



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: May 20, 2020

TIME: 11:20 AM

WSR 20-11-079

Agency: Health Care Authority

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 20-06-048 ; 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); or

Proposal is exempt under RCW _____.

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

WAC 182-537-0100 – Purpose

WAC 182-537-0200 – Definitions

WAC 182-537-0350 – Provider qualifications

WAC 182-537-0400 – Covered services

WAC 182-537-0600 – School district requirements for billing and payment

WAC 182-537-0700 – School district documentation requirements

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
June 23, 2020	10:00 AM	In response to the Governor's extended orders for Stay Home, Stay Safe, this public hearing will be held virtually. This will not be an in-person hearing and there is not a physical location available.	You must register for the public hearing at: https://attendee.gotowebinar.com/register/6057562907361355533 After registering, you will receive a confirmation email containing information about joining the webinar

Date of intended adoption: Not sooner than June 24, 2020 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: HCA Rules Coordinator

Address: PO Box 42716, Olympia WA 98504-2716

Email: arc@hca.wa.gov

Fax: (360) 586-9727

Other:

By (date) June 23, 2020

Assistance for persons with disabilities:

Contact Amber Lougheed

Phone: (360) 725-1349

Fax: (360) 586-9727

TTY: Telecommunication Relay Services (TRS): 711

Email: amber.lougheed@hca.wa.gov

Other:

By (date) June 12, 2020

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The agency is amending this chapter to clarify approved place of service for school-based health care services, to add and update definitions, add additional eligible provider types, and remove outdated language.

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?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

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

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

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Michael Williams	PO Box 42716, Olympia WA 98504-2716	(360) 725-1346
Implementation:	Shanna Muirhead	PO Box 45530, Olympia WA 98504-2716	(360) 725-1153
Enforcement:	Shanna Muirhead	PO Box 45530, Olympia WA 98504-2716	(360) 725-1153

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

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:
TTY:
Email:
Other:

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.

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- RCW 34.05.310 (4)(b) (Internal government operations)
- RCW 34.05.310 (4)(c) (Incorporation by reference)
- RCW 34.05.310 (4)(d) (Correct or clarify language)
- RCW 34.05.310 (4)(e) (Dictated by statute)
- RCW 34.05.310 (4)(f) (Set or adjust fees)
- RCW 34.05.310 (4)(g) ((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW ____.

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. The changes to the proposed rules do not impose any costs, and therefore does not impose a more than minor costs on business.

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

Date: May 20, 2020

Name: Wendy Barcus

Title: HCA Rules Coordinator

Signature:



AMENDATORY SECTION (Amending WSR 19-04-095, filed 2/5/19, effective 3/8/19)

WAC 182-537-0100 Purpose. The medicaid agency pays contracted school districts, educational service districts, charter schools, and tribal schools for school-based health care services provided to medicaid-eligible children who require early intervention or special education and related services consistent with Sections 1903(c) and 1905(a) of the Social Security Act. The agency pays school districts through fee-for-service. Covered services must:

(1) Identify, treat, and manage the disabilities of a child who requires early intervention or special education and related services;

(2) Be prescribed or recommended by licensed physicians or other licensed health care providers within their scope of practice under state law;

(3) Be medically necessary;

(4) Be included in the child's current individualized education program (IEP) or individualized family service plan (IFSP); and

(5) Be provided in a school setting, the natural environment, an alternate placement in accordance with the Individuals with Disabilities Education Act (IDEA), or by telemedicine.

AMENDATORY SECTION (Amending WSR 19-04-095, filed 2/5/19, effective 3/8/19)

WAC 182-537-0200 Definitions. The following definitions and those found in chapter 182-500 WAC apply to this chapter:

"Agency" - See WAC 182-500-0010.

"Assessment" - For the purposes of this chapter, an assessment is made-up of medically necessary tests given to an individual child by a licensed health care provider to evaluate whether a child with a disability is in need of early intervention services or special education and related services. Assessments are a part of the individualized education program (IEP) and individualized family service plan (IFSP) evaluation and reevaluation processes.

"Charter school" - A public school governed by a charter school board and operated according to the terms of the charter school contract. Charter schools are open to all students, do not charge tuition, and do not have special entrance requirements.

