

## WSR 21-20-068

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed September 29, 2021, 12:08 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-10-017 and 21-10-068.

Title of Rule and Other Identifying Information: WAC 182-559-100 General, 182-559-200 Eligible providers, 182-559-300 Eligibility for community support services, and 182-559-350 Eligibility for supported employment services.

Hearing Location(s): On November 9, 2021, at 10:00 a.m. The health care authority (HCA) remains closed in response to the coronavirus disease 2019 (COVID-19) public health emergency. Until further notice, HCA continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of Washington state residents. To attend the virtual public hearing, you must register in advance [https://zoom.us/webinar/register/WN\\_5E5op\\_X5Qq-dfxRP\\_a6EDg](https://zoom.us/webinar/register/WN_5E5op_X5Qq-dfxRP_a6EDg). After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than November 10, 2021.

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, by November 9, 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](mailto:amber.lougheed@hca.wa.gov), by October 29, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending WAC 182-559-100 to remove the community support services benefit exclusion for institutes for mental diseases and is amending WAC 182-559-100, 182-559-200, 182-559-300, and 182-559-350 to correct outdated rule citations and make other clarifying changes.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.1605 [41.05.160].

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Matthew Christie, P.O. Box 42730, Olympia, WA 98504-2730, 360-725-1015.

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. The changes to the proposed rules expand a cli-

ent benefit and make technical corrections and do not impose any costs on businesses.

September 29, 2021  
Wendy Barcus  
Rules Coordinator

## OTS-3330.1

AMENDATORY SECTION (Amending WSR 18-15-007, filed 7/6/18, effective 8/6/18)

**WAC 182-559-100 General.** (1) Under the authority of the medic-aid transformation project, RCW 71.24.385, and subject to available funds, the medicaid agency covers targeted foundational community supports to eligible medicaid beneficiaries, which include the following benefits:

- (a) Community support services; and
- (b) Supported employment services.
- (2) Community support services include:
  - (a) Pretenancy supports:
    - (i) Conducting a functional needs assessment to:
      - (A) Identify the participant's preferences related to housing (type, location, living alone or with someone else, identifying a roommate, accommodations needed, or other important preferences); and
      - (B) Identify the participant's needs for support to maintain community integration. This includes what type of setting works best for the client, assistance in budgeting for housing/living expenses, assistance in connecting the client with social services to assist with filling out applications and submitting appropriate documentation (~~in~~ ~~order~~) to obtain sources of income necessary for community living and establishing credit, and in understanding and meeting obligations of tenancy.
    - (ii) Assisting clients to connect with social services to help with finding and applying for housing necessary to support the clients in meeting their medical care needs;
    - (iii) Developing an individualized community integration plan based upon the assessment as part of the overall person-centered plan;
    - (iv) Identifying and establishing short and long-term measurable goal(s), and establishing how goals will be achieved and how concerns will be addressed;
    - (v) Participating in person-centered plan meetings at redetermination and revision plan meetings, as needed;
    - (vi) Providing supports and interventions according to the person-centered plan.
  - (b) Tenancy-sustaining services:
    - (i) Service planning support and participating in person-centered plan meetings at redetermination and revision plan meetings as needed;
    - (ii) Coordinating and linking the client to services including:
      - (A) Primary care and health homes;
      - (B) Substance use disorder treatment providers;
      - (C) Mental health providers;
      - (D) Medical, vision, nutritional and dental providers;

- (E) Vocational, education, employment and volunteer supports;
- (F) Hospitals and emergency rooms;
- (G) Probation and parole;
- (H) Crisis services;
- (I) End of life planning; and
- (J) Other support groups and natural supports.

(iii) Entitlement assistance including assisting clients in obtaining documentation, navigating and monitoring application process and coordinating with the entitlement agency;

(iv) Assistance in accessing supports to preserve the most independent living, including skills coaching, financing counseling, anger management, individual and family counseling, support groups, and natural supports;

(v) Providing supports to assist the client in communicating with the landlord and/or property manager regarding the participant's disability (if authorized and appropriate), detailing accommodations needed, and addressing components of emergency procedures involving the landlord and/or property manager;

(vi) Coordinating with the client to review, update and modify their housing support and crisis plan on a regular basis to reflect current needs and address existing or recurring housing retention barriers; and

(vii) Connecting the client to training and resources that will assist the client in being a good tenant and lease compliance, including ongoing support with activities related to household management.

