

## WSR 22-03-036

## EXPEDITED RULES

## HEALTH CARE AUTHORITY

[Filed January 11, 2022, 3:10 p.m.]

Title of Rule and Other Identifying Information: WAC 182-500-0050 Washington apple health definitions—I, 182-501-0070 Health care coverage—Noncovered services, 182-502-0002 Eligible provider types, and 182-531-0150 Noncovered physician-related and health care professional services—General and administrative.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Replace outdated medical terms.

Reasons Supporting Proposal: The agency is amending these rules to replace outdated medical terms with their updated equivalents.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160; 42 C.F.R. 440.150.

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

Name of Proponent: Health care authority, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Melissa Kundur, P.O. Box 45502, Olympia, WA 98504-2716, 360-725-5297.

This notice meets the following criteria to use the expedited adoption process for these rules:

Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

## NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Rules Coordinator, Health Care Authority, P.O. Box 42716, Olympia, WA 98504-2716, phone 360-725-1306, fax 360-586-9272, email arc@hca.wa.gov, AND RECEIVED BY March 22, 2022.

January 11, 2022  
Wendy Barcus  
Rules Coordinator

**OTS-3563.1**

AMENDATORY SECTION (Amending WSR 21-19-141, filed 9/22/21, effective 10/23/21)

**WAC 182-500-0050 Washington apple health definitions—I. "Ineligible spouse"** see "spouse" in WAC 182-500-0100.

"**Institution**" means an entity that furnishes (in single or multiple facilities) food, shelter, and some treatment or services to four

or more people unrelated to the proprietor. Eligibility for a Washington apple health program may vary depending upon the type of institution in which an individual resides. For the purposes of apple health programs, "institution" includes all the following:

(1) **"Institution for mental diseases (IMD)"** - A hospital, nursing facility, or other institution of more than (~~sixteen~~) 16 beds that is primarily engaged in providing diagnosis, treatment or care of people with mental diseases, including medical attention, nursing care and related services. An IMD may include inpatient substance use disorder (SUD) facilities of more than (~~sixteen~~) 16 beds which provide residential treatment for SUD.

(2) **"Intermediate care facility for (~~the mentally retarded (ICF/MR)~~) individuals with intellectual disabilities (ICF/IID)"** - An institution or distinct part of an institution that is:

(a) Defined in 42 C.F.R. 440.150;

(b) Certified to provide (~~ICF/MR~~) ICF/IID services under 42 C.F.R. 483, Subpart I; and

(c) Primarily for the diagnosis, treatment, or rehabilitation for people with (~~mental retardation~~) intellectual disabilities or a related condition.

(3) **"Medical institution"** - An entity that is organized to provide medical care, including nursing and convalescent care. The terms "medical facility" and "medical institution" are sometimes used interchangeably throughout Title 182 WAC.

(a) To meet the definition of medical institution, the entity must:

(i) Be licensed as a medical institution under state law;

(ii) Provide medical care, with the necessary professional personnel, equipment, and facilities to manage the health needs of the patient on a continuing basis under acceptable standards; and

(iii) Include adequate physician and nursing care.

(b) Medical institutions include:

(i) "Hospice care center" - An entity licensed by the department of health (DOH) to provide hospice services. Hospice care centers must be medicare-certified, and approved by the agency or the agency's designee to be considered a medical institution.

(ii) "Hospital" - Defined in WAC 182-500-0045.

(iii) "Nursing facility (NF)" - An entity certified to provide skilled nursing care and long-term care services to medicaid recipients under Social Security Act Sec. 1919(a), 42 U.S.C. Sec. 1396r. Nursing facilities that may become certified include nursing homes licensed under chapter 18.51 RCW, and nursing facility units within hospitals licensed by DOH under chapter 70.41 RCW. This includes the nursing facility section of a state veteran's facility.

