

WSR 23-06-044

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed February 24, 2023, 10:59 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-24-062.

Title of Rule and Other Identifying Information: WAC 182-535-1098 Covered—Adjunctive general services and 182-535-1100 Dental-related services—Not covered.

Hearing Location(s): On April 4, 2023, 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_vz25iQmcQVaCXYW6QEDNyw. 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: April 5, 2023.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by April 4, 2023, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email Johanna.Larson@hca.wa.gov, by March 17, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending these rules to: (1) Correct a WAC subsection reference in WAC 182-535-1098 (4) (c). Subsection (4) (c) indicates refer to WAC 182-535-1094(3) and should be WAC 182-535-1094(4); and (2) remove subsection (2) (f) (x), replacement of agency-purchased prosthodontics, from WAC 182-535-1100 Not covered. Dentures are a covered service.

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: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-3144; Implementation and Enforcement: Jayson Diaz, P.O. Box 55076, Olympia, WA 98504-5076, 360-725-1822.

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 from Regulatory Fairness Act requirements:

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 rule is being revised to fix an incorrect citation and remove a restriction on dentures. Neither of these changes impose a more-than-minor cost.

February 24, 2023

OTS-4328.1

AMENDATORY SECTION (Amending WSR 21-14-055, filed 7/1/21, effective 8/1/21)

WAC 182-535-1098 Covered—Adjunctive general services. Clients described in WAC 182-535-1060 are eligible to receive the adjunctive general services listed in this section, subject to coverage limitations, restrictions, and client-age requirements identified for a specific service.

(1) **Adjunctive general services.** The medicaid agency:

(a) Covers palliative (emergency) treatment, not to include pupal debridement (see WAC 182-535-1086 (2)(b)), for treatment of dental pain, limited to once per day, per client, as follows:

(i) The treatment must occur during limited evaluation appointments;

(ii) A comprehensive description of the diagnosis and services provided must be documented in the client's record; and

(iii) Appropriate radiographs must be in the client's record supporting the medical necessity of the treatment.

(b) Covers local anesthesia and regional blocks as part of the global fee for any procedure being provided to clients.

(c) Covers office-based deep sedation/general anesthesia services:

(i) For all eligible clients age eight and younger and clients any age of the developmental disabilities administration of the department of social and health services (DSHS). Documentation supporting the medical necessity of the anesthesia service must be in the client's record.

(ii) For clients age nine through (~~twenty~~) 20 on a case-by-case basis and when prior authorized, except for oral surgery services. For oral surgery services listed in WAC 182-535-1094 (1)(f) through (l) and clients with cleft palate diagnoses, the agency does not require prior authorization for deep sedation/general anesthesia services.

(iii) For clients age (~~twenty-one~~) 21 and older when prior authorized. The agency considers these services for only those clients:

(A) With medical conditions such as tremors, seizures, or asthma;

(B) Whose records contain documentation of tried and failed treatment under local anesthesia or other less costly sedation alternatives due to behavioral health conditions; or

(C) With other conditions for which general anesthesia is medically necessary, as defined in WAC 182-500-0070.

(d) Covers office-based intravenous moderate (conscious) sedation/analgesia:

(i) For any dental service for clients age (~~twenty~~) 20 and younger, and for clients any age of the developmental disabilities administration of DSHS. Documentation supporting the medical necessity of the service must be in the client's record.