(c) The community support services benefit does not include:

(i) Payment of rent or other room and board costs;

(ii) Capital costs related to the development or modification of housing;

(iii) Expenses for utilities or other regular occurring bills;

(iv) Goods or services intended for leisure or recreation;

(v) Duplicative services from other state or federal programs;

and

(vi) Services to clients in a correctional institution (~~or an institute for mental disease (IMD)~~).

(d) Community support services must be provided:

(i) In an integrated setting of the client's choice; and

(ii) In a manner that ensures the client's individual right of privacy, dignity, respect, and freedom from coercion and restraint;

(iii) Post tenancy, in settings consistent with home and community-based services, as defined in 42 C.F.R. Sec. 441.530, such as those that:

(A) Do not have the qualities of an institution;

(B) Are not located in a building that is also a publicly or privately operated facility providing inpatient institutional treatment;

(C) Are not on the grounds of, or immediately adjacent to a public institution;

(D) Do not have the effect of isolating the client from community members who are not receiving medicaid services; and

(E) Are not a licensed residential care facility such as an adult family home or assisted living facility.

(3) Supported employment, such as individual placement and support (IPS) services, is individualized and includes one or more of the following services:

(a) Preemployment services:

(i) Prevocational/job-related discovery or assessment;

(ii) Person-centered employment planning;

- (iii) Individualized job development and placement;
- (iv) Job carving;
- (v) Benefits education and planning; or
- (vi) Transportation (only in conjunction with the delivery of an authorized service).
- (b) Employment sustaining services:
  - (i) Career advancement services;
  - (ii) Negotiation with employers;
  - (iii) Job analysis;
  - (iv) Job coaching;
  - (v) Benefits education and planning;
  - (vi) Transportation (only in conjunction with the delivery of an authorized service);
  - (vii) Asset development; or
  - (viii) Follow-along supports.
- (c) The IPS benefit does not include:
  - (i) Generalized employer contacts that are not connected to a specific enrolled individual or an authorized service;
  - (ii) Employment support for individuals in subminimum wage, or sheltered workshop settings; and
  - (iii) Facility-based habilitation or personal care services.
- (d) Supported employment services must be provided in settings consistent with settings defined in 42 C.F.R. 441.530 (a) (1) (i) through (v) and (a) (2).
- (4) Clients who meet the eligibility criteria for both community support services and supported employment services (~~(are able to)~~) may receive both services concurrently. See WAC 182-559-300 for community support services eligibility criteria and WAC 182-559-350 for supported employment eligibility criteria.
- (5) In order to ensure the demand for services remains within available funds, the agency may impose enrollment wait lists for services. The wait list for foundational community supports services is considered on a first-come first-serve basis using the date the client requests community support services.
- (6) Services described in this chapter must be approved under the explicit authority of the medicaid transformation project.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-15-007, § 182-559-100, filed 7/6/18, effective 8/6/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2014 c 225 § 9 (1) (i) and 2016 1st sp.s c 36 § 213 (1) (f) and (g). WSR 17-11-136, § 182-559-100, filed 5/24/17, effective 7/1/17.]

AMENDATORY SECTION (Amending WSR 18-15-007, filed 7/6/18, effective 8/6/18)

**WAC 182-559-200 Eligible providers.** (1) Providers of community support services and supported employment services under this authority must be:

- (a) Health care professionals, entities, or contractors as defined by WAC 182-502-0002;
- (b) Agencies, centers, or facilities as defined by WAC 182-502-0002;
- (c) Health home providers as described in WAC 182-557-0050;

(d) Behavioral health providers licensed and certified according to chapter ((388-877)) 246-809 WAC; or

(e) Housing, employment, social service, or related agencies with demonstrated experience and ability to provide community support services, supported employment, or equivalent services.

