

WSR 23-14-120

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed July 5, 2023, 10:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-24-114.

Title of Rule and Other Identifying Information: Transportation services—Nonemergency transportation (NEMT); WAC 182-546-5000 NEMT—General, 182-546-5100 NEMT—Definitions, 182-546-5550 NEMT—Exclusions and limitations, 182-546-5600 NEMT—Intermediate stops or delays, 182-546-5800 NEMT—Trips out-of-state/out-of-country, 182-546-5900 NEMT—Meals, lodging, escort/guardian, and 182-546-6200 NEMT—Reimbursement.

Hearing Location(s): On August 8, 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_PL_UX-6lSuWpeJy1vLlPEg. 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: August 9, 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 August 8, 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 July 21, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending these rules to provide more precise language to define the program parameters and ensure consistency. Specifically, in addition to housekeeping changes, the agency is proposing to amend:

- WAC 182-546-5000(4) to clarify this section pertains to a client's freedom of access to health care, but that doesn't require the agency to cover transportation at a higher cost in order to meet the client's personal choice of medical provider.
- WAC 182-546-5100 to add a definition for against medical advice (AMA), fix WAC reference in ambulance definition, and remove definitions for extended stay and short stay.
- WAC 182-546-5550 to add in a new subsection (1)(b) regarding AMA discharges and a new subsection (1)(k) for standalone pharmacy trips.
- WAC 182-546-5600 (3)(b) to clarify the agency may pay for transportation for a client to a pharmacy to obtain medicare Part D prescriptions if the prescriptions are billable to medicaid and not paid for by medicare Part D.
- WAC 182-546-5800(1) to clarify that out-of-state requests require a minimum of seven days' notice before the client's travel.
- WAC 182-546-5900(4) to clarify the reasonable cost of lodging and meals is measured against the state per diem of the location where the client is receiving covered medical services and striking subsections (4)(a), (b), and (c).

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; 42 C.F.R. 431.53, 42 C.F.R. 440.170.

Statute Being Implemented: RCW 41.05.021, 41.05.160; 42 C.F.R. 431.53, 42 C.F.R. 440.170.

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 42719, Olympia, WA 98504-2716 [2719], 360-725-1344; Implementation and Enforcement: Emily Horton, 626 8th Avenue S.E., Olympia, WA 98504, 360-725-1721.

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. HCA is amending these rules to provide more precise language to define the program parameters and ensure consistency. This change does not impose a more-than-minor cost.

July 5, 2023

Wendy Barcus

Rules Coordinator

OTS-4406.3

AMENDATORY SECTION (Amending WSR 16-12-022, filed 5/20/16, effective 6/20/16)

WAC 182-546-5000 Nonemergency transportation—General. (1) The (~~medicaid~~) agency covers nonemergency nonambulance transportation to and from covered health care services, as (~~provided by the Code of Federal Regulations~~) required by 42 C.F.R. 431.53 (~~and 42 C.F.R. 440.170~~), subject to the limitations and requirements under WAC 182-546-5000 through 182-546-6200. See WAC 182-546-1000 for nonemergency ground ambulance transportation.

(2) The agency pays for nonemergency transportation for clients covered under state-funded medical programs subject to funding appropriated by the legislature.

(3) Clients may not select the transportation provider or the mode of transportation.

(4) A client's right to freedom of choice does not require the agency to cover transportation at unusual or exceptional cost in order to meet a client's personal choice of health care provider.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 16-12-022, § 182-546-5000, filed 5/20/16, effective 6/20/16; WSR 15-03-050, § 182-546-5000, filed 1/14/15, effective 2/14/15. WSR 11-17-032, recodi-

fied as § 182-546-5000, filed 8/9/11, effective 8/9/11. Statutory Authority: RCW 74.04.057, 74.08.090, and 74.09.500. WSR 11-15-029, § 388-546-5000, filed 7/12/11, effective 8/12/11. Statutory Authority: RCW 74.08.090, 74.09.500, 74.04.050, 74.04.055, and 74.04.057. WSR 01-06-029, § 388-546-5000, filed 3/2/01, effective 4/2/01.]

AMENDATORY SECTION (Amending WSR 20-05-066, filed 2/14/20, effective 3/16/20)

WAC 182-546-5100 Nonemergency transportation—Definitions. The following definitions and those found in chapter 182-500 WAC apply to nonemergency medical brokered transportation. Unless otherwise defined in WAC 182-546-5200 through 182-546-6000, medical terms are used as commonly defined within the scope of professional medical practice in the state of Washington.