- (ii) For clients age (~~(twenty-one)~~) 21 and older when prior authorized. The agency considers these services for only those clients:
- (A) With medical conditions such as tremors, seizures, or asthma;
 - (B) Whose records contain documentation of tried and failed treatment under local anesthesia, or other less costly sedation alternatives due to behavioral health conditions; or
 - (C) With other conditions for which general anesthesia or conscious sedation is medically necessary, as defined in WAC 182-500-0070.
- (e) Covers office-based nonintravenous conscious sedation:
- (i) For any dental service for clients age (~~(twenty)~~) 20 and younger, and for clients any age of the developmental disabilities administration of DSHS. Documentation supporting the medical necessity of the service must be in the client's record.
 - (ii) For clients age (~~(twenty-one)~~) 21 and older, only when prior authorized.
- (f) Requires providers to bill anesthesia services using the current dental terminology (CDT) codes listed in the agency's current published billing instructions.
- (g) Requires providers to have a current anesthesia permit on file with the agency.
- (h) Covers administration of nitrous oxide once per day, per client per provider.
- (i) Requires providers of oral or parenteral conscious sedation, deep sedation, or general anesthesia to meet:
- (i) The prevailing standard of care;
 - (ii) The provider's professional organizational guidelines;
 - (iii) The requirements in chapter 246-817 WAC; and
 - (iv) Relevant department of health (DOH) medical, dental, or nursing anesthesia regulations.
- (j) Pays for dental anesthesia services according to WAC 182-535-1350.
- (k) Covers professional consultation/diagnostic services as follows:
- (i) A dentist or a physician other than the practitioner providing treatment must provide the services; and
 - (ii) A client must be referred by the agency for the services to be covered.
- (2) **Professional visits.** The agency covers:
- (a) Up to two house/extended care facility calls (visits) per facility, per provider. The agency limits payment to two facilities per day, per provider.
 - (b) One hospital visit, including emergency care, per day, per provider, per client, and not in combination with a surgical code unless the decision for surgery is a result of the visit.
 - (c) Emergency office visits after regularly scheduled hours. The agency limits payment to one emergency visit per day, per client, per provider.
- (3) **Drugs and medicaments (pharmaceuticals).**
- (a) The agency covers oral sedation medications only when prescribed and the prescription is filled at a pharmacy. The agency does not cover oral sedation medications that are dispensed in the provider's office for home use.
 - (b) The agency covers therapeutic parenteral drugs as follows:
 - (i) Includes antibiotics, steroids, anti-inflammatory drugs, or other therapeutic medications. This does not include sedative, anesthetic, or reversal agents.

(ii) Only one single-drug injection or one multiple-drug injection per date of service.

(c) For clients age (~~twenty~~) 20 and younger, the agency covers other drugs and medicaments dispensed in the provider's office for home use. This includes, but is not limited to, oral antibiotics and oral analgesics. The agency does not cover the time spent writing prescriptions.

(d) For clients enrolled in an agency-contracted managed care organization (MCO), the client's MCO pays for dental prescriptions.

(4) **Miscellaneous services.** The agency covers:

(a) Behavior management provided by a dental provider or clinic. The agency does not cover assistance with managing a client's behavior provided by a dental provider or staff member delivering the client's dental treatment.

(i) Documentation supporting the need for behavior management must be in the client's record and including the following:

(A) A description of the behavior to be managed;

(B) The behavior management technique used; and

(C) The identity of the additional professional staff used to provide the behavior management.

(ii) Clients, who meet one of the following criteria and whose documented behavior requires the assistance of one additional professional staff employed by the dental provider or clinic to protect the client and the professional staff from injury while treatment is rendered, may receive behavior management:

(A) Clients age eight and younger;

(B) Clients age nine through (~~twenty~~) 20, only on a case-by-case basis and when prior authorized;

(C) Clients any age of the developmental disabilities administration of DSHS;

(D) Clients diagnosed with autism;

(E) Clients who reside in an alternate living facility (ALF) as defined in WAC 182-513-1301, or in a nursing facility as defined in WAC 182-500-0075.

(iii) Behavior management can be performed in the following settings:

(A) Clinics (including independent clinics, tribal health clinics, federally qualified health centers, rural health clinics, and public health clinics);

(B) Offices;

(C) Homes (including private homes and group homes); and

(D) Facilities (including nursing facilities and alternate living facilities).

(b) Treatment of post-surgical complications (e.g., dry socket). Documentation supporting the medical necessity of the service must be in the client's record.

(c) Occlusal guards when medically necessary and prior authorized. (Refer to WAC 182-535-1094(~~(+3)~~) (4) for occlusal orthotic device coverage and coverage limitations.) The agency covers:

(i) An occlusal guard only for clients age (~~twelve~~) 12 through (~~twenty~~) 20 when the client has permanent dentition; and

(ii) An occlusal guard only as a laboratory processed full arch appliance.

