



# RULE-MAKING ORDER PERMANENT RULE ONLY

## CR-103P (December 2017) (Implements RCW 34.05.360)

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STATE OF WASHINGTON  
FILED

DATE: July 06, 2018

TIME: 1:40 PM

WSR 18-15-010

**Agency:** Health Care Authority

**Effective date of rule:**

**Permanent Rules**

- ☐ 31 days after filing.
- ☒ Other (specify) September 1, 2018 (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

- ☐ Yes ☒ No If Yes, explain:

**Purpose:** The agency is amending WAC 182-551-3000, Private Duty nursing services for clients age seventeen and younger – General, as follows:

- Title renamed to reflect that it contains general information about private duty nursing for clients age seventeen and younger;
- Definition of “private duty nursing” moved to a new section for definitions;
- Information added about receiving services through managed care organizations (MCOs);
- Information added about coverage for services when the client has third-party liability (TPL) coverage; and
- Information regarding client eligibility, provider requirements, application requirements, and authorization moved to new sections.

Changes to WAC 182-551-3000 explain that clients receive private duty nursing services through the Medically Intensive Children’s Program (MICP) and further clarify how services are provided through MCOs and when clients have TPL coverage.

The agency is creating a new WAC 182-551-3050, Private Duty nursing services for clients age seventeen and younger – Definitions, to define private duty nursing terms not previously found in WAC. The agency is creating new sections for client eligibility, provider requirements, application requirements, and authorization (new WACs 182-551-3100 through -3400). The rule changes reorganize the private duty nursing rules within Chapter 182-551 WAC, revise eligibility criteria, and clarify current agency policy.

**Citation of rules affected by this order:**

New: 182-551-3050, 182-551-3100, 182-551-3200, 182-551-3300, 182-551-3400

Repealed:

Amended: 182-551-3000

Suspended:

**Statutory authority for adoption:** RCW 41.05.021, 41.05.160

**Other authority:**

**PERMANENT RULE (Including Expedited Rule Making)**

Adopted under notice filed as WSR 18-02-094 on January 3, 2018 (date).

Describe any changes other than editing from proposed to adopted version:

Proposed/Adopted	WAC Subsection	Reason
<b>Original WAC #182-551-3100(1)</b>		
Proposed	(1) To be eligible for private duty nursing under the medically intensive children's program (MICP), clients must:  (a) Be age seventeen or younger;	The agency rearranged the subsection to be more logical.

	<p>(b) Have informal support by a person who has been trained to provide designated skilled nursing care and is able to perform the care as required;</p> <p>(c) Have prior authorization from the department of social and health services/developmental disabilities administration (DSHS/DDA); and</p> <p>(d) Have exhausted all other funding sources for private duty nursing, according to RCW 74.09.185, prior to accessing these services through the medically intensive children's program (MICP);</p> <p>(e) Meet financial eligibility under subsection (2) of this section;</p> <p>(f) Meet medical eligibility under subsection (3) of this section.</p>	
Adopted	<p>(1) To be eligible for private duty nursing under the medically intensive children's program (MICP), clients must:</p> <p>(a) Be age seventeen or younger;</p> <p>(b) <u>Meet financial eligibility under subsection (2) of this section;</u></p> <p>(c) <u>Meet medical eligibility under subsection (3) of this section;</u></p> <p>(d) Have informal support by a person who has been trained to provide designated skilled nursing care and is able to perform the care as required;</p> <p>(<del>ee</del>) Have prior authorization from the department of social and health services/developmental disabilities administration (DSHS/DDA); and</p> <p>(<del>df</del>) Have exhausted all other funding sources for private duty nursing, according to RCW 74.09.185, prior to accessing these services through the medically intensive children's program (MICP);</p> <p><del>(e) Meet financial eligibility under subsection (2) of this section;</del></p> <p><del>(f) Meet medical eligibility under subsection (3) of this section.</del></p>	
<b>Original WAC #182-551-3200(1)</b>		
Proposed	(1) A home health agency license with the state of Washington to provide private duty nursing;	The agency updated the subsection because the state does not have a home health agency license. Providers receive an in-home services license to provide home health.
Adopted	(1) <del>A home health agency</del> <u>An in-home services</u> license with the state of Washington to provide private duty nursing;	

**Original WAC #182-551-3200(2)**

Proposed	(2) To be financially eligible for private duty nursing, clients must meet medicaid eligibility requirements under the categorically needy program, the medically needy program, or alternative medical program (see WAC 182-501-0060).	The agency corrected the program name.
Adopted	(2) To be financially eligible for private duty nursing, clients must meet medicaid eligibility requirements under the categorically needy program, the medically needy program, or alternative <del>medical</del> <u>benefits plan</u> program (see WAC 182-501-0060).	

