

(b) For emergency abdominal surgery. (The nature of the emergency must be described on the consent form.)

(5) The ((~~medicaid~~)) agency waives the thirty-day consent waiting period for sterilization when the client requests that sterilization be performed at the time of delivery and completes a sterilization consent form. One of the following circumstances must apply:

(a) The client became eligible for ((~~medical assistance~~)) medical assistance during the last month of pregnancy;

(b) The client did not obtain medical care until the last month of pregnancy; or

(c) The client was a substance abuser during pregnancy, but is not using alcohol or illegal drugs at the time of delivery.

(6) The ((~~medicaid~~)) agency does not accept informed consent obtained when the client is:

(a) In labor or childbirth;

(b) In the process of seeking to obtain or obtaining an abortion;

or

(c) Under the influence of alcohol or other substances, including pain medications for labor and delivery, that affects the client's state of awareness.

(7) The ((medicaid)) agency has certain consent requirements that the provider must meet before the agency reimburses sterilization of an institutionalized client or a client with mental incompetence. The agency requires both of the following:

(a) A court order, which includes both a statement that the client is to be sterilized, and the name of the client's legal guardian who will be giving consent for the sterilization; and

(b) A sterilization consent form signed by the legal guardian, sent to the agency at least thirty days before the procedure.

(8) The ((medicaid)) agency reimburses epidural anesthesia in excess of the six-hour limit for deliveries if sterilization procedures are performed in conjunction with or immediately following a delivery.

(a) For reimbursement, anesthesia time for sterilization is added to the time for the delivery when the two procedures are performed during the same operative session.

(b) If the sterilization and delivery are performed during different operative sessions, the anesthesia time is calculated separately.

(9) The ((medicaid)) agency reimburses all attending providers for the sterilization procedure only when the provider submits an agency-approved and complete consent form with the claim for reimbursement. ((See subsections (10), (11), and (12) of this section for additional coverage criteria for hysteroscopic sterilizations.))

(a) The physician must complete and sign the physician statement on the consent form within thirty days of the sterilization procedure.

(b) The agency reimburses attending providers after the procedure is completed.

~~((HYSTEROSCOPIC STERILIZATIONS~~

~~(10) The medicaid agency pays for hysteroscopic sterilizations when the following additional criteria are met:~~

~~(a) A device covered by the agency is used.~~

~~(b) The procedure is predominately performed in a clinical setting, such as a physician's office, without general anesthesia and without the use of a surgical suite; and is covered according to the corresponding agency fee schedule.~~

~~(c) If determining that it is medically necessary to perform the procedure in an inpatient rather than outpatient setting, a provider must submit clinical notes with the claim, documenting the medical necessity.~~

~~(d) The client provides informed consent for the procedure.~~

~~(e) The hysteroscopic sterilization is performed by an approved provider who:~~

~~(i) Has a core provider agreement with the agency;~~

~~(ii) Is nationally board certified in obstetrics and gynecology (OB-GYN);~~

~~(iii) Is privileged at a licensed hospital to do hysteroscopies;~~

~~(iv) Has successfully completed the manufacturer's training for the device covered by the agency;~~

~~(v) Has successfully performed a minimum of twenty hysteroscopies; and~~

~~(vi) Has established screening and follow-up protocols for clients being considered for hysteroscopic sterilization.~~

~~(11) To become approved for hysteroscopic sterilizations, interested providers must send the medicaid agency-approved vendor, identified in the agency's billing instructions, the following:~~

- ~~(a) Documentation of successful completion of the manufacturer's training;~~
 - ~~(b) Documentation demonstrating privilege at a licensed hospital to perform hysteroscopies;~~
 - ~~(c) Documentation attesting to having successfully performed twenty or more hysteroscopies;~~
 - ~~(d) Evidence of valid National Board Certification; and~~
 - ~~(e) Office protocols for screening and follow-up.~~
- ~~(12) The provider will not be paid to perform the hysteroscopic procedure until the medicaid agency sends written approval to the provider.)~~