



# EXPEDITED RULE MAKING

## CR-105 (December 2017) (Implements RCW 34.05.353)

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DATE: May 22, 2019

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WSR 19-11-119

**Agency:** Health Care Authority

**Title of rule and other identifying information:** (describe subject)

WAC 182-535-1050 Dental-related services—Definitions

WAC 182-535-1060 Dental-related services—Client eligibility

WAC 182-535A-0010 Orthodontic services—Definitions

WAC 182-535A-0020 Orthodontic treatment and orthodontic services—Client eligibility

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

The agency is striking all references to dental managed care from these sections. Eligible clients will continue to receive their dental services through fee-for-service.

**Reasons supporting proposal:** Recently signed ESHB 1109 directs the agency to not proceed with a managed care dental option, effective July 1, 2019. The agency previously revised these sections in anticipation of having a managed care dental option, effective July 1, 2019, to comply with SSB 5883 (Laws of 2017). This rulemaking strikes the dental managed care option.

**Statutory authority for adoption:** RCW 41.05.021, 41.05.160, ESHB 1109, 66<sup>th</sup> Legislature, 2019 Regular Session, Sec. 211 and Sec. 1111

**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:

**Name of proponent:** (person or organization) Health Care Authority

Private

Public

Governmental

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Michael Williams	PO Box 42716, Olympia WA 98504-2716	360-725-1348
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**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** N/A

**Expedited Adoption - Which of the following criteria was used by the agency to file this notice:**

- Relates only to internal governmental operations that are not subject to violation by a person;
- Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;
- Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect;
- Content is explicitly and specifically dictated by statute;
- Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or
- Is being amended after a review under RCW 34.05.328.

**Expedited Repeal - Which of the following criteria was used by the agency to file notice:**

- The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;
- The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;
- The rule is no longer necessary because of changed circumstances; or
- Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

**Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4):**

**NOTICE**

**THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO**

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Agency: Health Care Authority

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**AND RECEIVED BY** (date) July 23, 2019

**Date:** May 22, 2019

**Name:** Wendy Barcus

**Title:** HCA Rules Coordinator

**Signature:**



**WAC 182-535-1050 Definitions.** The following definitions and abbreviations and those found in chapter 182-500 WAC apply to this chapter. The medicaid agency also uses dental definitions found in the American Dental Association's Current Dental Terminology (CDT) and the American Medical Association's Physician's Current Procedural Terminology (CPT). Where there is any discrepancy between the CDT or CPT and this section, this section prevails. (CPT is a trademark of the American Medical Association.)

**"Access to baby and child dentistry (ABCD)"** is a program to increase access to dental services for medicaid eligible infants, toddlers, and preschoolers through age five. See WAC 182-535-1245 for specific information.

**"Alternate living facility"** is defined in WAC 182-513-1100.

**"American Dental Association (ADA)"** is a national organization for dental professionals and dental societies.

**"Anterior"** refers to teeth (maxillary and mandibular incisors and canines) and tissue in the front of the mouth. Permanent maxillary anterior teeth include teeth six, seven, eight, nine, ten, and eleven. Permanent mandibular anterior teeth include teeth twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, and twenty-seven. Primary maxillary anterior teeth include teeth C, D, E, F, G, and H. Primary mandibular anterior teeth include teeth M, N, O, P, Q, and R.

**"Asynchronous"** means two or more events not happening at the same time.

**"Behavior management"** means using one additional professional staff, who is employed by the dental provider or clinic and who is not delivering dental treatment to the client, to manage the client's behavior to facilitate dental treatment delivery.

**"By-report"** means a method of reimbursement in which the department determines the amount it will pay for a service when the rate for that service is not included in the agency's published fee schedules. Upon request the provider must submit a "report" that describes the nature, extent, time, effort and/or equipment necessary to deliver the service.

**"Caries"** means carious lesions or tooth decay through the enamel or decay on the root surface.

- **"Incipient caries"** means the beginning stages of caries or decay, or subsurface demineralization.
- **"Rampant caries"** means a sudden onset of widespread caries that affects most of the teeth and penetrates quickly to the dental pulp.

**"Comprehensive oral evaluation"** means a thorough evaluation and documentation of a client's dental and medical history to include extra-oral and intra-oral hard and soft tissues, dental caries, missing or unerupted teeth, restorations, occlusal relationships, periodontal conditions (including periodontal charting), hard and soft tissue anomalies, and oral cancer screening.

**"Conscious sedation"** means a drug-induced depression of consciousness during which a client responds purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, spontaneous ventilation is adequate, and cardiovascular function is maintained.

