

WSR 23-08-048

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed March 30, 2023, 2:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-09-074.

Title of Rule and Other Identifying Information: WAC 182-502-0002 Eligible provider types; new chapter 182-561 WAC, Community behavioral support services benefit.

Hearing Location(s): On May 9, 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_hBvwLAWGQNaCbfhRKR7ciw. 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: May 10, 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 May 9, 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 April 28, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 182-561 WAC is a new chapter to establish the community behavioral [health] support services (CBHS) benefit. The CBHS benefit assists eligible clients with obtaining the skills necessary to reside successfully in home and community-based settings. The chapter includes the eligibility criteria for clients; apple health rules requiring medical necessity do not apply to this benefit. The chapter also includes CBHS provider requirements, eligible diagnoses, covered services, and the appeal process.

Reasons Supporting Proposal: See purpose above.

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: None.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Rebecca Carrell, P.O. Box 45534, Olympia, WA 98504-5534, 360-725-5707.

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 rules do not impose any costs on businesses.

March 30, 2023
Wendy Barcus
Rules Coordinator

OTS-4392.1

AMENDATORY SECTION (Amending WSR 23-04-071, filed 1/30/23, effective 3/2/23)

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 182-531A-0800:

(i) Licensed behavior analyst;

(ii) Licensed assistant behavior analyst; and

(iii) Certified behavior technician.

(d) Audiologists;

(e) Substance use disorder professionals:

(i) Mental health 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) Substance use disorder treatment facilities certified by the department of health (DOH);
 - (h) Withdrawal management treatment facilities certified by DOH;
 - (i) Community AIDS services alternative agencies;
 - (j) Community behavioral health support services provider facilities;
 - (k) Community mental health centers;
 - ~~((k))~~ (l) Diagnostic centers;
 - ~~((l))~~ (m) Early and periodic screening, diagnosis, and treatment (EPSDT) clinics;
 - ~~((m))~~ (n) Family planning clinics;
 - ~~((n))~~ (o) Federally qualified health centers (designated by the federal department of health and human services);
 - ~~((o))~~ (p) Genetic counseling agencies;
 - ~~((p))~~ (q) Health departments;
 - ~~((q))~~ (r) Health maintenance organization (HMO)/managed care organization (MCO);
 - ~~((r))~~ (s) HIV/AIDS case management;
 - ~~((s))~~ (t) Home health agencies;
 - ~~((t))~~ (u) Hospice agencies;
 - ~~((u))~~ (v) Hospitals;
 - ~~((v))~~ (w) Indian health service facilities/tribal 638 facilities;
 - ~~((w))~~ (x) Tribal or urban Indian clinics;
 - ~~((x))~~ (y) Inpatient psychiatric facilities;
 - ~~((y))~~ (z) Intermediate care facilities for individuals with intellectual disabilities (ICF-IID);
 - ~~((z))~~ (aa) Kidney centers;
 - ~~((aa))~~ (bb) Laboratories (CLIA certified);
 - ~~((bb))~~ (cc) Maternity support services agencies; maternity case managers; infant case management, first steps providers;
 - ~~((cc))~~ (dd) Neuromuscular and neurodevelopmental centers;
 - ~~((dd))~~ (ee) Nurse services/delegation;
 - ~~((ee))~~ (ff) Nursing facilities (approved by the DSHS aging and long-term support administration);

~~((ff))~~ (gg) Pathology laboratories;
~~((gg))~~ (hh) Pharmacies;
~~((hh))~~ (ii) Private duty nursing agencies;
~~((ii))~~ (jj) Radiology - Stand-alone clinics;
~~((jj))~~ (kk) Rural health clinics (medicare-certified);
~~((kk))~~ (ll) School districts and educational service districts;
~~((ll))~~ (mm) Sleep study centers; and
~~((mm))~~ (nn) 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, 71A.10.020(11), and chapter 18.205 RCW. WSR 23-04-071, § 182-502-0002, filed 1/30/23, effective 3/2/23. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-15-115, § 182-502-0002, filed 7/20/22, effective 8/20/22; WSR 22-07-105, § 182-502-0002, filed 3/23/22, effective 4/23/22. 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-4003.4

Chapter 182-561 WAC COMMUNITY BEHAVIORAL HEALTH SUPPORT SERVICES BENEFIT

NEW SECTION

WAC 182-561-0100 General. (1) **Administration.** The medicaid agency, in conjunction with the department of social and health services, administers the community behavioral health support services (CBHS) benefit.

(2) **Services.** The CBHS benefit individualizes services designed to assist eligible clients in acquiring, retaining, restoring, and im-

proving the self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings.

(3) **Applicability.** The rules in this chapter apply to benefits administered through fee-for-service delivery or a managed care organization.

