

WSR 21-05-037

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed February 11, 2021, 11:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-22-041.

Title of Rule and Other Identifying Information: WAC 182-501-0135 Patient review and coordination.

Hearing Location(s): On March 23, 2021, at 10:00 a.m. As the Governor's Safe Start plan progresses, it is yet unknown whether by the date of this public hearing restrictions of meeting in public places will be eased. To continue to be safe, this hearing is being scheduled as a virtual only hearing. This will not be an in-person hearing and there is not a physical location available. To attend, you must register prior to the virtual public hearing (March 23, 2021, 10:00 a.m. Pacific Time), <https://attendee.gotowebinar.com/register/3340410196417463307>, Webinar ID 747-864-883. After registering, you will receive a confirmation email containing the information about joining the webinar.

Date of Intended Adoption: Not sooner than March 24, 2021.

Submit Written Comments to: Health Care Authority (HCA), Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by March 23, 2021.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email amber.lougheed@hca.wa.gov, by March 5, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is revising this section to clarify that a client with private full coverage insurance is not reviewed or placed into the patient review and coordination (PRC) program unless the client does not have pharmacy coverage. In this situation, if the client qualifies for PRC and is placed into the PRC program, the restriction is only to a pharmacy.

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.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Michael Williams, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1346; Implementation and Enforcement: Suzanne Cunningham, P.O. Box 45530, Olympia, WA 98504-2716, 360-725-1679.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. These rules do not impose a disproportionate cost impact on small businesses or nonprofits.

February 11, 2021
Wendy Barcus
Rules Coordinator

OTS-2774.1

AMENDATORY SECTION (Amending WSR 18-08-075, filed 4/3/18, effective 5/4/18)

WAC 182-501-0135 Patient review and coordination (PRC). (1) **Patient review and coordination (PRC)** is a health and safety program that coordinates care and ensures clients enrolled in PRC use services appropriately and in accordance with agency rules and policies.

(a) PRC applies to medical assistance fee-for-service and managed care clients.

(b) PRC is authorized under federal medicaid law by 42 U.S.C. 1396n (a) (2) and 42 C.F.R. 431.54.

(2) **Definitions.** Definitions found in chapter 182-500 WAC and WAC 182-526-0010 apply to this section. The following definitions apply to this section only:

"Appropriate use" - Use of health care services that are safe and effective for a client's health care needs.

"Assigned provider" - An agency-enrolled health care provider or one participating with an agency-contracted managed care organization (MCO) who agrees to be assigned as a primary provider and coordinator of services for a fee-for-service or managed care client in the PRC program. Assigned providers can include a primary care provider (PCP), a pharmacy, a prescriber of controlled substances, and a hospital for nonemergency services.

"At-risk" - A term used to describe one or more of the following:

(a) A client with a medical history of:

- (i) Seeking and obtaining health care services at a frequency or amount that is not medically necessary; or
 - (ii) Potential life-threatening events or life-threatening conditions that required or may require medical intervention.
- (b) Behaviors or practices that could jeopardize a client's medical treatment or health including, but not limited to:
- (i) Indications of forging or altering prescriptions;
 - (ii) Referrals from medical personnel, social services personnel, or MCO personnel about inappropriate behaviors or practices that place the client at risk;
 - (iii) Noncompliance with medical or drug and alcohol treatment;
 - (iv) Paying cash for medical services that result in a controlled substance prescription or paying cash for controlled substances;
 - (v) Arrests for diverting controlled substance prescriptions;
 - (vi) Positive urine drug screen for illicit street drugs or non-prescribed controlled substances;
 - (vii) Negative urine drug screen for prescribed controlled substances; or
 - (viii) Unauthorized use of a client's services card for an unauthorized purpose.

"Care management" - Services provided to clients with multiple health, behavioral, and social needs to improve care coordination, client education, and client self-management skills.

"Conflicting" - Drugs or health care services that are incompatible or unsuitable for use together because of undesirable chemical or physiological effects.

