



PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)

Do **NOT** use for expedited rule making

Agency: Department of Social and Health Services, Health and Recovery Services Administration

- Preproposal Statement of Inquiry was filed as WSR 09-05-055; or
- Expedited Rule Making--Proposed notice was filed as WSR _____; or
- Proposal is exempt under RCW 34.05.310(4).

- Original Notice
- Supplemental Notice to WSR
- Continuance of WSR

Title of rule and other identifying information: (Describe Subject)

WAC 388-501-0050 Healthcare – general coverage
 WAC 388-501-0070 Healthcare coverage – noncovered services
 WAC 388-501-0163 Healthcare coverage – process for submitting a valid request for authorization
 WAC 388-501-0169 Healthcare coverage – limitation extension

Hearing location(s):

Blake Office Park East – Rose Room
 4500 – 10th Ave. SE
 Lacey, Washington 98503
 (One block north of the intersection of Pacific Ave. SE and Alhadeff Lane. A map or directions are available at <http://www.dshs.wa.gov/msa/rpau/docket.html> or by calling 360-664-6094)

Date: **August 4, 2009** Time: **10:00 a.m.**

Submit written comments to:

Name: DSHS Rules Coordinator
 Address: PO Box 45850, Olympia WA, 98504-5850
 Delivery: 4500 – 10th Ave. SE, Lacey, Washington 98503
 E-mail: DSHSRPAURulesCoordinator@dshs.wa.gov
 Fax: (360) 664-6185

by
5 p.m. on August 4, 2009

Assistance for persons with disabilities: Contact Jennisha Johnson, DSHS Rules Consultant by July 21, 2009
 TTY (360) 664-6178 or (360) 664-6094 or
 by e-mail at johnsjl4@dshs.wa.gov

Date of intended adoption: Not sooner than August 5, 2009
 (Note: This is **NOT** the **effective** date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

- Clarify that providers must be enrolled with the Department and meet the requirements of chapter 388-502 WAC to be paid for furnishing healthcare services to clients;
- Clarify when the Department pays for healthcare services;
- Clarify that the Department does not reimburse clients for healthcare services purchased out-of-pocket;
- Clarify that the Department does not pay for the replacement of Department-purchased equipment, devices, or supplies which have been sold, lost, broken, destroyed, or stolen as a result of carelessness, negligence, recklessness, or misuse;
- Clarify how a noncovered healthcare service, recommended during an EPSDT exam is evaluated by the Department for coverage;
- Correctly alphabetize the list of noncovered items;
- Add discography and upright magnetic resonance imaging to the list of noncovered services;
- Clarify that a client has the right to an administrative hearing, if one is available under state and federal laws.
- Add a new section (WAC 388-501-0163) to clarify the process for submitting a valid request for authorization; and
- Clarify limitation extensions.

Statutory authority for adoption:

RCW 74.04.050, 74.08.090, 74.09.530, 74.09.700

Statute being implemented:

RCW 74.08.090

Is rule necessary because of a:

- | | | |
|-------------------------|------------------------------|--|
| Federal Law? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If yes, CITATION:

DATE

June 25, 2009

NAME (type or print)

Stephanie Schiller

SIGNATURE

TITLE

DSHS Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
 STATE OF WASHINGTON
 FILED

DATE: June 29, 2009

TIME: 2:58 PM

WSR 09-14-076

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

N/A

Name of proponent: (person or organization) Department of Social and Health Services

- Private
- Public
- Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting.....Wendy L. Boedigheimer	PO Box 45504, Olympia WA 98504	(360) 725-1306
Implementation....Gail Kreiger	PO Box 45560, Olympia WA 98504	(360) 725-1681
Enforcement.....Gail Kreiger	PO Box 45560, Olympia WA 98504	(360) 725-1681

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone ()

fax ()

e-mail

No. Explain why no statement was prepared.

