# RULE-MAKING ORDER
## EMERGENCY RULE ONLY

## CR-103E (December 2017)
## (Implements RCW 34.05.350 and 34.05.360)

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: November 23, 2020
TIME: 3:47 PM

WSR 20-24-049

**Agency:** Health Care Authority

**Effective date of rule:**

**Emergency Rules**

☒ Immediately upon filing.

☐ Later (specify) _____

**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 replacing the list of covered generic products for the treatment of cough and cold. Under the amended rule, the agency instead covers only those products with a preferred status on the Medicaid preferred drug list (PDL) on the date a prescription is dispensed.

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

New:
Repealed:
Amended: 182-530-2000
Suspended:

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

**Other authority:**

**EMERGENCY RULE**

Under RCW 34.05.350 the agency for good cause finds:

☒ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

☐ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

**Reasons for this finding:** In response to the current public health emergency surrounding the outbreak of the Coronavirus disease (COVID-19), this rulemaking is necessary to immediately allow the agency the ability to make specific products for the treatment of cough and cold covered by simply updating publications, rather than by changing WAC. This flexibility is necessary to ensure that when products are determined to have evidence of efficacy in treating COVID-19 or its symptoms, they are made available to clients as a covered benefit as quickly as possible.

The current emergency rule, filed under WSR 20-16-048, will expire on November 25, 2020. The agency filed a Proposal of Inquiry under WSR 20-15-034 to begin the permanent rule making process. The agency subsequently filed its Proposed Rule Making under WSR 20-23-121, setting a public hearing date of December 22, 2020.

**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 | ____ |

**The number of sections adopted on the agency's own initiative:**

| | | | | | | |
|---|---|---|---|---|---|---|
| | New | ____ | Amended | ____ | Repealed | ____ |

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

| | | | | | | |
|---|---|---|---|---|---|---|
| | New | ____ | Amended | 1 | Repealed | ____ |

**The number of sections adopted using:**

| | | | | | | |
|---|---|---|---|---|---|---|
| Negotiated rule making: | New | ____ | Amended | ____ | Repealed | ____ |
| Pilot rule making: | New | ____ | Amended | ____ | Repealed | ____ |
| Other alternative rule making: | New | ____ | Amended | 1 | Repealed | ____ |

| | |
|---|---|
| **Date Adopted:** November 23, 2020 | **Signature:**  |
| **Name:** Wendy Barcus | |
| **Title:** HCA Rules Coordinator | |

AMENDATORY SECTION (Amending WSR 19-22-016, filed 10/25/19, effective 11/25/19)

**WAC 182-530-2000 Covered—Outpatient drugs, devices, and drug-related supplies.** (1) The medicaid agency covers:

(a) Outpatient drugs, including over-the-counter (OTC) drugs, as defined in WAC 182-530-1050, subject to the limitations and requirements in this chapter, when:

(i) The drug is approved by the Food and Drug Administration (FDA);

(ii) The drug is for a medically accepted indication as defined in WAC 182-530-1050;

(iii) The drug is not excluded from coverage under WAC 182-530-2100;

(iv) The manufacturer has a signed drug rebate agreement with the federal Department of Health and Human Services (DHHS). Exceptions to the drug rebate requirement are described in WAC 182-530-7500; and

(v) The drug is prescribed by a provider with prescriptive authority. Exceptions to the prescription requirement exist for family planning and emergency contraception in (b) of this subsection.

(b) Family planning drugs, devices, and drug-related supplies per chapter 182-532 WAC and as follows:

(i) OTC family planning drugs, devices, and drug-related supplies without a prescription when the agency determines it necessary for client access and safety;

(ii) Family planning drugs that do not meet the federal drug rebate requirement in WAC 182-530-7500 on a case-by-case basis; and

(iii) Contraceptive patches, contraceptive rings, and oral contraceptives, excluding emergency contraception, when dispensed in a one-year supply only, unless:

(A) A smaller supply is directed by the prescriber;

(B) A smaller supply is requested by the client;

(C) The pharmacy does not have adequate stock.

(c) Vitamins, minerals, and enzymes when prescribed for:

(i) Prenatal vitamins, when prescribed and dispensed to pregnant women;

(ii) A medical condition caused by a clinically documented deficiency;

(iii) A United States Preventive Services Task Force recommendation with an A or B rating;

(iv) Fluoride for clients under age twenty-one; or

(v) A clinically documented medical condition that causes vitamin, mineral, or enzyme deficiencies, and the deficiency cannot be treated through other dietary interventions.

(d) OTC drugs, vitamins, and minerals when determined by the agency to be the least costly therapeutic alternative for a medically accepted indication. All covered OTC products determined to be the least costly therapeutic alternatives for medically accepted indications will be included on the agency's published apple health preferred drug list. This subsection does not apply to products prescribed for the treatment of cough or cold symptoms. See this subsection (1)(h) of this section and WAC 182-530-2100 (1)(b)(v) for coverage of products prescribed for the treatment of cough and cold symptoms.

(e) Drug-related devices and drug-related supplies as an outpatient pharmacy benefit when:

(i) Prescribed by a provider with prescribing authority;

(ii) Essential for the administration of a covered drug;

(iii) Not excluded from coverage under WAC 182-530-2100; and

(iv) Determined by the agency that a product covered under chapter 182-543 WAC related to durable medical equipment and supplies should be available at retail pharmacies.

(f) Preservatives, flavoring, or coloring agents, only when used as a suspending agent in a compound.

(g) OTC and prescription drugs to promote tobacco/nicotine cessation.

(h) ((~~The following generic products~~)) For the treatment of cough and cold((~~:~~

~~(i) Dextromethorphan 15 mg/5 ml liquid or syrup;~~

~~(ii) Dextromethorphan/Guaifenesin 10 mg - 100/5 ml liquid or syrup, including sugar-free formulations;~~

~~(iii) Guaifenesin 100 mg/5 ml liquid or syrup;~~

~~(iv) Phenylephrine 10 mg tablets;~~

~~(v) Phenylephrine 2.5 mg/ml liquid or syrup;~~

~~(vi) Pseudoephedrine 30 mg and 60 mg tablets;~~

~~(vii) Pseudoephedrine 15 mg/5 ml liquid or syrup; and~~

~~(viii) Saline 0.65% nasal spray~~)), only those products included with a preferred status on the medicaid preferred drug list (PDL), as described in WAC 182-530-4100, on the date a client's prescription is dispensed.

(2) The agency does not reimburse for any drug, device, or drug-related supply not meeting the coverage requirements under this section.