"Contraindicated" - A medical treatment, procedure, or medication that is inadvisable or not recommended or warranted.

"Duplicative" - Applies to the use of the same or similar drugs and health care services without due medical justification. Example: A client receives health care services from two or more providers for the same or similar condition(s) in an overlapping time frame, or the client receives two or more similarly acting drugs in an overlapping time frame, which could result in a harmful drug interaction or an adverse reaction.

"Emergency department information exchange (EDIE)" - An internet-delivered service that enables health care providers to better identify and treat high users of the emergency department and special needs patients. When patients enter the emergency room, EDIE can proactively alert health care providers through different venues such as fax, phone, email, or integration with a facility's current electronic medical records.

"Emergency medical condition" - See WAC 182-500-0030.

"Emergency services" - See 42 C.F.R. 447.53.

"Just cause" - A legitimate reason to justify the action taken, including but not limited to, protecting the health and safety of the client.

"Managed care client" - A medical assistance client enrolled in, and receiving health care services from, an agency-contracted managed care organization (MCO).

"Prescriber of controlled substances" - Any of the following health care professionals who, within their scope of professional practice, are licensed to prescribe and administer controlled substances (see chapter 69.50 RCW, Uniform Controlled Substance Act) for a legitimate medical purpose:

- (a) A physician under chapter 18.71 RCW;
- (b) A physician assistant under chapter 18.71A RCW;
- (c) An osteopathic physician under chapter 18.57 RCW;
- (d) An osteopathic physician assistant under chapter 18.57A RCW;

and

(e) An advanced registered nurse practitioner under chapter 18.79 RCW.

"Primary care provider" or "PCP" - A person licensed or certified under Title 18 RCW including, but not limited to, a physician, an advanced registered nurse practitioner (ARNP), or a physician assistant (PA) who supervises, coordinates, and provides health care services to a client, initiates referrals for specialty and ancillary care, and maintains the client's continuity of care.

(3) **Clients selected for PRC review.** The agency or MCO selects a client for PRC review when either or both of the following occur:

- (a) A usage review report indicates the client has not used health care services appropriately; or
- (b) Medical providers, social service agencies, or other concerned parties have provided direct referrals to the agency or MCO.

(4) Clients not selected for PRC review. Clients who have comprehensive, private medical insurance (not casualty) are not reviewed or placed into the PRC program unless the client does not have pharmacy coverage included as a benefit under the private insurance policy. In this situation, if the client qualifies for PRC and is placed into the PRC program, the restriction is only to a pharmacy.

(5) **When a fee-for-service client is selected for PRC review,** the prior authorization process as defined in WAC 182-500-0085 may be required:

- (a) Prior to or during a PRC review; or
- (b) When the client is currently in the PRC program.

~~((5))~~ **(6) Review for placement in the PRC program.** When the agency or MCO selects a client for PRC review, the agency or MCO staff, with clinical oversight, reviews either the client's medical history or billing history, or both, to determine if the client has used health care services at a frequency or amount that is not medically necessary (42 C.F.R. 431.54(e)).

~~((6))~~ **(7) Usage guidelines for PRC placement.** Agency or MCO staff use the following usage guidelines to initiate review for PRC placement. A client may be placed in the PRC program when either the client's medical history or billing history, or both, documents any of the following:

(a) Any two or more of the following conditions occurred in a period of ninety consecutive calendar days in the previous twelve months. The client:

(i) Received services from four or more different providers, including physicians, ARNPs, and PAs not located in the same clinic or practice;

(ii) Had prescriptions filled by four or more different pharmacies;

(iii) Received ten or more prescriptions;

(iv) Had prescriptions written by four or more different prescribers not located in the same clinic or practice;

(v) Received similar services in the same day not located in the same clinic or practice; or

(vi) Had ten or more office visits;

(b) Any one of the following occurred within a period of ninety consecutive calendar days in the previous twelve months. The client:

(i) Made two or more emergency department visits;

(ii) Exhibits "at-risk" usage patterns;

