

WSR 21-14-047

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed July 1, 2021, 10:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-10-096.

Title of Rule and Other Identifying Information: WAC

182-535A-0010 Definitions, 182-535A-0040 Orthodontic treatment and orthodontic-related services—Covered, noncovered, and limitations to coverage, 182-535A-0050 Orthodontic treatment and orthodontic-related services—Authorization and prior authorization, and 182-535A-0060 Orthodontic treatment and orthodontic-related services—Payment.

Hearing Location(s): On August 10, 2021, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the health care authority (HCA) is not providing a physical location for this hearing. This promotes social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. To attend the virtual public hearing, you must register in advance for this public hearing https://zoom.us/webinar/register/WN_4prz5EyiTyWEL7yOgcjWwg. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than August 11, 2021.

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 10, 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, by July 23, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending these rules to remove all references to interceptive treatment. This change is necessary to align with the planned discontinuance of the current dental terminology code for interceptive treatment, effective January 1, 2022, by the American Dental Association's Council of Dental Benefit Program's Code Maintenance Committee.

WAC 182-535A-0010 removed definition for interceptive treatment; 182-535A-0040 added new subsection (4)(e) Removable appliances as part of limited or comprehensive orthodontic treatment; 182-535A-0040 removed subsection (5)(a) Interceptive orthodontic treatment; 182-535A-0040 (5)(c) removed interceptive orthodontic treatment; 182-535A-0050 removed interceptive orthodontic treatment; 182-535A-0060 added new subsection (4)(d) That do not address medical issue(s) as listed in the prior authorization request; 182-535A-0060(5) removed interceptive orthodontic treatment; and 182-535A-0060 (6)(c)(i) payments are allowed once every three months during treatment "with the eighth periodic treatment visit covering the last six months of treatment."

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.

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: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Janice Tadeo, P.O. Box 45506, Olympia, WA 98504-5506, 360-725-1583.

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 proposed rule does not impose any costs on businesses.

July 1, 2021
Wendy Barcus
Rules Coordinator

OTS-3089.2

AMENDATORY SECTION (Amending WSR 19-20-047, filed 9/25/19, effective 10/26/19)

WAC 182-535A-0010 Definitions. The following definitions and those found in chapter 182-500 WAC apply to this chapter.

"Adolescent dentition" means teeth that are present after the loss of primary teeth and prior to the cessation of growth that affects orthodontic treatment.

"Appliance placement" means the application of orthodontic attachments to the teeth for the purpose of correcting dentofacial abnormalities.

"Cleft" means an opening or fissure involving the dentition and supporting structures, especially one occurring in utero. These can be:

- (a) Cleft lip;
- (b) Cleft palate (involving the roof of the mouth); or
- (c) Facial clefts (e.g., macrostomia).

"Comprehensive full orthodontic treatment" means utilizing fixed orthodontic appliances for treatment of adolescent dentition leading to the improvement of a client's severe handicapping craniofacial dysfunction and/or dentofacial deformity, including anatomical and functional relationships.

"Craniofacial anomalies" means abnormalities of the head and face, either congenital or acquired, involving disruption of the dentition and supporting structures.

"Craniofacial team" means a cleft palate/maxillofacial team or an American Cleft Palate Association-certified craniofacial team. These teams are responsible for the management (review, evaluation, and approval) of patients with cleft palate craniofacial anomalies to provide integrated management, promote parent-professional partnership, and make appropriate referrals to implement and coordinate treatment plans.

"Crossbite" means an abnormal relationship of a tooth or teeth to the opposing tooth or teeth, in which normal buccolingual or labiolingual relations are reversed.

"Dental dysplasia" means an abnormality in the development of the teeth.

"Ectopic eruption" means a condition in which a tooth erupts in an abnormal position or is fifty percent blocked out of its normal alignment in the dental arch.

"EPSDT" means the agency's early and periodic screening, diagnostic, and treatment program for clients twenty years of age and younger as described in chapter 182-534 WAC.

"Hemifacial microsomia" means a developmental condition involving the first and second brachial arch. This creates an abnormality of the upper and lower jaw, ear, and associated structures (half or part of the face is smaller in size).

~~(**"Interceptive orthodontic treatment"** means procedures to lessen the severity or future effects of a malformation and to affect or eliminate the cause. Such treatment may occur in the primary or transitional dentition and may include such procedures as the redirection of ectopically erupting teeth, correction of isolated dental crossbite, or recovery of recent minor space loss where overall space is adequate.)~~

"Limited orthodontic treatment" means orthodontic treatment with a limited objective, not involving the entire dentition. It may be directed only at the existing problem, or at only one aspect of a larger problem in which a decision is made to defer or forego more comprehensive therapy.

"Malocclusion" means improper alignment of biting or chewing surfaces of upper and lower teeth or abnormal relationship of the upper and lower dental arches.