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Web site:

Other:

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

**The number of sections adopted at the request of a nongovernmental entity:**

New	_____	Amended	_____	Repealed	_____
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**The number of sections adopted on the agency's own initiative:**

New	_____	Amended	_____	Repealed	_____
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	<u>5</u>	Amended	<u>1</u>	Repealed	_____
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**The number of sections adopted using:**

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	<u>5</u>	Amended	<u>1</u>	Repealed	_____

<b>Date Adopted:</b> July 6, 2018	<b>Signature:</b> 
<b>Name:</b> Wendy Barcus	
<b>Title:</b> HCA Rules Coordinator	

**WAC 182-551-3000 Private duty nursing ((services)) for clients age seventeen ((years of age)) and younger—General.** ((This section applies to private duty nursing services for eligible clients on fee-for-service programs.)) (1) The medically intensive children's program (MICP) provides private duty nursing to clients, either through fee-for-service or an agency-contracted managed care organization (MCO).

(2) The MICP is available to clients age seventeen and younger, whose complex medical needs cannot be managed within the scope of intermittent home health services.

(3) Managed care clients receive private duty nursing services through their ((plans)) agency-contracted MCO. (See chapter ((388-538)) 182-538 WAC). ((1) "Private duty nursing" means four hours or more of continuous skilled nursing services provided in the home to eligible clients with complex medical needs that cannot be managed within the scope of intermittent home health services. Skilled nursing service is the management and administration of the treatment and care of the client, and may include, but is not limited to:

(a) Assessments (e.g., respiratory assessment, patency of airway, vital signs, feeding assessment, seizure activity, hydration, level of consciousness, constant observation for comfort and pain management);

(b) Administration of treatment related to technological dependence (e.g., ventilator, tracheotomy, bilevel positive airway pressure, intravenous (IV) administration of medications and fluids, feeding pumps, nasal stints, central lines);

(c) Monitoring and maintaining parameters/machinery (e.g., oximetry, blood pressure, lab draws, end tidal CO<sub>2</sub>s, ventilator settings, humidification systems, fluid balance, etc.); and

(d) Interventions (e.g., medications, suctioning, IV's, hyperalimentation, enteral feeds, ostomy care, and tracheostomy care).

(2) To be eligible for private duty nursing services, a client must meet all the following:

(a) Be seventeen years of age or younger (see chapter 388-71 WAC for information about private duty nursing services for clients eighteen years of age and older);

(b) Be eligible for categorically needy (CN) or medically needy (MN) scope of care (see WAC 388-501-0060 and 388-501-0065);

(c) Need continuous skilled nursing care that can be provided safely outside an institution; and

(d) Have prior authorization from the department.

(3) The department contracts only with home health agencies licensed by Washington state to provide private duty nursing services and pays a rate established by the department according to current funding levels.

(4) A provider must coordinate with a division of developmental disabilities case manager and request prior authorization by submitting a complete referral to the department, which includes all of the following:

(a) The client's age, medical history, diagnosis, and current prescribed treatment plan, as developed by the individual's physician;

(b) Current nursing care plan that may include copies of current daily nursing notes that describe nursing care activities;

~~(c) An emergency medical plan which includes notification of electric, gas and telephone companies as well as local fire department;~~

~~(d) Psycho-social history/summary which provides the following information:~~

~~(i) Family constellation and current situation;~~

~~(ii) Available personal support systems;~~

~~(iii) Presence of other stresses within and upon the family; and~~

~~(iv) Projected number of nursing hours needed in the home, after discussion with the family or guardian.~~

~~(e) A written request from the client or the client's legally authorized representative for home care.~~

~~(5) The department approves requests for private duty nursing services for eligible clients on a case-by-case basis when:~~

