

WSR 25-02-112
EMERGENCY RULES
HEALTH CARE AUTHORITY

[Filed December 31, 2024, 3:04 p.m., effective January 1, 2025]

Effective Date of Rule: January 1, 2025.

Purpose: The health care authority (agency) is developing rules under ESSB 5187, section 211(83), 68th legislature, 2023 regular session. This legislation directed the agency to implement a program that began on July 1, 2024, with coverage comparable to the categorically needy medicaid program for certain adults age 19 and older who: (a) Have an immigration status making them ineligible for medicaid or federal subsidies through the health benefit exchange; and (b) are not eligible for another full scope federally funded medical assistance program. These rules are filed as emergency rules under WSR 24-21-064, on October 11, 2024.

The amendments in the following two rule sections are also needed to support the previous mentioned rule making: WAC 182-501-0065(1) to add apple health expansion as one of the agency's service categories; and WAC 182-503-0535 (2)(e) to include apple health expansion as a program available to undocumented people.

The agency is also amending WAC 182-501-0065 (2)(t) to add birth doula services. This addition is necessary to support an unrelated, separate rule making filed under WSR 24-10-016 on April 19, 2024. Emergency rules are also filed under WSR 25-02-111, effective January 1, 2025.

Citation of Rules Affected by this Order: Amending WAC 182-501-0065 and 182-503-0535.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: ESSB 5187, section 211(83), 68th legislature, regular session.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: These rules are necessary to support the implementation of the agency's apple health expansion program, as directed in ESSB 5187, to provide health care coverage for adults who qualify. The program took effect on July 1, 2024. The agency previously filed emergency rules under WSR 24-13-067 on June 14, 2024, and again on October 11, 2024, under WSR 24-21-064; these rules continue to be in effect. The amendments in the following two rule sections are also needed to support the implementation of the agency's apple health expansion program: WAC 182-501-0065(1) to add apple health expansion as one of the agency's service categories; and WAC 182-503-0535 (2)(e) to include apple health expansion as a program available to undocumented people.

Progress to complete the permanent rule-making process continues. The agency shared two versions of the other apple health expansion draft rules with interested parties in February and May of this year and received substantial comments on each of the drafts. After the agency filed the emergency rules, staff subsequently asked stakeholders to review and comment on a permanent enrollment process for the apple health expansion program. The agency has developed its permanent enrollment policy, based on stakeholders' input, and staff are con-

tinuing to prepare proposed rules that include the permanent enrollment process.

In addition to the rule revisions for the apple health expansion program, the agency is also amending WAC 182-501-0065 (2)(t) to add birth doula services. The permanent rule-making process for this revision is being conducted under an unrelated, separate rule making (WSR 24-10-016 on April 19, 2024). Emergency rules are also filed under WSR 25-02-111, effective January 1, 2025.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 2, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 31, 2024.

Wendy Barcus
Rules Coordinator

OTS-6057.2

AMENDATORY SECTION (Amending WSR 24-10-081, filed 4/30/24, effective 7/1/24)

WAC 182-501-0065 Health care coverage—Description of service categories. This rule provides a brief description of the medical, dental, mental health, and substance use disorder (SUD) service categories listed in the table in WAC 182-501-0060. The description of services under each category is not intended to be all inclusive.

(1) For alternative benefits plan (ABP), categorically needy (CN), medically needy (MN), ~~((and))~~ medical care services (MCS), and apple health expansion, refer to the WAC citations listed in the following descriptions for specific details regarding each service category.

(2) The following service categories are subject to the exclusions, limitations, restrictions, and eligibility requirements contained in agency rules:

(a) **Ambulance** - Emergency medical transportation and ambulance transportation for nonemergency medical needs. (WAC 182-546-0001 through 182-546-4000.)

(b) **Applied behavior analysis (ABA)** - (Chapter 182-531A WAC.)

(c) **Behavioral health services** - (Chapter 182-538D WAC, Behavioral health services, WAC 182-531-1400 Psychiatric physician-related services and other professional mental health services, and chapter 246-341 WAC, Behavioral health services administrative requirements.)

(d) **Blood, blood products, and related services** - Blood and/or blood derivatives, including synthetic factors, plasma expanders, and their administration. (WAC 182-550-1400 and 182-550-1500.)

(e) **Community behavioral health support services (CBHS)** - (Chapter 182-561 WAC.)

(f) **Dental services** - Diagnosis and treatment of dental problems including emergency treatment and preventive care. (Chapters 182-535 and 182-535A WAC.)