(iv) "Psychiatric hospital" - An institution, or a psychiatric unit located in a hospital, licensed as a hospital under applicable Washington state laws and rules, that is primarily engaged to provide psychiatric services for the diagnosis and treatment of mentally ill people under the supervision of a physician.

(v) "Psychiatric residential treatment facility (PRTF)" - A non-hospital residential treatment center licensed by DOH, and certified by the agency or the agency's designee to provide psychiatric inpatient services to medicaid-eligible people age (~~twenty-one~~) 21 and younger. A PRTF must be accredited by the Joint Commission on Accreditation of Health care Organizations (JCAHO) or any other accrediting organization with comparable standards recognized by Washington state.

A PRTF must meet the requirements in 42 C.F.R. 483, Subpart G, regarding the use of restraint and seclusion.

(vi) "Residential habilitation center (RHC)" - A residence operated by the state under chapter 71A.20 RCW that serves people who have exceptional care and treatment needs due to their developmental disabilities by providing residential care designed to develop individual capacities to their optimum. RHCs provide residential care and may be certified to provide ICF/MR services and nursing facility services.

(c) Medical institutions do not include entities licensed by the agency or the agency's designee as adult family homes (AFHs) and boarding homes. AFHs and boarding homes include assisted living facilities, adult residential centers, enhanced adult residential centers, and developmental disability group homes.

(4) "**Public institution**" means an entity that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control.

(a) Public institutions include:

(i) Correctional facility - An entity such as a state prison, or city, county, or tribal jail, or juvenile rehabilitation or juvenile detention facility.

(ii) Eastern and Western State mental hospitals. (Medicaid coverage for these institutions is limited to people age (~~twenty-one~~) 21 and younger, and people age (~~sixty-five~~) 65 and older.)

(iii) Certain facilities administered by Washington state's department of veteran's affairs (see (b) of this subsection for facilities that are not considered public institutions).

(b) Public institutions do not include intermediate care facilities, entities that meet the definition of medical institution (such as Harborview Medical Center and University of Washington Medical Center), or facilities in Retsil, Orting, and Spokane that are administered by the department of veteran's affairs and licensed as nursing facilities.

"**Institution for mental diseases (IMD)**" see "institution" in this section.

"**Institutional review board**" - A board or committee responsible for reviewing research protocols and determining whether:

(1) Risks to subjects are minimized;

(2) Risks to subjects are reasonable in relation to anticipated benefits, if any, to subjects, and the importance of the knowledge that may reasonably be expected to result;

(3) Selection of subjects is equitable;

(4) Informed consent will be sought from each prospective subject or the subject's legally authorized representative;

(5) Informed consent will be appropriately documented;

(6) When appropriate, the research plan makes adequate provision for monitoring the data collected to ensure the safety of subjects;

(7) When appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data; and

(8) When some or all of the subjects are likely to be vulnerable to coercion or undue influence, such as children, prisoners, pregnant people, mentally disabled persons, or economically or educationally disadvantaged persons, additional safeguards have been included in the study to protect the rights and welfare of these subjects.

"**Institutionalized spouse**" see "spouse" in WAC 182-500-0100.

"Intermediate care facility for (~~the mentally retarded (ICF/MR)~~) individuals with intellectual disabilities (ICF/IID)" see "institution" in this section.

[Statutory Authority: RCW 41.05.021, 41.05.160. WSR 21-19-141, § 182-500-0050, filed 9/22/21, effective 10/23/21; WSR 17-12-017, § 182-500-0050, filed 5/30/17, effective 6/30/17; WSR 15-17-013, § 182-500-0050, filed 8/7/15, effective 9/7/15. WSR 11-14-075, recodified as § 182-500-0050, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090 and 2011 1st sp.s. c 15. WSR 11-14-053, § 388-500-0050, filed 6/29/11, effective 7/30/11.]

