



PROPOSED RULE MAKING

CR-102 (July 2022)
(Implements RCW 34.05.320)
Do **NOT** use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: September 27, 2023

TIME: 4:42 PM

WSR 23-20-047

Agency: Health Care Authority

☒ **Original Notice**

☐ **Supplemental Notice to WSR** _____

☐ **Continuance of WSR** _____

☒ **Preproposal Statement of Inquiry was filed as WSR 23-16-097 and 23-07-015 ; 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) 182-531-0150 Noncovered physician-related and health care professional services – General and administrative and 182-531-0950 Office and other outpatient physician-related services.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
November 7, 2023	10:00 AM	The Health Care Authority holds public hearings virtually without a physical meeting place.	To attend the virtual public hearing, you must register in advance: https://us02web.zoom.us/webinar/register/WN_EICFeDr8Q0ap3784rr7LVQ If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of intended adoption: November 8, 2023 (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) November 7, 2023, by 11:59 PM

Assistance for persons with disabilities:

Contact Johanna Larson

Phone: 360-725-1349

Fax: 360-586-9727

TTY: Telecommunication Relay Services (TRS): 711

Email: Johanna.larson@hca.wa.gov

Other:

By (date) October 27, 2023

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The agency is amending these rules to align with Section 11405 of the Inflation Reduction Act of 2022 (Pub. L. 117-169), which requires states to cover approved adult vaccines recommended by the Advisory Committee on Immunization Practices (ACIP). The agency is also making revisions to add clarity and provide more detail on program requirements for how fee-for-service drugs must be billed to HCA for providers subject to the 340B program requirements.

Reasons supporting proposal: See purpose above.

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 checked="" type="checkbox"/> Yes	<input 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: Pub. L. 117-169			
Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: N/A			
Type of proponent: <input type="checkbox"/> Private <input type="checkbox"/> Public <input checked="" type="checkbox"/> Governmental			
Name of proponent: (person or organization) Health Care Authority			
Name of agency personnel responsible for:			
	Name	Office Location	Phone
Drafting:	Melinda Froud	PO Box 42716, Olympia, WA 98504-2716	360-725-1408
Implementation:	Korrina Dalke	PO Box 45506, Olympia, WA 98504-5506	360-725-2005
Enforcement:	Korrina Dalke	PO Box 45506, Olympia, WA 98504-5506	360-725-2005
Is a school district fiscal impact statement required under RCW 28A.305.135?			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If yes, insert statement here: None			
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?			
<input type="checkbox"/> Yes: A preliminary cost-benefit analysis may be obtained by contacting:			
Name:			
Address:			
Phone:			
Fax:			
TTY:			
Email:			
Other:			
<input checked="" type="checkbox"/> 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 and Small Business Economic Impact Statement			
Note: The Governor's Office for Regulatory Innovation and Assistance (ORIA) provides support in completing this part.			
(1) Identification of exemptions:			
This rule proposal, or portions of the proposal, may be exempt from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). For additional information on exemptions, consult the exemption guide published by ORIA . Please check the box for any applicable exemption(s):			
<input checked="" type="checkbox"/> 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: The Inflation Reduction Act of 2022, Pub. L.117-169; failure to align with the requirement to cover ACIP recommended vaccines may result in the loss of the agency's federal Medicaid funding.			
<input type="checkbox"/> 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.			
<input type="checkbox"/> 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:
- | | |
|---|--|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> 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 19.85.025\(4\)](#) (does not affect small businesses).
- ☐ This rule proposal, or portions of the proposal, is exempt under RCW ____.
- Explanation of how the above exemption(s) applies to the proposed rule:

(2) Scope of exemptions: *Check one.*

- ☐ The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.
- ☒ The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)): Revisions related to fee-for-service drug billing are for clarification and are not exempt under section 1.
- ☐ The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of 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 minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. The revised rules do not impose any costs on businesses.
- ☐ Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact 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: September 27, 2023

Name: Wendy Barcus

Title: HCA Rules Coordinator

Signature:



WAC 182-531-0150 Noncovered physician-related and health care professional services—General and administrative. (1) The medicaid agency evaluates a request for noncovered services in this chapter under WAC 182-501-0160. In addition to noncovered services found in WAC 182-501-0070, except as provided in subsection (2) of this section, the agency does not cover:

- (a) Acupuncture, massage, or massage therapy;
- (b) Any service specifically excluded by statute;
- (c) Care, testing, or treatment of infertility or sexual dysfunction. This includes procedures for donor ovum, donor sperm, gestational carrier, and reversal of vasectomy or tubal ligation;
- (d) Hysterectomy performed solely for the purpose of sterilization;
- (e) Cosmetic treatment or surgery, except as provided in WAC 182-531-0100 (4) (x);
- (f) Experimental or investigational services, procedures, treatments, devices, drugs, or application of associated services, except when the individual factors of an individual client's condition justify a determination of medical necessity under WAC 182-501-0165;
- (g) Hair transplantation;
- (h) Marital counseling or sex therapy;
- (i) More costly services when the medicaid agency determines that less costly, equally effective services are available;
- (j) Vision-related services as follows:
 - (i) Services for cosmetic purposes only;
 - (ii) Group vision screening for eyeglasses; and
 - (iii) Refractive surgery of any type that changes the eye's refractive error. The intent of the refractive surgery procedure is to reduce or eliminate the need for eyeglass or contact lens correction. This refractive surgery does not include intraocular lens implantation following cataract surgery((-));
- (k) Payment for body parts, including organs, tissues, bones and blood, except as allowed in WAC 182-531-1750;
- (l) Physician-supplied medication, except those drugs which the client cannot self-administer and therefore are administered by the physician in the physician's office;
- (m) Physical examinations or routine checkups, except as provided in WAC 182-531-0100;
- (n) Foot care, unless the client meets criteria and conditions outlined in WAC 182-531-1300, as follows:
 - (i) Routine foot care including, but not limited to:
 - (A) Treatment of tinea pedis;
 - (B) Cutting or removing warts, corns and calluses; and
 - (C) Trimming, cutting, clipping, or debriding of nails.
 - (ii) Nonroutine foot care including, but not limited to, treatment of:
 - (A) Flat feet;
 - (B) High arches (cavus foot);
 - (C) Onychomycosis;
 - (D) Bunions and tailor's bunion (hallux valgus);
 - (E) Hallux malleus;
 - (F) Equinus deformity of foot, acquired;

- (G) Cavovarus deformity, acquired;
- (H) Adult acquired flatfoot (metatarsus adductus or pes planus);
- (I) Hallux limitus.
- (iii) Any other service performed in the absence of localized illness, injury, or symptoms involving the foot;
- (o) Except as provided in WAC 182-531-1600, weight reduction and control services, procedures, treatments, devices, drugs, products, gym memberships, equipment for the purpose of weight reduction, or the application of associated services;
- (p) Nonmedical equipment;
- (q) Nonemergent admissions and associated services to out-of-state hospitals or noncontracted hospitals in contract areas; and
- (r) ~~((Vaccines recommended or required for the sole purpose of international travel. This does not include routine vaccines administered according to current centers for disease control (CDC) advisory committee on immunization practices (ACIP) immunization schedule for adults and children in the United States; and~~
- ~~(s))~~ Early elective deliveries as defined in WAC 182-500-0030.
- (2) The medicaid agency covers excluded services listed in (1) of this subsection if those services are mandated under and provided to a client who is eligible for one of the following:
 - (a) The EPSDT program;
 - (b) A Washington apple health program for qualified **medicare** beneficiaries (QMBs); or
 - (c) A waiver program.

AMENDATORY SECTION (Amending WSR 17-21-040, filed 10/12/17, effective 11/12/17)

WAC 182-531-0950 Office and other outpatient physician-related services. (1) The medicaid agency pays eligible providers for the following:

- (a) Two calls per month for routine medical conditions for a client residing in a nursing facility; and
- (b) One call per noninstitutionalized client, per day, for an individual physician, except for valid call-backs to the emergency room per WAC 182-531-0500.
- (2) The provider must provide justification based on medical necessity at the time of billing for visits in excess of subsection (1) of this section and follow the requirements in WAC 182-501-0169.
- (3) See the agency's physician-related services/health care professional services billing instructions for procedures that are included in the office call and that cannot be billed separately.
- (4) Using selected diagnosis codes, the agency reimburses the provider at the appropriate level of physician office call for history and physical procedures in conjunction with dental surgery services performed in an outpatient setting.
- (5) The agency may reimburse providers for injection procedures and/or injectable drug products only when:
 - (a) The injectable drug is administered during an office visit; and
 - (b) The injectable drug used is from office stock and which was purchased by the provider from a pharmacy, drug manufacturer, or drug wholesaler.

