

Chapter 182-526 WAC

ADMINISTRATIVE HEARING RULES FOR MEDICAL SERVICES PROGRAMS

WAC

182-526-0005 Purpose and scope.
 182-526-0010 Definitions.
 182-526-0015 Terms in the Administrative Procedure Act compared to this chapter.
 182-526-0020 Good cause.
 182-526-0025 Use and location of the office of administrative hearings.
 182-526-0030 Contacting the board of appeals.
 182-526-0035 Calculating when a hearing deadline ends.
 182-526-0040 Sending documents to another party, the office of administrative hearings, or to the board of appeals.
 182-526-0045 Serving documents.
 182-526-0070 Filing documents.
 182-526-0080 Resolving a dispute with the health care authority.
 182-526-0085 Determining if a hearing right exists.
 182-526-0090 Authority to request a hearing.
 182-526-0095 How to request a hearing.
 182-526-0102 Coordinated appeals process with the Washington health benefits exchange.
 182-526-0105 Required information for requesting a hearing.
 182-526-0110 Process after a hearing is requested.
 182-526-0112 Rescheduling a hearing.
 182-526-0115 Withdrawing the request for hearing.
 182-526-0120 Interpreter services for hearings.
 182-526-0130 Limited-English-proficient parties—Notice requirements.
 182-526-0135 Interpreters.
 182-526-0140 Waiving interpreter services.
 182-526-0145 Interpreter requirements.
 182-526-0150 Hearing decisions involving limited-English-proficient parties.
 182-526-0155 Appellant's representation in the hearing.
 182-526-0156 Legal assistance in the hearing process.
 182-526-0157 Requirements to appear and represent a party in the administrative hearing process.
 182-526-0170 Representation of the health care authority in the hearing process.
 182-526-0175 Prehearing meetings.
 182-526-0185 Settlement agreements.
 182-526-0195 Prehearing conferences.
 182-526-0200 Enrollee appeals of a managed care organization action.
 182-526-0215 Authority of the administrative law judge when conducting a hearing.
 182-526-0216 The authority of the administrative law judge and the review judge is limited.
 182-526-0218 The authority of a review judge when conducting a hearing as a presiding officer.
 182-526-0220 Rules and laws an administrative law judge and review judge must apply when conducting a hearing and making a decision.
 182-526-0221 Using the index of significant decisions.
 182-526-0230 Assigning an administrative law judge to a hearing.
 182-526-0235 Requesting a different judge.
 182-526-0240 Filing a motion of prejudice.
 182-526-0245 Disqualifying an administrative law judge or review judge.
 182-526-0250 Time requirements for notices issued by the office of administrative hearings.
 182-526-0255 Notice of hearing.
 182-526-0260 Amending the health care authority or managed care organization notice.
 182-526-0265 Amending hearing requests.
 182-526-0270 Mailing address changes.
 182-526-0280 Requesting a continuance.
 182-526-0285 Orders of dismissal.
 182-526-0290 Reinstating a hearing after an order of dismissal.
 182-526-0310 Requesting a stay of the health care authority action.
 182-526-0315 Requiring witnesses to testify or provide documents.
 182-526-0320 Subpoenas.
 182-526-0340 Hearing location.

182-526-0345 Administrative law judge present at the hearing.
 182-526-0350 Recording the hearing.
 182-526-0355 Persons who may attend the hearing.
 182-526-0360 Changing how a hearing is held or how a witness appears at a hearing.
 182-526-0370 Submitting documents for a telephonic hearing.
 182-526-0375 Summary of the hearing process.
 182-526-0380 Group hearing requests and withdrawals.
 182-526-0387 Requesting that a hearing be consolidated or severed when multiple agencies are parties to the proceeding.
 182-526-0390 Evidence.
 182-526-0405 Stipulations.
 182-526-0415 Exhibits.
 182-526-0440 Judicial notice.
 182-526-0450 Witness.
 182-526-0480 Burden of proof.
 182-526-0485 Standard of proof.
 182-526-0495 Equitable estoppel.
 182-526-0500 Hearing record.
 182-526-0512 Contents of the hearing record.
 182-526-0520 Information which must be included in the ALJ's initial order.
 182-526-0525 When initial orders become final.
 182-526-0530 How to correct or appeal an initial order.
 182-526-0540 How clerical errors are corrected in the initial orders.
 182-526-0545 How a party requests a corrected initial order.
 182-526-0550 Deadline for a party to request a corrected initial order.
 182-526-0555 Process after a party requests a corrected initial order.
 182-526-0560 Review of an initial order by a review judge.
 182-526-0565 Evidence a review judge considers in reviewing an initial order.
 182-526-0570 Request for review of an initial order.
 182-526-0575 How to request review of an initial order.
 182-526-0580 Deadline for requesting review of an initial order by a review judge.
 182-526-0590 Response to a request for review.
 182-526-0595 Process after review response deadline.
 182-526-0600 Authority of the review judge.
 182-526-0605 Reconsideration of a final order entered by a review judge.
 182-526-0620 Deadline for requesting reconsideration.
 182-526-0630 Responding to a reconsideration request.
 182-526-0635 Process after a party requests reconsideration.
 182-526-0640 Judicial review of a final order.
 182-526-0645 Deadline for petition for judicial review and filing requirements.
 182-526-0647 Exhaustion of administrative remedies required.
 182-526-0650 Service of petition for judicial review.

WAC 182-526-0005 Purpose and scope. This chapter describes the general hearing rules and procedures that apply to the resolution of disputes between an appellant and medical services programs established under chapter 74.09 RCW and subsidized basic health under chapter 70.47 RCW. This chapter supplements the Administrative Procedure Act (APA), chapter 34.05 RCW, and the model rules, chapter 10-08 WAC, adopted by the office of administrative hearings (OAH).

(1) This chapter:

(a) Establishes rules encouraging informal dispute resolution between the health care authority (HCA), its authorized agents, or an HCA-contracted managed care organization (MCO), and persons or entities who disagree with its actions; and

(b) Regulates all hearings involving medical services programs established under chapter 74.09 RCW and subsidized basic health under chapter 70.47 RCW unless specifically excluded by this chapter or program rules.

(2) Nothing in this chapter is intended to affect the constitutional rights of any person or to limit or change additional requirements imposed by statute or other rule. Other laws or rules determine if a hearing right exists, including the APA and program rules or laws.

(3) If there is a conflict between this chapter and specific program rules, the specific program rules prevail. HCA's hearing rules and program rules prevail over the model hearing rules in chapter 10-08 WAC.

(4) The hearing rules in this chapter do not apply to the following programs:

(a) Public employees benefits board program (see chapter 182-16 WAC); and

(b) The Washington health plan (see chapter 182-22 WAC).

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0005, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0010 Definitions. The following definitions and those found in RCW 34.05.010 apply to this chapter:

"Administrative law judge (ALJ)" - An impartial decision-maker who is an attorney and presides at an administrative hearing. ALJs are employed by the office of administrative hearings (OAH), which is a separate state agency. ALJs are not department of social and health services or health care authority (HCA) employees or representatives.

"Applicant" - Any person who has made a request, or on whose behalf a request has been made, to HCA, or HCA's authorized agent on HCA's behalf, for assistance through a medical service program established under chapter 74.09 RCW.

"Authorized agent" - A person or agency acting on HCA's behalf pursuant to an agreement authorized by RCW 41.05.021. The authorized agent(s) may include employees of the department of social and health services or its contractors but does not include employees of HCA-contracted managed care organizations.

"Board of appeals" or "BOA" - The HCA's board of appeals.

"Business days" - All days except Saturdays, Sundays, and legal holidays.

"Calendar days" - All days including Saturdays, Sundays, and legal holidays.

"Continuance" - A change in the date or time of a pre-hearing conference, hearing, or the deadline for other action.

"Date of the health care authority (HCA) action" - The date when the HCA's decision is effective.

"Deliver" - Giving a document to a person or entity in person or placing the document into the person or entity's possession as authorized by the rules in this chapter or chapter 34.05 RCW.

"Department" - The department of social and health services.

"Documents" - Papers, letters, writings, or other printed or written items.

"Final order" - An order that is the final HCA decision.

"HCA" - The health care authority.