The proposed rules do not impose any new costs on small businesses.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name: Gail Kreiger

Address: PO Box 45560
Olympia WA 98504-5560

phone (360) 725-1681

fax (360) 586-9727

e-mail kreigga@dshs.wa.gov

No: Please explain:

AMENDATORY SECTION (Amending WSR 06-24-036, filed 11/30/06, effective 1/1/07)

WAC 388-501-0050 Healthcare general coverage. ((The following rules,)) WAC 388-501-0050 through 388-501-0065((7)) describe the healthcare services available to a client on a fee-for-service basis or ((as an enrollee)) to a client enrolled in a managed care organization (MCO) (defined in WAC 388-538-050). For the purposes of this section, healthcare services includes treatment, equipment, related supplies, and drugs. WAC 388-501-0070 describes noncovered services ((are described in WAC 388-501-0070)).

(1) Healthcare service categories listed in WAC 388-501-0060 do not represent a contract for healthcare services.

(2) For the provider to receive payment, the client must be eligible for the covered healthcare service on the date the healthcare service is performed or provided.

(3) Under the department's fee-for-service programs, providers must be enrolled with the department and meet the requirements of chapter 388-502 WAC to be paid for furnishing healthcare services to clients.

(4) The department pays only for ((medical or dental services, equipment, or supplies)) the healthcare services that are:

(a) Within the scope of the client's medical program;

(b) Covered - see subsection ((5)) (8) of this section;

(c) ((Medically necessary;

(d)) Ordered or prescribed by a healthcare provider ((meeting)) who meets the requirements of chapter 388-502 WAC; ((and))

(d) Medically necessary as defined in WAC 388-500-0005;

(e) Submitted for authorization, when required, in accordance with WAC 388-501-0163;

(f) Approved, when required, in accordance with WAC 388-501-0165;

(g) Furnished by a provider according to ((the requirements of)) chapter 388-502 WAC; and

(h) Billed in accordance with department program rules and the department's current published billing instructions and numbered memoranda.

((4) The department's fee-for-service program pays only for services furnished by enrolled providers who meet the requirements of chapter 388-502 WAC.))

(5) The department does not pay for any healthcare service((, treatment, equipment, drug, or supply)) requiring prior authorization from the department, if prior authorization was not obtained before the healthcare service was provided.

(6) The department does not reimburse clients for healthcare services purchased out-of-pocket.

(7) The department does not pay for the replacement of department-purchased equipment, devices, or supplies which have been sold, lost, broken, destroyed, or stolen as a result of

carelessness, negligence, recklessness, or misuse unless otherwise allowed in specific program rules.

(8) Covered healthcare services

(a) Covered healthcare services are either:

(i) "Federally mandated" - means the state of Washington is required by federal regulation (42 CFR 440.210 and 220) to cover the healthcare service for medicaid clients; or

(ii) "State-option" - means the state of Washington is not federally mandated to cover the healthcare service but has chosen to do so at its own discretion.

(b) The department may limit the scope, amount, duration, and/or frequency of covered healthcare services. Limitation extensions are authorized according to WAC 388-501-0169.

~~((+7+))~~ **(9) Noncovered healthcare services**

(a) The department does not pay for any healthcare service (~~(, equipment, or supply)~~):

(i) That federal or state laws or regulations prohibit the department from covering; or

(ii) Listed as noncovered in WAC 388-501-0070 or in any other program rule. The department evaluates a request for a noncovered healthcare service only if an exception to rule is requested according to the provisions in WAC 388-501-0160.

(b) When a noncovered healthcare services is recommended during the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) ((applies, a noncovered)) exam and then ordered by a provider, the department evaluates the healthcare service ((, equipment, or supply will be evaluated)) according to the process in WAC 388-501-0165 to determine if it is medically necessary, safe, effective, and not experimental (see WAC 388-534-0100 for EPSDT rules).

AMENDATORY SECTION (Amending WSR 07-04-036, filed 1/29/07, effective 3/1/07)

WAC 388-501-0070 Healthcare coverage--Noncovered services.

(1) The department does not pay for any healthcare service (~~(, treatment, equipment, drug or supply)~~) not listed or referred to as a covered healthcare service under the medical programs described in WAC 388-501-0060, regardless of medical necessity. For the purposes of this section, healthcare services includes treatment, equipment, related supplies, and drugs. Circumstances (~~(under)~~) in which clients are responsible for payment of healthcare services are described in WAC 388-502-0160.

