



# PROPOSED RULE MAKING

## CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Health Care Authority, Washington Apple Health

- Preproposal Statement of Inquiry was filed as WSR 16-03-069; 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).

- Original Notice
- Supplemental Notice to WSR \_\_\_\_\_
- Continuance of WSR \_\_\_\_\_

**Title of rule and other identifying information:**

- WAC 182-546-5000 Nonemergency transportation – General
- WAC 182-546-5100 Nonemergency transportation – Definitions
- WAC 182-546-5200 Nonemergency transportation broker and provider requirements
- WAC 182-546-5300 Nonemergency transportation – Client eligibility
- WAC 182-546-5400 Nonemergency transportation – Client responsibility
- WAC 182-546-5550 Nonemergency transportation – Exclusions and limitations
- WAC 182-546-5700 Nonemergency transportation – Local provider and trips outside client’s local community
- WAC 182-546-6000 Nonemergency transportation – Authorization

**Hearing location:**

Health Care Authority  
Cherry Street Plaza Building; Sue Crystal Conf Rm 106A  
626 - 8<sup>th</sup> Avenue, Olympia WA 98504

Metered public parking is available street side around building. A map is available at:  
[http://www.hca.wa.gov/documents/directions\\_to\\_csp.pdf](http://www.hca.wa.gov/documents/directions_to_csp.pdf)  
or directions can be obtained by calling: (360) 725-1000

Date: **May 10, 2016** Time: **10:00 a.m.**

**Date of intended adoption:** Not sooner than May 11, 2016  
(Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: HCA Rules Coordinator  
Address: PO Box 45504, Olympia WA, 98504-5504  
Delivery: 626 – 8<sup>th</sup> Avenue, Olympia WA 98504  
e-mail [arc@hca.wa.gov](mailto:arc@hca.wa.gov)  
fax (360) 586-9727

by **5:00 pm on May 10, 2016**

**Assistance for persons with disabilities:** Contact Amber Lougheed by May 6, 2016  
e-mail: [amber.lougheed@hca.wa.gov](mailto:amber.lougheed@hca.wa.gov) or (360) 725-1349  
TTY (800) 848-5429 or 711

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

The proposed revisions include changes to broker requirements for transportation requests made by tribes, changes to client responsibility in regards to urgent care requests, changes to limitations on trips when a client is discharged from an emergency department; and clarifies the limitation in providing trips for additional off-site mental health activities.

**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:

**DATE**  
April 5, 2016

**NAME**  
Wendy Barcus

**SIGNATURE**

**TITLE**  
HCA Rules Coordinator

**CODE REVISER USE ONLY**

**OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED**

**DATE: April 05, 2016**

**TIME: 11:10 AM**

**WSR 16-08-104**

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** N/A

**Name of proponent:** Health Care Authority

- Private
- Public
- Governmental

**Name of agency personnel responsible for:**

Name	Office Location	Phone
Drafting..... Katie Pounds	PO Box 42716, Olympia, WA 98504-2716	(360) 725-1346
Implementation.... Stephen Riehl	PO Box 45530, Olympia, WA 98504-5530	(360) 725-1441
Enforcement..... Stephen Riehl	PO Box 45530, Olympia, WA 98504-5530	(360) 725-1441

**Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?**

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone (    )

fax    (    )

e-mail

No. Explain why no statement was prepared.

The agency has determined that the proposed filing does not impose a disproportionate cost impact on small businesses or nonprofits.

**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    (    )

e-mail

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.

AMENDATORY SECTION (Amending WSR 15-03-050, filed 1/14/15, effective 2/14/15)

**WAC 182-546-5000 Nonemergency transportation—General.** (1) The medicaid agency covers nonemergency nonambulance transportation to and from covered health care services, as provided by the Code of Federal Regulations (42 C.F.R. 431.53 and 42 C.F.R. 440.170) subject to the limitations and requirements under WAC 182-546-5000 through 182-546-6200. See WAC 182-546-1000 for nonemergency ground ambulance transportation.

(2) The agency pays for nonemergency transportation for clients covered under state-funded medical programs subject to funding appropriated by the legislature.