"Health care authority (HCA) hearing representative" - An employee of HCA, an authorized agent of HCA, HCA contractor or a contractor of HCA's authorized agent, or an assistant attorney general authorized to represent HCA in an administrative hearing. An employee of an HCA contracted managed care organization is not an HCA hearing representative.

"Hearing" - Unless context clearly requires a different meaning, a proceeding before an ALJ, HCA-employed presiding officer, or a review judge that gives a party an opportunity to be heard in disputes about medical services programs established under chapter 74.09 RCW and subsidized basic health under chapter 70.47 RCW. For purposes of this chapter, hearings include administrative hearings, adjudicative proceedings, and any other similar term referenced under chapter 34.05 RCW, the Administrative Procedure Act, Titles 182 and 388 WAC, chapter 10-08 WAC, or other law.

"Initial order" - A hearing decision entered (made) by an ALJ that may be reviewed by a review judge at any party's request.

"Intermediary interpreter" - An interpreter who:

(1) Is a certified deaf interpreter (CDI); and

(2) Is able to assist in providing an accurate interpretation between spoken and sign language or between types of sign language by acting as an intermediary between a person with hearing loss and a qualified interpreter.

"Judicial review" - A superior court's review of a final order.

"Limited-English-proficient (LEP)" - Includes limited-English-speaking persons or other persons unable to communicate in spoken English because of hearing loss.

"Limited-English-speaking (LES) person" - A person who, because of non-English-speaking cultural background or disability, cannot readily speak or understand the English language.

"Mail" - Placing a document in the United States Postal system, or commercial delivery service, properly addressed and with the proper postage.

"Managed care organization" or "MCO" - An organization having a certificate of authority or certificate of registration from the office of insurance commissioner that contracts with HCA under a comprehensive risk contract to provide prepaid healthcare services to eligible clients under HCA's managed care programs.

"OAH" - The office of administrative hearings, which is a separate state agency from HCA or the department of social and health services.

"Party":

(1) The health care authority (HCA);

(2) HCA-contracted managed care organization (MCO) (if applicable); and

(3) A person or entity:

(a) Named in the action;

(b) To whom the action is directed; or

(c) Is allowed to participate in a hearing to protect an interest as authorized by law or rule.

"Person with hearing loss" - A person who, because of a loss of hearing, cannot readily speak, understand, or communicate in spoken language.

"Prehearing conference" - A proceeding scheduled and conducted by an ALJ or other reviewing officer to address issues in preparation for a hearing.

"Prehearing meeting" - An informal, voluntary meeting that may be held before any prehearing conference or hearing.

"Program" - An organizational unit and the services that it provides, including services provided by HCA staff, its authorized agents, and through contracts with providers and HCA-contracted managed care organizations.

"Qualified interpreter" - Includes qualified interpreters for a limited-English-speaking person or a person with hearing loss.

"Qualified interpreter for a limited-English-speaking person" - A person who is readily able to interpret or translate spoken and written English communications to and from a limited-English-speaking person effectively, accurately, and impartially. If an interpreter is court certified, the interpreter is considered qualified.

"Qualified interpreter for a person with hearing loss" - A visual language interpreter who is certified by the Registry of Interpreters for the Deaf (RID) or National Association of the Deaf (NAD) and is readily able to interpret or translate spoken communications to and from a person with hearing loss effectively, accurately, and impartially.

"Recipient" - Any person receiving assistance through a medical service program established under chapter 74.09 RCW.

"Reconsideration" - Asking a review judge to reconsider a final order entered because the party believes the review judge made a mistake.

"Record" - The official documentation of the hearing process. The record includes recordings or transcripts, admitted exhibits, decisions, briefs, notices, orders, and other filed documents.

"Review" - A review judge evaluating initial orders entered by an ALJ and making the final HCA decision as provided by RCW 34.05.464, or issuing final orders.

"Review judge" - A decision-maker with expertise in program rules that serves as the reviewing officer under RCW 34.05.464. The review judge reviews initial orders and the hearing record exercising decision-making power as if hearing the case as a presiding officer. In some cases, review judges conduct hearings under RCW 34.05.425 as a presiding officer. After reviewing initial orders or conducting hearings, review judges enter final orders. Review judges are employed by HCA but may be physically located at the board of appeals (BOA). The review judge must not have been involved in the initial HCA action.

"Rule" - A state regulation. Rules are found in the Washington Administrative Code (WAC).

"Should" - That an action is recommended but not required.

"Stay" - An order temporarily halting the HCA decision or action.

"Witness" - For the purposes of this chapter, means any person who makes statements or gives testimony that becomes evidence in a hearing. One type of witness is an expert witness. An expert witness is qualified by knowledge, skill, experience, training, and education to give opinions or evidence in a specialized area.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0010, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0015 Terms in the Administrative Procedure Act compared to this chapter. To improve clarity and understanding, the rules in this chapter may use different words than the Administrative Procedure Act (APA) or the model rules. Following is a list of terms used in those laws and the terms as used in these rules:

Chapter 34.05 RCW Chapter 10-08 WAC	Chapter 182-526 WAC
Adjudicative proceeding.	Different terms are used to refer to different stages of the hearing process and may include prehearing meeting, prehearing conference, hearing, review, reconsideration, and the entire hearing process.
Application for adjudicative proceeding.	Request a hearing.
Presiding officer.	Administrative law judge, review judge, or designated HCA employee.
Reviewing officer.	Review judge.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0015, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0020 Good cause. (1) Good cause is a substantial reason or legal justification for failing to appear, act, or respond to an action. To show good cause, the administrative law judge must find that a party had a good reason for what they did or did not do, using the provisions of Superior Court Civil Rule 60 as a guideline.

(2) Good cause may include, but is not limited to, the following examples:

(a) The party who requested the hearing ignored a notice because he or she was in the hospital or was otherwise prevented from responding; or

(b) The party who requested the hearing could not respond to the notice because it was written in a language that he or she did not understand.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0020, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0025 Use and location of the office of administrative hearings. (1) HCA may utilize administrative law judges employed by the office of administrative hearings (OAH) to conduct administrative hearings and issue initial orders in accordance with RCW 34.05.425 (1)(c). In some situations, HCA may use presiding officers employed by HCA to conduct administrative hearings and issue final orders in accordance with RCW 34.05.425 (1)(a) and (b). When HCA uses HCA-employed presiding officers to conduct administrative hearings, the HCA presiding officer shall have all the duties and responsibilities set forth in this chapter relating to administrative law judges and the office of admin-

istrative hearings. The notice of hearing will identify whether the case is to be heard by OAH or an HCA-employed presiding officer.

(2)(a) The office of administrative hearings (OAH) headquarters location is:

Office of Administrative Hearings
2420 Bristol Court S.W.
P.O. Box 42488
Olympia, WA 98504-2488
360-664-8717
fax: 360-664-8721

(b) The headquarters office is open from 8:00 a.m. to 5:00 p.m. Monday through Friday, except legal holidays.

(3) OAH field offices are at the following locations:

Olympia

Office of Administrative Hearings
2420 Bristol Court S.W.
P.O. Box 42489
Olympia, WA 98504-2489
360-407-2700
1-800-583-8271
fax: 360-586-6563

Seattle

Office of Administrative Hearings
One Union Square
600 University Street, Suite 1500
Mailstop: TS-07
Seattle, WA 98101-1129
206-389-3400
1-800-845-8830
fax: 206-587-5135

Vancouver

Office of Administrative Hearings
5300 MacArthur Blvd., Suite 100
Vancouver, WA 98661
360-690-7189
1-800-243-3451
fax: 360-696-6255

Spokane

Office of Administrative Hearings
16201 E. Indiana Avenue, Suite 5600
Spokane Valley, WA 99216
509-456-3975
1-800-366-0955
fax: 509-456-3997

Yakima

Office of Administrative Hearings
32 N. 3rd Street, Suite 320
Yakima, WA 98901-2730
509-249-6090
1-800-843-3491
fax: 509-454-7281

(4) Contact the Olympia field office, under subsection (2) of this section, if unable to identify the correct field office.

(5) Further hearing information can be obtained at the OAH web site: www.oah.wa.gov.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 14-17-031, § 182-526-0025, filed 8/13/14, effective 9/13/14. Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0025, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0030 Contacting the board of appeals.