**"Core buildup"** means the building up of clinical crowns, including pins.

"**Coronal**" means the portion of a tooth that is covered by enamel.

"**Crown**" means a restoration covering or replacing the whole clinical crown of a tooth.

"**Current dental terminology (CDT)**" means a systematic listing of descriptive terms and identifying codes for reporting dental services and procedures performed by dental practitioners. CDT is published by the Council on Dental Benefit Programs of the American Dental Association (ADA).

"**Current procedural terminology (CPT)**" means a systematic listing of descriptive terms and identifying codes for reporting medical services, procedures, and interventions performed by physicians and other practitioners who provide physician-related services. CPT is copyrighted and published annually by the American Medical Association (AMA).

"**Decay**" means a term for caries or carious lesions and means decomposition of tooth structure.

"**Deep sedation**" means a drug-induced depression of consciousness during which a client cannot be easily aroused, ventilatory function may be impaired, but the client responds to repeated or painful stimulation.

"**Dental general anesthesia**" see "**general anesthesia.**"

"**Dentures**" means an artificial replacement for natural teeth and adjacent tissues, and includes complete dentures, immediate dentures, overdentures, and partial dentures.

"**Denturist**" means a person licensed under chapter 18.30 RCW to make, construct, alter, reproduce, or repair a denture.

"**Distant site (location of dental provider)**" means the physical location of the dentist or authorized dental provider providing the dental service to a client through teledentistry.

"**Edentulous**" means lacking teeth.

"**Endodontic**" means the etiology, diagnosis, prevention and treatment of diseases and injuries of the pulp and associated periradicular conditions.

"**EPSDT**" means the agency's early and periodic screening, diagnostic, and treatment program for clients age twenty and younger as described in chapter 182-534 WAC.

"**Extraction**" see "**simple extraction**" and "**surgical extraction.**"

"**Flowable composite**" means a diluted low-viscosity-filled resin-based composite dental restorative material that is used in cervical restorations and small, low stress bearing occlusal restorations.

"**Fluoride varnish, rinse, foam or gel**" means a substance containing dental fluoride which is applied to teeth, not including silver diamine fluoride.

"**General anesthesia**" means a drug-induced loss of consciousness during which a client is not arousable even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Clients may require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

"**Interim therapeutic restoration (ITR)**" means the placement of an adhesive restorative material following caries debridement by hand or other method for the management of early childhood caries. It is not considered a definitive restoration.

"**Limited oral evaluation**" means an evaluation limited to a specific oral health condition or problem. Typically a client receiving this type of evaluation has a dental emergency, such as trauma or acute infection.

**"Limited visual oral assessment"** means an assessment by a dentist or dental hygienist provided in a setting other than a dental office or dental clinic to identify signs of disease and the potential need for referral for diagnosis.

**"Medically necessary"** see WAC 182-500-0070.

**"Oral evaluation"** see **"comprehensive oral evaluation."**

**"Oral hygiene instruction"** means instruction for home oral hygiene care, such as tooth brushing techniques or flossing.

**"Originating site (location of client)"** means the physical location of the Medicaid client as it relates to teledentistry.

**"Partials"** or **"partial dentures"** mean a removable prosthetic appliance that replaces missing teeth on either arch.

**"Periodic oral evaluation"** means an evaluation performed on a patient of record to determine any changes in the client's dental or medical status since a previous comprehensive or periodic evaluation.

**"Periodontal maintenance"** means a procedure performed for clients who have previously been treated for periodontal disease with surgical or nonsurgical treatment. It includes the removal of supragingival and subgingival microorganisms, calculus, and deposits with hand and mechanical instrumentation, an evaluation of periodontal conditions, and a complete periodontal charting as appropriate.

**"Periodontal scaling and root planing"** means a procedure to remove plaque, calculus, microorganisms, and rough cementum and dentin from tooth surfaces. This includes hand and mechanical instrumentation, an evaluation of periodontal conditions, and a complete periodontal charting as appropriate.

**"Posterior"** means the teeth (maxillary and mandibular premolars and molars) and tissue towards the back of the mouth. Permanent maxillary posterior teeth include teeth one, two, three, four, five, twelve, thirteen, fourteen, fifteen, and sixteen. Permanent mandibular posterior teeth include teeth seventeen, eighteen, nineteen, twenty, twenty-one, twenty-eight, twenty-nine, thirty, thirty-one, and thirty-two. Primary maxillary posterior teeth include teeth A, B, I, and J. Primary mandibular posterior teeth include teeth K, L, S, and T.