(4) **CBHS benefits determined under this chapter.**

(a) The agency determines eligibility for CBHS benefits based on the rules in this chapter.

(b) Apple health rules requiring medical necessity do not apply to the CBHS benefit.

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NEW SECTION

WAC 182-561-0200 Definitions. The following definitions and those found in chapter 182-500 WAC apply to this chapter:

"Activities of daily living (ADL)" means the same as in WAC 388-106-0010.

"Home and community services (HCS)" means the division of the department of social and health services (DSHS) that manages the state's comprehensive long-term care system that provides in-home, residential, and nursing home services to clients with functional disabilities.

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NEW SECTION

WAC 182-561-0300 Eligibility. To be eligible for the community behavioral health support services (CBHS) benefit, a person must meet all requirements and criteria in this section.

(1) **General requirements.** A person must:

(a) Be eligible for apple health under categorically needy or alternate benefit plan scope of care;

(b) Receive at least one of the following home and community services at home or in a community residential setting:

(i) Medicaid personal care (MPC), as described in WAC 388-106-0015(1);

(ii) Community options program entry system (COPES), as described in WAC 388-106-0015(2);

(iii) Community first choice (CFC), as described in WAC 388-106-0015(3);

(iv) New freedom consumer directed services (NFCDS), as described in WAC 388-106-0015(16); or

(v) Residential support, as described in WAC 388-106-0015(17).

(c) Have countable income at or below 150 percent of the federal poverty level (FPL);

(d) Be age 18 or older; and

(e) Have an eligible diagnosis, as identified in WAC 182-561-0600.

(2) **Needs-based criteria.** A person must be assessed by home and community services (HCS) or an HCS designee and found to have a demonstrated need for:

(a) Assistance with three or more activities of daily living (ADL), or assistance with body care, or both, as defined in WAC 388-106-0010; or

(b) Hands-on assistance with one or more ADLs.

(3) **Risk-based criteria.** A person must have:

(a) A behavioral or clinical complexity that requires additional staffing or specialized services available only under the CBHS benefit. This determination is based on the person exhibiting one or more of the following behaviors within the last 12 months:

(i) Multiple assaults related to a behavioral health condition during inpatient or long-term care;

(ii) Self-endangering behaviors related to a behavioral health condition that would result in bodily harm;

(iii) Intrusiveness related to a behavioral health condition (e.g., rummaging, unawareness of personal boundaries) that places the person at risk of assault by others;

(iv) Chronic psychiatric symptoms that cause distress to and escalate the person or other residents to crisis;

(v) Sexual inappropriateness related to a behavioral health condition that may compromise the safety of the person and other vulnerable adults; or

(b) A history of any of the above behaviors, which are currently only prevented by additional skilled staff intervention.

(4) **Other criteria.** A person must meet the criteria of (a) or (b) of this subsection and have:

(a) A history of being unsuccessful in community living settings, as evidenced by at least one or more of the following:

(i) A history of multiple failed stays in residential settings within the past two years;

(ii) Be in imminent danger of losing a current community living setting due to behaviors related to a behavioral health condition or conditions;

(iii) Experience frequent caregiver turnover due to behaviors related to a behavioral health condition or conditions within the past two years; or

(iv) Be at imminent risk of losing a long-term care living setting without currently receiving the CBHS benefit.

(b) A past psychiatric history, where significant functional improvement has not been maintained due to the lack of the CBHS benefit, as evidenced by one or more of the following:

(i) Two or more inpatient psychiatric hospitalizations in the last 12 months;

(ii) An inpatient stay in a community hospital (acute or psychiatric) or a free-standing evaluation and treatment facility for 30 days or more in the last 12 months, with barriers to discharge related to a behavioral health condition or conditions;

(iii) Discharge from a state psychiatric hospital or a long-term 90/180-day inpatient psychiatric setting in the last 12 months; or

(iv) Being at imminent risk of requiring inpatient level of care without currently receiving the CBHS benefit.

(5) **Continuous eligibility.** Covered services may begin on the date the client meets all CBHS benefit criteria described in subsections (1) through (4) of this section. The agency approves one year of continuous eligibility for the CBHS benefit, unless the client:

- (a) Is admitted to an institution, as defined in WAC 182-500-0050, and is likely to reside there for 30 days or longer;
- (b) No longer receives any of the following home and community services at home or in a community residential setting:
- (i) Medicaid personal care (MPC), as described in WAC 388-106-0015(1);
 - (ii) Community options program entry system (COPES), as described in WAC 388-106-0015(2);
 - (iii) Community first choice (CFC), as described in WAC 388-106-0015(3);
 - (iv) New freedom consumer directed services (NFCDS), as described in WAC 388-106-0015(16); or
 - (v) Residential support, as described in WAC 388-106-0015(17).
- (c) Has countable income over 150 percent federal poverty level (FPL); or
- (d) Otherwise loses eligibility for medicaid.
- (6) **Service eligibility denial or termination.** The agency provides a written explanation for denials as described in chapter 182-518 WAC.
- (a) A change that results in termination takes effect the first of the month following the change as described in WAC 182-504-0120.
- (b) A change that results in a decreased scope of care takes effect the first of the month following the advance notice period, as described in WAC 182-504-0120.
- (7) **Redetermination.** The agency reviews client eligibility for CBHS services at least once every 12 months.