The information included in this section is current at the time of rule adoption, but may change. Current information and additional contact information are available on the health care authority's internet site, in person at the board of appeals (BOA) office, or by a telephone call to the BOA's main public number.

Board of Appeals	
Location	Office Building 2 (OB-2) 2nd Floor 1115 Washington Street Olympia, Washington
Mailing address	P.O. Box 45803 Olympia, WA 98504-5803
Telephone	360-664-6100
Fax	360-664-6187
Toll free	1-877-351-0002
Internet web site	www.hca.wa.gov/appeals

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0030, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0035 Calculating when a hearing deadline ends. (1) When counting days to calculate when a hearing deadline ends under program rules or statutes:

(a) Do not include the day of the action, notice, or order. For example, if a hearing decision is mailed on Tuesday and the party has twenty-one days to request a review, start counting the days with Wednesday.

(b) If the last day of the period is a Saturday, Sunday, or legal holiday, the deadline is the next business day.

(c) For periods of seven days or less, count only business days. For example, if the party has seven days to respond to a review request that was mailed on Friday, May 10th, the response period ends on Tuesday, May 21st.

(d) For periods over seven days, count every calendar day, including Saturdays, Sundays, and legal holidays.

(2) The deadline is 5:00 p.m. on the last day.

(3) If the party who requested the hearing misses a deadline, that party may lose its right to a hearing or appeal of a decision.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0035, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0040 Sending documents to another party, the office of administrative hearings, or to the board of appeals. (1) When the rules in this chapter or in other program rule or statute require a party to send copies of documents to other parties, the party must serve copies of the documents to the health care authority (HCA) hearing representative and to all other parties or their representatives.

(2) When sending documents to the office of administrative hearings (OAH) or the board of appeals (BOA), the party

must file the documents at one of the locations listed in WAC 182-526-0025(2) for OAH or in WAC 182-526-0030 for BOA.

(3) When sending documents to the assigned OAH field office, the parties should use the address of the assigned OAH listed on the notice of hearing. If a field office has not been assigned, all written communication about the hearing must be sent to the OAH Olympia field office, which sends the communication to the correct office.

(4) Documents may be sent only as identified in WAC 182-526-0045 to accomplish service and only as identified in WAC 182-526-0070 to accomplish filing.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0040, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0045 Serving documents. (1) When a document is delivered to the party, the party is considered served with official notice of the contents of the document.

(2) Unless otherwise stated in law, a party may serve someone by:

- (a) Personal service (hand delivery);
 - (b) First class, registered, or certified mail;
 - (c) Fax if the party mails a copy of the document the same day;
 - (d) Commercial delivery service; or
 - (e) Legal messenger service.
- (3) A party must serve all other parties and their representatives whenever the party files a pleading, brief or other document with the office of administrative hearings or the board of appeals, or when required by law.

- (4) Service is complete when:
- (a) Personal service is made;
 - (b) Mail is properly stamped, addressed, and deposited in the United States mail;
 - (c) Fax produces proof of transmission;
 - (d) A parcel is delivered to a commercial delivery service with charges prepaid; or
 - (e) A parcel is delivered to a legal messenger service with charges prepaid.

(5) A party may prove service by providing any of the following:

- (a) A sworn statement;
 - (b) The certified mail receipt signed by the recipient;
 - (c) An affidavit or certificate of mailing;
 - (d) A signed receipt from the person who accepted the commercial delivery service or legal messenger service package; or
 - (e) Proof of fax transmission.
- (6) Sending a document by e-mail is not a valid method of providing service of the document.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0045, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0070 Filing documents. (1) Filing is the act of delivering documents to the office of administrative hearings (OAH) or the board of appeals (BOA).

(2) The date of filing is the date documents are received by OAH or the BOA.

(3) Filing is complete when the documents are received by OAH or the BOA during office hours. For documents received after normal office hours, the filing is effective the next business day.

(4) A party may file documents by delivering them to the office of administrative hearings or the BOA by:

- (a) Personal service (hand delivery);
- (b) First class, registered, or certified mail;
- (c) Fax transmission;
- (d) Commercial delivery service; or
- (e) Legal messenger service.

(5) A party may deliver documents for filing by e-mail only if the ALJ or review judge has agreed to accept electronically filed documents. Parties must request and receive confirmation of receipt of the filing from the ALJ or review judge in order to prove that the documents were successfully filed.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0070, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0080 Resolving a dispute with the health care authority. (1) There is a limited time to request a hearing. The party must request a hearing within the deadline established in statute or rule to preserve the hearing right.

(2) If the party who requested the hearing disagrees with a decision or action of the health care authority, or one of its authorized agents, the party has several options for resolving the dispute, which may include the following:

- (a) Any special prehearing alternative or administrative process offered by the program;
- (b) Prehearing meeting;
- (c) Prehearing conference; and
- (d) Hearing.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0080, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0085 Determining if a hearing right exists. (1) A person or entity has a right to a hearing only if a law or program rule gives that right. If the person or entity is not sure whether a hearing right exists, they should request a hearing to protect their rights.

(2) Some programs may require a person or entity to go through an informal administrative process before requesting or having a hearing. The notice of the action should include information about this requirement if it applies.

(3) Program rules and statutes may limit the time a person or entity has to request a hearing. The deadline for filing the request for hearing varies by the program involved. All hearing requests should be submitted right away to protect the right to a hearing, even if the parties are also trying to resolve the dispute informally.

(4) If a hearing is requested, one is scheduled.

(5) If the health care authority (HCA) hearing representative or the administrative law judge (ALJ) questions the right to a hearing, the ALJ must address whether the hearing right exists.

(6) If on appeal of the initial order the HCA hearing representative or the review judge questions the right to a hear-

ing, the review judge decides whether the hearing right exists.

(7) If the ALJ or review judge decides a person or entity does not have a right to a hearing, the hearing is dismissed.

(8) If the ALJ or review judge decides that a person or entity does have a right to a hearing, the hearing proceeds.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0085, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0090 Authority to request a hearing.

Only a person or entity who has a right under law or rule to an administrative hearing or the representative of that person or entity may request a hearing.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0090, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0095 How to request a hearing. (1) If

a person or entity has questions about how, when, and where to request a hearing, they should:

(a) Contact the specific program involved, the office of administrative hearings (OAH), or the board of appeals (BOA);

(b) Review the notice sent by the health care authority (HCA) of the action or decision; or

(c) Review the applicable statute or program rule.

(2) A person or entity may request a hearing in writing or orally, unless a written request is specifically required by applicable statutes or program rules.

(3) An oral request for hearing is allowed unless a program rule or statute requires a written request for hearing. An oral request for hearing can be made to an HCA employee, HCA's authorized agent, or to an OAH employee in person, by telephone, or by voice mail.

(4) A written request for hearing should be sent to the location on the notice. Program rules or statutes may require a specific method and location for sending a written request for hearing.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0095, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0102 Coordinated appeals process with the Washington health benefits exchange. (1) The health care authority (HCA) coordinates with the Washington state health benefits exchange (HBE) to ensure a seamless appeal process for determinations related to eligibility for Washington apple health (WAH) when the modified adjusted gross income (MAGI) methodology is used as described in WAC 182-509-0305.

(2) An applicant, recipient, or an authorized representative of an applicant or recipient may request a WAH hearing:

(a) By telephone;

(b) By mail (which should be sent to Health Care Authority, P.O. Box 45504, Olympia, WA 98504-5504);

(c) In person;

(d) By facsimile transmission;

(e) By e-mail; or

(f) By any other commonly available electronic means.

(3) When an applicant or recipient appeals an HBE determination of eligibility for health insurance premium tax credits (HIPTC) or cost-sharing reductions with HBE and also requests a hearing with the health care authority related to WAH eligibility, the ALJ will not require the applicant or recipient to submit information to the ALJ that the applicant or recipient previously submitted to HBE.

(4) If an applicant or recipient submits to HBE a request for a hearing related to WAH eligibility, the ALJ will accept the date HBE received the request for the hearing as the date filed for the purposes of timeliness standards and will treat it as a valid hearing request.

(5) If the applicant or recipient appeals only the determination related to WAH eligibility, subsection (3) of this section does not apply.