~~(**"Prepaid ambulatory health plan (PAHP)"** see WAC 182-538-050. For the purpose of this chapter, dental managed care contractors are considered PAHPs.)~~

**"Prophylaxis"** means the dental procedure of scaling and polishing which includes removal of calculus, plaque, and stains from teeth.

**"Proximal"** means the surface of the tooth near or next to the adjacent tooth.

**"Radiograph (X-ray)"** means an image or picture produced on a radiation sensitive film emulsion or digital sensor by exposure to ionizing radiation.

**"Reline"** means to resurface the tissue side of a denture with new base material or soft tissue conditioner in order to achieve a more accurate fit.

**"Root canal"** means the chamber within the root of the tooth that contains the pulp.

**"Root canal therapy"** means the treatment of the pulp and associated periradicular conditions.

**"Root planing"** means a procedure to remove plaque, calculus, microorganisms, and rough cementum and dentin from tooth surfaces. This includes hand and mechanical instrumentation.

**"Scaling"** means a procedure to remove plaque, calculus, and stain deposits from tooth surfaces.

"**Sealant**" means a dental material applied to teeth to prevent dental caries.

"**Simple extraction**" means the extraction of an erupted or exposed tooth to include the removal of tooth structure, minor smoothing of socket bone, and closure, as necessary.

"**Standard of care**" means what reasonable and prudent practitioners would do in the same or similar circumstances.

"**Surgical extraction**" means the extraction of an erupted or impacted tooth requiring removal of bone and/or sectioning of the tooth, and including elevation of mucoperiosteal flap if indicated. This includes related cutting of gingiva and bone, removal of tooth structure, minor smoothing of socket bone, and closure.

"**Synchronous**" means existing or occurring at the same time.

"**Teledentistry**" means the variety of technologies and tactics used to deliver HIPAA-compliant, interactive, real-time audio and video telecommunications (including web-based applications) or store-and-forward technology to deliver covered services within the dental care provider's scope of practice to a client at a site other than the site where the provider is located.

"**Temporomandibular joint dysfunction (TMJ/TMD)**" means an abnormal functioning of the temporomandibular joint or other areas secondary to the dysfunction.

"**Therapeutic pulpotomy**" means the surgical removal of a portion of the pulp (inner soft tissue of a tooth), to retain the healthy remaining pulp.

"**Usual and customary**" means the fee that the provider usually charges nonmedicaid customers for the same service or item. This is the maximum amount that the provider may bill the agency.

AMENDATORY SECTION (Amending WSR 19-09-058, filed 4/15/19, effective 7/1/19)

**WAC 182-535-1060 Client eligibility.** (1) Refer to WAC 182-501-0060 to see which apple health programs include dental-related services in their benefit package.

~~(2) ((Clients whose benefit package includes dental services are assigned a dental managed care plan. If a client is not eligible for a dental managed care plan, they receive services on a fee-for-service basis.~~

~~(3) Clients enrolled in an agency contracted managed care organization (MCO) or prepaid ambulatory health plan (PAHP) must receive their dental services through that MCO or PAHP, except as described under WAC 182-538-095.~~

~~(a) All clients are eligible for dental managed care benefits with the exception of clients receiving apple health benefits under a state-only program.~~

~~(b) Clients eligible for dental managed care on a voluntary basis include:~~

~~(i) American Indian/Alaska native (AI/AN) clients; and~~

~~(ii) Clients who reside in a county that has only one MCO or PAHP.~~

~~(c) See WAC 182-538-060 for more details regarding managed care choice and assignment.~~

~~(4))~~ Managed care clients are eligible under apple health fee-for-service for covered dental-related services not covered by their managed care organization (MCO), subject to the provisions of this chapter and other applicable agency rules.

(3) See WAC 182-507-0115 for rules for clients eligible under the alien emergency medical program.

~~((5))~~ (4) Exception to rule procedures as described in WAC 182-501-0160 are not available for services that are excluded from a client's benefit package.

AMENDATORY SECTION (Amending WSR 19-09-058, filed 4/15/19, effective 7/1/19)

**WAC 182-535-1245 Access to baby and child dentistry (ABCD) program.** The access to baby and child dentistry (ABCD) program is a program established to increase access to dental services for medicaid-eligible clients ages five and younger.

(1) Client eligibility for the ABCD program is as follows:

(a) Clients must be age five and younger. Once enrolled in the ABCD program, eligible clients are covered until their sixth birthday.