### OTS-3564.1

AMENDATORY SECTION (Amending WSR 16-22-024, filed 10/24/16, effective 11/24/16)

#### **WAC 182-501-0070 Health care coverage—Noncovered services.** (1)

The medicaid agency or its designee does not pay for any health care service not listed or referred to as a covered health care service under the medical programs described in WAC 182-501-0060, regardless of medical necessity. For the purposes of this section, health care services includes treatment, equipment, related supplies, and drugs. Circumstances in which clients are responsible for payment of health care services are described in WAC 182-502-0160.

(2) This section does not apply to health care services provided as a result of the early and periodic screening, diagnosis, and treatment (EPSDT) program as described in chapter 182-534 WAC.

(3) The agency or its designee does not pay for any ancillary health care service(s) provided in association with a noncovered health care service.

(4) The following list of noncovered health care services is not intended to be exhaustive. Noncovered health care services include, but are not limited to:

(a) Any health care service specifically excluded by federal or state law;

(b) Acupuncture, Christian Science practice, faith healing, herbal therapy, homeopathy, massage, massage therapy, naturopathy, and sanopractice;

(c) Chiropractic care for adults;

(d) Cosmetic, reconstructive, or plastic surgery, and any related health care services, not specifically allowed under WAC 182-531-0100(4) or 182-531-1675;

(e) Discography;

(f) Ear or other body piercing;

(g) Face lifts or other facial cosmetic enhancements;

(h) Fertility, infertility or sexual dysfunction testing, and related care, drugs, and/or treatment including but not limited to:

(i) Artificial insemination;

(ii) Donor ovum, donor sperm, or (~~surrogate womb~~) gestational carrier;

(iii) In vitro fertilization;

- (iv) Penile implants;
- (v) Reversal of sterilization; and
- (vi) Sex therapy.
- (i) Hair transplants;
- (j) Epilation (hair removal) and electrolysis not specifically allowed under WAC 182-531-1675;
- (k) Marital counseling;
- (l) Motion analysis, athletic training evaluation, work hardening condition, high altitude simulation test, and health and behavior assessment;
- (m) Nonmedical equipment;
- (n) Penile implants;
- (o) Prosthetic testicles not specifically allowed under WAC 182-531-1675;
- (p) Psychiatric sleep therapy;
- (q) Subcutaneous injection filling;
- (r) Tattoo removal;
- (s) Transport of Involuntary Treatment Act (ITA) clients to or from out-of-state treatment facilities, including those in bordering cities;
- (t) Upright magnetic resonance imaging (MRI); and
- (u) Vehicle purchase - New or used vehicle.
- (5) For a specific list of noncovered health care services in the following service categories, refer to the WAC citation:
  - (a) Ambulance transportation and nonemergent transportation as described in chapter 182-546 WAC;
  - (b) Dental services as described in chapter 182-535 WAC;
  - (c) Durable medical equipment as described in chapter 182-543 WAC;
  - (d) Hearing care services as described in chapter 182-547 WAC;
  - (e) Home health services as described in WAC 182-551-2130;
  - (f) Hospital services as described in WAC 182-550-1600;
  - (g) Health care professional services as described in WAC 182-531-0150;
  - (h) Prescription drugs as described in chapter 182-530 WAC;
  - (i) Vision care hardware for clients (~~(twenty)~~) 20 years of age and younger as described in chapter 182-544 WAC; and
  - (j) Vision care exams as described in WAC 182-531-1000.
- (6) A client has a right to request an administrative hearing, if one is available under state and federal law. When the agency or its designee denies all or part of a request for a noncovered health care service(s), the agency or its designee sends the client and the provider written notice, within (~~(ten)~~) 10 business days of the date the decision is made, that includes:
  - (a) A statement of the action the agency or its designee intends to take;
  - (b) Reference to the specific WAC provision upon which the denial is based;
  - (c) Sufficient detail to enable the recipient to:
    - (i) Learn why the agency's or its designee's action was taken; and
    - (ii) Prepare a response to the agency's or its designee's decision to classify the requested health care service as noncovered.
  - (d) The specific factual basis for the intended action; and
  - (e) The following information:
    - (i) Administrative hearing rights;
    - (ii) Instructions on how to request the hearing;

- (iii) Acknowledgment that a client may be represented at the hearing by legal counsel or other representative;
  - (iv) Instructions on how to request an exception to rule (ETR);
  - (v) Information regarding agency-covered health care services, if any, as an alternative to the requested noncovered health care service; and
  - (vi) Upon the client's request, the name and address of the nearest legal services office.
- (7) A client can request an exception to rule (ETR) as described in WAC 182-501-0160.