[Statutory Authority: RCW 41.05.021, 42 C.F.R. § 431, 435, and 457, 45 C.F.R. § 155, and Patient Protection and Affordable Care Act (Public Law 111-148). WSR 13-22-094, § 182-526-0102, filed 11/6/13, effective 12/7/13.]

WAC 182-526-0105 Required information for requesting a hearing. (1) The hearing request must contain enough information to identify the person or entity requesting the hearing and the health care authority (HCA) action. The request should include:

(a) The requestor's name, address, and telephone number;

(b) The client identification or case number, contract number, or any other information that identifies the case or the program involved;

(c) A brief explanation of why the person or entity disagrees with the HCA action; and

(d) Any assistance needed to participate in the hearing, including a foreign or sign language interpreter or any other accommodation for an individual with a disability.

(2) The person or entity requesting the hearing should also refer to a program's specific rules or the notice to determine if additional information is required in the request for hearing.

(3) The office of administrative hearings (OAH) may not be able to process the hearing request if it cannot identify or locate the person or entity requesting the hearing and determine the HCA action involved.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0105, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0110 Process after a hearing is requested. (1) After a hearing is requested, the office of administrative hearings (OAH) must send a copy of the hearing request to the health care authority (HCA) or HCA's authorized agent who made the decision on HCA's behalf, unless OAH received the hearing request from HCA or HCA's authorized agent. The OAH should send it to HCA or HCA's authorized agent within four business days of the OAH receiving the request.

(2) OAH must serve all the parties a notice containing the hearing date, time, and place. This document is called the notice of hearing. The parties may also receive a written notice of a prehearing conference either before or after receiving the notice of the hearing.

(3) Before the hearing is held:

(a) The HCA hearing representative may contact the other parties and try to resolve the dispute; and

(b) The party who requested the hearing is encouraged to contact the HCA hearing representative and try to resolve the dispute.

(4) If the party who requested the hearing does not appear for the prehearing conference or the hearing, an administrative law judge may enter an order of default and an order dismissing the hearing according to WAC 182-526-0285.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0110, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0112 Rescheduling a hearing. (1) Any party may request the office of administrative hearings (OAH) to reschedule a proceeding if:

(a) A rule requires the OAH to provide notice of a proceeding; and

(b) OAH does not provide the amount of notice required.

(2) OAH must reschedule the proceeding under circumstances identified in subsection (1) of this section if requested by any party.

(3) The administrative law judge and the parties may agree to shorten the amount of notice required by any rule.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0112, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0115 Withdrawing the request for hearing. (1) The party who requested the hearing may withdraw the hearing request for any reason and at any time by contacting the health care authority hearing representative or the office of administrative hearings (OAH). The request for withdrawal must be made in writing or orally with the administrative law judge and the other parties.

(2) After the request for withdrawal is received, the hearing is canceled and OAH enters and serves an order dismissing the hearing. If a hearing request is withdrawn, the party may not be able to request another hearing on the same action.

(3) If a party withdraws the hearing request, the order of dismissal may only be set aside according to WAC 182-526-0290.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0115, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0120 Interpreter services for hearings. If the party requesting the hearing needs an interpreter because the party or its witness is a person with limited-English-proficiency, the office of administrative hearings will provide an interpreter at no cost to that party.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0120, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0130 Limited-English-proficient parties—Notice requirements. If the office of administrative hearings is notified that the party who has requested the hear-

(8/13/14)

ing is a limited-English-proficient (LEP) person, all hearing notices, decisions and orders must:

(1) Be written in that party's primary language; or

(2) Include a statement in the party's primary language:

(a) Indicating the importance of the notice; and

(b) Providing information about how to get help in understanding the notice and responding to it.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0130, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0135 Interpreters. (1) The office of administrative hearings (OAH) must provide a qualified interpreter to assist any person at no charge who:

(a) Has limited-English-proficiency; and

(b) Is a party or witness in a hearing.

(2) OAH may hire or contract with persons to interpret at hearings.

(3) The following persons may not be used as interpreters:

(a) A relative of any party;

(b) Health care authority (HCA) employees; or

(c) HCA authorized agents.

(4) The administrative law judge (ALJ) must determine, at the beginning of the hearing, if an interpreter can accurately interpret all communication for the person requesting the service. To do so, the ALJ considers the interpreter's:

(a) Ability to meet the needs of the person with hearing loss or limited-English-speaking person;

(b) Education, certification, and experience;

(c) Understanding of the basic vocabulary and procedures involved in the hearing; and

(d) Ability to be impartial.

(5) The parties or their representatives may question the interpreter's qualifications and ability to be impartial.

(6) If at any time before or during the hearing the interpreter does not provide accurate and effective communication, the ALJ must provide another interpreter.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0135, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0140 Waiving interpreter services. (1) If one of the parties is limited-English-proficient (LEP), that party may ask to waive interpreter services.

(2) The request must be in writing or through a qualified interpreter on the record.

(3) The administrative law judge must determine if the waiver has been knowingly and voluntarily made.

(4) The party may withdraw their waiver at any time before or during the hearing.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0140, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0145 Interpreter requirements. (1) Interpreters must:

(a) Use the interpretive mode that the parties, the person with hearing loss, the interpreter, and the administrative law judge (ALJ) consider the most accurate and effective;

(b) Interpret statements made by the parties and the ALJ;

[Ch. 182-526 WAC p. 7]

(c) Not disclose information about the hearing without the written consent of the parties; and

(d) Not comment on the hearing or give legal advice.

(2) The ALJ must allow enough time for all interpretations to be made and understood.

(3) The ALJ may make a video recording of a hearing and use it as the official transcript for hearings involving a person with hearing loss.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0145, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0150 Hearing decisions involving limited-English-proficient parties. (1) When an interpreter is used at a hearing, the administrative law judge must explain that the decision is written in English and that the office of administrative hearings (OAH) will provide an interpreter for a sight translation of the decision at no cost to that party.

(2) OAH must provide the party needing sight translation services information about how to obtain those services. Information about how to access sight translation must be attached to the decision or order.

(3) OAH or the board of appeals must send a copy of a decision or order to an interpreter for use in sight translation.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0150, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0155 Appellant's representation in the hearing. (1) The party that requested the hearing may be his or her own representative or have anyone represent them except employees of the health care authority (HCA), HCA's authorized agents, and employees of the department of social and health services (DSHS).

(2) The party's representative may be a friend, relative, community advocate, attorney, or paralegal.

(3) The party should inform the HCA hearing representative and the office of administrative hearings of his or her representative's name, address, and telephone number.

(4) Although health care authority (HCA) employees, HCA authorized agents, and other DSHS employees cannot represent other parties to the hearing, they may:

(a) Act as a witness;

(b) Provide referrals to community legal resources;

(c) Assist the party to obtain nonconfidential information; or

(d) Inform the party about or provide copies of relevant laws or rules.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0155, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0156 Legal assistance in the hearing process. (1) The health care authority (HCA), HCA's authorized agents, and the office of administrative hearings (OAH) will not pay for an attorney for another party.

(2) If a party wants an attorney to represent him or her and cannot afford one, community resources may be available to assist that party. These legal services may be free or available at a reduced cost. HCA, HCA's authorized agent, or

OAH can provide information about who to contact for legal assistance.

(3) Information about legal assistance can also be found at www.oah.wa.gov.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0156, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0157 Requirements to appear and represent a party in the administrative hearing process.

(1) All parties should provide the administrative law judge (ALJ) and all other parties with their name, address, and telephone number.

(2) If a party is represented by another person, the representative should also provide the ALJ and other parties with the representative's name, address, and telephone number.

(3) The ALJ may require the representative of the party to file a written notice of appearance or provide documentation authorizing the representative to appear on behalf of the party. In cases involving confidential information, the representative must file a legally sufficient signed written consent or release of information document with the health care authority (HCA) or HCA's authorized agent.

(4) If the party who requested the hearing is represented by an attorney admitted to practice in Washington state, that attorney must file a written notice of appearance, and must file a notice of withdrawal upon withdrawal of representation.

(5) If any party or the party's representative files a written notice of appearance, the ALJ should call the telephone number on the notice of appearance if the party does not appear by calling in before any hearing or prehearing conference.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0157, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0170 Representation of the health care authority in the hearing process. The health care authority (HCA) hearing representative represents HCA during the hearing. The HCA hearing representative may or may not be an attorney.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0170, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0175 Prehearing meetings. (1) A prehearing meeting is an informal meeting with a health care authority (HCA) hearing representative that may be held before any prehearing conference or hearing.