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NEW SECTION

WAC 182-561-0400 Covered services. The community behavioral health support services (CBHS) benefit covers supportive supervision and oversight services that:

- (1) Include direct monitoring, redirection, diversion, and cueing to prevent at-risk behavior that may result in harm to the client or to others;
- (2) Provide assistance with building skills and resiliency to support stabilized living and integration; and
- (3) Must be coordinated with other behavioral health services or incorporated into any existing crisis plans.

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NEW SECTION

WAC 182-561-0500 Providers. (1) **Supportive supervision and oversight services providers.** The services described in WAC 182-561-0400(1) must be provided by the following medicaid agency-contracted providers:

- (a) Adult family homes, which are licensed under chapter 388-76 WAC;

(b) Adult residential care facilities (ARC), which are assisted living facilities with a contract to provide ARC services and are licensed under chapters 18.20 RCW and 388-78A WAC;

(c) Enhanced adult residential care (EARC) facilities, which are assisted living facilities with a contract to provide EARC services and are licensed under chapters 18.20 RCW and 388-78A WAC;

(d) Assisted living facilities, which are licensed under chapters 70.97 RCW and 388-78A and 388-110 WAC; or

(e) Enhanced services facilities, which are licensed under chapters 70.97 RCW and 388-107 WAC.

(2) **Provider requirements.** For the purposes of community behavioral health support services, WAC 182-502-0020 is not applicable. Providers should follow the record requirements outlined in the billing guides.

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NEW SECTION

WAC 182-561-0600 Eligible diagnoses. For purposes of this chapter, eligible diagnoses include:

- Psychotic disorder with hallucinations due to known physiological condition
- Psychotic disorder with delusions due to known physiological condition
- Mood disorder due to known physiological condition, unspecified
- Mood disorder due to known physiological condition with depressive features
- Mood disorder due to known physiological condition with major depressive-like episode
- Mood disorder due to known physiological condition with manic features
- Mood disorder due to known physiological condition with mixed features
- Anxiety disorder due to known physiological condition
- Personality change due to known physiological condition
- Diffuse traumatic brain injury with loss of consciousness sequela
- Paranoid schizophrenia
- Disorganized schizophrenia
- Catatonic schizophrenia
- Undifferentiated schizophrenia
- Residual schizophrenia
- Schizophreniform disorder
- Other schizophrenia
- Schizophrenia, unspecified
- Schizotypal disorder
- Delusional disorders
- Brief psychotic disorder
- Shared psychotic disorder
- Schizoaffective disorder, bipolar type
- Schizoaffective disorder, depressive type
- Other schizoaffective disorders
- Schizoaffective disorder, unspecified

- Other psychotic disorder not due to a substance or known physiological condition
 - Unspecified psychosis not due to a substance or known physiological condition
 - Manic episode without psychotic symptoms, unspecified
 - Manic episode without psychotic symptoms, mild
 - Manic episode without psychotic symptoms, moderate
 - Manic episode, severe, without psychotic symptoms
 - Manic episode, severe with psychotic symptoms
 - Manic episode in partial remission
 - Manic episode in full remission
 - Other manic episodes
 - Manic episode, unspecified
 - Bipolar disorder, current episode hypomanic
 - Bipolar disorder, current episode manic without psychotic features, unspecified
 - Bipolar disorder, current episode manic without psychotic features, mild
 - Bipolar disorder, current episode manic without psychotic features, moderate
 - Bipolar disorder, current episode manic without psychotic features, severe
 - Bipolar disorder, current episode manic severe with psychotic features
 - Bipolar disorder, current episode depressed, mild or moderate severity, unspecified
 - Bipolar disorder, current episode depressed, mild
 - Bipolar disorder, current episode depressed, moderate
 - Bipolar disorder, current episode depressed, severe, without psychotic features
 - Bipolar disorder, current episode depressed, severe, with psychotic features
 - Bipolar disorder, current episode mixed, unspecified
 - Bipolar disorder, current episode mixed, mild
 - Bipolar disorder, current episode mixed, moderate
 - Bipolar disorder, current episode mixed, severe, without psychotic features
 - Bipolar disorder, current episode mixed, severe, with psychotic features
 - Bipolar disorder, currently in remission, most recent episode unspecified
 - Bipolar disorder, in partial remission, most recent episodic hypomanic
 - Bipolar disorder, in full remission, most recent episode hypomanic
 - Bipolar disorder, in partial remission, most recent episode manic
 - Bipolar disorder, in full remission, most recent episode manic
 - Bipolar disorder, in partial remission, most recent episode depressed
 - Bipolar disorder, in full remission, most recent episode depressed
 - Bipolar disorder, in partial remission, most recent episode mixed
 - Bipolar disorder, in full remission, most recent episode mixed
 - Bipolar II disorder
 - Other bipolar disorder