~~(a) The information submitted by the provider is complete;~~

~~(b) The care provided will be based in the client's home;~~

~~(c) Private duty nursing will be provided in the most cost-effective setting;~~

~~(d) An adult family member, guardian, or other designated adult has been trained and is capable of providing the skilled nursing care;~~

~~(e) A registered or licensed practical nurse will provide the care under the direction of a physician; and~~

~~(f) Based on the referral submitted by the provider, the department determines:~~

~~(i) The services are medically necessary for the client because of a complex medical need that requires continuous skilled nursing care which can be provided safely in the client's home;~~

~~(ii) The client requires more nursing care than is available through the home health services program; and~~

~~(iii) The home care plan is safe for the client.~~

~~(6) Upon approval, the department will authorize private duty nursing services up to a maximum of sixteen hours per day except as provided in subsection (7) of this section, restricted to the least costly equally effective amount of care.~~

~~(7) The department may authorize additional hours:~~

~~(a) For a maximum of thirty days if any of the following apply:~~

~~(i) The family or guardian is being trained in care and procedures;~~

~~(ii) There is an acute episode that would otherwise require hospitalization, and the treating physician determines that noninstitutionalized care is still safe for the client;~~

~~(iii) The family or guardian caregiver is ill or temporarily unable to provide care;~~

~~(iv) There is a family emergency; or~~

~~(v) The department determines it is medically necessary.~~

~~(b) After the department evaluates the request according to the provisions of WAC 388-501-0165 and 388-501-0169.~~

~~(8) The department adjusts the number of authorized hours when the client's condition or situation changes.~~

~~(9) Any hours of nursing care in excess of those authorized by the department are the responsibility of the client, family or guardian.) Providers must follow the policies and procedures of the client's MCO, including the authorization of services.~~

(4) For clients with third-party liability (TPL) coverage (see WAC 182-500-0105) that includes private duty nursing, the procedures and policies in subchapter III, titled Private Duty Nursing, apply when determining coverage of additional hours under MICP.

## NEW SECTION

**WAC 182-551-3050 Private duty nursing for clients age seventeen and younger—Definitions.** The following definitions and those found in chapter 182-500 WAC apply to this subchapter.

**"Nursing care consultant"** means a registered nurse employed by the department of social and health services (DSHS) to evaluate clinical eligibility for the medically intensive children's program (MICP) and provide a written assessment summary.

**"Private duty nursing"** means skilled nursing care and services provided in the home for clients with complex medical needs that cannot be managed within the scope of intermittent home health services.

**"Skilled nursing care"** means the medical care provided by a licensed nurse or delegate working under the direction of a physician as described in RCW 18.79.260.

**"Skilled nursing services"** means the management and administration of skilled nursing care requiring the specialized judgment, knowledge, and skills of a registered nurse or licensed practical nurse as described in RCW 18.79.040 and 18.79.060.

## NEW SECTION

**WAC 182-551-3100 Private duty nursing for clients age seventeen and younger—Client eligibility.** (1) To be eligible for private duty nursing under the medically intensive children's program (MICP), clients must:

- (a) Be age seventeen or younger;
- (b) Meet financial eligibility under subsection (2) of this section;
- (c) Meet medical eligibility under subsection (3) of this section;
- (d) Have informal support by a person who has been trained to provide designated skilled nursing care and is able to perform the care as required;
- (e) Have prior authorization from the department of social and health services/developmental disabilities administration (DSHS/DDA); and
- (f) Have exhausted all other funding sources for private duty nursing, according to RCW 74.09.185, prior to accessing these services through the medically intensive children's program (MICP).

(2) To be financially eligible for private duty nursing, clients must meet medicaid eligibility requirements under the categorically needy program, the medically needy program, or alternative benefits plan program (see WAC 182-501-0060).

(3) To be medically eligible for private duty nursing under fee-for-service, clients must be assessed by a DSHS/DDA nursing care consultant and determined medically eligible for MICP.