(2) The HCA hearing representative may contact the party who requested the hearing before the scheduled hearing to arrange a prehearing meeting. Any party may also contact the HCA hearing representative to request a prehearing meeting.

(3) A prehearing meeting is voluntary. A party is not required to request one, and is not required to participate in one. If a party does not participate, it does not affect the party's right to a hearing.

(4) The prehearing meeting includes the party who requested the hearing and/or its representative, the HCA

hearing representative, and any other party. An administrative law judge (ALJ) does not attend a prehearing meeting.

(5) The prehearing meeting gives the parties an opportunity to:

- (a) Clarify issues;
- (b) Exchange documents and witness statements;
- (c) Resolve issues through agreement or withdrawal; and
- (d) Ask questions about the hearing process and the laws and rules that apply.
- (6) During a prehearing meeting:
 - (a) The HCA hearing representative may:
 - (i) Explain the role of the HCA hearing representative in the hearing process;
 - (ii) Explain how a hearing is conducted and the relevant laws and rules that apply;
 - (iii) Explain the right to representation during the hearing;
 - (iv) Respond to questions about the hearing process;
 - (v) Identify accommodation and safety issues;
 - (vi) Distribute copies of the documents to be presented during the hearing;
 - (vii) Provide, upon request, copies of relevant laws and rules;
 - (viii) Identify additional documents or evidence a party may want or be required to present during the hearing;
 - (ix) Provide information about how to obtain relevant documents;
 - (x) Clarify the issues; and
 - (xi) Attempt to settle the dispute, if possible.
 - (b) Parties should explain their position and provide documents that relate to the case. Parties may consult legal resources.
 - (c) Parties may enter into written agreements or stipulations, including agreements that settle the dispute.

(7) A prehearing meeting may be held or information exchanged:

- (a) In person;
- (b) By telephone conference call;
- (c) Through correspondence; or
- (d) Any combination of the above that is agreeable to the parties.

(8) If a prehearing conference is required by HCA or its program rules, a prehearing meeting may not be an available option.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0175, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0185 Settlement agreements. (1) If the parties resolve the dispute during the prehearing meeting and put it in writing or present the agreement to an administrative law judge (ALJ), the agreement may be legally enforceable.

(2) Any agreements or stipulations made at the prehearing meeting must be presented to an ALJ before or during the hearing, if the parties want the ALJ to consider the agreement.

(3) If all of the issues are not resolved in the prehearing meeting, the parties may request a prehearing conference before an ALJ or go to the scheduled hearing. The ALJ may also order a prehearing conference.

(4) The party that requested the hearing may withdraw the hearing request at any time if the HCA hearing representative agrees to some action that resolves the dispute, or for any other reason. If the party withdraws their hearing request, the hearing is not held and the ALJ enters and serves a written order of dismissal.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0185, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0195 Prehearing conferences. (1) A prehearing conference is a formal proceeding conducted on the record by an administrative law judge (ALJ) to address issues and prepare for a hearing.

(a) The ALJ must record the prehearing conference using audio recording equipment (such as a digital recorder or tape recorder).

(b) An ALJ may conduct the prehearing conference in person, by telephone conference call, or in any other manner acceptable to the parties.

(2) All parties must attend and participate in the prehearing conference. If the party who requested the hearing does not attend and participate in the prehearing conference, the administrative law judge may enter an order of default and an order dismissing the hearing.

(3) The administrative law judge (ALJ) may require a prehearing conference. Any party may request a prehearing conference.

(4) The ALJ must grant the first request for a prehearing conference if it is filed with the office of administrative hearings (OAH) at least seven business days before the scheduled hearing date.

(5) When the ALJ grants a party's request for a prehearing conference, OAH must continue the previously scheduled hearing when necessary to comply with subsection (10) of this section.

(6) The ALJ may grant additional requests for prehearing conferences.

(7) The OAH must schedule prehearing conferences for all cases which concern:

- (a) The department's division of residential care services under Title XIX of the federal Social Security Act; and
- (b) Provider and vendor overpayment hearings.

(8) During a prehearing conference the parties and the administrative law judge may:

- (a) Simplify or clarify the issues to be decided during the hearing;
- (b) Agree to the date, time, and place of the hearing;
- (c) Identify accommodation and safety issues;
- (d) Agree to postpone the hearing;
- (e) Allow the parties to make changes in their own documents, including the notice or the hearing request;
- (f) Agree to facts and documents to be entered during the hearing;
- (g) Set a deadline to exchange names and phone numbers of witnesses and documents before the hearing;
- (h) Schedule additional prehearing conferences;
- (i) Resolve the dispute;
- (j) Consider granting a stay if authorized by law or program rule; or

(k) Rule on any procedural issues and substantive motions raised by any party.

(9) After the prehearing conference ends, the administrative law judge (ALJ) must enter a written order describing:

- (a) The actions taken;
- (b) Any changes to the documents;
- (c) Any agreements reached; and
- (d) Any ruling of the ALJ.

(10) The ALJ must serve the prehearing order to the parties at least fourteen calendar days before the scheduled hearing.

(11) A party may object to the prehearing order by notifying the ALJ in writing within ten days after the mailing date of the order. The ALJ must issue a ruling on the objection.

(12) If no objection is made to the prehearing order, the order determines how the hearing is conducted, including whether the hearing will be in person or held by telephone conference or other means, unless the ALJ changes the order for good cause.

(13) The ALJ may take further appropriate actions to address other concerns.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0195, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0200 Enrollee appeals of a managed care organization action. (1) The hearing process described in this chapter applies to enrollee appeals of a health care authority (HCA)-contracted managed care organization (MCO) action. Where a conflict exists, the requirements in this section prevail.

(2) An MCO enrollee must exhaust all levels of resolution and appeal within the MCO's grievance system prior to requesting a hearing with HCA. See WAC 182-538-110.

(3) If an MCO enrollee does not agree with the MCO's resolution of the enrollee's appeal, the enrollee may file a request for a hearing within ninety calendar days of the date of receipt of the MCO's notice of resolution of the appeal.

(a) An enrollee may request continuation of services pending the outcome of a hearing related to the termination, suspension, or reduction of a previously authorized service.

(b) To receive continuation of services pending the outcome of the hearing, the enrollee must file the hearing request and request to continue services within ten days of the date of the MCO's notice of the resolution of the appeal. See WAC 182-538-110 for additional requirements related to continuation of services.

(4) The entire appeal and hearing process, including the MCO appeal process, must be completed within ninety calendar days of the date the MCO enrollee filed the appeal with the MCO, not including the number of days the enrollee took to subsequently file for a hearing.

(5) Expedited hearing process:

(a) The office of administrative hearings (OAH) must establish and maintain an expedited hearing process when the enrollee or the enrollee's representative requests an expedited hearing and OAH determines that the time taken for a standard resolution of the claim could seriously jeopardize the enrollee's life or health and ability to attain, maintain, or regain maximum function.

(b) When approving an expedited hearing, OAH must issue a hearing decision as expeditiously as the enrollee's health condition requires, but not later than three business days after receiving the case file and information from the MCO regarding the action and MCO appeal.

(c) When denying an expedited hearing, OAH must give prompt oral notice to the enrollee followed by written notice within two calendar days of the request and change the hearing to the standard time frame.

(6) Parties to the hearing include HCA, the MCO, the enrollee, and the enrollee's representative or the representative of a deceased enrollee's estate.

(7) Any party that disagrees with the initial order may request a review by an HCA review judge in accordance with WAC 182-526-0560 through 182-526-0600.

(8) If an enrollee disagrees with the initial order, the enrollee may request review in accordance with subsection (7) of this section, or an independent review (IR) by an independent review organization (IRO) in accordance with RCW 48.43.535. The enrollee must request the IR within twenty-one calendar days of the date of mailing the initial order. A timely submitted request for an IR stays any review requested pursuant to subsection (7) of this section.

(9) Any party that disagrees with the IR decision may request a review by an HCA review judge in accordance with WAC 182-526-0560 through 182-526-0600 within twenty-one calendar days of the date of mailing of the IR decision.