(iii) Made repeated and documented efforts to seek health care services that are not medically necessary; or

(iv) Was counseled at least once by a health care provider, or an agency or MCO staff member with clinical oversight, about the appropriate use of health care services;

(c) The client received prescriptions for controlled substances from two or more different prescribers not located in the same clinic or practice in any one month within the ninety-day review period; or

(d) The client has either a medical history or billing history, or both, that demonstrates a pattern of the following at any time in the previous twelve months:

(i) Using health care services in a manner that is duplicative, excessive, or contraindicated; or

(ii) Seeking conflicting health care services, drugs, or supplies that are not within acceptable medical practice.

~~((7))~~ **(8) PRC review results.** As a result of the PRC review, the agency or MCO may take any of the following steps:

(a) Determine that no action is needed and close the client's file;

(b) Send the client and, if applicable, the client's authorized representative a one-time only written notice of concern with information on specific findings and notice of potential placement in the PRC program; or

(c) Determine that the usage guidelines for PRC placement establish that the client has used health care services at an amount or frequency that is not medically necessary, in which case the agency or MCO will take one or more of the following actions:

(i) Refer the client for education on appropriate use of health care services;

(ii) Refer the client to other support services or agencies; or

(iii) Place the client into the PRC program for an initial placement period of no less than twenty-four months. For clients younger than eighteen years of age, the MCO must get agency approval prior to placing the client into the PRC program.

~~((8))~~ **(9) Initial placement in the PRC program.** When a client is initially placed in the PRC program:

(a) The agency or MCO places the client for no less than twenty-four months with one or more of the following types of health care providers:

(i) Primary care provider (PCP);

(ii) Pharmacy for all prescriptions;

(iii) Prescriber of controlled substances;

(iv) Hospital for nonemergency services unless referred by the assigned PCP or a specialist. A client may receive covered emergency services from any hospital; or

(v) Another qualified provider type, as determined by agency or MCO program staff on a case-by-case basis.

(b) The managed care client will remain in the same MCO for no less than twelve months unless:

(i) The client moves to a residence outside the MCO's service area and the MCO is not available in the new location; or

(ii) The client's assigned PCP no longer participates with the MCO and is available in another MCO, and the client wishes to remain with the current provider;

(iii) The client is in a voluntary enrollment program or a voluntary enrollment county;

(iv) The client is in the address confidentiality program (ACP), indicated by P.O. Box 257, Olympia, WA 98507; or

(v) The client is an American Indian/Alaska native.

(c) A managed care client placed in the PRC program must remain in the PRC program for no less than twenty-four months regardless of whether the client changes MCOs or becomes a fee-for-service client.

~~((9))~~ **(10) Notifying the client about placement in the PRC program.** When the client is initially placed in the PRC program, the agency or the MCO sends the client and, if applicable, the client's authorized representative, a written notice that:

(a) Informs the client of the reason for the PRC program placement;

(b) Directs the client to respond to the agency or MCO within ten calendar days of the date of the written notice;

(c) Directs the client to take the following actions:

(i) Select providers, subject to agency or MCO approval;

(ii) Submit additional health care information, justifying the client's use of health care services; or

(iii) Request assistance, if needed, from the agency or MCO program staff.

(d) Informs the client of administrative hearing or appeal rights (see subsection ~~((14))~~ **(15)** of this section).

(e) Informs the client that if a response is not received within ten calendar days of the date of the written notice, the client will be assigned a provider(s) by the agency or MCO.

~~((10))~~ **(11) Selection and role of assigned provider.** A client will have a limited choice of providers.