(5) **Nonclinical procedures.**

(a) The agency covers teledentistry according to the department of health, health systems quality assurance office of health professions, current guidelines, appropriate use of teledentistry, and as

follows (see WAC 182-531-1730 for coverage limitations not listed in this section):

(i) Synchronous teledentistry at the distant site for clients of all ages; and

(ii) Asynchronous teledentistry at the distant site for clients of all ages.

(b) The client's record must include the following supporting documentation regarding teledentistry:

(i) Service provided via teledentistry;

(ii) Location of the client;

(iii) Location of the provider; and

(iv) Names and credentials of all persons involved in the teledentistry visit and their role in providing the service at both the originating and distant sites.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-14-055, § 182-535-1098, filed 7/1/21, effective 8/1/21; WSR 20-08-103, § 182-535-1098, filed 3/30/20, effective 4/30/20. Statutory Authority: RCW 41.05.021, 41.05.160 and 2017 3rd sp.s. c 1 § 213 (1)(c). WSR 19-09-058, § 182-535-1098, filed 4/15/19, effective 7/1/19. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-20-097, § 182-535-1098, filed 10/3/17, effective 11/3/17; WSR 16-18-033, § 182-535-1098, filed 8/26/16, effective 9/26/16; WSR 15-10-043, § 182-535-1098, filed 4/29/15, effective 5/30/15. Statutory Authority: RCW 41.05.021 and 2013 2nd sp.s. c 4 § 213. WSR 14-08-032, § 182-535-1098, filed 3/25/14, effective 4/30/14. Statutory Authority: RCW 41.05.021. WSR 12-09-081, § 182-535-1098, filed 4/17/12, effective 5/18/12. WSR 11-14-075, recodified as § 182-535-1098, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.500, 74.09.520. WSR 07-06-042, § 388-535-1098, filed 3/1/07, effective 4/1/07.]

AMENDATORY SECTION (Amending WSR 17-20-097, filed 10/3/17, effective 11/3/17)

WAC 182-535-1100 Dental-related services—Not covered. (1) The medicaid agency does not cover the following under the dental program:

(a) The dental-related services described in subsection (2) of this section unless the services are covered under the early periodic screening, diagnostic, and treatment (EPSDT) program. When EPSDT applies, the agency evaluates a noncovered service, equipment, or supply according to the process in WAC 182-501-0165 to determine if it is medically necessary, safe, effective, and not experimental.

(b) Any service specifically excluded by statute.

(c) More costly services when less costly, equally effective services as determined by the agency are available.

(d) Services, procedures, treatment, devices, drugs, or application of associated services:

(i) That the agency or the Centers for Medicare and Medicaid Services (CMS) considers investigative or experimental on the date the services were provided.

(ii) That are not listed as covered in one or both of the following:

(A) Washington Administrative Code (WAC).

(B) The agency's current published documents.

(2) The agency does not cover dental-related services listed under the following categories of service (see subsection (1)(a) of this section for services provided under the EPSDT program):

(a) **Diagnostic services.** The agency does not cover:

(i) Detailed and extensive oral evaluations or reevaluations.

(ii) Posterior-anterior or lateral skull and facial bone survey films.

(iii) Any temporomandibular joint films.

(iv) Tomographic surveys/3-D imaging.

(v) Comprehensive periodontal evaluations.

(vi) Viral cultures, genetic testing, caries susceptibility tests, or adjunctive prediagnostic tests.

(b) **Preventive services.** The agency does not cover:

(i) Nutritional counseling for control of dental disease.

(ii) Removable space maintainers of any type.

(iii) Sealants placed on a tooth with the same-day occlusal restoration, preexisting occlusal restoration, or a tooth with occlusal decay.

(iv) Custom fluoride trays of any type.

(v) Bleach trays.

(c) **Restorative services.** The agency does not cover:

(i) Restorations for wear on any surface of any tooth without evidence of decay through the dentinoenamel junction (DEJ) or on the root surface.

