

WSR 24-19-096

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed September 17, 2024, 4:09 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-13-055.

Title of Rule and Other Identifying Information: WAC 182-501-0070 Health care coverage—Noncovered services, 182-502-0002 Eligible provider types, 182-502-0003 Noneligible provider types, 182-531-0150 Noncovered physician-related and health care professional services—General and administrative, 182-556-0200 Chiropractic services, and 182-556-0250 Acupuncture services.

Hearing Location(s): On October 22, 2024, at 10:00 a.m. The health care authority (HCA) 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\\_icWpKqAQTxycXgTcltuVgA](https://us02web.zoom.us/webinar/register/WN_icWpKqAQTxycXgTcltuVgA). 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: Not sooner than October 23, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, beginning September 18, 2024, 8:00 a.m., by October 22, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication relay service (TRS) 711, email [Johanna.Larson@hca.wa.gov](mailto:Johanna.Larson@hca.wa.gov), by October 4, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is revising these rules to provide adult chiropractic benefits in alignment with ESB 5693, section 211(95) and ESSB 5187, section 211(43). HCA is also adding rules to provide adult acupuncture benefits in alignment with ESSB 5693, section 211(94) and ESSB 5187, section 211(42). HCA is revising WAC 182-501-0070 to remove acupuncture, naturopathy, and chiropractic for adults from the noncovered services list. HCA is also revising WAC 182-502-0002 to add acupuncturist to the eligible provider types and remove acupuncturist from WAC 182-502-0003 noneligible provider types. This filing also removes acupuncturist from the noncovered physician-related services, WAC 182-531-0150.

A separate addition, birth doula, is being added to WAC 182-502-0002 as an eligible provider type. This addition is under a separate rule making filed under WSR 24-10-016 on April 19, 2024.

Another separate addition, behavior health support specialist (BHSS), is being added to WAC 182-502-0002 as an eligible provider type. This addition is under a separate rule making filed under WSR 24-16-024 on July 26, 2024.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; ESSB 5693, section 211 (94) and (95); ESSB 5187, section 211 (42) and (43).

Statute Being Implemented: RCW 41.05.021, 41.05.160; ESSB 5693, section 211 (94) and (95); ESSB 5187, section 211 (42) and (43).

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Joan Chappell, P.O. Box 45506, Olympia, WA 98504-5506, 360-725-1071.

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.

Scope of exemption for rule proposal:

Is not exempt.

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. The rules provide new and additional benefits for eligible medicaid clients.

September 17, 2024

Wendy Barcus

Rules Coordinator

## OTS-5757.1

AMENDATORY SECTION (Amending WSR 22-07-105, filed 3/23/22, effective 4/23/22)

### **WAC 182-501-0070 Health care coverage—Noncovered services.** (1)

The medicaid agency or ~~((its))~~ the agency's designee does not pay for any health care service not listed or referred to as a covered health care service under the medical programs described in WAC 182-501-0060, regardless of medical necessity. For the purposes of this section, health care services includes treatment, equipment, related supplies, and drugs. Circumstances in which clients are responsible for payment of health care services are described in WAC 182-502-0160.

(2) This section does not apply to health care services provided as a result of the early and periodic screening, diagnosis, and treatment (EPSDT) program as described in chapter 182-534 WAC.

(3) The agency or ~~((its))~~ the agency's designee does not pay for any ancillary health care service(s) provided in association with a noncovered health care service.

(4) The following list of noncovered health care services is not intended to be exhaustive. Noncovered health care services include, but are not limited to:

(a) Any health care service specifically excluded by federal or state law;

(b) ~~((Acupuncture,))~~ Christian Science practice, faith healing, herbal therapy, homeopathy, massage, massage therapy, ~~((naturopathy,))~~ and sanipractice;

(c) ~~((Chiropractic care for adults;~~

~~((d))~~ Cosmetic, reconstructive, or plastic surgery, and any related health care services, not specifically allowed under WAC 182-531-0100(4) or 182-531-1675;

~~((e))~~ (d) Discography;

~~((f))~~ (e) Ear or other body piercing;

~~((g))~~ (f) Face lifts or other facial cosmetic enhancements;  
~~((h))~~ (g) Fertility, infertility or sexual dysfunction testing, and related care, drugs, and/or treatment including but not limited to:

- (i) Artificial insemination;
- (ii) Donor ovum, donor sperm, or gestational carrier;
- (iii) In vitro fertilization;
- (iv) Penile implants;
- (v) Reversal of sterilization; and
- (vi) Sex therapy.