(i) Community support services experience may be demonstrated by:

(A) Two years' experience in the coordination of supportive housing or in the coordination of independent living services in a social service setting under qualified supervision; or

(B) ((Certified)) Certification in supportive housing services (WAC ((388-877-0720 or 388-877-0722) by the department of social and health services/division of behavioral health and recovery (DSHS/DBHR)) 246-341-0722).

(ii) Supported employment experience may be demonstrated by one or more of the following:

(A) Accredited by the commission on accreditation of rehabilitation facilities (CARF) in employment services;

(B) Certified in employment services (WAC ((388-877-0718 or 388-877-0720) by DSHS/DBHR)) 246-341-0720 or 246-341-0722); or

(C) All staff that will be performing supported employment services meet one of the following criteria:

(I) Be a certified employment support professional (CESP) by the employment support professional certification council (ESPCC);

(II) Be a certified rehabilitation counselor (CRC) by the commission of rehabilitation counselor certification (CRCC);

(III) Have a bachelor's degree or higher in human or social services from an accredited college or university and at least two years of demonstrated experience providing supported employment or similar services; or

(IV) Have four or more years of demonstrated experience providing supported employment or similar services.

(2) Providers of community support services or supported employment services must:

(a) Obtain a core provider agreement in accordance with WAC 182-502-0005;

(b) Enroll with the medicaid agency as a nonbilling provider in accordance with WAC 182-502-0006; or

(c) Be qualified to bill for aging and long-term support administration services to provide community support services or supported employment services.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-15-007, § 182-559-200, filed 7/6/18, effective 8/6/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2014 c 225 § 9 (1)(i) and 2016 1st sp.s c 36 § 213 (1)(f) and (g). WSR 17-11-136, § 182-559-200, filed 5/24/17, effective 7/1/17.]

AMENDATORY SECTION (Amending WSR 18-15-007, filed 7/6/18, effective 8/6/18)

**WAC 182-559-300 Eligibility for community support services.** To be eligible for community support services, a client must:

(1) Be age eighteen or older;

(2) Be eligible for Washington apple health (medicaid);

(3) Meet at least one of the following health criteria and be expected to benefit from community support services:

(a) Clients assessed by a licensed behavioral health agency, under chapter ((388-877)) 246-341 WAC, to have a behavioral health need, which is defined as one or both of the following criteria:

(i) Mental health needs, including a need for improvement, stabilization, or prevention of deterioration of functioning (including the ability to live independently without support) resulting from the presence of a mental illness; or

(ii) Substance use needs determined by an assessment using the American Society of Addiction Medicine (ASAM) criteria indicates that the client meets at least ASAM level 1.0, indicating the need for outpatient substance use disorder (SUD) treatment. The ASAM is a multi-dimensional assessment approach for determining a client's need for SUD treatment.

(b) Clients assessed via a CARE assessment, per WAC 388-106-0050, to have a need for assistance demonstrated by:

(i) The need for assistance with at least three activities of daily living (ADLs) defined in WAC 388-106-0010, one of which may be body care; or

(ii) The need for hands-on assistance with at least one ADL which may include body care.

(c) Clients assessed to be a homeless person with a disability, according to 24 C.F.R. 578.3, which is defined as a long continuing or indefinite physical condition requiring improvement, stabilization, or prevention of deterioration of functioning (including ability to live independently without support).

(4) Exhibit at least one of the following risk factors:

(a) Homeless clients who:

(i) Have been homeless for at least twelve months; or

(ii) Have been homeless on at least four separate occasions in the last three years, as long as the combined occasions equal at least twelve months.

Homeless is defined as living in a safe haven, an emergency shelter, or a place not meant for human habitation. See 24 C.F.R. 578.3.

(b) A history of frequent or lengthy institutional contact.

(i) Institutional care facilities include jails, substance ((abuse)) use disorder or mental health treatment facilities, hospitals, or other similar facilities, as defined in 24 C.F.R. 578.3, or skilled nursing facilities as defined in WAC 388-97-0001.

(ii) Frequent means more than one contact in the past twelve months.

(iii) Lengthy means ninety or more consecutive days within an institutional setting in the past twelve months.

(c) A history of frequent stays at adult residential care facilities as defined by WAC 388-110-020 or residential treatment facilities as defined by WAC 246-337-005. Frequent means more than one contact in the past twelve months.