(10) When an initial order or an IR decision is appealed to an HCA review judge, the review judge issues the final order.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0200, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0215 Authority of the administrative law judge when conducting a hearing. (1) The administrative law judge (ALJ) must hear and decide the issues de novo (anew) based on what is presented during the hearing and admitted into the record.

(2) As needed, the ALJ may:

- (a) Determine the order for presenting evidence;
- (b) Issue subpoenas or orders directing witnesses to appear or bring documents;
- (c) Rule on objections, motions, and procedural matters;
- (d) Rule on an offer of proof made to admit evidence;
- (e) Admit relevant evidence;
- (f) Impartially question witnesses to develop the record;
- (g) Call additional witnesses and request exhibits to complete the record;
- (h) Give the parties an opportunity to cross-examine witnesses or present more evidence against the witnesses or exhibits;
- (i) Keep order during the hearing;
- (j) Allow or require oral or written argument and set the deadlines for the parties to submit argument or evidence;
- (k) Permit others to attend, photograph, or electronically record hearings, but may place conditions to preserve confidentiality or prevent disruption;
- (l) Allow a party to waive rights given by chapters 34.05 RCW or 182-526 WAC, unless another law prevents it;
- (m) Decide whether a party has a right to a hearing;

- (n) Issue protective orders;
- (o) Consider granting a stay if authorized by law or HCA rule; and
- (p) Take any other action necessary and authorized under these or other rules.

(3) The ALJ administers oaths or affirmations and takes testimony.

(4) The ALJ enters initial orders. Initial orders may become final orders pursuant to WAC 182-526-0525.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0215, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0216 The authority of the administrative law judge and the review judge is limited. (1) The authority of the administrative law judge and the review judge is limited to those powers granted by statute or rule. The ALJ and the review judge do not have any inherent or common law powers.

(2) Neither an administrative law judge nor a review judge may decide that a rule is invalid or unenforceable. Only a court may decide this issue.

(3) If the validity of a rule is raised during the hearing, the ALJ or review judge may allow only argument for court review.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0216, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0218 The authority of a review judge when conducting a hearing as a presiding officer. (1) A review judge has the same authority and responsibilities as an administrative law judge, as described in WAC 182-526-0215, when conducting a hearing.

(2) A review judge conducts the hearing and enters the final order in cases where a contractor for the delivery of nursing facility services requests an administrative hearing under WAC 388-96-904(5).

(3) The review judge enters final HCA decisions on all cases in the form of a final order.

(4) Following a review judge's final order:

(a) Any party may request reconsideration of the final order as provided in this chapter and WAC 388-96-904(12); and

(b) The party who requested the hearing, but not the health care authority or any of its authorized agents, may file a petition for judicial review as provided in this chapter.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0218, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0220 Rules and laws an administrative law judge and review judge must apply when conducting a hearing and making a decision. (1) Administrative law judges (ALJs) and review judges must first apply the applicable program rules adopted in the Washington Administrative Code (WAC).

(2) If no program rule applies, the ALJ and review judge must decide the issue according to the best legal authority and reasoning available, including federal and Washington state constitutions, statutes, regulations, and court decisions.

(8/13/14)

(3) When applying program rules regarding the substantive rights and responsibilities of the parties (such as eligibility for services, benefits, or a license), the ALJ and review judge must apply the program rules in effect on the date of the health care authority (HCA) action, unless otherwise required by other rule or law. If HCA amends its notice of action, the ALJ or review judge must apply the rules in effect on the date the action was taken, unless otherwise required by other rule or law.

(4) When applying procedural rules, the ALJ and review judge must apply the rules that are in effect on the date the procedure is followed.

(5) Program rules determine the amount of time HCA or HCA's authorized agent has to process an application for services, benefits, or a license.

(6) The ALJ and review judge must apply the rules in this chapter beginning on the date each rule is effective.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0220, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0221 Using the index of significant decisions. (1) A final order may be relied on, used, or cited as precedent by a party if the final order has been indexed in the index of significant decisions.

(2) The index of significant decisions is available to the public at <http://www.hca.wa.gov/appeals>. For information on how to obtain a copy of the index, contact the health care authority (HCA) hearing representative.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0221, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0230 Assigning an administrative law judge to a hearing. The office of administrative hearings (OAH) assigns an administrative law judge (ALJ) at least five business days before the hearing. A party may ask which ALJ is assigned to the hearing by calling or writing the OAH field office listed on the notice of hearing. If requested by a party, the OAH must send the name of the assigned ALJ to the party by e-mail or in writing at least five business days before the party's scheduled hearing date.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0230, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0235 Requesting a different judge. A party may file a motion of prejudice against an administrative law judge (ALJ) under RCW 34.12.050. A party may also request that an ALJ or review judge be disqualified under RCW 34.05.425.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0235, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0240 Filing a motion of prejudice. (1) A party requesting a different administrative law judge (ALJ) may do so by filing a written motion of prejudice with the office of administrative hearings (OAH) before the ALJ rules on a discretionary issue in the case, admits evidence, or takes testimony. A motion of prejudice must include an affidavit or

statement that a party does not believe that the ALJ can hear the case fairly.

(2) Rulings that are not considered discretionary rulings for purposes of this section include, but are not limited to those:

- (a) Granting or denying a request for a continuance; and
- (b) Granting or denying a request for a prehearing conference.

(3) A party must send the written motion of prejudice to the chief ALJ at the OAH headquarters identified in WAC 182-526-0025(1) and must send a copy to the OAH field office where the ALJ is assigned.

(4) A party may make an oral motion of prejudice at the beginning of the hearing before the ALJ rules on a discretionary issue in the case, admits evidence, or takes testimony if:

- (a) The OAH did not assign an ALJ at least five business days before the date of the hearing; or
- (b) The OAH changed the assigned ALJ within five business days of the date of the hearing.

(5) The first request by each party for a different ALJ is automatically granted. The chief ALJ or a designee grants or denies any later requests.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0240, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0245 Disqualifying an administrative law judge or review judge. (1) An administrative law judge (ALJ) or review judge may be disqualified for bias, prejudice, or conflict of interest, or if one of the parties or a party's representative has an ex parte contact with the ALJ or review judge.

(2) Ex parte contact means a written or oral communication with the ALJ or review judge about something related to the hearing when the other parties are not present. Procedural questions are not considered an ex parte contact. Examples of procedural questions include clarifying the hearing date, time, or location or asking for directions to the hearing location.

(3) To ask to disqualify an ALJ or review judge, a party must file a written petition for disqualification. A petition for disqualification is a written explanation to request assignment of a different ALJ or review judge. A party must promptly make the petition upon discovery of possible bias, conflict of interest, or an ex parte contact.

(4) A party must deliver the petition to the ALJ or review judge assigned to the case. That ALJ or review judge must decide whether to grant or deny the petition and must state the facts and reasons for the decision.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0245, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0250 Time requirements for notices issued by the office of administrative hearings. (1) The OAH must serve a notice of hearing to all parties and their representatives at least fourteen calendar days before the hearing date.

(2) If the OAH schedules a prehearing conference, the OAH must serve a notice of prehearing conference to the par-

ties and their representatives at least seven business days before the date of the prehearing conference except:

(a) The OAH and/or an administrative law judge (ALJ) may change a scheduled hearing into a prehearing conference and provide less than seven business days notice of the prehearing conference; and

(b) The OAH may give less than seven business days notice if the only purpose of the prehearing conference is to consider whether there is good cause to grant a continuance.

(3) The OAH must reschedule the hearing if necessary to comply with the notice requirements in this section.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0250, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0255 Notice of hearing. (1)(a) A notice of hearing is a written notice that must include the:

- (i) Names of all parties who receive the notice and, if known, the names and addresses of their representatives;
- (ii) Name, mailing address, and telephone number of the administrative law judge (ALJ), if known;
- (iii) Date, time, place, and nature of the hearing;
- (iv) Legal authority and jurisdiction for the hearing;
- (v) Date of the hearing request; and
- (vi) Statement that failure to attend and participate in a prehearing conference or a hearing, may result in the loss of the right to a hearing. Then the ALJ may send:

- (A) An order of default; and/or
- (B) An order dismissing the hearing.

(b) If the party who requested a hearing needs a qualified interpreter because they or any of their witnesses are persons with limited-English-proficiency, OAH will provide an interpreter at no cost to that party.