"Maxillofacial" means relating to the jaws and face.

"Occlusion" means the relation of the upper and lower teeth when in functional contact during jaw movement.

"Orthodontics" means treatment involving the use of any appliance, in or out of the mouth, removable or fixed, or any surgical procedure designed to redirect teeth and surrounding tissues.

"Orthodontist" means a dentist who specializes in orthodontics, who is a graduate of a postgraduate program in orthodontics that is accredited by the American Dental Association, and who meets the licensure requirements of the department of health.

"Permanent dentition" means those teeth that succeed the primary teeth and the additional molars that erupt.

"Primary dentition" means teeth that develop and erupt first in order of time and are normally shed and replaced by permanent teeth.

"Transitional dentition" means the final phase from primary to permanent dentition, in which most primary teeth have been lost or are in the process of exfoliating and the permanent successors are erupting.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2019 c 415 §§ 211 (1)(c) and 1111 (1)(c). WSR 19-20-047, § 182-535A-0010, filed 9/25/19, effective 10/26/19. Statutory Authority: RCW 41.05.021, 41.05.160 and 2017 3rd sp.s. c 1 § 213 (1)(c). WSR 19-09-058, § 182-535A-0010, filed 4/15/19, effective 7/1/19. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-20-097, § 182-535A-0010, filed 10/3/17, effective 11/3/17. Statutory Authority: RCW 41.05.021 and 2013 2nd sp.s. c 4 § 213. WSR 14-08-032, § 182-535A-0010, filed 3/25/14, effective 4/30/14.]

WSR 11-14-075, recodified as § 182-535A-0010, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.04.050, 74.08.090. WSR 08-17-009, § 388-535A-0010, filed 8/7/08, effective 9/7/08. Statutory Authority: RCW 74.08.090, 74.09.520 and 74.09.035, 74.09.500. WSR 05-01-064, § 388-535A-0010, filed 12/8/04, effective 1/8/05. Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.520, 74.09.500, 42 U.S.C. 1396d(a), C.F.R. 440.100 and 225. WSR 02-01-050, § 388-535A-0010, filed 12/11/01, effective 1/11/02.]

AMENDATORY SECTION (Amending WSR 20-03-042, filed 1/8/20, effective 2/8/20)

WAC 182-535A-0040 Orthodontic treatment and orthodontic-related services—Covered, noncovered, and limitations to coverage. Orthodontic treatment and orthodontic-related services require prior authorization.

(1) The medicaid agency covers orthodontic treatment and orthodontic-related services for a client who has one of the medical conditions listed in (a) and (b) of this subsection. Treatment and follow-up care must be performed only by an orthodontist or agency-recognized craniofacial team.

(a) Cleft lip and palate, cleft palate, or cleft lip with alveolar process involvement.

(b) The following craniofacial anomalies including, but not limited to:

- (i) Hemifacial microsomia;
- (ii) Craniosynostosis syndromes;
- (iii) Cleidocranial dental dysplasia;
- (iv) Arthrogyrosis;
- (v) Marfan syndrome;
- (vi) Treacher Collins syndrome;
- (vii) Ectodermal dysplasia; or
- (viii) Achondroplasia.

(2) The agency authorizes orthodontic treatment and orthodontic-related services when the following criteria are met:

(a) Severe malocclusions with a Washington Modified Handicapping Labiolingual Deviation (HLD) Index Score of twenty-five or higher as determined by the agency;

(b) The client has established caries control; and

(c) The client has established plaque control.

(3) The agency covers orthodontic treatment for dental malocclusions other than those listed in subsections (1) and (2) of this section on a case-by-case basis when the agency determines medical necessity based on documentation submitted by the provider.

(4) The agency does not cover the following orthodontic treatment or orthodontic-related services:

(a) Orthodontic treatment for cosmetic purposes;

(b) Orthodontic treatment that is not medically necessary;

(c) Orthodontic treatment provided out-of-state, except as stated in WAC 182-501-0180 (see also WAC 182-501-0175 for medical care provided in bordering cities); (~~or~~)

(d) Orthodontic treatment and orthodontic-related services that do not meet the requirements of this section or other applicable WAC; or

(e) Removable appliances as part of limited or comprehensive orthodontic treatment.

(5) The agency covers the following orthodontic treatment and orthodontic-related services:

(a) ~~((Interceptive orthodontic treatment.~~

~~(b)))~~ Limited orthodontic treatment.

~~((e)))~~ (b) Comprehensive full orthodontic treatment on adolescent dentition.

~~((d)))~~ (c) A case study when done in conjunction with ~~((interceptive,))~~ limited~~((r))~~ or comprehensive orthodontic treatment only.

~~((e)))~~ (d) Other orthodontic treatment subject to review for medical necessity as determined by the agency.