(ii) Preventative restorations.

(iii) Labial veneer resin or porcelain laminate restorations.

(iv) Sedative fillings.

(v) Crowns and crown related services.

(A) Gold foil restorations.

(B) Metallic, resin-based composite, or porcelain/ceramic inlay/onlay restorations.

(C) Crowns for cosmetic purposes (e.g., peg laterals and tetracycline staining).

(D) Permanent indirect crowns for posterior teeth.

(E) Permanent indirect crowns on permanent anterior teeth for clients age (~~fourteen~~) 14 and younger.

(F) Temporary or provisional crowns (including ion crowns).

(G) Any type of coping.

(H) Crown repairs.

(I) Crowns on teeth one, (~~sixteen, seventeen, and thirty-two~~) 16, 17, and 32.

(vi) Polishing or recontouring restorations or overhang removal for any type of restoration.

(vii) Any services other than extraction on supernumerary teeth.

(d) **Endodontic services.** The agency does not cover:

(i) Indirect or direct pulp caps.

(ii) Any endodontic treatment on primary teeth, except as described in WAC 182-535-1086(3).

(e) **Periodontic services.** The agency does not cover:

(i) Surgical periodontal services including, but not limited to:

(A) Gingival flap procedures.

(B) Clinical crown lengthening.

(C) Osseous surgery.

(D) Bone or soft tissue grafts.

(E) Biological material to aid in soft and osseous tissue regeneration.

(F) Guided tissue regeneration.

(G) Pedicle, free soft tissue, apical positioning, subepithelial connective tissue, soft tissue allograft, combined connective tissue and double pedicle, or any other soft tissue or osseous grafts.

(H) Distal or proximal wedge procedures.

(ii) Nonsurgical periodontal services including, but not limited to:

(A) Intracoronal or extracoronal provisional splinting.

(B) Full mouth or quadrant debridement (except for clients of the developmental disabilities administration).

(C) Localized delivery of chemotherapeutic agents.

(D) Any other type of surgical periodontal service.

(f) **Removable prosthodontics.** The agency does not cover:

(i) Removable unilateral partial dentures.

(ii) Any interim complete or partial dentures.

(iii) Flexible base partial dentures.

(iv) Any type of permanent soft reline (e.g., molloplast).

(v) Precision attachments.

(vi) Replacement of replaceable parts for semi-precision or precision attachments.

(vii) Replacement of second or third molars for any removable prosthesis.

(viii) Immediate dentures.

(ix) Cast-metal framework partial dentures.

~~((x) Replacement of agency purchased removable prosthodontics that have been lost, broken, stolen, sold, or destroyed as a result of the client's carelessness, negligence, recklessness, deliberate intent, or misuse as described in WAC 182-501-0050.))~~

(g) **Implant services.** The agency does not cover:

(i) Any type of implant procedures, including, but not limited to, any tooth implant abutment (e.g., periosteal implants, eposteal implants, and transosteal implants), abutments or implant supported crowns, abutment supported retainers, and implant supported retainers.

(ii) Any maintenance or repairs to procedures listed in (g)(i) of this subsection.

(iii) The removal of any implant as described in (g)(i) of this subsection.

(h) **Fixed prosthodontics.** The agency does not cover any type of:

(i) Fixed partial denture pontic.

(ii) Fixed partial denture retainer.

(iii) Precision attachment, stress breaker, connector bar, coping, cast post, or any other type of fixed attachment or prosthesis.

(i) **Oral maxillofacial prosthetic services.** The agency does not cover any type of oral or facial prosthesis other than those listed in WAC 182-535-1092.

(j) **Oral and maxillofacial surgery.** The agency does not cover:

(i) Any oral surgery service not listed in WAC 182-535-1094.

(ii) Vestibuloplasty.

(k) **Adjunctive general services.** The agency does not cover:

(i) Anesthesia, including, but not limited to:

(A) Local anesthesia as a separate procedure.

(B) Regional block anesthesia as a separate procedure.