(b) Clients eligible under one of the following medical assistance programs are eligible for the ABCD program:

(i) Categorically needy program (CNP);

(ii) Limited casualty program-medically needy program (LCP-MNP);

(iii) Children's health program; ~~((e))~~

(iv) State children's health insurance program (SCHIP); or

(c) ABCD program services for eligible clients enrolled in a managed care organization (MCO) plan are paid through the fee-for-service payment system.

(2) Health care providers and community service programs identify and refer eligible clients to the ABCD program. If enrolled, the client and an adult family member may receive:

(a) Oral health education;

(b) "Anticipatory guidance" (expectations of the client and the client's family members, including the importance of keeping appointments); and

(c) Assistance with transportation, interpreter services, and other issues related to dental services.

(3) Only ABCD-certified dentists and other agency-approved certified providers are paid an enhanced fee for furnishing ABCD program services. ABCD program services include, when appropriate:

(a) Family oral health education. An oral health education visit:

(i) Is limited to one visit per day per family, up to two visits per child in a twelve-month period, per provider or clinic; and

(ii) Must include documentation of all of the following in the client's record:

(A) "Lift the lip" training;

(B) Oral hygiene training;

(C) Risk assessment for early childhood caries;

(D) Dietary counseling;

(E) Discussion of fluoride supplements; and

(F) Documentation in the client's record to record the activities provided and duration of the oral education visit.

(b) Comprehensive oral evaluations as defined in WAC 182-535-1050, once per client, per provider or clinic, as an initial examination. The agency covers an additional comprehensive oral evaluation if the client has not been treated by the same provider or clinic within the past five years;

(c) Periodic oral evaluations as defined in WAC 182-535-1050, once every six months. Six months must elapse between the comprehensive oral evaluation and the first periodic oral evaluation;

(d) Topical application of fluoride varnish;

(e) Amalgam, resin, and glass ionomer restorations on primary teeth, as specified in the agency's current published documents;

(f) Interim therapeutic restorations (ITRs) for primary teeth, only for clients age five and younger. The agency pays an enhanced rate for these restorations to ABCD-certified, ITR-trained dentists as follows:

(i) A one-surface, resin-based composite restoration with a maximum of five teeth per visit; and

(ii) Restorations on a tooth can be done every twelve months through age five, or until the client can be definitively treated for a restoration.

(g) Therapeutic pulpotomy;

(h) Prefabricated stainless steel crowns on primary teeth, as specified in the agency's current published documents;

(i) Resin-based composite crowns on anterior primary teeth; and

(j) Other dental-related services, as specified in the agency's current published documents.

(4) The client's record must show documentation of the ABCD program services provided.



**WAC 182-535A-0010 Definitions.** The following definitions and those found in chapter 182-500 WAC apply to this chapter.

**"Adolescent dentition"** means teeth that are present after the loss of primary teeth and prior to the cessation of growth that affects orthodontic treatment.

**"Appliance placement"** means the application of orthodontic attachments to the teeth for the purpose of correcting dentofacial abnormalities.

**"Cleft"** means an opening or fissure involving the dentition and supporting structures, especially one occurring in utero. These can be:

- (a) Cleft lip;
- (b) Cleft palate (involving the roof of the mouth); or
- (c) Facial clefts (e.g., macrostomia).

**"Comprehensive full orthodontic treatment"** means utilizing fixed orthodontic appliances for treatment of adolescent dentition leading to the improvement of a client's severe handicapping craniofacial dysfunction and/or dentofacial deformity, including anatomical and functional relationships.

**"Craniofacial anomalies"** means abnormalities of the head and face, either congenital or acquired, involving disruption of the dentition and supporting structures.

**"Craniofacial team"** means a cleft palate/maxillofacial team or an American Cleft Palate Association-certified craniofacial team. These teams are responsible for the management (review, evaluation, and approval) of patients with cleft palate craniofacial anomalies to provide integrated management, promote parent-professional partnership, and make appropriate referrals to implement and coordinate treatment plans.

**"Crossbite"** means an abnormal relationship of a tooth or teeth to the opposing tooth or teeth, in which normal buccolingual or labiolingual relations are reversed.

**"Dental dysplasia"** means an abnormality in the development of the teeth.

**"Ectopic eruption"** means a condition in which a tooth erupts in an abnormal position or is fifty percent blocked out of its normal alignment in the dental arch.

**"EPSDT"** means the agency's early and periodic screening, diagnostic, and treatment program for clients twenty years of age and younger as described in chapter 182-534 WAC.

**"Hemifacial microsomia"** means a developmental condition involving the first and second brachial arch. This creates an abnormality of the upper and lower jaw, ear, and associated structures (half or part of the face is smaller in size).