(3) Clients may not select the transportation provider or the mode of transportation.

(4) A client's right to freedom of (~~access to health care~~) choice does not require the agency to cover transportation at unusual or exceptional cost in order to meet a client's personal choice of provider.

AMENDATORY SECTION (Amending WSR 15-03-050, filed 1/14/15, effective 2/14/15)

**WAC 182-546-5100 Nonemergency transportation—Definitions.** The following definitions and those found in chapter 182-500 WAC apply to nonemergency medical brokered transportation. Unless otherwise defined in WAC 182-546-5200 through 182-546-6000, medical terms are used as commonly defined within the scope of professional medical practice in the state of Washington.

**"Ambulance"** - See WAC 182-546-0001.

**"Broker"** - An organization or entity contracted with the medicaid agency to arrange nonemergency transportation services for clients.

**"Drop off point"** - The location authorized by the transportation broker for the client's trip to end.

**"Escort"** - A person authorized by the transportation broker to accompany and be transported with a client to a health care service. An escort's transportation may be authorized depending on the client's age, mental state or capacity, safety requirements, mobility skills, communication skills, or cultural issues.

**"Extended stay"** - A period of time spanning seven consecutive days or longer for which a client receives health care services outside of his or her local community and for which he or she may request assistance with meals (~~and/or~~) and lodging.

**"Guardian"** - A person who is legally responsible for a client and who may be required to be present when a client is receiving health care services.

**"Local community"** - The client's city or town of residence or nearest location to residence.

**"Local provider"** - A provider, as defined in WAC 182-500-0085, who delivers covered health care service within the client's local community, and the treatment facility where the services are delivered (~~are also~~) within the client's local community.

**"Lodging and meals"** - Temporary housing and meals ((in support of)) provided during a client's out-of-area medical stay.

**"Mode"** - A method of transportation assistance used by the general public that an individual client can use in a specific situation. Methods that may be considered include, but are not limited to:

- Air transport;
- Bus fares;
- Ferries/water taxis;
- Gas vouchers/gas cards;
- Grouped or shared-ride vehicles;
- Mileage reimbursement;
- Parking;
- Stretcher vans or cars;
- Taxi;
- Tickets;
- Tolls;
- Train;
- Volunteer drivers;
- Walking or other personal conveyance; and
- Wheelchair vans.

**"Noncompliance or noncompliant"** - When a client:

- Fails to appear at the pickup point of the trip at the scheduled pickup time;
- Misuses or abuses agency-paid medical, transportation, or other services;
- Fails to comply with the rules, procedures, or policies of the agency or those of the agency's transportation brokers, the brokers' subcontracted transportation providers, or health care service providers;
- Poses a direct threat to the health or safety of self or others; or
- Engages in violent, seriously disruptive, or illegal conduct.

**"Pickup point"** - The location authorized by the agency's transportation broker for the client's trip to begin.

**"Return trip"** - The return of the client to the client's residence, or another authorized drop-off point, from the location where a covered health care service has occurred.

**"Short stay"** - A period of time spanning one to six days for which a client receives health care services outside of his or her local community and for which he or she may request assistance with meals ((and/or)) and lodging.

**"Stretcher car or van"** - A vehicle that can legally transport a client in a prone or supine position when the client does not require medical attention en route.

**"Stretcher trip"** - A transportation service that requires a client to be transported in a prone or supine position without medical attention during the trip. This may be by stretcher, board, gurney, or other appropriate device. Medical or safety requirements must be the basis for transporting a client in the prone or supine position.

**"Transportation provider"** - ((An individual)) A person or company under contract with a broker((, for the provision of trips)) to provide trips to eligible clients.

**"Trip"** - Transportation one-way from the pickup point to the drop off point by an authorized transportation provider.

**"Urgent care"** - An unplanned appointment for a covered medical service with verification from an attending physician or facility that the client must be seen that day or the following day.