(C) Trigeminal division block anesthesia as a separate procedure.

(D) Medication for oral sedation, or therapeutic intramuscular

(IM) drug injections, including antibiotic and injection of sedative.

(E) Application of any type of desensitizing medicament or resin.

(ii) Other general services including, but not limited to:

(A) Fabrication of an athletic mouthguard.

- (B) Sleep apnea devices or splints.
 - (C) Occlusion analysis.
 - (D) Occlusal adjustment, tooth or restoration adjustment or smoothing, or odontoplasties.
 - (E) Enamel microabrasion.
 - (F) Dental supplies such as toothbrushes, toothpaste, floss, and other take home items.
 - (G) Dentist's or dental hygienist's time writing or calling in prescriptions.
 - (H) Dentist's or dental hygienist's time consulting with clients on the phone.
 - (I) Educational supplies.
 - (J) Nonmedical equipment or supplies.
 - (K) Personal comfort items or services.
 - (L) Provider mileage or travel costs.
 - (M) Fees for no-show, canceled, or late arrival appointments.
 - (N) Service charges of any type, including fees to create or copy charts.
 - (O) Office supplies used in conjunction with an office visit.
 - (P) Teeth whitening services or bleaching, or materials used in whitening or bleaching.
 - (Q) Botox or dermal fillers.
- (3) The agency does not cover the following dental-related services for clients age (~~twenty-one~~) 21 and older:
- (a) The following diagnostic services:
 - (i) Occlusal intraoral radiographs;
 - (ii) Diagnostic casts;
 - (iii) Sealants (for clients of the developmental disabilities administration, see WAC 182-535-1099);
 - (iv) Pulp vitality tests.
 - (b) The following restorative services:
 - (i) Prefabricated resin crowns;
 - (ii) Any type of core buildup, cast post and core, or prefabricated post and core.
 - (c) The following endodontic services:
 - (i) Endodontic treatment on permanent bicuspid or molar teeth;
 - (ii) Any apexification/recalcification procedures;
 - (iii) Any apicoectomy/periradicular surgical endodontic procedures including, but not limited to, retrograde fillings (except for anterior teeth), root amputation, reimplantation, and hemisections.
 - (d) The following adjunctive general services:
 - (i) Occlusal guards, occlusal orthotic splints or devices, bruxing or grinding splints or devices, or temporomandibular joint splints or devices; and
 - (ii) Analgesia or anxiolysis as a separate procedure except for administration of nitrous oxide.
- (4) The agency evaluates a request for any dental-related services listed as noncovered in this chapter under the provisions of WAC 182-501-0160.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-20-097, § 182-535-1100, filed 10/3/17, effective 11/3/17; WSR 15-10-043, § 182-535-1100, filed 4/29/15, effective 5/30/15. Statutory Authority: RCW 41.05.021 and 2013 2nd sp.s. c 4 § 213. WSR 14-08-032, § 182-535-1100, filed 3/25/14, effective 4/30/14. Statutory Authority: RCW 41.05.021. WSR 12-09-081, § 182-535-1100, filed 4/17/12, effective 5/18/12. WSR 11-14-075, recodified as § 182-535-1100, filed 6/30/11,

effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.500, 74.09.520. WSR 07-06-042, § 388-535-1100, filed 3/1/07, effective 4/1/07. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 2003 1st sp.s. c 25, P.L. 104-191. WSR 03-19-078, § 388-535-1100, filed 9/12/03, effective 10/13/03. Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.500, 74.09.520, 42 U.S.C. 1396d(a), 42 C.F.R. 440.100 and 440.225. WSR 02-13-074, § 388-535-1100, filed 6/14/02, effective 7/15/02. Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.520 and 74.09.700, 42 USC 1396d(a), C.F.R. 440.100 and 440.225. WSR 99-07-023, § 388-535-1100, filed 3/10/99, effective 4/10/99. Statutory Authority: Initiative 607, 1995 c 18 2nd sp.s. and 74.08.090. WSR 96-01-006 (Order 3931), § 388-535-1100, filed 12/6/95, effective 1/6/96.]