**"Interceptive orthodontic treatment"** means procedures to lessen the severity or future effects of a malformation and to affect or eliminate the cause. Such treatment may occur in the primary or transitional dentition and may include such procedures as the redirection of ectopically erupting teeth, correction of isolated dental crossbite, or recovery of recent minor space loss where overall space is adequate.

**"Limited orthodontic treatment"** means orthodontic treatment with a limited objective, not involving the entire dentition. It may be di-

rected only at the existing problem, or at only one aspect of a larger problem in which a decision is made to defer or forego more comprehensive therapy.

**"Malocclusion"** means improper alignment of biting or chewing surfaces of upper and lower teeth or abnormal relationship of the upper and lower dental arches.

**"Maxillofacial"** means relating to the jaws and face.

**"Occlusion"** means the relation of the upper and lower teeth when in functional contact during jaw movement.

**"Orthodontics"** means treatment involving the use of any appliance, in or out of the mouth, removable or fixed, or any surgical procedure designed to redirect teeth and surrounding tissues.

**"Orthodontist"** means a dentist who specializes in orthodontics, who is a graduate of a postgraduate program in orthodontics that is accredited by the American Dental Association, and who meets the licensure requirements of the department of health.

**"Permanent dentition"** means those teeth that succeed the primary teeth and the additional molars that erupt.

~~(**"Prepaid ambulatory health plan"** or **"PAHP"** see WAC 182-538-050. For the purpose of this chapter, dental managed care contractors are considered PAHPs.)~~

**"Primary dentition"** means teeth that develop and erupt first in order of time and are normally shed and replaced by permanent teeth.

**"Transitional dentition"** means the final phase from primary to permanent dentition, in which most primary teeth have been lost or are in the process of exfoliating and the permanent successors are erupting.

AMENDATORY SECTION (Amending WSR 19-09-058, filed 4/15/19, effective 7/1/19)

**WAC 182-535A-0020 Client eligibility.** (1) Subject to the limitations of this chapter, the medicaid agency covers medically necessary orthodontic treatment and orthodontic-related services for severe handicapping malocclusions, craniofacial anomalies, or cleft lip or palate, for eligible clients through age twenty. Refer to WAC 182-501-0060 to see which Washington apple health programs include orthodontic services in their benefit package.

~~(2) ((Clients enrolled in an agency contracted managed care organization (MCO) or prepaid ambulatory health plan (PAHP) must receive their orthodontic services through that MCO or PAHP, except as described under WAC 182-538-095. Clients whose benefit package includes dental services are assigned a dental managed care plan. If a client is not eligible for a dental managed care plan, they receive services on a fee-for-service basis.~~

~~(a) All clients are eligible for dental managed care benefits with the exception of clients receiving apple health benefits under a state-only program.~~

~~(b) Clients eligible for dental managed care on a voluntary basis include:~~

~~(i) American Indian/Alaska native (AI/AN) clients; and~~

~~(ii) Clients who reside in a county that has only one MCO or PAHP.~~

~~(c) See WAC 182-538-060 for more details regarding managed care choice and assignment.~~

~~(d) If a client receiving orthodontic services through an MCO or PAHP chooses to transfer to another MCO or PAHP or to fee-for-service (FFS) during active orthodontic treatment, the MCO or PAHP that initiated the orthodontic treatment remains responsible for payment until completion of the orthodontic treatment.~~

~~(e) If an FFS client transfers to an MCO or PAHP during active orthodontic treatment, the MCO or PAHP assumes payment responsibility until completion of the orthodontic treatment.~~

~~(3)) Eligible clients may receive the same orthodontic treatment and orthodontic-related services in recognized out-of-state bordering cities on the same basis as if provided in-state. See WAC 182-501-0175.~~

~~((4))~~ (3) Eligible clients may receive the same orthodontic treatment and orthodontic-related services for continued orthodontic treatment when originally rendered by a nonmedicaid or out-of-state provider as follows:

(a) The provider must submit the initial orthodontic case study and treatment plan records with the request for continued treatment.

(b) The agency evaluates the initial orthodontic case study and treatment plan to determine if the client met the agency's orthodontic criteria per WAC 182-535A-0040 (1) through (3).

(c) The agency determines continued treatment duration based on the client's current orthodontic conditions.

(d) The agency does not cover continued treatment if the client's initial condition did not meet the agency's criteria for the initial orthodontic treatment. The agency pays a deband and retainer fee if the client does not meet the initial orthodontic treatment criteria.