**WAC 182-546-5200 Nonemergency transportation broker and provider requirements.** (1) The medicaid agency requires:

(a) Brokers and subcontracted transportation providers to be licensed, equipped, and operated in accordance with applicable federal, state, and local laws, and the terms specified in their contracts;

(b) Brokers to:

(i) Screen their employees and subcontracted transportation providers and employees prior to hiring or contracting, and on an ongoing basis thereafter, to assure that employees and contractors are not excluded from receiving federal funds as required by 42 U.S.C. 1320a-7 and 42 U.S.C. 1320c-5; and

(ii) Report immediately to the agency any information discovered regarding an employee's or contractor's exclusion from receiving federal funds in accordance with 42 U.S.C. 1320a-7 and 42 U.S.C. 1320c-5.

(c) Drivers and passengers to comply with all applicable federal, state, and local laws and regulations during transport.

(2) Brokers:

(a) Must determine the level of assistance needed by the client (e.g., curb-to-curb, door-to-door, door-through-door, hand-to-hand) and the mode of transportation to be used for each authorized trip;

(b) Must select the lowest cost available mode or alternative that is both accessible to the client and appropriate to the client's medical condition and personal capabilities;

(c) Must have subcontracts with transportation providers in order for the providers to be paid by the broker;

(d) Must provide transportation services comparable to those available to the general public in the local community;

(e) May subcontract with licensed ambulance providers for non-emergency trips in licensed ground ambulance vehicles; and

(f) ~~((May))~~ Must negotiate in good faith a contract with a federally recognized tribe that has all or part of its contract health service delivery area, as established by 42 C.F.R. Sec. 136.22, within the broker's service region, to provide transportation services when requested by that tribe. The contract must comply with federal and state requirements for contracts with tribes. When the agency approves the request of a tribe or a tribal agency to administer or provide transportation services under WAC 182-546-5100 through 182-546-6200, tribal members may obtain their transportation services from the tribe or tribal agency with coordination from and payment through the transportation broker.

(3) If the broker is not open for business and is unavailable to give advance approval for transportation to an urgent care appointment or after a hospital discharge, the subcontracted transportation provider must either:

(a) Provide the transportation in accordance with the broker's after-hours instructions and request a retroactive authorization from the broker within two business days of the transport; or

(b) Deny the transportation, if the requirements of this section cannot be met.

(4) If the subcontracted transportation provider provides transportation as described in subsection (3)(a) of this section, the broker may grant retroactive authorization and must document the reason in the client's trip record.

AMENDATORY SECTION (Amending WSR 14-07-042, filed 3/12/14, effective 4/12/14)

**WAC 182-546-5300 Nonemergency transportation—Client eligibility.** (1) The agency pays for nonemergency transportation for Washington apple health (WAH) clients, including persons enrolled in an agency-contracted managed care organization (MCO), to and from health care services when the health care service(s) meets the requirements in WAC 182-546-5500.

(2) Persons assigned to the patient review and coordination (PRC) program according to WAC 182-501-0135 may be restricted to certain providers.

(a) Brokers may authorize transportation of a PRC client to only those providers to whom the person is assigned or referred by their primary care provider (PCP), or for covered services which do not require referrals.

(b) If a person assigned to PRC chooses to receive service from a provider, pharmacy, ~~((and/or))~~ or hospital that is not in the person's local community, the person's transportation is limited per WAC 182-546-5700.

AMENDATORY SECTION (Amending WSR 15-03-050, filed 1/14/15, effective 2/14/15)

**WAC 182-546-5400 Nonemergency transportation—Client responsibility.** (1) Clients must comply with applicable state, local, and federal laws during transport.

(2) Clients must comply with the rules, procedures and policies of the medicaid agency, brokers, the brokers' subcontracted transportation providers, and health care service providers.

(3) A client who is noncompliant may have limited transportation mode options available.

(4) Clients must request, arrange, and obtain authorization for transportation at least two business days before a health care appointment, except when the request is for an urgent care appointment or a hospital discharge. Requests for trips to urgent care appointments must not be to an emergency department (also known as an emergency room).

AMENDATORY SECTION (Amending WSR 15-03-050, filed 1/14/15, effective 2/14/15)

**WAC 182-546-5550 Nonemergency transportation—Exclusions and limitations.** (1) The following service categories listed in WAC 182-501-0060 are subject to the following exclusions and limitations:

(a) Adult day health (ADH) - Nonemergency transportation for ADH services is not provided through the brokers. ADH providers are responsible for arranging or providing transportation to ADH services.