(g) **Diagnostic services** - Clinical testing and imaging services. (WAC 182-531-0100; WAC 182-550-1400 and 182-550-1500.)

(h) **Early and periodic screening, diagnosis, and treatment (EPSDT)** - (Chapter 182-534 WAC and WAC 182-501-0050(10).)

(i) **Enteral nutrition program** - Enteral nutrition products, equipment, and related supplies. (Chapter 182-554 WAC.)

(j) **Habilitative services** - (Chapter 182-545 WAC.)

(k) **Health care professional services** - The following services found in chapter 182-531 WAC:

(i) Office visits and vaccinations;

(ii) Screening/brief intervention/referral to treatment (SBIRT), emergency room, and nursing facility services;

(iii) Home-based and hospital-based services;

(iv) Surgery, anesthesia, pathology, radiology, and laboratory services;

(v) Obstetric services;

(vi) Kidney dialysis and renal disease services;

(vii) Advanced registered nurse practitioner, naturopathy, osteopathy, podiatry, physiatry, and pulmonary/respiratory services; and

(viii) Allergen immunotherapy services.

(l) **Health homes** - (Chapter 182-557 WAC.)

(m) **Hearing evaluations** - The following services found in WAC 182-531-0375:

(i) Audiology;

(ii) Diagnostic evaluations; and

(iii) Hearing exams and testing.

(n) **Hearing aids** - (Chapter 182-547 WAC.)

(o) **Home health services** - Intermittent, short-term skilled nursing care, occupational therapy, physical therapy, speech therapy, home infusion therapy, and health aide services, provided in the home. (WAC 182-551-2000 through 182-551-2220.)

(p) **Home infusion therapy/parenteral nutrition program** - Supplies and equipment necessary for parenteral infusion of therapeutic agents. (Chapter 182-553 WAC.)

(q) **Hospice services** - Physician services, skilled nursing care, medical social services, counseling services for client and family, drugs, medications (including biologicals), medical equipment and supplies needed for palliative care, home health aide, homemaker, personal care services, medical transportation, respite care, and brief inpatient care. This benefit also includes services rendered in a hospice care center and pediatric palliative care services. (WAC 182-551-1210 through 182-551-1850.)

(r) **Hospital services—Inpatient/outpatient** - Emergency room; hospital room and board (includes nursing care); inpatient services, supplies, equipment, and prescription drugs; surgery, anesthesia; diagnostic testing, laboratory work, blood/blood derivatives; radiation and imaging treatment and diagnostic services; and outpatient or day surgery, and obstetrical services. (Chapter 182-550 WAC.)

(s) **Intermediate care facility/services for persons with intellectual disabilities** - Habilitative training, health-related care, supervision, and residential care. (Chapter 388-835 WAC.)

(t) **Maternity care and delivery services** - Community health nurse visits, nutrition visits, behavioral health visits, midwife services, birth doula services, maternity and infant case management services, family planning services, and community health worker visits. ((WAC ~~182-533-0330~~) Chapter 182-533 WAC.)

(u) **Medical equipment, supplies, and appliances** - Medical equipment and appliances, including wheelchairs, hospital beds, respiratory equipment; casts, splints, crutches, trusses, and braces. Medical supplies, including antiseptics, germicides, bandages, dressings, tape, blood monitoring/testing supplies, braces, belts, supporting devices, decubitus care products, ostomy supplies, syringes, needles, and urological supplies. (Chapter 182-543 WAC.)

(v) **Medical nutrition therapy** - Outpatient medical nutrition therapy and associated follow-ups. (Chapter 182-555 WAC.)

(w) **Nursing facility services** - Nursing, therapies, dietary, and daily care services delivered in a licensed nursing facility. (Chapter 388-97 WAC.)

(x) **Organ transplants** - Solid organs, e.g., heart, kidney, liver, lung, pancreas, and small bowel; bone marrow and peripheral stem cell; skin grafts; and corneal transplants. (WAC 182-550-1900 and 182-556-0400.)

(y) **Orthodontic services** - (Chapter 182-535A WAC.)

(z) **Out-of-state services** - (WAC 182-502-0120.)

(aa) **Outpatient rehabilitation services (OT, PT, ST)** - Evaluations, assessments, and treatment. (WAC 182-545-200.)