"Child with a disability" - For purposes of this chapter, a child with a disability is a child evaluated and determined to need early intervention services or special education and related services because of a disability in one or more of the following eligibility categories:

- Autism;
- Deaf-blindness;
- Developmental delay for children ages three through nine, with an adverse educational impact, the results of which require special education and related direct services;
- Hearing loss (including deafness);
- Intellectual disability;
- Multiple disabilities;
- Orthopedic impairment;

- Other health impairment;
- Serious emotional disturbance (emotional behavioral disturbance);
- Specific learning disability;
- Speech or language impairment;
- Traumatic brain injury; and
- Visual impairment (including blindness).

"Core provider agreement" - See WAC 182-500-0020.

"Early intervention services" - Means developmental services provided to children ages birth through two. For the purposes of this chapter, early intervention services include:

- Audiology services;
- Health services;
- Nursing services;
- Occupational therapy;
- Physical therapy;
- Psychological services; and
- Speech-language pathology.

"Educational service district" - A regional agency which provides cooperative and informal services to local school districts within defined regions of the state.

"Electronic signature" - See WAC 182-500-0030.

"Evaluation" - Procedures used to determine whether a child has a disability, and the nature and extent of the early intervention or special education and related services needed. (See WAC 392-172A-01070 and 34 C.F.R. Sec. 303.321.)

"Fee-for-service" - See WAC 182-500-0035.

"Handwritten signature" - A scripted name or legal mark of an individual on a document to signify knowledge, approval, acceptance, or responsibility of the document.

"Health care-related services" - For the purposes of this chapter, means developmental, corrective, and other supportive services required to assist a student ages three through twenty eligible for special education and include:

- Audiology;
- Counseling;
- School health services and school nurse services;
- Occupational therapy;
- Physical therapy;
- Psychological assessments and services; and
- Speech-language therapy.

"Individualized education program (IEP)" - A written educational program for a child who is age three through twenty-one and eligible for special education. An IEP is developed, reviewed and revised according to WAC 392-172A-03090 through 392-172A-03115.

"Individualized family service plan (IFSP)" - A plan for providing early intervention services to a child birth through age two, with a disability or developmental delay and the child's family. The IFSP:

- Is based on the evaluation and assessment described in 34 C.F.R. Sec. 303.321;
- Includes the content specified in 34 C.F.R. Sec. 303.344; and
- Is developed under the IFSP procedures in 34 C.F.R. Secs. 303.342, 303.343, and 303.345.

~~(**"Interagency agreement"** - Is a contract that describes and defines the relationship between the agency, the school-based health care services program, and the school district.)~~

"Medically necessary" - See WAC 182-500-0070.

"National provider identifier (NPI)" - See WAC 182-500-0075.

"Reevaluation" - Procedures used to determine whether a child continues to need early intervention services or special education and related services. (See WAC 392-172A-03015 and 34 C.F.R. Secs. 303.342 and 303.343.)

"Related services" - See WAC 392-172A-01155.

"School-based health care services contract" - A contract that describes and defines the relationship between the agency, the school-based health care services program, and the school district, ESD, charter, or tribal school.

"School-based health care services program" or "SBHS" - Is an agency-administered program that pays contracted school districts, educational service districts (ESDs), charter schools, and tribal schools for providing early intervention services or special education health-related services to children ages birth through twenty who have an IEP or IFSP. (~~Services must be provided by department of health (DOH)-licensed providers who are enrolled under the school district's ProviderOne account.~~)

"School district" - A group of schools administered by a particular authority within defined geographical division.

"Signature log" - A typed list that verifies a licensed provider's identity by associating each provider's signature with their name, handwritten initials, credentials, license and national provider identifier (NPI).

"Special education" - See WAC 392-172A-01175.

"Supervision" - Means supervision provided by a licensed health care provider either directly or indirectly to assist the supervisee in the administration of early intervention or health care-related services outlined in the IEP or IFSP.

"Telemedicine" - See WAC 182-531-1730.

AMENDATORY SECTION (Amending WSR 19-04-095, filed 2/5/19, effective 3/8/19)

WAC 182-537-0350 Provider qualifications. (1) School-based health care services (SBHS) must be delivered by or under the supervision of health care providers who are enrolled with the medicaid agency and who meet state licensure requirements, including active, unrestricted department of health (DOH) licensure. The following people may provide SBHS:

(a) Licensed audiologists (~~(who meet the requirements described in chapters 246-828 WAC and 18.35 RCW)~~);

(b) Licensed ((advanced)) social workers (~~((LiACSW) who meet the requirements described in chapters 246-809 WAC and 18.225 RCW;~~