(b) Ambulance - Nonemergency ambulance transportation is not provided through the brokers except as specified in WAC 182-546-5200 (2)(e).

(c) Emergency department (ED) - When a client is discharged from the ED, brokers may provide transportation to another medicaid-covered service or to the client's residence only.

(d) Hospice services - Nonemergency transportation is not provided through the brokers when the health care service is related to a client's hospice diagnosis. See WAC 182-551-1210.

~~((d))~~ (e) Medical equipment, durable (DME) - Nonemergency transportation is not provided through the brokers for DME services, except for complex rehabilitation technology (CRT) and DME equipment that needs to be fitted to the client.

~~((e))~~ (f) Medical nutrition services - Nonemergency transportation is not provided through the brokers to pick up medical nutrition products.

~~((f))~~ (g) Medical supplies/equipment, nondurable (MSE) - Nonemergency transportation is not provided through the brokers for MSE services.

~~((g))~~ (h) Mental health services:

(i) Nonemergency transportation brokers generally provide one round trip per day to or from a mental health service. ~~((Additional trips for off-site activities, such as a visit to a recreational park, are the responsibility of the provider/facility.))~~ The broker must request agency approval for additional trips for off-site activities.

(ii) Nonemergency transportation of an involuntarily detained person under the Involuntary Treatment Act (ITA) is not a service provided or authorized by transportation brokers. Involuntary transportation is a service provided by an ambulance or a designated ITA transportation provider. See WAC 182-546-4000.

~~((h))~~ (i) Chemical dependency services - Nonemergency transportation is not provided through the brokers to or from the following:

(i) Residential treatment, intensive inpatient, or long-term treatment at certified facilities which are institutes for mental diseases (IMDs) ~~((. Transportation may be provided to these services which are identified by the agency as non-IMDs, and therefore eligible to receive medicaid funds (refer to the catalog of federal domestic assistance (CFDA) program number 93.778))~~, as defined in WAC 182-500-0050;

(ii) Recovery house; and

(iii) Information and assistance services which include:

(A) Alcohol and drug information school;

(B) Information and crisis services; and

(C) Emergency service patrol.

(2) Transportation may be provided to facilities identified by the agency as non-IMDs, and therefore eligible to receive medicaid funds (refer to the Catalog of Federal Domestic Assistance (CFDA) program number 93.778).

(3) The state-funded medical care services (MCS) program has a limitation on trips. Nonemergency transportation for mental health services and substance abuse services is not provided through the brokers. The medicaid agency does pay for nonemergency transportation to and from medical services listed in WAC 182-501-0060, excluding mental health services and substance abuse services, and subject to any other limitations in this chapter or other program rules.

~~((3))~~ (4) The following programs do not have a benefit for brokered nonemergency transportation through the agency:

- (a) Federal medicare savings and state-funded medicare buy-in programs (see chapter 182-517 WAC);
- (b) Family planning services - Nonemergency transportation is not provided for clients that are enrolled only in TAKE CHARGE or family planning only services; and
- (c) Alien emergency medical (AEM) - See WAC 182-507-0115.

AMENDATORY SECTION (Amending WSR 15-03-050, filed 1/14/15, effective 2/14/15)

**WAC 182-546-5700 Nonemergency transportation—Local provider and trips outside client's local community.** (1) A client~~((s))~~ receiving services provided under fee-for-service ~~((and/or))~~ or through a medic-aid agency-contracted managed care organization (MCO) ~~((are))~~ may be transported to a local provider only.

(a) A local provider's medical specialty may vary as long as the provider is capable of providing medically necessary care that is the subject of the appointment or treatment;

(b) ~~A ((provider's acceptance of the agency's clients may determine if the))~~ provider may be considered ~~((as))~~ an available local provider ~~((, along with whether MCO, primary care case management, or third party participation is involved))~~ if:

(i) Providers in the client's local community are not accepting medicaid clients; or

(ii) Providers in the client's local community are not contracted with the client's MCO, primary care case management group, or third-party coverage.