(6) The agency covers the following orthodontic-related services:

(a) Clinical oral evaluations according to WAC 182-535-1080.

(b) Cephalometric films that are of diagnostic quality, dated, and labeled with the client's name.

(c) Orthodontic appliance removal as a stand-alone service only when:

(i) The client's appliance was placed by a different provider or dental clinic; and

(ii) The provider has not furnished any other orthodontic treatment or orthodontic-related services to the client.

(7) The treatment must meet industry standards and correct the medical issue. If treatment is discontinued prior to completion, or treatment objectives are not achieved, the provider must:

(a) Document in the client's record why treatment was discontinued or not completed, or why treatment goals were not achieved.

(b) Notify the agency by submitting the Orthodontic Discontinuation of Service form (HCA 13-0039).

(8) The agency evaluates a request for orthodontic treatment or orthodontic-related services:

(a) That are in excess of the limitations or restrictions listed in this section, according to WAC 182-501-0169; and

(b) That are listed as noncovered according to WAC 182-501-0160.

(9) The agency reviews requests for orthodontic treatment or orthodontic-related services for clients who are eligible for services under the EPSDT program according to the provisions of WAC 182-534-0100.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-03-042, § 182-535A-0040, filed 1/8/20, effective 2/8/20; WSR 19-11-028, § 182-535A-0040, filed 5/7/19, effective 7/1/19; WSR 17-20-097, § 182-535A-0040, filed 10/3/17, effective 11/3/17; WSR 16-10-064, § 182-535A-0040, filed 5/2/16, effective 6/2/16. Statutory Authority: RCW 41.05.021 and 2013 2nd sp.s. c 4 § 213. WSR 14-08-032, § 182-535A-0040, filed 3/25/14, effective 4/30/14. WSR 11-14-075, recodified as § 182-535A-0040, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.04.050, 74.08.090. WSR 08-17-009, § 388-535A-0040, filed 8/7/08, effective 9/7/08. Statutory Authority: RCW 74.04.050, 74.08.090, 74.09.530, and 74.09.700. WSR 06-24-036, § 388-535A-0040, filed 11/30/06, effective 1/1/07. Statutory Authority: RCW 74.08.090, 74.09.520 and 74.09.035, 74.09.500. WSR 05-01-064, § 388-535A-0040, filed 12/8/04, effective 1/8/05. Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.520, 74.09.500, 42 U.S.C. 1396d(a), C.F.R. 440.100 and 225. WSR 02-01-050, § 388-535A-0040, filed 12/11/01, effective 1/11/02.]

AMENDATORY SECTION (Amending WSR 20-03-042, filed 1/8/20, effective 2/8/20)

WAC 182-535A-0050 Orthodontic treatment and orthodontic-related services—Authorization and prior authorization. When the medicaid agency authorizes (~~(an interceptive orthodontic treatment,)~~) a limited orthodontic treatment, full orthodontic treatment, or orthodontic-related services for a client, including a client eligible for services under the EPSDT program, that authorization indicates only that the specific service is medically necessary; authorization is not a guarantee of payment. The client must be eligible for the covered service at the time the service is provided.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-03-042, § 182-535A-0050, filed 1/8/20, effective 2/8/20. Statutory Authority: RCW 41.05.021 and 2013 2nd sp.s. c 4 § 213. WSR 14-08-032, § 182-535A-0050, filed 3/25/14, effective 4/30/14. WSR 11-14-075, recodified as § 182-535A-0050, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.04.050, 74.08.090. WSR 08-17-009, § 388-535A-0050, filed 8/7/08, effective 9/7/08. Statutory Authority: RCW 74.08.090, 74.09.520 and 74.09.035, 74.09.500. WSR 05-01-064, § 388-535A-0050, filed 12/8/04, effective 1/8/05. Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.520, 74.09.500, 42 U.S.C. 1396d(a), C.F.R. 440.100 and 225. WSR 02-01-050, § 388-535A-0050, filed 12/11/01, effective 1/11/02.]

AMENDATORY SECTION (Amending WSR 20-03-042, filed 1/8/20, effective 2/8/20)

WAC 182-535A-0060 Orthodontic treatment and orthodontic-related services—Payment. (1) The medicaid agency pays providers for furnishing covered orthodontic treatment and orthodontic-related services described in WAC 182-535A-0040 according to this section and other applicable WAC.

(2) A provider who furnishes covered orthodontic treatment and orthodontic-related services to an eligible client accepts the agency's fees as published in the agency's fee schedules according to WAC 182-502-0010.

(3) Providers must deliver services and procedures that are of acceptable quality to the agency.

(4) The agency may recoup payment, not limited to services:

(a) Determined to be below the standard of care; or

(b) Of an unacceptable product quality; or

(c) That are not rendered; or

(d) That do not address medical issue(s) as listed in the prior authorization request.