~~((i))~~ (h) Hair transplants;  
~~((j))~~ (i) Epilation (hair removal) and electrolysis not specifically allowed under WAC 182-531-1675;

~~((k))~~ (j) Marital counseling;  
~~((l))~~ (k) Motion analysis, athletic training evaluation, work hardening condition, high altitude simulation test, and health and behavior assessment;

~~((m))~~ (l) Nonmedical equipment;  
~~((n))~~ (m) Penile implants;  
~~((o))~~ (n) Prosthetic testicles not specifically allowed under WAC 182-531-1675;

- ~~((p))~~ (o) Psychiatric sleep therapy;
- ~~((q))~~ (p) Subcutaneous injection filling;
- ~~((r))~~ (q) Tattoo removal;

~~((s))~~ (r) Transport of Involuntary Treatment Act (ITA) clients to or from out-of-state treatment facilities, including those in bordering cities;

- ~~((t))~~ (s) Upright magnetic resonance imaging (MRI); and
- ~~((u))~~ (t) Vehicle purchase - New or used vehicle.

(5) For a specific list of noncovered health care services in the following service categories, refer to the WAC citation:

(a) Ambulance transportation and nonemergent transportation as described in chapter 182-546 WAC;

(b) Dental services as described in chapter 182-535 WAC;

(c) Durable medical equipment as described in chapter 182-543 WAC;

(d) Hearing care services as described in chapter 182-547 WAC;

(e) Home health services as described in WAC 182-551-2130;

(f) Hospital services as described in WAC 182-550-1600;

(g) Health care professional services as described in WAC 182-531-0150;

(h) Prescription drugs as described in chapter 182-530 WAC;

(i) Vision care hardware for clients 20 years of age and younger as described in chapter 182-544 WAC; and

(j) Vision care exams as described in WAC 182-531-1000.

(6) A client has a right to request an administrative hearing, if one is available under state and federal law. When the agency or its designee denies all or part of a request for a noncovered health care service(s), the agency or its designee sends the client and the provider written notice, within 10 business days of the date the decision is made, that includes:

(a) A statement of the action the agency or its designee intends to take;

(b) Reference to the specific WAC provision upon which the denial is based;

(c) Sufficient detail to enable the recipient to:

- (i) Learn why the agency's or its designee's action was taken;
- and
- (ii) Prepare a response to the agency's or its designee's decision to classify the requested health care service as noncovered.
- (d) The specific factual basis for the intended action; and
- (e) The following information:
  - (i) Administrative hearing rights;
  - (ii) Instructions on how to request the hearing;
  - (iii) Acknowledgment that a client may be represented at the hearing by legal counsel or other representative;
  - (iv) Instructions on how to request an exception to rule (ETR);
  - (v) Information regarding agency-covered health care services, if any, as an alternative to the requested noncovered health care service; and
  - (vi) Upon the client's request, the name and address of the nearest legal services office.
- (7) A client can request an exception to rule (ETR) as described in WAC 182-501-0160.

**OTS-5760.1**

AMENDATORY SECTION (Amending WSR 24-12-036, filed 5/30/24, effective 7/1/24)

**WAC 182-502-0002 Eligible provider types.** The following health care professionals, health care entities, suppliers or contractors of service may request enrollment with the Washington state health care authority (medicaid agency) to provide covered health care services to eligible clients. For the purposes of this chapter, health care services include treatment, equipment, related supplies, and drugs.

- (1) Professionals:
  - (a) Acupuncturists;
  - ~~(b)~~ (b) Advanced registered nurse practitioners;
  - ~~(c)~~ (c) Advanced social workers;
  - ~~(d)~~ (d) Advanced social worker associates;
  - ~~(e)~~ (e) Anesthesiologists;
  - ~~(f)~~ (f) Applied behavior analysis (ABA) professionals, as provided in WAC 182-531A-0800:
    - (i) Licensed behavior analyst;
    - (ii) Licensed assistant behavior analyst; and
    - (iii) Certified behavior technician;
    - ~~(g)~~ (g) Audiologists;
    - ~~(h)~~ (h) Behavioral health support specialists (BHSS);
    - (i) Birth doulas;
    - (j) Chiropractors;
    - ~~(k)~~ (k) Dentists;
    - ~~(l)~~ (l) Dental health aide therapists, as provided in chapter 70.350 RCW;
    - ~~(m)~~ (m) Dental hygienists;
    - ~~(n)~~ (n) Denturists;
    - ~~(o)~~ (o) Dietitians or nutritionists;
    - ~~(p)~~ (p) Hearing aid fitters/dispensers;