(2) Brokers are responsible for considering and authorizing exceptions. See subsection (3) of this section for exceptions.

(3) A broker may transport a client to a provider outside the client's local community for covered health care services when any of the following apply:

(a) The health care service is not available within the client's local community.

(i) If requested by the broker, the client or the client's provider must provide documentation from the client's primary care provider (PCP), specialist, or other appropriate provider verifying the medical necessity for the client to be served by a health care provider outside of the client's local community.

(ii) If the service is not available in the client's local community, the broker may authorize transportation to the nearest provider where the service may be obtained;

(b) The transportation to a provider outside the client's local community is required for continuity of care.

(i) If requested by the broker, the client or the client's provider must submit documentation from the client's PCP, specialist, or other appropriate provider verifying the existence of ongoing treatment for medically necessary care by the provider and the medical necessity for the client to continue to be served by the health care provider.

(ii) If the broker authorizes transportation to a provider outside the client's local community based on continuity of care, this authorization is for a limited period of time for completion of ongo-

ing care for a specific medical condition. Each transport must be related to the ongoing treatment of the specific condition that requires continuity of care.

(iii) Ongoing treatment of medical conditions that may qualify for transportation based on continuity of care((7)) include, but are not limited to:

- (A) Active cancer treatment;
- (B) Recent transplant (within the last twelve months);
- (C) Scheduled surgery (within the next sixty days);
- (D) Major surgery (within the previous ninety days); or
- (E) Third trimester of pregnancy;

(c) The health care service is paid by a third-party payer who requires or refers the client to a specific provider within their network;

(d) The total cost to the agency, including transportation costs, is lower when the health care service is obtained outside of the client's local community; and

(e) A provider outside the client's local community has been issued a global payment by the agency for services the client will receive, and the broker determines it to be cost effective to provide transportation for the client to complete treatment with this provider.

(4) Brokers determine whether an exception should be granted based on documentation from the client's health care providers and program rules. (~~Brokers may refer requests to transport a client to a provider outside the client's local community for health care services to the agency's medical director or the medical director's designee for review and/or authorization.~~)

(5) When a client or a provider moves to a new community, the existence of a provider-client relationship, independent of other factors, does not constitute a medical need for the broker to authorize and pay for transportation to the previous provider.

(6) The health care service must be provided in the state of Washington or a designated border city, unless the agency specifically authorizes transportation to an out-of-state provider in accordance with WAC 182-546-5800.

(7) If local Washington health providers refuse to see a client due to the client's noncompliance, the agency does not authorize or pay more for nonemergency transportation to a provider outside the client's local community.

(a) In this circumstance, the agency pays for the least costly, most appropriate, mode of transportation from one of the following options:

- (i) Transit bus fare;
- (ii) Commercial bus or train fare;
- (iii) Gas voucher/gas card; or
- (iv) Mileage reimbursement.

(b) The agency's payment, whether fare, tickets, voucher, or mileage reimbursement, is determined using the number of miles from the client's authorized pickup point (e.g., client residence) to the location of the local health care provider who otherwise would have been available if not for the client's noncompliance.

(8) The agency may grant an exception to subsection (7) of this section for a life-sustaining service or as reviewed and authorized by the agency's medical director or designee in accordance with WAC 182-502-0050 and 182-502-0270.

**WAC 182-546-6000 Nonemergency transportation—Authorization.**

(1) The medicaid agency contracts with brokers to authorize or deny requests for transportation services.

(2) (~~Brokers may refer~~) Exceptional requests to transport a client (~~to a provider~~) may be referred to the agency's medical director or designee for ((a)) review (~~or authorization~~).

(3) Nonemergency medical transportation, other than ambulance, must be prior authorized by the broker. See WAC 182-546-5200 (3) and (4) and 182-546-6200(4) for granting retroactive authorization.

(4) The broker mails a written notice of denial to each client who is denied authorization of transportation.

(5) A client who is denied nonemergency transportation under this chapter may request an administrative hearing, if one is available under state and federal law.

(6) If the agency approves a medical service under exception to rule (ETR), the authorization requirements of this section apply to transportation services related to the ETR service.