"Against medical advice (AMA)" - When a client elects to discharge from a health care facility against the advice of medical professionals.

"Ambulance" - See WAC (~~(182-546-0001)~~) 182-546-0125.

"Broker" - An organization or entity contracted with the (~~(medicaid)~~) agency to arrange nonemergency transportation and related services for clients.

"Drop off point" - The location authorized by the transportation broker for the client's trip to end.

"Escort" - A person authorized by the transportation broker to accompany and be transported with a client to a health care service. An escort's transportation may be authorized depending on the client's age, mental state or capacity, safety requirements, mobility skills, communication skills, or cultural issues.

(~~("Extended stay" - A period of time spanning thirty consecutive days or longer for which a client receives health care services outside of their local community and for which they may request assistance with meals and lodging.)~~)

"Guardian" - A person who is legally responsible for a client and who may be required to be present when a client is receiving health care services.

"Local community" - The client's city or town of residence or nearest location to residence.

"Local provider" - A provider, as defined in WAC 182-500-0085, who delivers covered health care service within the client's local community, and the treatment facility where the services are delivered within the client's local community.

"Lodging and meals" - Temporary housing and meals provided during a client's out-of-area medical stay.

"Mode" - A method of transportation assistance used by the general public that an individual client can use in a specific situation. Methods that may be considered include, but are not limited to:

- Air transport;
- Public bus;
- Commercial bus;
- Ferries/water taxis;
- Gas vouchers/gas cards;
- Grouped or shared-ride vehicles;
- Mileage reimbursement;

- Parking;
- Stretcher vans or cars;
- Taxi;
- Tickets;
- Tolls;
- Train;
- Volunteer drivers;
- Walking or other personal conveyance; and
- Wheelchair vans.

"Noncompliance or noncompliant" - When a client:

- Fails to appear at the pickup point of the trip at the scheduled pickup time;
- Misuses or abuses agency-paid medical, transportation, or other services;
- Fails to comply with the rules, procedures, or policies of the agency or those of the agency's transportation brokers, the brokers' subcontracted transportation providers, or health care service providers;
- Poses a direct threat to the health or safety of self or others; or
- Engages in violent, seriously disruptive, or illegal conduct.

"Pickup point" - The location authorized by the agency's transportation broker for the client's trip to begin.

"Return trip" - The return of the client to the client's residence, or another authorized drop-off point, from the location where a covered health care service has occurred.

"Service animal" - An animal individually trained to work or perform tasks for an individual with a disability. The work or task an animal has been trained to provide must be directly related to the individual's disability. Animals whose sole function is to provide comfort or emotional support do not qualify as service animals under the American with Disabilities Act.

~~(**"Short stay"** - A period of time up to twenty-nine days for which a client receives health care services outside of their local community and for which they may request assistance with meals and lodging.)~~

"Stretcher car or van" - A vehicle that can legally transport a client in a prone or supine position when the client does not require medical attention en route.

"Stretcher trip" - A transportation service that requires a client to be transported in a prone or supine position without medical attention during the trip. This may be by stretcher, board, gurney, or other appropriate device. Medical or safety requirements must be the basis for transporting a client in the prone or supine position.

"Transportation provider" - A person or company under contract with a broker to provide trips to eligible clients.

"Trip" - Transportation one-way from the pickup point to the drop off point by an authorized transportation provider.

"Urgent care" - An unplanned appointment for a covered medical service with verification from an attending physician or facility that the client must be seen that day or the following day.

[Statutory Authority: RCW 41.05.021, 41.05.160, 42 C.F.R. §§ 431.53 and 440.170. WSR 20-05-066, § 182-546-5100, filed 2/14/20, effective 3/16/20. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 16-12-022, § 182-546-5100, filed 5/20/16, effective 6/20/16; WSR 15-03-050, § 182-546-5100, filed 1/14/15, effective 2/14/15. WSR

11-17-032, recodified as § 182-546-5100, filed 8/9/11, effective 8/9/11. Statutory Authority: RCW 74.04.057, 74.08.090, and 74.09.500. WSR 11-15-029, § 388-546-5100, filed 7/12/11, effective 8/12/11. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 74.09.035. WSR 08-08-064, § 388-546-5100, filed 3/31/08, effective 5/1/08. Statutory Authority: RCW 74.08.090, 74.09.500, 74.04.050, 74.04.055, and 74.04.057. WSR 01-06-029, § 388-546-5100, filed 3/2/01, effective 4/2/01.]