~~(c) Licensed independent clinical social workers (LiCSW) who meet the requirements described in chapters 246-809 WAC and 18.225 RCW;~~

~~(d))~~;

(c) Licensed mental health counselors (LMHC) (~~(who meet the requirements described in chapters 246-809 WAC and 18.225 RCW;~~

~~(e))~~;

(d) Licensed mental health counselor associates (LMHCA) (~~(who meet the requirements described in chapters 246-809 WAC and 18.225 RCW and are under the direction and supervision of a qualified LiACSW, LiCSW, or LMHC;~~

~~(f) Licensed registered nurses (RN) who meet the requirements described in chapters 246-840 WAC and 18.79 RCW) practicing under the supervision of a licensed mental health provider;~~

~~(e) Advanced registered nurse practitioners (ARNP);~~

~~(f) Registered nurses (RN);~~

~~(g) Licensed practical nurses (LPN) ((who meet the requirements described in chapters 246-840 WAC and 18.79 RCW and are)) practicing under the ((direction and)) supervision of ((a)) an ARNP or licensed RN;~~

~~(h) ((Nonlicensed school employees who are delegated certain limited health care tasks by an RN and are supervised according to professional practice standards in RCW 18.79.260, 18.79.290, and 28A.210.275;~~

~~(i)) Licensed occupational therapists (OT) ((who meet the requirements described in chapters 246-847 WAC and 18.59 RCW;~~

~~(j))~~;

~~(i) Licensed occupational therapist assistants (OTA) ((who meet the requirements described in chapters 246-847 WAC and 18.59 RCW and are under the direction and)) practicing under the supervision of a licensed OT;~~

~~((k)) (j) Licensed physical therapists (PT) ((who meet the requirements described in chapters 246-915 WAC and 18.74 RCW;~~

~~(l))~~;

~~(k) Licensed physical therapist assistants (PTA) ((who meet the requirements described in chapters 246-915 WAC and 18.74 RCW and are)) practicing under the ((direction and)) supervision of a licensed PT;~~

~~((m)) (l) Licensed psychologists ((who meet the requirements described in chapters 246-924 WAC and 18.83 RCW;~~

~~(n))~~;

~~(m) Licensed speech-language pathologists (SLP) ((who meet the requirements described in chapters 246-828 WAC and 18.35 RCW; and~~

~~(o))~~;

~~(n) Speech-language pathology assistants (SLPA) ((who meet the requirements described in chapters 246-828 WAC and 18.35 RCW and who are)) practicing under the ((direction and)) supervision of a licensed SLP;~~

~~(o) Audiologist and speech language pathologist interim permit holders practicing under the supervision of a licensed audiologist or SLP; and~~

~~(p) Nonlicensed people providing services under the supervision of a licensed provider.~~

~~(2) For services provided under the supervision of a ((PT, OT, SLP, nurse, counselor, or social worker)) licensed provider, the ((supervising)) provider must:~~

~~(a) Ensure the child receives quality ((therapy)) services by providing supervision in accordance with professional practice standards; and~~

~~(b) ((Approve)) Review and cosign all treatment notes written by the supervisee before submitting claims for payment.~~

~~(3) The school district must ensure providers meet the professional licensing requirements described in the agency's SBHS billing guide and in this chapter.~~

~~((4) The licensing exemptions found in the following regulations do not apply to federal medicaid reimbursement:~~

~~(a) Counseling under RCW 18.225.030;~~

~~(b) Psychology under RCW 18.83.200;~~

~~(c) Social work under RCW 18.320.010; and~~

~~(d) Speech therapy under RCW 18.35.195.~~

~~(5) People not specifically listed in subsection (1) of this section may not participate in the SBHS program including, but not limited to:~~

~~(a) Interim permit holders;~~

~~(b) Limited permit holders; and~~

~~(c) People completing education required for DOH licensure.)~~

AMENDATORY SECTION (Amending WSR 19-04-095, filed 2/5/19, effective 3/8/19)

WAC 182-537-0400 Covered services. ((All services covered under this section may be provided through telemedicine as described in WAC 182-531-1730 and in the agency's school-based health care services (SBHS) billing guide.)) Covered school-based health care (SBHS) services include:

(1) Evaluations when the child is determined to have a disability, and is in need of early intervention services or special education and health care-related services that result in an individualized education program (IEP) or individualized family service plan (IFSP);

(2) Health care-related services authorized in an IEP or IFSP limited to:

(a) Audiology;

~~(b) ((Counseling;~~

~~(e-))~~ School health services and school nursing services;

~~((d))~~ (c) Occupational therapy;

~~((e))~~ (d) Physical therapy;

~~((f) Psychological assessments and services; and~~

~~(g))~~ (e) Mental health services; and

(f) Speech-language therapy.