[Statutory Authority: RCW 41.05.021, 41.05.160. WSR 16-22-024, § 182-501-0070, filed 10/24/16, effective 11/24/16; WSR 15-16-084, § 182-501-0070, filed 7/31/15, effective 8/31/15. Statutory Authority: RCW 41.05.021. WSR 13-15-044, § 182-501-0070, filed 7/11/13, effective 8/11/13. Statutory Authority: RCW 41.05.021 and section 1927 of the Social Security Act. WSR 12-18-062, § 182-501-0070, filed 8/31/12, effective 10/1/12. WSR 11-14-075, recodified as § 182-501-0070, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.04.050, 74.08.090, 74.09.530, and 74.09.700. WSR 09-23-112, § 388-501-0070, filed 11/18/09, effective 12/19/09; WSR 07-04-036, § 388-501-0070, filed 1/29/07, effective 3/1/07.]

#### OTS-3565.1

AMENDATORY SECTION (Amending WSR 19-20-046, filed 9/25/19, effective 10/26/19)

**WAC 182-502-0002 Eligible provider types.** The following health care professionals, health care entities, suppliers or contractors of service may request enrollment with the Washington state health care authority (medicaid agency) to provide covered health care services to eligible clients. For the purposes of this chapter, health care services include treatment, equipment, related supplies, and drugs.

- (1) Professionals:
  - (a) Advanced registered nurse practitioners;
  - (b) Anesthesiologists;
  - (c) Applied behavior analysis (ABA) professionals, as provided in WAC 182-531-1410 through 182-531-1436:
    - (i) Certified agency-affiliated counselors;
    - (ii) Certified counselors; and
    - (iii) Certified counselor advisors.
  - (d) Audiologists;
  - (e) Chemical dependency professionals:
    - (i) Mental health care providers; and
    - (ii) Peer counselors.
  - (f) Chiropractors;
  - (g) Dentists;
  - (h) Dental health aide therapists, as provided in chapter 70.350 RCW;
    - (i) Dental hygienists;
    - (j) Denturists;
    - (k) Dietitians or nutritionists;

- (l) Hearing aid fitters/dispensers;
- (m) Marriage and family therapists;
- (n) Mental health counselors;
- (o) Mental health care providers;
- (p) Midwives;
- (q) Naturopathic physicians;
- (r) Nurse anesthetist;
- (s) Occularists;
- (t) Occupational therapists;
- (u) Ophthalmologists;
- (v) Opticians;
- (w) Optometrists;
- (x) Orthodontists;
- (y) Orthotist;
- (z) Osteopathic physicians;
- (aa) Osteopathic physician assistants;
- (bb) Peer counselors;
- (cc) Podiatric physicians;
- (dd) Pharmacists;
- (ee) Physicians;
- (ff) Physician assistants;
- (gg) Physical therapists;
- (hh) Prosthetist;
- (ii) Psychiatrists;
- (jj) Psychologists;
- (kk) Radiologists;
- (ll) Registered nurse delegators;
- (mm) Registered nurse first assistants;
- (nn) Respiratory therapists;
- (oo) Social workers; and
- (pp) Speech/language pathologists.
- (2) Agencies, centers and facilities:
  - (a) Adult day health centers;
  - (b) Ambulance services (ground and air);
  - (c) Ambulatory surgery centers (medicare-certified);
  - (d) Birthing centers (licensed by the department of health);
  - (e) Cardiac diagnostic centers;
  - (f) Case management agencies;
  - (g) Chemical dependency treatment facilities certified by the department of social and health services (DSHS) division of behavioral health and recovery (DBHR), and contracted through either:
    - (i) A county under chapter 388-810 WAC; or
    - (ii) DBHR to provide chemical dependency treatment services.
  - (h) Centers for the detoxification of acute alcohol or other drug intoxication conditions (certified by DBHR);
    - (i) Community AIDS services alternative agencies;
    - (j) Community mental health centers;
    - (k) Diagnostic centers;
    - (l) Early and periodic screening, diagnosis, and treatment (EPSDT) clinics;
    - (m) Family planning clinics;
    - (n) Federally qualified health centers (designated by the federal department of health and human services);
    - (o) Genetic counseling agencies;
    - (p) Health departments;
    - (q) Health maintenance organization (HMO)/managed care organization (MCO);