(2) This section does not apply to healthcare services provided (~~(under)~~) as a result of the early and periodic screening, diagnosis, and treatment (EPSDT) program as described in chapter 388-534 WAC.

(3) The department does not pay for any ancillary healthcare service(s) provided in association with a noncovered healthcare service.

(4) The following list of noncovered healthcare services is not intended to be exhaustive. Noncovered healthcare services

include, but are not limited to:

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

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

(c) Chiropractic care for adults;

(d) Cosmetic, reconstructive, or plastic surgery, and any related healthcare services ((and supplies)), not specifically allowed under WAC 388-531-0100(4).

(e) Discography;

~~(f)~~ (f) Ear or other body piercing;

~~((f))~~ (g) Face lifts or other facial cosmetic enhancements;

~~((g))~~ Gender reassignment surgery and any surgery related to transsexualism, gender identity disorders, and body dysmorphism, and related services, supplies, or procedures, including construction of internal or external genitalia, breast augmentation, or mammoplasty;

~~(h)~~ ((Hair transplants, epilation (hair removal), and electrolysis;

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

(i) Artificial insemination;

(ii) Donor ovum, sperm, or surrogate womb;

(iii) In vitro fertilization;

(iv) Penile implants;

(v) Reversal of sterilization; and

(vi) Sex therapy.

~~((j))~~ (i) Gender reassignment surgery and any surgery related to trans-sexualism, gender identity disorders, and body dysmorphism, and related healthcare services or procedures, including construction of internal or external genitalia, breast augmentation, or mammoplasty;

(j) Hair transplants, epilation (hair removal), and electrolysis;

(k) Marital counseling;

~~((k))~~ (l) Motion analysis, athletic training evaluation, work hardening condition, high altitude simulation test, and health and behavior assessment;

~~((l))~~ (m) Nonmedical equipment;

~~((m))~~ (n) Penile implants;

~~((n))~~ (o) Prosthetic testicles;

~~((o))~~ (p) Psychiatric sleep therapy;

~~((p))~~ (q) Subcutaneous injection filling;

~~((q))~~ (r) Tattoo removal;

~~((r))~~ (s) Transport of Involuntary Treatment Act (ITA) clients to or from out-of-state treatment facilities, including those in bordering cities; ((and))

~~((s))~~ (t) Upright magnetic resonance imaging (MRI); and

(u) Vehicle purchase - new or used vehicle.

(5) For a specific list((ing)) of noncovered healthcare services in the following service categories, refer to the ((accompanying)) WAC citation:

(a) Ambulance transportation and nonemergent transportation as described in ((WAC 388-546-0250)) chapter 388-546 WAC;

(b) Dental services ~~((†))~~ for clients twenty~~((-one))~~ years of age and younger~~((†))~~ as described in chapter 388-535 WAC;

(c) Dental services ~~((†))~~ for clients twenty-one years of age and older~~((†))~~ as described in chapter 388-535 WAC;

(d) Durable medical equipment as described in ~~((WAC 388-543-1300))~~ chapter 388-543 WAC;

(e) Hearing care services as described in ~~((WAC 388-544-1400))~~ chapter 388-547 WAC;

(f) Home health services as described in WAC 388-551-2130;

(g) Hospital services as described in WAC 388-550-1600;

(h) Physician-related services as described in WAC 388-531-0150;

(i) Prescription drugs as described in ~~((WAC 388-530-1150))~~ chapter 388-530 WAC; and

(j) Vision care services as described in ~~((WAC 388-544-0475))~~ chapter 388-544 WAC.

(6) A client has a right to request an administrative hearing ~~((when a service is denied as noncovered)), if one is available under state and federal law.~~ When the department denies all or part of a request for a noncovered healthcare service(s) ~~((or equipment))~~, the department sends the client and the provider written notice, within ten business days of the date the decision is made, that includes:

(a) A statement of the action the department 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 department's action was taken; and

(ii) Prepare a response to the department's decision to classify the requested healthcare service as noncovered.