- ((n)) (g) Home health aide credentialed with DOH as nursing assistant certified or nursing assistant registered;
- ((o)) (r) Independent clinical social workers;
- ((p)) (s) Independent clinical social worker associates;
- ((q)) (t) Licensed practical nurse;
- ((r)) (u) Marriage and family therapists;
- ((s)) (v) Mental health counselors;
- ((t)) (w) Mental health counselor associates;
- ((u)) (x) Mental health care providers;
- ((v)) (y) Midwives;
- ((w)) (z) Naturopathic physicians;
- ((x)) (aa) Nurse anesthetist;
- ((y)) (bb) Ocularists;
- ((z)) (cc) Occupational therapists;
- ((aa)) (dd) Ophthalmologists;
- ((bb)) (ee) Opticians;
- ((cc)) (ff) Optometrists;
- ((dd)) (gg) Orthodontists;
- ((ee)) (hh) Orthotist;
- ((ff)) (ii) Osteopathic physicians;
- ((gg)) (jj) Osteopathic physician assistants;
- ((hh)) (kk) Peer counselors;
- ((ii)) (ll) Podiatric physicians;
- ((jj)) (mm) Pharmacists;
- ((kk)) (nn) Physicians;
- ((ll)) (oo) Physician assistants;
- ((mm)) (pp) Physical therapists;
- ((nn)) (qq) Prosthetist;
- ((oo)) (rr) Psychiatrists;
- ((pp)) (ss) Psychologists;
- ((qq)) (tt) Radiologists;
- ((rr)) (uu) Registered nurse;
- ((ss)) (vv) Registered nurse delegators;
- ((tt)) (ww) Registered nurse first assistants;
- ((uu)) (xx) Respiratory therapists;
- ((vv)) (yy) Speech/language pathologists; and
- ((ww)) (zz) Substance use disorder professionals:
  - (i) Mental health providers; and
  - (ii) Peer counselors.
- (2) Agencies, centers and facilities:
  - (a) Adult day health centers;
  - (b) Ambulance services (ground and air);
  - (c) Ambulatory surgery centers (medicare-certified);
  - (d) Birthing centers (licensed by the department of health);
  - (e) Cardiac diagnostic centers;
  - (f) Case management agencies;
  - (g) Substance use disorder treatment facilities certified by the department of health (DOH);
  - (h) Withdrawal management treatment facilities certified by DOH;
  - (i) Community AIDS services alternative agencies;
  - (j) Community behavioral health support services provider facilities;
  - (k) Community mental health centers;
  - (l) Diagnostic centers;
  - (m) Early and periodic screening, diagnosis, and treatment (EPSDT) clinics;
  - (n) Family planning clinics;

- (o) Federally qualified health centers (designated by the federal department of health and human services);
- (p) Genetic counseling agencies;
- (q) Health departments;
- (r) Health maintenance organization (HMO)/managed care organization (MCO);
- (s) HIV/AIDS case management;
- (t) Home health agencies;
- (u) Hospice agencies;
- (v) Hospitals;
- (w) Indian health service facilities/tribal 638 facilities;
- (x) Tribal or urban Indian clinics;
- (y) Inpatient psychiatric facilities;
- (z) Intermediate care facilities for individuals with intellectual disabilities (ICF-IID);
- (aa) Kidney centers;
- (bb) Laboratories (CLIA certified);
- (cc) Maternity support services agencies; maternity case managers; infant case management, first steps providers;
- (dd) Neuromuscular and neurodevelopmental centers;
- (ee) Nurse services/delegation;
- (ff) Nursing facilities (approved by the DSHS aging and long-term support administration);
- (gg) Pathology laboratories;
- (hh) Pharmacies;
- (ii) Private duty nursing agencies;
- (jj) Radiology - Stand-alone clinics;
- (kk) Rural health clinics (medicare-certified);
- (ll) School districts and educational service districts; and
- (mm) Sleep study centers.
- (3) Suppliers of:
  - (a) Blood, blood products, and related services;
  - (b) Durable and nondurable medical equipment and supplies;
  - (c) Complex rehabilitation technologies;
  - (d) Infusion therapy equipment and supplies;
  - (e) Prosthetics/orthotics;
  - (f) Hearing aids; and
  - (g) Respiratory care, equipment, and supplies.
- (4) Contractors:
  - (a) Transportation brokers;
  - (b) Spoken language interpreter services agencies;
  - (c) Independent sign language interpreters; and
  - (d) Eyeglass and contact lens providers.