(3) Reevaluations, to determine whether a child continues to need early intervention services or special education and health care-related services.

AMENDATORY SECTION (Amending WSR 19-04-095, filed 2/5/19, effective 3/8/19)

WAC 182-537-0600 School district requirements for billing and payment. To receive payment from the medicaid agency for providing school-based health care services (SBHS) to eligible children, a school district must:

(1) Enroll as a billing provider in ProviderOne and have a current, signed core provider agreement (CPA) with the agency.

(2) Have a current, signed, and executed ~~((interagency agreement))~~ SBHS contract with the agency.

(3) Meet the applicable requirements in chapter 182-502 WAC.

(4) Comply with the applicable requirements in the agency's current, published ProviderOne billing and resource guide.

(5) Bill according to the agency's current SBHS billing guide and the SBHS fee schedule.

(6) Comply with the intergovernmental transfer (IGT) process. The school district must provide its local match to the agency within one hundred twenty days of the invoice date.

(a) If local match is not received within one hundred twenty days of the invoice date, the agency will deny claims.

(b) School districts may resubmit denied claims within twenty-four months from the date of service under WAC 182-502-0150.

(7) Provide only early intervention or health care-related services identified through a current individualized education program (IEP) or individualized family service plan (IFSP).

(8) Use only licensed health care providers or nonlicensed people practicing under the supervision of a licensed provider under WAC 182-537-0350.

(9) Enroll licensed health care providers as servicing providers under the school district's ProviderOne account, and ensure providers have their own national provider identifier (NPI) number.

(10) Meet documentation requirements described in WAC 182-537-0700.

AMENDATORY SECTION (Amending WSR 19-04-095, filed 2/5/19, effective 3/8/19)

WAC 182-537-0700 School district documentation requirements.

(1) Providers must document all school-based health care services as required in this section and the medicaid agency's school-based health care services (SBHS) billing guide.

(2) Documentation to justify billed claims must be maintained for at least six years from the date of service.

(3) Records for each student must include, but are not limited to:

(a) A referral or prescription for services by a physician or other licensed health care provider within their scope of practice;

(b) Assessment reports;

(c) Evaluation and reevaluation reports;

(d) Individualized education program (IEP) or individualized family service plan (IFSP);

(e) Attendance records; and

(f) Treatment notes. Treatment notes must include the:

(i) Child's name;

(ii) Child's ProviderOne client ID;

(iii) Child's date of birth;

(iv) Date of service, and for each date of service:

(A) Time-in;

(B) Time-out;

(C) A procedure code for and description of each service provided;

(D) The child's progress related to each service;

(E) Whether the occupational therapy, speech-language therapy, physical therapy or counseling service described in the note was individual or group therapy;

(F) The licensed provider's printed name, handwritten or electronic signature, and title; and

(G) Assistants and nonlicensed people, as defined in WAC 182-537-0350, who provide early intervention or health care-related

services under supervision, must have (~~(their supervising)~~) a licensed provider review and cosign all treatment notes (~~(in accordance with the supervisory requirements for the provider type)~~).

(4) The agency accepts electronic records and signatures. Maintaining the records in an electronic format is acceptable only if the original records are available to the agency for program integrity activities for up to six years after the date of service. Each school district is responsible for determining what standards are consistent with state and federal electronic record and signature requirements.

(5) For a signature to be valid, it must be handwritten or electronic. Signature by stamp is acceptable only if the provider is unable to sign by hand due to a physical disability.

(6) School districts must maintain a signature log to support the provider's signature identity.

(7) The signature log must include the provider's:

- (a) Printed name;
- (b) Handwritten signature;
- (c) Initials;
- (d) Credentials;
- (e) License number; and
- (f) National provider identifier (NPI).

(8) Each school district must establish policies and procedures to ensure complete, accurate, and authentic records. These policies and procedures must include:

(a) Security provisions to prevent the use of an electronic signature by anyone other than the licensed provider to whom the electronic signature belongs;

(b) Procedures that correspond to recognized standards and laws and protect against modifications;

(c) Protection of the privacy and integrity of the documentation;

(d) A list of which documents will be maintained and signed electronically; and

(e) Verification of the signer's identity at the time the signature was generated.