AMENDATORY SECTION (Amending WSR 20-05-066, filed 2/14/20, effective 3/16/20)

WAC 182-546-5550 Nonemergency transportation—Exclusions and limitations.

(1) The following service categories listed in WAC 182-501-0060 are subject to the following exclusions and limitations:

(a) Adult day health (ADH) - Nonemergency transportation for ADH services is not provided through the brokers. ADH providers are responsible for arranging or providing transportation to ADH services.

(b) Against medical advice (AMA) discharges - Nonemergency transportation is not provided through the brokers for clients that elect to discharge from a facility or hospital AMA.

(c) Ambulance - Nonemergency ambulance transportation is not provided through the brokers except as specified in WAC 182-546-5200

(2) (e).

~~((e))~~ (d) Emergency department (ED) - When a client is discharged from the ED, brokers may provide transportation only to another medicaid-covered service or to the client's residence ~~((only))~~.

~~((d))~~ (e) Hospice services - Nonemergency transportation is not provided through the brokers when the health care service is related to a client's hospice diagnosis. See WAC 182-551-1210.

~~((e))~~ (f) Medical equipment, durable (DME) - Nonemergency transportation is not provided through the brokers for DME services, except for complex rehabilitation technology (CRT) and DME equipment that needs to be fitted to the client (such as braces/crutches, wheelchairs).

~~((f))~~ (g) Medical nutrition services - Nonemergency transportation is not provided through the brokers to pick up medical nutrition products.

~~((g))~~ (h) Medical supplies/equipment, nondurable (MSE) - Nonemergency transportation is not provided through the brokers for MSE services.

~~((h))~~ (i) The following mental health and substance use disorder services:

(i) Nonemergency transportation brokers generally provide one round trip per day. The broker must request agency approval for additional trips for off-site activities.

(ii) Nonemergency transportation of an involuntarily detained person under the Involuntary Treatment Act (ITA) is not a service provided or authorized by transportation brokers. Involuntary transportation is a service provided by an ambulance or a designated ITA transportation provider.

(iii) Nonemergency transportation is not provided through the brokers to or from information and assistance services which include:

(A) Alcohol and drug information school;

(B) Information and crisis services; and

(C) Emergency service patrol.

~~((i))~~ (j) Program of all-inclusive care for the elderly (PACE)-nonemergency transportation for clients in the PACE program is not provided through the brokers. The PACE contractor is responsible for transportation to PACE services.

(k) Standalone pharmacy trips - Transportation that occurs solely for the purpose of picking up a medication prescribed by a health care provider from a pharmacy.

(i) The broker may provide mileage reimbursement to the client or coordinate a standalone pharmacy trip only when:

(A) The client cannot receive the medication through the mail and such transportation assistance has been requested two business days in advance; or

(B) Documentation from a medical professional has been provided to the broker that indicates medication was prescribed for a condition that requires urgent treatment.

(ii) A standalone pharmacy trip that meets the conditions of (k) of this subsection is restricted to one trip per week per household, unless documentation from a medical professional indicates the medication must be picked up urgently.

(iii) Documentation of medical necessity from the client's health care provider, pharmacy, or other medical professional is required before the broker can authorize a standalone pharmacy trip more frequently than once a week per household.

(iv) If the client has a scheduled trip to an eligible medical appointment in the same week as a pharmacy pick up, the prescription must be picked up when in route to or from the medical appointment. See WAC 182-546-5600 (3)(b).

(2) Service animals as defined in WAC 182-546-5100 may be transported with clients.

(3) The following programs do not have a benefit for brokered nonemergency transportation through the agency:

(a) Federal medicare savings and state-funded medicare buy-in programs (see chapter 182-517 WAC);

(b) Family planning services - Nonemergency transportation is not provided for clients that are enrolled only in family planning only services; and

(c) Alien emergency medical (AEM) - See WAC 182-507-0115.

[Statutory Authority: RCW 41.05.021, 41.05.160, 42 C.F.R. §§ 431.53 and 440.170. WSR 20-05-066, § 182-546-5550, filed 2/14/20, effective 3/16/20. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 16-12-022, § 182-546-5550, filed 5/20/16, effective 6/20/16; WSR 15-03-050, § 182-546-5550, filed 1/14/15, effective 2/14/15. WSR 11-17-059, recodified as § 182-546-5550, filed 8/15/11, effective 8/15/11. Statutory Authority: RCW 74.04.057, 74.08.090, and 74.09.500. WSR 11-15-029, § 388-546-5550, filed 7/12/11, effective 8/12/11.]