(5) (~~(Interceptive orthodontic treatment. The agency pays for interceptive orthodontic treatment on primary or transitional dentition in one payment that includes all professional fees, laboratory costs, and required follow-up.~~

~~(6))~~ **Limited orthodontic treatment.** The agency pays for limited orthodontic treatment on transitional or adolescent dentition as follows:

(a) The first three months of treatment starts on the date the initial appliance is placed and includes active treatment for the first three months. The provider must bill the agency with the date of service that the initial appliance is placed.

(b) The agency's initial payment includes:

- (i) The placement of orthodontic appliances;
- (ii) Appliance removal;
- (iii) The initial retainer fee; and
- (iv) The final records (photos, a panoramic X-ray, a cephalometric film, and final trimmed study models).

(c) Continuing follow-up treatment must be billed as periodic orthodontic treatment visits.

(i) Payments are allowed once every three months during treatment.

(ii) Payment for treatment provided in addition to the three periodic orthodontic treatment visits requires a limitation extension. See WAC 182-535A-0040(8).

(iii) If treatment is discontinued or treatment objectives are not achieved, providers must notify the agency. See WAC 182-535A-0040(7).

~~((7))~~ (6) **Comprehensive full orthodontic treatment.** The agency pays for comprehensive full orthodontic treatment on adolescent dentition as follows:

(a) The first three months of treatment starts the date the initial appliance is placed and includes active treatment for the first three months. The provider must bill the agency with the date of service that the initial appliance is placed.

(b) The agency's initial payment includes:

- (i) The placement of orthodontic appliances;
- (ii) Appliance removal;
- (iii) The initial retainer fee; and
- (iv) The final records (photos, a panoramic X-ray, a cephalometric film, and final trimmed study models).

(c) Continuing follow-up treatment must be billed as periodic orthodontic treatment visits.

(i) Payments are allowed once every three months during treatment with the eighth periodic orthodontic treatment visit covering the last six months of treatment.

(ii) Payment for treatment provided in addition to the eight periodic orthodontic treatment visits requires a limitation extension. See WAC 182-535A-0040(8).

(iii) If treatment is discontinued or treatment objectives are not achieved, providers must notify the agency. See WAC 182-535A-0040(7).

~~((8))~~ (7) **Case study.** The agency pays for a case study, which includes:

(a) Preparation of comprehensive diagnostic records (additional photos, study casts, cephalometric examination film and panoramic film);

(b) Formation of diagnosis and treatment plan from such records; and

(c) Formal case conference.

~~((9))~~ (8) Payment for orthodontic treatment and orthodontic-related services is based on the agency's published fee schedule.

~~((10))~~ (9) Orthodontic providers who are in agency-designated bordering cities must:

(a) Meet the licensure requirements of their state; and

(b) Meet the same criteria for payment as in-state providers, including the requirements to contract with the agency.

~~((11))~~ (10) If the client's eligibility for orthodontic treatment under WAC 182-535A-0020 ends before the conclusion of the orthodontic treatment, payment for any remaining treatment is the client's responsibility. The agency does not pay for these services.

~~((12))~~ (11) The agency does not pay for orthodontic treatment provided after the client's twenty-first birthday. Payment for treatment that continues after the client's twenty-first birthday is the client's responsibility.

~~((13))~~ (12) The client is responsible for payment of any orthodontic service or treatment received during any period of medicaid ineligibility, even if the treatment was started when the client was eligible.

~~((14))~~ (13) See WAC 182-502-0160 and 182-501-0200 for when a provider or a client is responsible to pay for a covered service.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-03-042, § 182-535A-0060, filed 1/8/20, effective 2/8/20; WSR 19-11-028, § 182-535A-0060, filed 5/7/19, effective 7/1/19; WSR 17-20-097, § 182-535A-0060, filed 10/3/17, effective 11/3/17; WSR 16-10-064, § 182-535A-0060, filed 5/2/16, effective 6/2/16. Statutory Authority: RCW 41.05.021 and 2013 2nd sp.s. c 4 § 213. WSR 14-08-032, § 182-535A-0060, filed 3/25/14, effective 4/30/14. WSR 11-14-075, recodified as § 182-535A-0060, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.04.050, 74.08.090. WSR 08-17-009, § 388-535A-0060, filed 8/7/08, effective 9/7/08. Statutory Authority: RCW 74.08.090, 74.09.520 and 74.09.035, 74.09.500. WSR 05-01-064, § 388-535A-0060, filed 12/8/04, effective 1/8/05. Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.520, 74.09.500, 42 U.S.C. 1396d(a), C.F.R. 440.100 and 225. WSR 02-01-050, § 388-535A-0060, filed 12/11/01, effective 1/11/02.]