(c) If the hearing is to be held by telephone or in person, and how to request a change in the way it is held.

(2) In addition to the information provided in subsection (1) of this section, OAH informs the party who requested the hearing:

- (a) How to indicate any special needs for the party or their witnesses, including the need for an interpreter in a primary language or for sensory impairments.
- (b) How to contact OAH if a party has a safety concern.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0255, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0260 Amending the health care authority or managed care organization notice. (1) The administrative law judge (ALJ) must allow the health care authority (HCA), HCA's authorized agent, or a managed care organization (MCO) to amend (change) the notice of an action before or during the hearing to match the evidence and facts.

(2) HCA, HCA's authorized agent, or MCO must put the change in writing and deliver a copy to the ALJ and all parties.

(3) The ALJ must offer to continue (postpone) the hearing to give the parties more time to prepare or present evidence or argument if there is a substantive change from the earlier notice.

(4) If the ALJ grants a continuance, the office of administrative hearings must serve a new hearing notice at least fourteen calendar days before the hearing date.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0260, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0265 Amending hearing requests. (1)

The administrative law judge (ALJ) may allow the party that requested the hearing to amend its hearing request before or during the hearing.

(2) The ALJ must offer to continue (postpone) the hearing to give the other parties more time to prepare or present evidence or argument if there is a substantive change in the hearing request.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0265, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0270 Mailing address changes. (1) The

party who requested the hearing must tell the health care authority (HCA) hearing representative and the office of administrative hearings (OAH) as soon as possible, when its mailing address changes.

(2) If that party does not notify the HCA hearing representative and OAH of a change in its mailing address and the OAH continues to send notices and other important papers to the last known mailing address, the administrative law judge (ALJ) may find that the party received the documents.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0270, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0280 Requesting a continuance. (1)

Any party may request a continuance either orally or in writing.

(2) Before contacting the administrative law judge (ALJ) to request a continuance, the party seeking a continuance must contact the other parties, if possible, to find out if they will agree to a continuance.

(3) The party making the request for a continuance must let the ALJ know whether the other parties agreed to the continuance. If the parties agree to a continuance, the ALJ must grant it unless the ALJ holds a prehearing conference and finds that good cause for a continuance does not exist.

(4) If the parties do not agree to a continuance, the ALJ must schedule a prehearing conference in accordance with the requirements of WAC 182-526-0250 to decide whether there is good cause to grant the continuance.

(5) If the ALJ grants a continuance, the OAH must serve a new hearing notice at least fourteen calendar days before the new hearing date unless the parties agree to a shorter time period.

(6) If the ALJ denies the continuance request after a prehearing conference is held pursuant to subsections (3) or (4) of this section, the ALJ may proceed with the hearing on the date the hearing is scheduled and must issue a written order setting forth the basis for denying the continuance request.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0280, filed 12/19/12, effective 2/1/13.]

(8/13/14)

WAC 182-526-0285 Orders of dismissal. (1) An order of dismissal is an order from the administrative law judge (ALJ) ending the hearing process. The order is entered because the party who requested the hearing withdrew the request, or the ALJ entered an order of default because the party who requested the hearing failed to attend or refused to participate in the hearing (which includes all prehearing conferences).

(2) The order of dismissal becomes a final order if no party files a request to vacate the order within twenty-one days after the date the ALJ serves the order of dismissal. A party may request a vacate of the order of dismissal according to WAC 182-526-0290.

(3) If the hearing is dismissed because the party who requested the hearing was defaulted because that party did not attend or refused to participate in the hearing, the health care authority or managed care organization action stands unless the hearing is reinstated after a vacate of the order of dismissal under WAC 182-526-0290.

(4) If the hearing is dismissed due to a written agreement between all the parties, the parties must follow the agreement.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0285, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0290 Reinstating a hearing after an order of dismissal. (1) If the administrative law judge (ALJ) enters and serves an order dismissing the hearing, the party that originally requested the hearing may file a request to vacate (set aside) the order of dismissal. Upon receipt of a request to vacate an order of dismissal, OAH will schedule and serve notice of a prehearing conference. At the prehearing conference, the party asking that the order of dismissal be vacated must show good cause according to WAC 182-526-0020 for an order of dismissal to be vacated and the hearing to be reinstated.

(2) The request to vacate an order of dismissal must be filed with the office of administrative hearings (OAH) or the board of appeals (BOA). The party requesting that an order of dismissal be vacated should specify in the request why the order of dismissal should be vacated. BOA forwards any request received to OAH to schedule a prehearing conference on the request to vacate.

(3) The request to vacate an order of dismissal must be filed with the office of administrative hearings (OAH) or the board of appeals (BOA) within twenty-one calendar days after the date the order of dismissal was entered and served to the parties. If no request is received within that deadline, the dismissal order becomes a final order.

(a) The party seeking to vacate the order of dismissal may file a late request to vacate the order of dismissal for up to one year after the ALJ entered and served the order to the parties but must show good cause for the late request to be accepted and for the dismissal to be vacated.

(b) If the party files a request to vacate the order of dismissal more than one year after the order was served, the administrative law judge or review judge may vacate the order of dismissal if the health care authority hearing representative and all parties agree to waive (excuse) the deadline.

(4) OAH serves all parties a notice of the prehearing conference on the request to vacate the order of dismissal in accordance with WAC 182-526-0250. At the prehearing conference, the ALJ will receive evidence and argument from the parties on whether the order of dismissal should be vacated for good cause.

(5) If the ALJ finds good cause for the order of dismissal to be vacated, the ALJ must enter and serve a written order to the parties setting forth the findings and reinstate the hearing. This means the party who originally requested the hearing has another opportunity for a hearing on the initial request for hearing.

(6) If the order of dismissal is vacated, the ALJ will conduct a hearing at which the parties may present argument and evidence about the original request for hearing. The hearing may occur immediately following the prehearing conference on the request to vacate if agreed to by the parties and the ALJ or at a later hearing date scheduled by OAH in accordance with WAC 182-526-0250.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0290, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0310 Requesting a stay of the health care authority action. A party may request that an administrative law judge (ALJ) or review judge stay (stop) a health care authority action until there is a decision entered by the ALJ or review judge. The ALJ or review judge decides whether to grant or deny the stay and enters a written order.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0310, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0315 Requiring witnesses to testify or provide documents. A party may require witnesses to testify or provide documents by issuing a subpoena. A subpoena is an order to appear at a certain time and place to give testimony, or to provide books, documents, or other items.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0315, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0320 Subpoenas. (1) Administrative law judges (ALJs), the health care authority hearing representative, and attorneys for the parties may prepare subpoenas. If an attorney does not represent a party, that party may ask the ALJ to prepare a subpoena on its behalf. The ALJ may schedule a prehearing conference to decide whether to issue a subpoena.

(2) An ALJ may deny a request for a subpoena. For example, an ALJ may deny a request for a subpoena when the ALJ determines that a witness has no actual knowledge regarding the facts or that the documents are not relevant.

(3) There is no cost to prepare a subpoena, but a party may have to pay for:

- (a) Serving a subpoena;
- (b) Complying with a subpoena; and
- (c) Witness fees according to RCW 34.05.446(7).

(4) Any person who is at least eighteen years old and not a party to the hearing may serve a subpoena.

- (5) Service of a subpoena is complete when the server:

- (a) Gives the witness a copy of the subpoena; or
- (b) Leaves a copy at the residence of the witness with a person over the age of eighteen.

(6) To prove that a subpoena was served on a witness, the person serving the subpoena must sign a written, dated statement including:

- (a) Who was served with the subpoena;
- (b) When the subpoena was served;
- (c) Where the subpoena was served; and
- (d) The name, age, and address of the person who served the subpoena.

(7) A party may request that an administrative law judge (ALJ) quash (set aside) or change the subpoena request at any time before the deadline given in the subpoena.

(8) An ALJ may set aside or change a subpoena if it is unreasonable.

(9) Witnesses with safety or accommodation concerns should contact the office of administrative hearings (OAH).

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0320, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0340 Hearing location. (1) Hearings may be held in-person or as a telephonic hearing.

(2) A telephonic hearing is where all parties appear by telephone.