- Bipolar disorder, unspecified
- Major depressive disorder, single episode, mild
- Major depressive disorder, single episode, moderate
- Major depressive disorder, single episode, severe without psychotic features
- Major depressive disorder, single episode, severe with psychotic features
- Major depressive disorder, single episode, in partial remission
- Major depressive disorder, single episode, in full remission
- Other depressive episodes
- Premenstrual dysphoric disorder
- Other specified depressive episodes
- Major depressive disorder, single episode, unspecified
- Depression, unspecified
- Major depressive disorder, recurrent, mild
- Major depressive disorder, recurrent, moderate
- Major depressive disorder, recurrent severe without psychotic features
- Major depressive disorder, recurrent, severe with psychotic symptoms
- Major depressive disorder, recurrent, in remission, unspecified
- Major depressive disorder, recurrent, in partial remission
- Major depressive disorder, recurrent, in full remission
- Other recurrent depressive disorders
- Major depressive disorder, recurrent, unspecified
- Cyclothymic disorder
- Dysthymic disorder
- Other persistent mood (affective) disorders
- Disruptive mood dysregulation disorder
- Other specified persistent mood disorders
- Persistent mood (affective) disorder, unspecified
- Unspecified mood (affective) disorder
- Agoraphobia, unspecified
- Agoraphobia with panic disorder
- Agoraphobia without panic disorder
- Social phobia, unspecified
- Social phobia, generalized
- Claustrophobia
- Other phobic anxiety disorders
- Panic disorder (episodic paroxysmal anxiety)
- Generalized anxiety disorder
- Obsessive-compulsive disorder
- Mixed obsessional thoughts and acts
- Hoarding disorder
- Excoriation (skin-picking) disorder
- Other obsessive-compulsive disorder
- Obsessive-compulsive disorder, unspecified
- Post-traumatic stress disorder, unspecified
- Post-traumatic stress disorder, acute
- Post-traumatic stress disorder, chronic
- Dissociative amnesia
- Dissociative fugue
- Dissociative stupor
- Conversion disorder with motor symptom or deficit
- Conversion disorder with seizures or convulsions
- Conversion disorder with sensory symptom or deficit
- Conversion disorder with mixed symptom presentation

- Dissociative identity disorder
- Other dissociative and conversion disorders
- Dissociative and conversion disorder, unspecified
- Somatization disorder
- Undifferentiated somatoform disorder
- Hypochondriacal disorder, unspecified
- Hypochondriasis
- Body dysmorphic disorder
- Other hypochondriacal disorders
- Pain disorder exclusively related to psychological factors
- Pain disorder with related psychological factors
- Other somatoform disorders
- Somatoform disorder, unspecified
- Depersonalization-derealization syndrome
- Nonpsychotic mental disorder, unspecified
- Borderline personality disorder
- Trichotillomania
- Intermittent explosive disorder
- Other impulse disorders
- Impulse disorder, unspecified
- Factitious disorder imposed on self, unspecified
- Factitious disorder imposed on self, with predominantly physical signs and symptoms
 - Factitious disorder imposed on self, with combined psychological and physical signs and symptoms
- Other specified disorders of adult personality and behavior
- Conduct disorder confined to family context
- Conduct disorder, childhood-onset type
- Conduct disorder, adolescent-onset type
- Other conduct disorders
- Conduct disorder, unspecified
- Separation anxiety disorder of childhood
- Other childhood emotional disorders
- Childhood emotional disorder, unspecified
- Selective mutism
- Reactive attachment disorder of childhood
- Disinhibited attachment disorder of childhood
- Other childhood disorders of social functioning
- Childhood disorder of social functioning, unspecified

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NEW SECTION

WAC 182-561-0700 Appeal process. (1) The medicaid agency gives the client written notice of an action under chapter 182-518 WAC.

(2) The client has the right to appeal the agency's action according to chapter 182-526 WAC.

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