(a) The following providers are not available:

- (i) A provider who is being reviewed by the agency or licensing authority regarding quality of care;
 - (ii) A provider who has been suspended or disqualified from participating as an agency-enrolled or MCO-contracted provider; or
 - (iii) A provider whose business license is suspended or revoked by the licensing authority.
- (b) For a client placed in the PRC program, the assigned:
- (i) Provider(s) must be located in the client's local geographic area, in the client's selected MCO, and be reasonably accessible to the client.
 - (ii) PCP supervises and coordinates health care services for the client, including continuity of care and referrals to specialists when necessary.
 - (A) The PCP:
 - (I) Provides the plan of care for clients that have documented use of the emergency department for a reason that is not deemed to be an emergency medical condition;
 - (II) Files the plan of care with each emergency department that the client is using or with the emergency department information exchange;
 - (III) Makes referrals to substance abuse treatment for clients who are using the emergency department for substance abuse issues; and
 - (IV) Makes referrals to mental health treatment for clients who are using the emergency department for mental health treatment issues.
 - (B) The assigned PCP must be one of the following:
 - (I) A physician;
 - (II) An advanced registered nurse practitioner (ARNP); or
 - (III) A licensed physician assistant (PA), practicing with a supervising physician.
 - (iii) Prescriber of controlled substances prescribes all controlled substances for the client;
 - (iv) Pharmacy fills all prescriptions for the client; and
 - (v) Hospital provides all hospital nonemergency services.
- (c) A client placed in the PRC program must remain with the assigned providers for twelve months after the assignments are made, unless:
- (i) The client moves to a residence outside the provider's geographic area;
 - (ii) The provider moves out of the client's local geographic area and is no longer reasonably accessible to the client;
 - (iii) The provider refuses to continue to serve the client;
 - (iv) The client did not select the provider. The client may request to change an assigned provider once within thirty calendar days of the assignment;
 - (v) The client's assigned PCP no longer participates with the MCO. In this case, the client may select a new provider from the list of available providers in the MCO or follow the assigned provider to the new MCO; or
 - (vi) The client is in the address confidentiality program (ACP), indicated by P.O. Box 257, Olympia, WA 98507.
- (d) When an assigned prescribing provider no longer contracts with the agency or the MCO:
- (i) All prescriptions from the provider are invalid thirty calendar days following the date the contract ends;
 - (ii) All prescriptions from the provider are subject to applicable prescription drugs (outpatient) rules in chapter 182-530 WAC or appropriate MCO rules; and

(iii) The client must choose or be assigned another provider according to the requirements in this section.

~~((11))~~ **(12) PRC placement.**

(a) The initial PRC placement is no less than twenty-four consecutive months.

(b) The second PRC placement is no less than an additional thirty-six consecutive months.

(c) Each subsequent PRC placement is no less than seventy-two consecutive months.

~~((12))~~ **(13) Agency or MCO review of a PRC placement period.** The agency or MCO reviews a client's use of health care services prior to the end of each PRC placement period described in subsection ~~((11))~~ **(12)** of this section using the guidelines in subsection ~~((6))~~ **(7)** of this section.

(a) The agency or MCO assigns the next PRC placement if the usage guidelines for PRC placement in subsection ~~((6))~~ **(7)** of this section apply to the client.

(b) When the agency or MCO assigns a subsequent PRC placement, the agency or MCO sends the client and, if applicable, the client's authorized representative, a written notice informing the client:

(i) Of the reason for the subsequent PRC program placement;

(ii) Of the length of the subsequent PRC placement;

(iii) That the current providers assigned to the client continue to be assigned to the client during the subsequent PRC placement;

(iv) That all PRC program rules continue to apply;

~~((14))~~ **(15)** of this section); and

(vi) Of the rules that support the decision.

(c) The agency may remove a client from PRC placement if the client:

(i) Successfully completes a treatment program that is provided by a ~~((chemical dependency))~~ **substance use disorder (SUD)** service provider certified by the agency under chapter ~~((388-805))~~ **182-538D** WAC;

(ii) Submits documentation of completion of the approved treatment program to the agency; and

(iii) Maintains appropriate use of health care services within the usage guidelines described in subsection ~~((6))~~ **(7)** of this section for six consecutive months after the date the treatment ends.

(d) The agency or MCO determines the appropriate placement for a client who has been placed back into the program.