(bb) **Personal care services** - Assistance with activities of daily living (e.g., bathing, dressing, eating, managing medications) and routine household chores (e.g., meal preparation, housework, essential shopping, transportation to medical services). (Chapters 388-106 and 388-845 WAC.)

(cc) **Prescription drugs** - Outpatient drugs (including in nursing facilities), both generic and brand name; drug devices and supplies; some over-the-counter drugs; oral, topical, injectable drugs; vaccines, immunizations, and biologicals; and family planning drugs, devices, and supplies. (WAC 182-530-2000.) Additional coverage for medications and prescriptions is addressed in specific program WAC sections.

(dd) **Private duty nursing** - Continuous skilled nursing services provided in a private residence, including client assessment, administration of treatment, and monitoring of medical equipment and client care. For benefits for clients age 17 and younger, see WAC 182-551-3000 through 182-551-3400. For benefits for clients age 18 and older, see WAC 388-106-1000 through 388-106-1055.

(ee) **Prosthetic/orthotic devices** - Artificial limbs and other external body parts; devices that prevent, support, or correct a physical deformity or malfunction. (WAC 182-543-5000.)

(ff) **Reproductive health services** - Gynecological exams; contraceptives, drugs, and supplies, including prescriptions; sterilization; screening and treatment of sexually transmitted diseases; and educational services. (WAC 182-532-001 through 182-532-140.)

(gg) **Respiratory care (oxygen)** - All services, oxygen, equipment, and supplies related to respiratory care. (Chapter 182-552 WAC.)

(hh) **School-based health care services** - Early intervention services or special education health-related services provided in

schools to medicaid-eligible children ages birth through 20 who have an individualized education program (IEP) or individualized family service plan (IFSP). (Chapter 182-537 WAC.)

(ii) **Vision care** - Eye exams, refractions, fittings, visual field testing, vision therapy, ocular prosthetics, and surgery. (WAC 182-531-1000.)

(jj) **Vision hardware** - Frames and lenses. (Chapter 182-544 WAC.)

OTS-6058.1

AMENDATORY SECTION (Amending WSR 24-22-006, filed 10/23/24, effective 11/23/24)

WAC 182-503-0535 Washington apple health—Citizenship and immigration status. (1) Definitions.

(a) **Nonqualified alien** means someone who is lawfully present in the United States (U.S.) but who is not a qualified alien, a U.S. citizen, a U.S. national, or a qualifying American Indian born abroad.

(b) **Qualified alien** means someone who is lawfully present in the United States and who is one or more of the following:

(i) A person lawfully admitted for permanent residence (LPR).

(ii) An abused spouse or child, a parent of an abused child, or a child of an abused spouse who no longer resides with the person who committed the abuse, and who has one of the following:

(A) A pending or approved I-130 petition or application to immigrate as an immediate relative of a U.S. citizen or as the spouse of an unmarried LPR younger than 21 years of age.

(B) Proof of a pending application for suspension of deportation or cancellation of removal under the Violence Against Women Act (VAWA).

(C) A notice of prima facie approval of a pending self-petition under VAWA. An abused spouse's petition covers his or her child if the child is younger than 21 years of age. In that case, the child retains qualified alien status even after he or she turns 21 years of age.

(iii) A person who has been granted parole into the U.S. for one year or more, under the Immigration and Nationality Act (INA) Section 212 (d) (5), including public interest parolees.

(iv) A member of a Hmong or Highland Laotian tribe that rendered military assistance to the U.S. between August 5, 1964, and May 7, 1975, including the spouse, unremarried widow or widower, and unmarried dependent child of the tribal member.

(v) A person who was admitted into the U.S. as a conditional entrant under INA Section 203 (a) (7) before April 1, 1980.

(vi) A person admitted to the U.S. as a refugee under INA Section 207.

(vii) A person who has been granted asylum under INA Section 208.

(viii) A person granted withholding of deportation or removal under INA Section 243(h) or 241 (b) (3).

(ix) A Cuban or Haitian national who was paroled into the U.S. or given other special status.

(x) An Amerasian child of a U.S. citizen under 8 C.F.R. Section 204.4(a).

(xi) A person from Iraq or Afghanistan who has been granted one of the following:

(A) Special immigrant status under INA Section 101 (a) (27);

(B) Special immigrant conditional permanent resident; or

(C) Parole under Section 602 (b) (1) of the Afghan Allies Protection Act of 2009 or Section 1059(a) of the National Defense Authorization Act of 2006.

