



RULE-MAKING ORDER EMERGENCY RULE ONLY

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

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STATE OF WASHINGTON
FILED

DATE: December 02, 2020

TIME: 12:03 PM

WSR 21-01-002

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 Health Care Authority (HCA) is amending WAC 182-543-0500 and WAC 182-551-2040 to allow ordering of home health services, including medical supplies, by nonphysician practitioners.

Citation of rules affected by this order:

- New:
- Repealed:
- Amended: 182-543-0500, 182-551-2040
- Suspended:

Statutory authority for adoption: RCW 41.05.021, RCW 41.05.160

Other authority: N/A

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: This rulemaking is in response to the Governor's Proclamation 20-05 declaring a State of Emergency for all counties throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) and the secretary of the federal department of health and human services declaration of a public health emergency related to COVID-19. This emergency rulemaking is necessary to preserve the public health, safety, and general welfare by immediately allowing nonphysician practitioners the ability to order home health services, including medical supplies. This flexibility is necessary to ensure that when products and services 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.

Since the emergency rulemaking filed under WSR 20-16-083, HCA sent a draft to interested external stakeholders and has been working with stakeholders on the proposed rules. HCA anticipates filing the CR-102 by January 2021.

**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 2 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 2 Repealed ____

Date Adopted: December 2, 2020

Name: Wendy Barcus

Title: HCA Rules Coordinator

Signature:



WAC 182-543-0500 General. (1) The federal government considers medical equipment, supplies, and appliances, which the medicaid agency refers to throughout this chapter as medical equipment, services under the medicaid program.

(2) The agency pays for medical equipment, including modifications, accessories, and repairs, according to agency rules and subject to the limitations and requirements in this chapter when the medical equipment is:

(a) Medically necessary, as defined in WAC 182-500-0070;

(b) Authorized, as required within this chapter, chapters 182-501 and 182-502 WAC, and the agency's published billing instructions and provider notices; and

(c) Billed according to this chapter, chapters 182-501 and 182-502 WAC, and the agency's published billing instructions and provider notices.

(3) For the initiation of medical equipment under WAC 182-551-2122, the face-to-face encounter must be related to the primary reason the client requires medical equipment and must occur no later than six months prior to the start of services.

(4) The face-to-face encounter must be conducted by the ordering physician, a nonphysician practitioner as described in WAC 182-500-0075, or the attending acute, or post-acute physician, for beneficiaries admitted to home health immediately after an acute or post-acute stay.

(5) ~~((If a nonphysician practitioner as described in WAC 182-500-0075 (or the attending physician when a client is discharged from an acute hospital stay) performs the face-to-face encounter, the nonphysician practitioner (or attending physician) must communicate the clinical findings of that face-to-face encounter to the ordering physician.))~~ Physicians, advanced registered nurse practitioners (ARNPs), and physician assistants (PAs) may complete the face-to-face encounter. Those clinical findings must be incorporated into a written or electronic document included in the client's medical record.

(6) The agency requires prior authorization for covered medical equipment when the clinical criteria set forth in this chapter are not met, including the criteria associated with the expedited prior authorization process.

(a) The agency evaluates requests requiring prior authorization on a case-by-case basis to determine medical necessity as defined in WAC 182-500-0070, according to the process found in WAC 182-501-0165.

(b) Refer to WAC 182-543-7000, 182-543-7100, 182-543-7200, and 182-543-7300 for specific details regarding authorization.

(7) The agency bases its determination about which medical equipment requires prior authorization (PA) or expedited prior authorization (EPA) on utilization criteria (see WAC 182-543-7100 for PA and WAC 182-543-7300 for EPA). The agency considers all of the following when establishing utilization criteria:

(a) Cost;

(b) The potential for utilization abuse;

(c) A narrow therapeutic indication; and

(d) Safety.

(8) The agency evaluates a request for equipment that does not meet the definition of medical equipment or that is determined not

medically necessary under the provisions of WAC 182-501-0160. When early and periodic screening, diagnosis and treatment (EPSDT) applies, the agency evaluates a noncovered service, equipment, or supply according to the process in WAC 182-501-0165 to determine if it is medically necessary, safe, effective, and not experimental (see WAC 182-543-0100 for EPSDT rules).

(9) The agency may terminate a provider's participation with the agency according to WAC 182-502-0030 and 182-502-0040.

(10) The agency evaluates a request for a service that meets the definition of medical equipment but has been determined to be experimental or investigational, under the provisions of WAC 182-501-0165.

(11) If the agency denies a requested service, the agency notifies the client in writing that the client may request an administrative hearing under chapter 182-526 WAC. (For MCO enrollees, see WAC 182-538-110.)

WAC 182-551-2040 Face-to-face encounter requirements. (1) During the current COVID-19 public health emergency, the face-to-face requirements of this section may be met using telemedicine or telehealth services. See WAC 182-551-2125.

(2) The medicaid agency pays for home health services provided under this chapter only when the face-to-face encounter requirements in this section are met.

~~((2))~~ (3) For initiation of home health services, with the exception of medical equipment under WAC 182-551-2122, the face-to-face encounter must be related to the primary reason the client requires home health services and must occur within ninety days before or within the thirty days after the start of the services.

~~((3))~~ (4) For the initiation of medical equipment under WAC 182-551-2122, the face-to-face encounter must be related to the primary reason the client requires medical equipment and must occur no later than six months prior to the start of services.

~~((4))~~ (5) The face-to-face encounter may be conducted by the ordering physician, a nonphysician practitioner as described in WAC 182-500-0075, or the attending acute, or post-acute physician, for beneficiaries admitted to home health immediately after an acute or post-acute stay.

~~((5) If a nonphysician practitioner as described in WAC 182-500-0075 (or the attending physician when a client is discharged from an acute hospital stay) performs the face-to-face encounter, the nonphysician practitioner (or attending physician) must communicate the clinical findings of that face-to-face encounter to the ordering physician.)~~

(6) Physicians, advanced registered nurse practitioners (ARNPs), and physician assistants (PAs) may complete the face-to-face encounter. Those clinical findings must be incorporated into a written or electronic document included in the client's medical record.

~~((6))~~ (7) For all home health services except medical equipment under WAC 182-551-2122, the physician, ARNP, or PA responsible for ordering the services must:

(a) Document that the face-to-face encounter, which is related to the primary reason the client requires home health services, occurred within the required time frames described in subsection ~~((2))~~ (3) of this section prior to the start of home health services; and

(b) Indicate the practitioner who conducted the encounter, and the date of the encounter.

~~((7))~~ (8) For medical equipment under WAC 182-551-2122, except as provided in (b) of this subsection, an ordering physician, a non-physician practitioner as described in WAC 182-500-0075, except for certified nurse midwives, or the attending physician when a client is discharged from an acute hospital stay, must:

(a) Document that the face-to-face encounter, which is related to the primary reason the client requires home health services, occurred within the required time frames described in subsection ~~((3))~~ (4) of this section prior to the start of home health services; and

(b) Indicate the practitioner who conducted the encounter, and the date of the encounter.

~~((8) The face-to-face encounter may occur through telemedicine. See WAC 182-551-2125.)~~