**OTS-5668.1**

AMENDATORY SECTION (Amending WSR 14-06-054, filed 2/27/14, effective 3/30/14)

**WAC 182-502-0003 Noneligible provider types.** The medicaid agency does not enroll licensed or unlicensed health care practitioners not specifically listed in WAC 182-502-0002, including, but not limited to:

- (1) (~~(Acupuncturists;~~  
~~(2))~~) Sanipractors;  
~~((3))~~ (2) Homeopaths;  
~~((4))~~ (3) Herbalists;  
~~((5))~~ (4) Massage therapists;  
~~((6))~~ (5) Christian science practitioners, theological healers,  
and spiritual healers;  
~~((7))~~ (6) Chemical dependency professional trainee (CDPT); and  
~~((8))~~ (7) Mental health trainee (MHT).

### OTS-5758.1

AMENDATORY SECTION (Amending WSR 23-23-058, filed 11/8/23, effective 12/9/23)

**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) 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.

### OTS-5759.1

AMENDATORY SECTION (Amending WSR 15-10-018, filed 4/24/15, effective 5/25/15)

**WAC 182-556-0200 Chiropractic services ((for children)).** (1) **Requirements for chiropractic services.** The agency pays for chiropractic services when they are:

- (a) Medically necessary under WAC 182-500-0070, safe, effective, and not experimental;
- (b) Provided in-state or in a border city according to WAC 182-501-0175 by a chiropractor who is licensed in the state where services are rendered;
- (c) Within the scope of the provider's license; and
- (d) Diagnostic and for treatment of neuromusculoskeletal disorder of the spine.

(2) Services for clients age 20 and younger. The medicaid agency pays ~~((only))~~ for the chiropractic services ~~((+ (a-)))~~ described in subsection (1) of this section for clients who are ~~((+ (i) Under age twenty-one; and (ii) Referred by a screening provider under the healthy kids/early and periodic screening, diagnosis, and treatment (EPSDT) program. (b) That are: (i) Medically necessary under WAC 182-500-0070, safe, effective, and not experimental; (ii) Provided by a chiropractor licensed in the state where services are provided; and (iii) Within the scope of the chiropractor's license. (c) Limited to: (i) Chiropractic manipulative treatments of the spine; and (ii) X-rays of the spine))~~ age 20 and younger.

~~((+2))~~ (3) Services for clients age 21 and older.

(a) The agency pays for chiropractic service for clients age 21 and older as described in subsection (1) of this section.

(b) Services are limited to 24 visits of chiropractic care within a calendar year.

(c) The agency evaluates requests for authorization of services that exceed limitations in this chapter in accordance with WAC 182-501-0169.

(d) Chiropractic services for the treatment of chronic migraine and chronic tension-type headache is a noncovered service.

(4) Payment. The agency pays for chiropractic services ~~((are paid))~~ according to fees established by the ~~((agency using))~~ methodology set out in WAC 182-531-1850.

### OTS-4290.3

#### NEW SECTION

**WAC 182-556-0250 Acupuncture services.** (1) The agency pays for acupuncture services for clients age 18 years and older when:

(a) Services are medically necessary under WAC 182-500-0070 and are:

(i) Safe;

(ii) Effective; and

(iii) Not experimental or investigational as defined in WAC 182-501-0165.

(b) Services are provided by an acupuncturist or other qualified provider where acupuncture is within the practitioner's scope of practice; and

(c) Services are provided in-state or in a border city according to WAC 182-501-0175 and are provided by an acupuncturist or practitioner who is licensed in the state where services are rendered.

(2) Acupuncture services are limited to:

(a) Twenty-four visits per year; and

(b) Acupuncture needle treatment only, with or without electrical stimulation.

- (3) Covered diagnoses include:
  - (a) Chronic migraine;
  - (b) Chemotherapy induced nausea and vomiting;
  - (c) Chronic musculoskeletal pain; or
  - (d) Acute postoperative pain.
- (4) The following services are noncovered:
  - (a) Dry needling;
  - (b) Eastern medicine services other than acupuncture as defined in WAC 246-803-030; and
  - (c) Acupuncture for the diagnosis of chronic tension-type headache or chronic daily headache.
- (5) If acupuncture is requested or prescribed under the EPSDT program, the agency evaluates it as a covered service under EPSDT's standard of coverage that requires the service to be:
  - (a) Medically necessary;
  - (b) Safe and effective; and
  - (c) Not experimental or investigational as defined in WAC 182-501-0165.
- (6) The agency evaluates requests for covered services that are subject to limitations or other restrictions and approves such services beyond those limitations or restrictions when medically necessary, under the provisions of WAC 182-501-0165 and 182-501-0169.