AMENDATORY SECTION (Amending WSR 15-03-050, filed 1/14/15, effective 2/14/15)

WAC 182-546-5600 Nonemergency transportation—Intermediate stops or delays. (1) The ~~((medicaid))~~ agency does not pay for any costs re-

lated to intermediate stops or delays that are not directly related to the original approved trip, including trips that would, or did, result in additional transportation costs due to client convenience.

(2) Brokers may authorize intermediate stops or delays for clients if the broker determines that the intermediate stop is:

(a) Directly related to the original approved trip; or

(b) Likely to limit or eliminate the need for supplemental covered trips.

(3) The agency considers the following reasons to be related to the original trip:

(a) Transportation of the client to and from an immediate subsequent medical referral/appointment; or

(b) Transportation of the client to a pharmacy to obtain one or more prescriptions when in route to or from the covered service and the pharmacy is within a reasonable distance of the usual route to the medical appointment. The agency does not pay for transportation of the client to a pharmacy to obtain medicare Part D prescriptions unless the prescription is billable to medicaid and not paid by medicare Part D.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 15-03-050, § 182-546-5600, filed 1/14/15, effective 2/14/15. WSR 11-17-032, recodified as § 182-546-5600, filed 8/9/11, effective 8/9/11. Statutory Authority: RCW 74.04.057, 74.08.090, and 74.09.500. WSR 11-15-029, § 388-546-5600, filed 7/12/11, effective 8/12/11.]

AMENDATORY SECTION (Amending WSR 15-03-050, filed 1/14/15, effective 2/14/15)

WAC 182-546-5800 Nonemergency transportation—Trips out-of-state/out-of-country. (1) The (~~medicaid~~) agency reviews requests for out-of-state nonemergency transportation in accordance with regulations for covered health care services(~~(7)~~) including, but not limited to, WAC 182-501-0180, 182-501-0182 and 182-501-0184. Out-of-state requests must be submitted to the agency no less than seven business days prior to the client's anticipated travel date.

(2) The agency does not pay for nonemergency transportation to or from locations outside of the United States and U.S. territories, except as allowed under WAC 182-501-0184 for British Columbia, Canada.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 15-03-050, § 182-546-5800, filed 1/14/15, effective 2/14/15. WSR 11-17-032, recodified as § 182-546-5800, filed 8/9/11, effective 8/9/11. Statutory Authority: RCW 74.04.057, 74.08.090, and 74.09.500. WSR 11-15-029, § 388-546-5800, filed 7/12/11, effective 8/12/11.]

AMENDATORY SECTION (Amending WSR 20-05-066, filed 2/14/20, effective 3/16/20)

WAC 182-546-5900 Nonemergency transportation—Meals, lodging, escort/guardian. (1) The (~~medicaid~~) agency may pay for meals and lodging for clients who must be transported to health care services

outside of the client's local community. The agency's transportation brokers determine when meals and lodging are necessary based on a client's individual need.

(2) Brokers may authorize payment for meals and lodging for up to one calendar month. Extensions beyond the initial calendar month must be prior authorized by the broker on a month-to-month, week-to-week, or as-needed basis.

(3) Brokers may not authorize payment for alcohol, cannabis, or other nonfood items.

(4) Brokers follow the agency's guidelines in determining the reasonable costs of meals and lodging. ~~((The agency's guidelines are:~~

~~(a) The reasonable cost of lodging for short and extended stays is measured against state per diem rates.~~

~~(b) For short stays, the cost of meals may not exceed the state per diem rate.~~

~~(c) For extended stays, the reasonable cost of meals is measured against the state's basic food program. The maximum monthly allowable meal cost for extended stays is not to exceed the client's calculated monthly food benefit.)~~ The reasonable cost of lodging and meals is measured against the state per diem for the location where the client is receiving covered health care services.

(5) The agency pays for the transportation of an authorized escort, including meals and lodging, when all of the following apply:

(a) The client is present, except as stated in subsection (5) of this section; and

(b) The broker determines the transportation costs of an escort ~~((is))~~ are necessary based upon the client's age, mental state or capacity, safety requirements, mobility requirements, communication or translation requirements, or cultural issues.

(6) The agency may authorize and pay for the transportation of an authorized escort or guardian, with or without the presence of the client, if the broker determines, and documents, that the presence of the authorized escort or guardian is necessary to ensure that the client has access to medically necessary care.

(7) Lodging and meals for all out-of-state nonemergency transportation must be prior authorized by the agency. Border areas as defined by WAC 182-501-0175 are considered in-state under this section and subsequent sections.