(d) Have frequent turnover of in-home caregivers as defined by WAC 388-106-0040, where within the last twelve months the client utilized three or more different in-home caregiver providers and the current placement is not appropriate for the client.

(e) Have a predictive risk score of 1.5 or above. See WAC 182-557-0225.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-15-007, § 182-559-300, filed 7/6/18, effective 8/6/18. Statutory Authority: RCW

41.05.021, 41.05.160, 2014 c 225 § 9 (1)(i) and 2016 1st sp.s c 36 § 213 (1)(f) and (g). WSR 17-11-136, § 182-559-300, filed 5/24/17, effective 7/1/17.]

AMENDATORY SECTION (Amending WSR 18-15-007, filed 7/6/18, effective 8/6/18)

**WAC 182-559-350 Eligibility for supported employment services.**

To be eligible for supported employment services, a client must:

- (1) Be age sixteen or older;
- (2) Be eligible for apple health (medicaid);
- (3) Desire to obtain employment;
- (4) Meet at least one of the following health criteria and is expected to benefit from supported employment services:
  - (a) Clients assessed by a licensed behavioral health agency, under chapter ((388-877)) 246-341 WAC, to have a behavioral health need, which is defined as one or both of the following criteria:
    - (i) Mental health needs, including a need for improvement, stabilization, or prevention of deterioration of functioning (including ability to live independently without support) resulting from the presence of a mental illness; or
    - (ii) Substance use needs determined by an assessment using the American Society of Addiction Medicine (ASAM) criteria indicates that the client meets at least ASAM level 1.0, indicating the need for outpatient substance use disorder (SUD) treatment. The ASAM is a multi-dimensional assessment approach for determining a client's need for SUD treatment.
  - (b) Clients assessed via a CARE assessment, per WAC 388-106-0050, to have a need for assistance demonstrated by:
    - (i) The need for assistance with at least three activities of daily living (ADLs) defined in WAC 388-106-0010, one of which may be body care; or
    - (ii) The need for hands-on assistance with at least one ADL which may include body care.
  - (c) There is objective evidence, as defined by the sequential evaluation process in chapter 388-449 WAC or the progressive evaluation process in chapter 388-447 WAC, of physical or mental impairments because of which the client needs assistance with basic work-related activities, including one or more of the following: Sitting, standing, walking, lifting, carrying, handling, manipulative or postural functions (pushing, pulling, reaching, handling, stooping or crouching), seeing, hearing, communicating, remembering, understanding and following instructions, responding appropriately to supervisors and coworkers, tolerating the pressures of a work setting, maintaining appropriate behavior, using judgment, and adapting to changes in a routine work setting.
- (5) Exhibit at least one of the following risk factors:
  - (a) Unable to be gainfully employed for at least ninety consecutive days due to a mental or physical impairment, as demonstrated by eligibility for the aged, blind, or disabled program as defined in WAC 388-449-0001, or the housing and essential needs program as defined in WAC 388-447-0001;
  - (b) More than one instance of treatment for a substance use disorder within the past two years;

(c) At risk of deterioration of mental illness and substance use disorder, or both, including one or more of the following:

(i) Persistent or chronic risk factors such as social isolation due to a lack of family or social supports, poverty, criminal justice involvement, or homelessness;

(ii) Care for mental illness and substance use disorder, or both, requires multiple provider types, including behavioral health, primary care, long-term services and supports, or other supportive services; or

(iii) Past psychiatric history, with no significant functional improvement that can be maintained without treatment and/or supports.

(d) Dysfunction in role performance due to a behavioral health condition, including one or more of the following:

(i) Behaviors that disrupt employment or schooling, or put employment at risk of termination or schooling suspension;

(ii) A history of multiple terminations from work or suspensions/expulsions from school;

(iii) Cannot succeed in a structured work or school setting without additional support or accommodations; or

(iv) Performance significantly below expectations for cognitive/developmental level.

(e) An inability to obtain or maintain employment resulting from age, physical disability, or traumatic brain injury.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-15-007, § 182-559-350, filed 7/6/18, effective 8/6/18.]