(xii) An Afghan who, under Section 2502 of the Extending Government Funding and Delivering Emergency Assistance Act of 2021, is evaluated as a qualified alien until March 31, 2023, or the end of their parole term, whichever is later, when granted parole:

(A) Between July 31, 2021, and September 30, 2023; or

(B) After September 30, 2022, and is:

(I) Their spouse or child; or

(II) The parent or guardian of an unaccompanied minor described under this subsection.

(xiii) A citizen or national of Ukraine (or a person who last habitually resided in Ukraine) who, under section 401 of the Additional Ukraine Supplemental Appropriations Act, 2022 (AUSAA) and the Ukraine Security Supplemental Appropriations Act, 2024 (USSAA), is evaluated as a qualified alien until the end of their parole term when:

(A) Granted parole into the United States between February 24, 2022, and September 30, 2024; or

(B) Granted parole into the United States after September 30, 2024, and is:

(I) The spouse or child of a person described in (b) (xiii) (A) of this subsection; or

(II) The parent, legal guardian, or primary caregiver of a person described in (b) (xiii) (A) of this subsection who is determined to be an unaccompanied child under section 462 (g) (2) of the Homeland Security Act of 2002 or section 412 (d) (2) (B) of the Immigration and Nationality Act.

(xiv) A person who has been certified or approved as a victim of trafficking by the federal office of refugee resettlement, or who is:

(A) The spouse or child of a trafficking victim of any age; or

(B) The parent or minor sibling of a trafficking victim who is younger than 21 years of age.

(xv) A person from the Federated States of Micronesia, the Republic of Palau, or the Republic of the Marshall Islands living in the United States in accordance with the Compacts of Free Association.

(c) **U.S. citizen** means someone who is a United States citizen under federal law.

(d) **U.S. national** means someone who is a United States national under federal law.

(e) **Undocumented person** means someone who is not lawfully present in the U.S.

(f) **Qualifying American Indian born abroad** means someone who:

(i) Was born in Canada and has at least 50 percent American Indian blood, regardless of tribal membership; or

(ii) Was born outside of the United States and is a member of a federally recognized tribe or an Alaska Native enrolled by the Secretary of the Interior under the Alaska Native Claims Settlement Act.

(2) **Eligibility.**

(a) A U.S. citizen, U.S. national or qualifying American Indian born abroad may be eligible for:

(i) Apple health for adults;

(ii) Apple health for kids;

- (iii) Apple health for pregnant women; or
- (iv) Classic medicaid.

(b) A qualified alien who meets or is exempt from the five-year bar may be eligible for:

- (i) Apple health for adults;
- (ii) Apple health for kids;
- (iii) Apple health for pregnant women; or
- (iv) Classic medicaid.

(c) A qualified alien who neither meets nor is exempt from the five-year bar may be eligible for:

- (i) Alien medical programs;
- (ii) Apple health for kids;
- (iii) Apple health for pregnant women; or
- (iv) Medical care services.

(d) A nonqualified alien may be eligible for:

- (i) Alien medical programs;
- (ii) Apple health for kids;
- (iii) Apple health for pregnant women; or
- (iv) Medical care services.

(e) An undocumented person may be eligible for:

- (i) Alien medical programs;
- (ii) State-only funded apple health for kids; ((~~or~~))
- (iii) State-only funded apple health for pregnant women; or
- (iv) State-only funded apple health expansion.

(3) The five-year bar.

(a) A qualified alien meets the five-year bar if he or she:

- (i) Continuously resided in the U.S. for five years or more from the date he or she became a qualified alien; or
- (ii) Entered the U.S. before August 22, 1996, and:

(A) Became a qualified alien before August 22, 1996; or

(B) Became a qualified alien on or after August 22, 1996, and has continuously resided in the U.S. between the date of entry into the U.S. and the date he or she became a qualified alien.

(b) A qualified alien is exempt from the five-year bar if he or she is:

(i) A qualified alien as defined in subsection (1)(b)(vi) through (xv) of this section;

(ii) An LPR, parolee, or abused person, who is also an armed services member or veteran, or a family member of an armed services member or veteran, as described below:

(A) An active-duty member of the U.S. military, other than active-duty for training;

(B) An honorably discharged U.S. veteran;

(C) A veteran of the military forces of the Philippines who served before July 1, 1946, as described in Title 38 U.S.C. Section 107; or

(D) The spouse, unremarried widow or widower, or unmarried dependent child of an honorably discharged U.S. veteran or active-duty member of the U.S. military.