(6) The agency does not reimburse a prescribing provider for a drug when a pharmacist dispenses the drug.

(7) The agency does not reimburse the prescribing provider for an immunization when the immunization material is received from the department of health; the agency does reimburse an administrative fee.

(8) The agency reimburses immunizations as follows:

(a) For immunizations that are not part of the vaccines for children program through the department of health, the agency reimburses for the immunization:

(i) At the medicare Part B drug file price; or

(ii) When a medicare Part B price is not available, the agency uses the ~~((point-of-sale))~~ actual acquisition cost ~~((POS))~~ AAC) rate effective July 1st of each year; or

(iii) Invoice cost.

(b) The agency reimburses a separate administration fee for these immunizations.

(c) Covered immunizations are listed in the professional administered drugs ~~((and physician related/professional services))~~ fee schedule~~((s))~~.

~~((d) Refer to WAC 182-531-0150 (1)(r) for vaccines recommended or required for the sole purpose of international travel.))~~

(9) The agency reimburses therapeutic and diagnostic injections subject to certain limitations as follows:

(a) The agency does not pay separately for the administration of intra-arterial and intravenous therapeutic or diagnostic injections provided in conjunction with intravenous infusion therapy services. The agency does pay separately for the administration of these injections when they are provided on the same day as an E&M service. The agency does not pay separately an administrative fee for injectables when both E&M and infusion therapy services are provided on the same day. The agency reimburses separately for the drug(s).

(b) The agency does not pay separately for subcutaneous or intramuscular administration of antibiotic injections provided on the same day as an E&M service. If the injection is the only service provided, the agency pays an administrative fee. The agency reimburses separately for the drug.

(c) The agency reimburses injectable drugs at actual acquisition cost. The provider must document the name, strength, and dosage of the drug and retain that information in the client's file. The provider must provide an invoice when requested by the agency. This subsection does not apply to drugs used for chemotherapy; see subsection (11) in this section for chemotherapy drugs.

(d) The provider must submit a manufacturer's invoice to document the name, strength, and dosage on the claim form when billing the agency for the following drugs:

(i) Classified drugs where the billed charge to the agency is over ~~((one thousand, one hundred dollars))~~ \$1,100; and

(ii) Unclassified drugs where the billed charge to the agency is over ~~((one hundred dollars))~~ \$100. This does not apply to unclassified antineoplastic drugs.

(10) The agency reimburses allergen immunotherapy only as follows:

(a) Antigen/antigen preparation codes are reimbursed per dose.

(b) When a single client is expected to use all the doses in a multiple dose vial, the provider may bill the total number of doses in the vial at the time the first dose from the vial is used. When remaining doses of a multiple dose vial are injected at subsequent

times, the agency reimburses the injection service (administration fee) only.

(c) When a multiple dose vial is used for more than one client, the provider must bill the total number of doses provided to each client out of the multiple dose vial.

(d) The agency covers the antigen, the antigen preparation, and an administration fee.

(e) The agency reimburses a provider separately for an E&M service if there is a diagnosis for conditions unrelated to allergen immunotherapy.

(f) The agency reimburses for **RAST** testing when the physician has written documentation in the client's record indicating that previous skin testing failed and was negative.

(11) The agency reimburses for chemotherapy drugs:

(a) Administered in the physician's office only when:

(i) The physician personally supervises the E&M services furnished by office medical staff; and

(ii) The medical record reflects the physician's active participation in or management of course of treatment.

(b) At established maximum allowable fees that are based on medicare Part B pricing, or ((POS)) AAC, maximum allowable cost (MAC), or invoice cost;

(c) For unclassified antineoplastic drugs, the provider must submit the following information on the claim form:

(i) The name of the drug used;

(ii) The dosage and strength used; and

(iii) The National Drug Code (NDC).

(12) Notwithstanding the provisions of this section, the agency reserves the option of determining drug pricing for any particular drug based on the best evidence available to the agency, or other good and sufficient reasons (e.g., fairness/equity, budget), regarding the actual acquisition cost, after discounts and promotions, paid by typical providers nationally or in Washington state.

(13) The agency may request an invoice as necessary.