[Statutory Authority: RCW 41.05.021, 41.05.160, 42 C.F.R. §§ 431.53 and 440.170. WSR 20-05-066, § 182-546-5900, filed 2/14/20, effective 3/16/20. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 15-03-050, § 182-546-5900, filed 1/14/15, effective 2/14/15. WSR 11-17-032, recodified as § 182-546-5900, filed 8/9/11, effective 8/9/11. Statutory Authority: RCW 74.04.057, 74.08.090, and 74.09.500. WSR 11-15-029, § 388-546-5900, filed 7/12/11, effective 8/12/11.]

AMENDATORY SECTION (Amending WSR 20-05-066, filed 2/14/20, effective 3/16/20)

WAC 182-546-6200 Nonemergency transportation—Reimbursement.

(1) To be reimbursed for trips, meals, or lodging, the requestor must receive prior authorization from the broker at least two business days in advance of the client's travel.

(2) A client must request reimbursement of preauthorized expenditures for trips, meals, or lodging within (~~(thirty)~~) 30 calendar days after their medical appointment. The broker may consider reimbursement requests beyond (~~(thirty)~~) 30 calendar days if a client shows good cause as defined in WAC 388-02-0020 for having not requested reimbursement within (~~(thirty)~~) 30 calendar days.

(3) To be reimbursed for transportation-related services, the requestor must provide the broker with legible copies of:

- (a) Itemized receipt(s);
- (b) The operator's valid driver's license;
- (c) Valid vehicle registration; and
- (d) Proof of insurance for the vehicle/operator at the time of the trip.

(4) The (~~(medicaid)~~) agency or the broker may retroactively authorize and reimburse for transportation costs, including meals and lodging when:

(a) A client is approved for a delayed certification period as defined in WAC 182-500-0025, or for a retroactive eligibility period as defined in WAC 182-500-0095, or is retroactively eligible for a medically needy program which requires a spenddown as defined in WAC 182-500-0100;

(b) The transportation costs were not used to meet a client spenddown liability in accordance with WAC 182-519-0110;

(c) The transportation costs for which retroactive reimbursement is requested falls within the period of retroactive eligibility or delayed certification;

(d) The client received medically necessary services that were covered by the client's medical program for the date(s) of service for which retroactive reimbursement is requested; and

(e) The request for retroactive reimbursement is made within (~~(sixty)~~) 60 calendar days from the date of eligibility notification (award letter), not to exceed eight months from the date(s) of service for which reimbursement is requested.

(5) When transportation cost(s) are retroactively authorized, the reimbursement amount must not exceed the reimbursement amount that would have been authorized prior to the date(s) of service.

(6) To be paid by the broker for nonemergency transportation services:

(a) Ambulance providers must be subcontracted with the broker in accordance with WAC 182-546-5200.

(b) Nonambulance providers must be subcontracted with the broker in accordance with WAC 182-546-5200.

(7) The agency, through its contracted brokers, does not pay for nonemergency transportation when:

(a) The health care service the client is requesting transportation to or from is not a service covered by the client's medical program;

(b) The covered health care service is within three-quarters of a mile from the pick-up point, except when:

(i) The client's documented and verifiable medical condition and personal capabilities demonstrates that the client is not able to walk three-quarters mile distance;

(ii) The trip involves an area that the broker determines is not physically accessible to the client; or

(iii) The trip involves an area that the agency's broker considers to be unsafe for the client, other riders, or the driver.

(c) The client has personal or informal transportation resources that are available and appropriate to the clients' needs;

(d) Fixed-route public transportation service is available to the client within three-quarters of a mile walking distance. Exceptions to this rule may be granted by the transportation broker when the need for more specialized transportation is documented. Examples of such a need may be the client's use of a portable ventilator, a walker, or a quad cane; or

(e) The mode of transport that the client requests is not necessary, suitable, or appropriate to the client's medical condition.

[Statutory Authority: RCW 41.05.021, 41.05.160, 42 C.F.R. §§ 431.53 and 440.170. WSR 20-05-066, § 182-546-6200, filed 2/14/20, effective 3/16/20. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 15-03-050, § 182-546-6200, filed 1/14/15, effective 2/14/15. WSR 11-17-032, recodified as § 182-546-6200, filed 8/9/11, effective 8/9/11. Statutory Authority: RCW 74.04.057, 74.08.090, and 74.09.500. WSR 11-15-029, § 388-546-6200, filed 7/12/11, effective 8/12/11.]