(d) The specific factual basis for the intended action; and

(e) The following information:

(i) ~~((The client's))~~ General administrative hearing rights;

(ii) Instructions on how to request the hearing;

(iii) Acknowledgement that a client may be represented at the hearing by legal counsel or other representative;

~~(iv) ((Upon the client's request, the name and address of the nearest legal services office;~~

~~(v))~~ Instructions on how to request an exception to rule (ETR); ~~((and))~~

~~((vi))~~ (v) Information regarding department-covered healthcare services, if any, as an alternative to the requested noncovered healthcare 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 388-501-0160.

NEW SECTION

WAC 388-501-0163 Healthcare coverage--Process for submitting a valid request for authorization. (1) The department requires

providers to obtain authorization for certain healthcare services in accordance with this section, chapters 388-501 and 388-502 WAC, other applicable department rules, current published department billing instructions, and/or numbered memoranda. For the purposes of this section, healthcare services include treatment, equipment, related supplies, and drugs.

(a) For healthcare services that require prior authorization (PA), a provider (as defined in WAC 388-500-0005) must submit a written, electronic, or telephonic request to the department. To be a valid request for prior authorization, the provider must submit the request and conform to the department's current published program billing instructions, numbered memoranda, and any additional requirements in Washington Administrative Code (WAC) and/or Revised Code of Washington (RCW).

(b) For expedited prior authorization (EPA), a provider must certify that the client's clinical condition meets the appropriate EPA criteria outlined in the department's current published program billing instructions, numbered memoranda, and any additional requirements in WAC and/or RCW. The provider must use the department-assigned EPA number when submitting a claim for payment to the department.

(c) The department requires prior authorization for covered healthcare services when the applicable expedited prior authorization criteria are not met.

(d) Upon request, a provider must submit documentation to the department showing how the client's condition meets the required criteria for PA or EPA.

(2) Department authorization requirements for covered healthcare services are not a denial of service and do not create a right to an administrative hearing.

(3) The department returns invalid requests to the provider and takes no further action unless the request for authorization is resubmitted. The return of an invalid request is not a denial of service and does not create a right to an administrative hearing.

(4) Failure of a provider to request authorization for a healthcare service that requires it or a provider's failure to do so properly is not a denial of service and does not create a right to an administrative hearing.

(5) The department's authorization of healthcare service(s) does not guarantee payment. See WAC 388-501-0050 for other general requirements that must be satisfied before payment can be made for a healthcare service requested and authorized under this section.

(6) The department evaluates a request for an authorization of a healthcare service that exceeds identified limitations, on a case-by-case basis and in accordance with WAC 388-501-0169.

(7) The department may recoup any payment made to a provider if the department later determines the healthcare service was not properly authorized or did not meet EPA criteria. Refer to chapters 388-502 and 388-502A WAC.

WAC 388-501-0169 Healthcare coverage--Limitation extension.

This section addresses requests for limitation extensions ~~((additional covered services when a client has received the maximum services allowed under specific healthcare program rules))~~ regarding scope, amount, duration and/or frequency of a covered healthcare service. For the purposes of this section, healthcare services includes treatment, equipment, related supplies, and drugs. The department does not authorize or pay for any covered healthcare services exceeding ~~((the maximum allowed until))~~ identified limitations unless authorization is obtained prior to client receiving the service.

(1) No limitation extension of covered healthcare services will be authorized when prohibited by specific program rules.

(2) When ~~((an))~~ a limitation extension is not prohibited by specific program rules, ~~((a client or))~~ the client's provider may request a limitation extension.

(3) ~~((Under fee-for-service (FFS),))~~ The department evaluates requests for limitation extensions ~~((using))~~ as follows:

(a) For a fee-for-service client, the process described in WAC 388-501-0165.

(b) For a managed care enrollee, the client's managed care organization (MCO) evaluates requests for limitation extensions according to the MCO's prior authorization process.

~~((4) In addition to subsection (3),))~~ (c) Both the department and MCO consider the following in evaluating a request for a limitation extension:

~~((a))~~ (i) The level of improvement the client has shown to date related to the requested healthcare service and the reasonably calculated probability of continued improvement if the requested healthcare service is extended; and

~~((b))~~ (ii) The reasonably calculated probability the client's condition will worsen if the requested healthcare service is not extended.