- (r) HIV/AIDS case management;
  - (s) Home health agencies;
  - (t) Hospice agencies;
  - (u) Hospitals;
  - (v) Indian health service facilities/tribal 638 facilities;
  - (w) Tribal or urban Indian clinics;
  - (x) Inpatient psychiatric facilities;
  - (y) Intermediate care facilities for ~~((the mentally retarded~~  
~~(ICF-MR))~~ individuals with intellectual disabilities (ICF-IID);
  - (z) Kidney centers;
  - (aa) Laboratories (CLIA certified);
  - (bb) Maternity support services agencies; maternity case managers; infant case management, first steps providers;
  - (cc) Neuromuscular and neurodevelopmental centers;
  - (dd) Nurse services/delegation;
  - (ee) Nursing facilities (approved by the DSHS aging and long-term support administration);
  - (ff) Pathology laboratories;
  - (gg) Pharmacies;
  - (hh) Private duty nursing agencies;
  - (ii) Radiology - Stand-alone clinics;
  - (jj) Rural health clinics (medicare-certified);
  - (kk) School districts and educational service districts;
  - (ll) Sleep study centers; and
  - (mm) Washington state school districts and educational service districts.
- (3) Suppliers of:
- (a) Blood, blood products, and related services;
  - (b) Durable and nondurable medical equipment and supplies;
  - (c) Complex rehabilitation technologies;
  - (d) Infusion therapy equipment and supplies;
  - (e) Prosthetics/orthotics;
  - (f) Hearing aids; and
  - (g) Respiratory care, equipment, and supplies.
- (4) Contractors:
- (a) Transportation brokers;
  - (b) Spoken language interpreter services agencies;
  - (c) Independent sign language interpreters; and
  - (d) Eyeglass and contact lens providers.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2019 c 415 § 211(49). WSR 19-20-046, § 182-502-0002, filed 9/25/19, effective 10/26/19. Statutory Authority: RCW 41.05.021, 2013 c 178, and 2013 2nd sp.s. c 4. WSR 14-06-054, § 182-502-0002, filed 2/27/14, effective 3/30/14. WSR 11-14-075, recodified as § 182-502-0002, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.080, and 74.09.290. WSR 11-11-017, § 388-502-0002, filed 5/9/11, effective 6/9/11.]

**OTS-3566.1**



AMENDATORY SECTION (Amending WSR 15-24-021, filed 11/19/15, effective 1/1/16)

**WAC 182-531-0150 Noncovered physician-related and health care professional services—General and administrative.** (1) The medicaid agency evaluates a request for noncovered services in this chapter under WAC 182-501-0160. In addition to noncovered services found in WAC 182-501-0070, except as provided in subsection (2) of this section, the agency does not cover:

- (a) Acupuncture, massage, or massage therapy;
- (b) Any service specifically excluded by statute;
- (c) Care, testing, or treatment of infertility (~~(, frigidity, or impotency)~~) or sexual dysfunction. This includes procedures for donor ovum, donor sperm, ((womb)) gestational carrier, and reversal of vasectomy or tubal ligation;
- (d) Hysterectomy performed solely for the purpose of sterilization;
- (e) Cosmetic treatment or surgery, except as provided in WAC 182-531-0100 (4) (x);
- (f) Experimental or investigational services, procedures, treatments, devices, drugs, or application of associated services, except when the individual factors of an individual client's condition justify a determination of medical necessity under WAC 182-501-0165;
- (g) Hair transplantation;
- (h) Marital counseling or sex therapy;
- (i) More costly services when the medicaid agency determines that less costly, equally effective services are available;
- (j) Vision-related services as follows:
  - (i) Services for cosmetic purposes only;
  - (ii) Group vision screening for eyeglasses; and
  - (iii) Refractive surgery of any type that changes the eye's refractive error. The intent of the refractive surgery procedure is to reduce or eliminate the need for eyeglass or contact lens correction. This refractive surgery does not include intraocular lens implantation following cataract surgery.
- (k) Payment for body parts, including organs, tissues, bones and blood, except as allowed in WAC 182-531-1750;
- (l) Physician-supplied medication, except those drugs which the client cannot self-administer and therefore are administered by the physician in the physician's office;
- (m) Physical examinations or routine checkups, except as provided in WAC 182-531-0100;
- (n) Foot care, unless the client meets criteria and conditions outlined in WAC 182-531-1300, as follows:
  - (i) Routine foot care including, but not limited to:
    - (A) Treatment of tinea pedis;
    - (B) Cutting or removing warts, corns and calluses; and
    - (C) Trimming, cutting, clipping, or debriding of nails.
  - (ii) Nonroutine foot care including, but not limited to, treatment of:
    - (A) Flat feet;
    - (B) High arches (cavus foot);
    - (C) Onychomycosis;
    - (D) Bunions and tailor's bunion (hallux valgus);
    - (E) Hallux malleus;
    - (F) Equinus deformity of foot, acquired;

(G) Cavovarus deformity, acquired;

(H) Adult acquired flatfoot (metatarsus adductus or pes planus);

(I) Hallux limitus.

(iii) Any other service performed in the absence of localized illness, injury, or symptoms involving the foot;

(o) Except as provided in WAC 182-531-1600, weight reduction and control services, procedures, treatments, devices, drugs, products, gym memberships, equipment for the purpose of weight reduction, or the application of associated services;

(p) Nonmedical equipment;

(q) Nonemergent admissions and associated services to out-of-state hospitals or noncontracted hospitals in contract areas;

(r) Vaccines recommended or required for the sole purpose of international travel. This does not include routine vaccines administered according to current centers for disease control (CDC) advisory committee on immunization practices (ACIP) immunization schedule for adults and children in the United States; and

(s) Early elective deliveries as defined in WAC 182-500-0030.

(2) The medicaid agency covers excluded services listed in (1) of this subsection if those services are mandated under and provided to a client who is eligible for one of the following:

(a) The EPSDT program;

(b) A Washington apple health program for qualified **medicare** beneficiaries (QMBs); or

(c) A waiver program.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 15-24-021, § 182-531-0150, filed 11/19/15, effective 1/1/16; WSR 15-03-041, § 182-531-0150, filed 1/12/15, effective 2/12/15. Statutory Authority: RCW 41.05.021, 74.09.520, 74.09.657, 74.09.659, and 74.09.800. WSR 13-16-008, § 182-531-0150, filed 7/25/13, effective 9/1/13. WSR 11-14-075, recodified as § 182-531-0150, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090. WSR 11-14-055, § 388-531-0150, filed 6/29/11, effective 7/30/11; WSR 10-19-057, § 388-531-0150, filed 9/14/10, effective 10/15/10. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 05-12-022, § 388-531-0150, filed 5/20/05, effective 6/20/05; WSR 01-01-012, § 388-531-0150, filed 12/6/00, effective 1/6/01.]