(e) A client will remain placed in the PRC program regardless of change in eligibility program type or change in address.

~~((13))~~ **(14) Client financial responsibility.** A client placed in the PRC program may be billed by a provider and held financially responsible for nonemergency health care services obtained from a non-pharmacy provider when the provider is not an assigned or appropriately referred provider as described in subsection ~~((10))~~ **(11)** of this section. See WAC 182-502-0160.

~~((14))~~ **(15) Right to administrative hearing or appeal.**

(a) A fee-for-service client who disagrees with an agency decision regarding placement or continued placement in the PRC program has the right to an administrative hearing regarding this placement. A client must request an administrative hearing from the agency within ninety days of the written notice of placement or continued placement to exercise this right.

(b) A managed care client who disagrees with an MCO decision regarding placement or continued placement in the PRC program has a

right to appeal this decision in the same manner as an adverse benefit determination under WAC 182-538-110.

(i) An appeal must be filed with the MCO within sixty calendar days of the written notice of the MCO's decision.

(ii) A client must exhaust the right to appeal through the MCO prior to requesting an administrative hearing.

(iii) A client who disagrees with the resolution of the appeal by the MCO may request an administrative hearing.

(iv) A client may exercise the right to an administrative hearing by filing a request within one hundred twenty calendar days from the written notice of resolution of the appeal by the MCO.

(c) A client enrolled in an MCO cannot change MCOs until the MCO appeal and any administrative hearing process has been completed and a final order entered.

(d) The agency conducts an administrative hearing according to chapter 182-526 WAC.

(e) A client who requests an administrative hearing or appeal within ten calendar days from the date of the written notice of an initial PRC placement will not be placed in the PRC program until ordered by an administrative law judge (ALJ) or review judge.

(f) A client who requests an administrative hearing or appeal more than ten calendar days from the date of the written notice of initial PRC placement will remain placed in the PRC program until a final administrative order is entered that orders the client's removal from the program.

(g) A client who requests an administrative hearing or appeal in all other cases and who has already been assigned providers will remain placed in the PRC program unless a final administrative order is entered that orders the client's removal from the program.

(h) An ALJ may rule the client be placed in the PRC program prior to the date the record is closed and prior to the date the initial order is issued based on a showing of just cause.

[Statutory Authority: RCW 41.05.021, 41.05.160. WSR 18-08-075, § 182-501-0135, filed 4/3/18, effective 5/4/18. Statutory Authority: RCW 41.05.021 and 2011 1st sp.s. c 50. WSR 13-05-006, § 182-501-0135, filed 2/6/13, effective 3/9/13. WSR 11-14-075, recodified as § 182-501-0135, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090. WSR 10-19-057, § 388-501-0135, filed 9/14/10, effective 10/15/10. Statutory Authority: RCW 74.08.090 and 42 C.F.R. 431.51, 431.54(e) and 456.1; 42 U.S.C. 1396n. WSR 08-05-010, § 388-501-0135, filed 2/7/08, effective 3/9/08. Statutory Authority: RCW 74.08.090, 74.09.520, 74.04.055, and 42 C.F.R. 431.54. WSR 06-14-062, § 388-501-0135, filed 6/30/06, effective 7/31/06. Statutory Authority: RCW 74.08.090, 74.04.055, and 42 C.F.R. Subpart B 431.51, 431.54 (e) and (3), and 456.1. WSR 04-01-099, § 388-501-0135, filed 12/16/03, effective 1/16/04. Statutory Authority: RCW 74.08.090. WSR 01-02-076, § 388-501-0135, filed 12/29/00, effective 1/29/01. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-501-0135, filed 7/31/98, effective 9/1/98. Statutory Authority: RCW 74.08.090 and 74.09.522. WSR 97-03-038, § 388-501-0135, filed 1/9/97, effective 2/9/97. Statutory Authority: RCW 74.08.090. WSR 94-10-065 (Order 3732), § 388-501-0135, filed 5/3/94, effective 6/3/94. Formerly WAC 388-81-100.]