



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 09-14-041; 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)

The department is amending WAC 388-543-2900 Medical supplies and nondurable medical equipment (MSE)--Reimbursement methodology.

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: **November 10, 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 November 10, 2009

Assistance for persons with disabilities: Contact Jennisha Johnson, DSHS Rules Consultant by October 27, 2009
TTY (360) 664-6178 or (360) 664-6094 or
by e-mail at johnsjl4@dshs.wa.gov

Date of intended adoption: Not earlier than November 11, 2009 (Note: This is **NOT** the **effective** date)

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

This amendment is necessary to describe the payment methodology the department will use to meet the Legislature's intent that the Department continue to meet federal payment standards for durable medical equipment (DME) with a lower overall level of appropriation.

Reasons supporting proposal: These amendments are necessary for the department to fully meet the legislative mandate as required under Sections 201 and 209 of the state operating budget for the 2009-2011 fiscal years. This will replace the emergency rule which was filed effective August 1, 2009.

Statutory authority for adoption: Chapter 564, Laws of 2009 § 1109 (ESHB 1244); RCW 74.04.050, 74.04.057, 74.08.090

Statute being implemented:
Chapter 564, Laws of 2009 § 1109 (ESHB 1244)

Is rule necessary because of a:

- Federal Law? Yes No
- Federal Court Decision? Yes No
- State Court Decision? Yes No

If yes, CITATION:

DATE

September 30, 2009

NAME (type or print)

Stephanie Vaughn

SIGNATURE

TITLE

DSHS Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: October 02, 2009

TIME: 2:36 PM

WSR 09-20-063

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:
None.

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 Boedigheimer	PO Box 45504, Olympia WA 98504-5504	(360) 725-1306
Implementation...Melissa Usitalo	PO Box 45564, Olympia WA 98504-5564	(360) 725-1853
Enforcement.....Melissa Usitalo	PO Box 45564, Olympia WA 98504-5564	(360) 725-1853

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 Department analyzed the proposed rule amendments and concludes that they will impose no new costs on small businesses. The preparation of a comprehensive SBEIS is not required.

Is a cost-benefit analysis required under RCW 34.05.328?

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

Name: Melissa Usitalo, DME Rates Program Manager

Address: PO Box 45500
Olympia WA 98504-5500

phone (360) 725-1853

fax (360) 586-9727

e-mail Melissa.Usitalo@dshs.wa.gov

No: Please explain:

AMENDATORY SECTION (Amending WSR 03-19-083, filed 9/12/03, effective 10/13/03)

WAC 388-543-2900 Medical supplies and nondurable medical equipment (MSE)--Reimbursement methodology. (1) ~~((MAA determines rates for each category of medical supplies and non-DME (MSE) using either the))~~ The department sets, evaluates and annually updates rates for each category of medical supplies and nonDME (MSE) in the medical assistance fee schedule using one or more of the following:

~~(a) ((Medicare fee schedule; or~~

~~(b) Manufacturers' catalogs and commercial data bases for price comparisons))~~ The medicare fee schedule, for those items that are included in the fee schedule for the medicare program, as established by the federal centers for medicare and medicaid services (CMS).

(b) For those items not included in the medicare fee schedule, the department uses manufacturers' catalogs and commercial data bases to identify brands to comprise the department's pricing cluster. When establishing the fee for products in a pricing cluster, the maximum allowable fee is the lesser of either:

(i) Eighty-five percent of the average manufacturer's list price; or

(ii) One hundred twenty-five percent of the average dealer cost.

(c) Input from stakeholders or other relevant sources that the department determines to be reliable and appropriate.

(2) ~~((MAA evaluates and updates the maximum allowable fees for MSE as follows))~~ The department's pricing cluster is made up of all the brands for which the department obtains pricing information. However, the department may limit the number of brands included in the pricing cluster if doing so is in the best interests of its clients as determined by the department. The department considers all of the following when establishing the pricing cluster:

~~(a) ((MAA sets the maximum allowable fees for new MSE using one of the following:~~

~~(i) Medicare's fee schedule; or~~

~~(ii) For those items without a medicare fee, commercial data bases to identify brands to make up MAA's pricing cluster. MAA establishes the fee for products in the pricing cluster by using the lesser of either:~~

~~(A) Eighty-five percent of the average manufacturer's list price; or~~

~~(B) One hundred twenty-five percent of the average dealer cost.~~

~~(b) All the brands for which MAA obtains pricing information make up MAA's pricing cluster. However, MAA may limit the number of brands included in the pricing cluster if doing so is in the best interests of its clients. MAA considers all of the following:~~

~~(i) A client's medical needs;~~

~~(ii) Product quality;~~

~~(iii) Cost; and~~

~~(iv) Available alternatives))~~ A client's medical needs;

(b) Product quality;

(c) Cost; and

(d) Available alternatives.

(3) ~~((MAA's))~~ The department's nursing facility per diem rate, established per chapter 74.46 RCW and chapter 388-96 WAC, includes any reusable and disposable medical supplies that may be required for a nursing facility client. ((MAA)) The department may reimburse the following medical supplies separately for a client in a nursing facility:

(a) Medical supplies or services that replace all or parts of the function of a permanently impaired or malfunctioning internal body organ. This includes, but is not limited to the following:

(i) Colostomy and other ostomy bags and necessary supplies;
and

(ii) Urinary retention catheters, tubes, and bags, excluding irrigation supplies;

(b) Supplies for intermittent catheterization programs, for the following purposes:

(i) Long term treatment of atonic bladder with a large capacity; and

(ii) Short term management for temporary bladder atony; and

(c) Surgical dressings required as a result of a surgical procedure, for up to six weeks after surgery.

(4) ~~((MAA))~~ The department considers decubitus care products to be included in the nursing facility per diem rate and does not reimburse for these separately.