(4) Clients must meet the following criteria to be medically eligible for MICP:

- (a) Require four or more continuous hours of active skilled nursing care with consecutive tasks at a level that:

- (i) Cannot be delegated at the time of the initial assessment; and
  - (ii) Can be provided safely outside of a hospital in a less restrictive setting.
- (b) Require two or more tasks of complex skilled nursing care such as:
- (i) System assessments, including multistep approaches of systems (e.g., respiratory assessment, airway assessment, vital signs, nutritional and hydration assessment, complex gastrointestinal assessment and management, seizure management requiring intervention, or level of consciousness);
  - (ii) Administration of treatment for complex respiratory issues related to technological dependence requiring multistep approaches on a day-to-day basis (e.g., ventilator tracheostomy);
  - (iii) Assessment of complex respiratory issues and interventions with use of oximetry, titration of oxygen, ventilator settings, humidification systems, fluid balance, or any other cardiopulmonary critical indicators based on medical necessity;
  - (iv) Skilled nursing interventions of intravenous/parenteral administration of multiple medications and nutritional substances on a continuing or intermittent basis with frequent interventions; or
  - (v) Skilled nursing interventions of enteral nutrition and medications requiring multistep approaches daily.

#### NEW SECTION

**WAC 182-551-3200 Private duty nursing for clients age seventeen and younger—Provider requirements.** Providers qualified to deliver private duty nursing under the medically intensive children's program must have the following:

- (1) An in-home services license with the state of Washington to provide private duty nursing;
- (2) A contract with the department of social and health services/developmental disabilities administration (DSHS/DDA) to provide private duty nursing; and
- (3) A signed core provider agreement with the medicaid agency.

#### NEW SECTION

**WAC 182-551-3300 Private duty nursing for clients age seventeen and younger—Application requirements.** Clients requesting private duty nursing through fee-for-service must submit a complete signed medically intensive children's program (MICP) application (DSHS form 15-398). The MICP application must include the following:

- (1) DSHS 14-012 consent form;
- (2) DSHS 14-151 request for DDA eligibility determination form for clients not already determined DDA eligible;
- (3) DSHS 03-387 notice of practices for client medical information;



(4) Appropriate and current medical documentation including medical plan of treatment or plan of care (WAC 246-335-080) with the client's age, medical history, diagnoses, and the parent/guardian contact information including address and phone number;

(5) A list of current treatments or treatment records;

(6) Information about ventilator, bilevel positive airway pressure (BiPAP), or continuous positive airway pressure (CPAP) hours per day or frequency of use;

(7) History and physical from current hospital admission, recent discharge summary, or recent primary physician exam;

(8) A recent interim summary, discharge summary, or clinical summary;

(9) Recent nursing charting within the past five to seven days of hospitalization or in-home nursing documentation;

(10) Current nursing care plan that may include copies of current daily nursing notes that describe nursing care activities;

(11) An emergency medical plan that includes strategies to address loss of power and environmental disasters such as methods to maintain life-saving medical equipment supporting the client. The plan may include notification of electric and gas companies and the local fire department;

(12) A psycho-social history/summary with the following information, as available:

(a) Family arrangement and current situation;

(b) Available personal support systems; and

(c) Presence of other stresses within and upon the family.

(13) Statement that the home care plan is safe for the child and is agreed to by the child's parent or legal guardian;

(14) Information about other family supports such as medicaid, school hours, or hours paid by a third-party insurance or trust; and

(15) For a client with third-party insurance or a managed care organization (MCO), a denial letter from the third-party insurance or MCO that states the private duty nursing will not be covered.

## NEW SECTION

**WAC 182-551-3400 Private duty nursing for clients age seventeen and younger—Authorization.** (1) Private duty nursing when provided through fee-for-service requires prior authorization from the department of social and health services/developmental disabilities administration (DSHS/DDA).

(2) DSHS/DDA authorizes requests for private duty nursing on a case-by-case basis when:

(a) The application requirements under WAC 182-551-3300 are met; and

(b) The nursing care consultant determines the services to be medically necessary, as defined in WAC 182-500-0070 and according to the process in WAC 182-501-0165.

(3) DSHS/DDA authorizes only the number of private duty nursing hours that are medically necessary.

(a) Services are limited to sixteen hours of private duty nursing per day.

(b) DSHS/DDA may adjust the number of authorized hours when the client's condition or situation changes.

(c) Additional hours beyond sixteen per day are subject to review as a limitation extension under WAC 182-501-0169.

(4) Private duty nursing provided to the client in excess of the authorized hours may be the financial responsibility of the client, the client's family, or the client's guardian. Providers must follow the provisions of WAC 182-502-0160.