(3) An in-person hearing is where the party that had requested the hearing appears face-to-face with the administrative law judge (ALJ) and the other parties appear either in person or by telephone.

(4) Whether a hearing is held in-person or telephonically, the parties have the right to see all documents, hear all testimony and question all witnesses.

(5) If a hearing is originally scheduled as an in-person hearing, the party that requested the hearing may ask that the ALJ change it to a telephonic hearing. Once a telephonic hearing begins, the ALJ may stop, reschedule, and change the hearing to an in-person hearing if any party makes such a request.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0340, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0345 Administrative law judge present at the hearing. (1) If the hearing is scheduled as an in-person hearing, an administrative law judge (ALJ) is physically present.

(2) If the hearing is scheduled as a telephonic hearing, an ALJ is present by telephone.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0345, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0350 Recording the hearing. The administrative law judge must record the entire hearing using audio recording equipment (such as a digital recorder or a tape recorder).

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0350, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0355 Persons who may attend the hearing. (1) All parties and their representatives may attend the hearing.

(2) Witnesses may be excluded from the hearing if the administrative law judge (ALJ) finds good cause.

(3) The ALJ may also exclude other persons from all or part of the hearing.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0355, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0360 Changing how a hearing is held or how a witness appears at a hearing. (1) For cases in which the party that requested a hearing is an applicant or recipient of a medical services program established under chapter 74.09 RCW, the hearing shall be conducted according to RCW 74.09.741 (5)(c). An applicant or recipient may agree to have one or more prehearing conferences conducted telephonically without waiving the right to have any subsequent prehearing conference or other hearings held in-person.

(2) Parties to the hearing have the right to request that:

(a) A hearing format be changed from an in-person hearing to a telephonic hearing or from a telephonic hearing to an in-person hearing; or

(b) A witness may be allowed to appear in-person or telephonically. The office of administrative hearings (OAH) must advise the party of the right to request a change in how a witness appears.

(3) A party must show a compelling reason to change the way a witness appears (in-person or by telephone). Some examples of compelling reasons are:

(a) A party does not speak or understand English well.

(b) A party wants to present a significant number of documents during the hearing.

(c) A party does not believe that one of the witnesses or another party is credible, and wants the administrative law judge (ALJ) to have the opportunity to see the testimony.

(d) A party has a disability or communication barrier that affects its ability to present its case.

(e) A party believes that the personal safety of someone involved in the hearing process is at risk.

(4) A compelling reason to change the way a witness appears at a hearing can be overcome by a more compelling reason not to change how a witness appears for a hearing.

(5) If a party wants to change the hearing or change how their witnesses or other parties appear, the party must contact the office of administrative hearings (OAH) to request the change.

(6) The administrative law judge (ALJ) may schedule a prehearing conference to determine if the request should be granted.

(7) If the ALJ grants the request, the ALJ reschedules the hearing or changes how the witness or party appears.

(8) If the ALJ denies the request, the ALJ must issue a written order that includes findings of fact supporting why the request was denied.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0360, filed 12/19/12, effective 2/1/13.]

(8/13/14)

WAC 182-526-0370 Submitting documents for a telephonic hearing. (1) When a hearing is conducted by telephone, an administrative law judge (ALJ) may order the parties to file and serve the hearing documents at least five days before the hearing, so all parties have an opportunity to view them during the hearing.

(2) The health care authority hearing representative may be able to help a party copy and file their documents with the OAH and send them to any other party.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0370, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0375 Summary of the hearing process. At the hearing:

(1) The administrative law judge (ALJ):

(a) Explains the hearing rights of the parties;

(b) Marks and admits or rejects exhibits;

(c) Ensures that a record is made;

(d) Explains that a decision is mailed after the hearing;

(e) Notifies the parties of appeal rights;

(f) May keep the record open for a time after the hearing if needed to receive more evidence or argument; and

(g) May take actions as authorized according to WAC 182-526-0215.

(2) The parties may:

(a) Make opening statements to explain the issues;

(b) Offer evidence to prove their positions, including oral or written statements of witnesses;

(c) Question the witnesses presented by the other parties; and

(d) Give closing arguments about what the evidence shows and what laws apply.

(3) At the end of the hearing the record will be closed unless the ALJ allows more time to file additional evidence. See WAC 182-526-0390.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0375, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0380 Group hearing requests and withdrawals. (1) A group hearing may be held when two or more parties request a hearing about similar issues.

(2) Hearings may be combined at the request of the parties or the administrative law judge.

(3) All parties participating in a group hearing may have their own representative present.

(4) A party may withdraw from a group hearing by asking the administrative law judge (ALJ) for a separate hearing.

(5) If a party asks to withdraw from a group hearing before the ALJ makes a discretionary ruling or the hearing begins, the ALJ must give the party a separate hearing.

(6) If a party later shows good cause, the ALJ may give the party a separate hearing at any time during the hearing process.

(7) The ALJ must grant a party's request to withdraw from a group hearing when participation in the group hearing could require the release of confidential or protected health care information and the party does not consent to the release of such information.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0380, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0387 Requesting that a hearing be consolidated or severed when multiple agencies are parties to the proceeding. (1) The following requirements apply only to hearings in which an applicant or recipient of medical services programs set forth in chapter 74.09 RCW, seeks review of decisions made by more than one agency. For example: A medical services program recipient appeals a termination of medical assistance by the health care authority and in the same request for hearing the recipient appeals a termination of cash assistance issued by the department of social and health services.

(2) When the applicant or recipient of a medical services program files a single request for hearing seeking review of decisions by more than one agency, this review shall be conducted initially in one hearing. The administrative law judge (ALJ) may sever the proceeding into multiple hearings on the motion of any of the parties, when:

(a) All parties consent to the severance; or

(b) Any party requests severance without another party's consent, and the ALJ finds there is good cause for severing the hearing and that the proposed severance is not likely to prejudice the rights of the applicant or recipient in accordance with RCW 74.09.741(5).

(3) If there are multiple hearings involving common issues or parties where there is one appellant and both the health care authority and the department are parties, upon motion of any party or upon the ALJ's motion, the ALJ may consolidate the hearings if the ALJ finds that the consolidation is not likely to prejudice the rights of the applicant or recipient who is a party to any of the consolidated hearings in accordance with RCW 74.09.741(5).

(4) If the ALJ grants the motion to sever the hearing into multiple hearings or consolidate multiple hearings into a single hearing, the ALJ will enter and serve an order and a new notice of hearing to the appropriate parties in accordance with WAC 182-526-0250, unless service of notice is waived by the parties.

(5) Petitions for judicial review must be served on all agencies involved in the hearing.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0387, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0390 Evidence. (1) Evidence includes documents, objects, and testimony of witnesses that parties give during the hearing to help prove their positions.

(2) Evidence may be all or parts of original documents or copies of the originals.

(3) Parties may offer statements signed by a witness under oath or affirmation as evidence, if the witness cannot appear.

(4) Testimony subject to cross examination by the other parties may be given more importance by the administrative law judge (ALJ).

(5) The parties may bring evidence to any prehearing meeting, prehearing conference, or hearing, or may file evidence before these events with OAH.

(6) The ALJ may set a deadline before the hearing for the parties to file proposed exhibits and the names of witnesses. If the parties miss the deadline, the ALJ may refuse to admit the evidence unless the parties show:

(a) They have good cause for missing the deadline; or

(b) That the other parties agree.

(7) If the ALJ gives the parties more time to submit evidence, the parties may file it after the hearing. The ALJ may allow more time for the other parties to respond and object to the evidence.

(8) Parties may bring any documents and witnesses to the hearing to support their position. However, the following provisions apply:

(a) The other parties may object to the evidence and question the witnesses;

(b) The ALJ determines whether the evidence is admitted and what importance to give it;

(c) If the ALJ does not admit the evidence, the parties may make an offer of proof to show why the ALJ should admit it;

(d) To make an offer of proof, a party presents evidence and argument on the record to show why the ALJ should consider the evidence; and

(e) The offer of proof preserves the argument for appeal.

(9) The ALJ may only consider admitted evidence and matters officially noticed in the proceeding (judicial notice) to decide the case.

(10) Admission of evidence is based upon the reasonable person standard. This standard means evidence that a reasonable person would rely on in making a decision.

(11) The ALJ may admit and consider hearsay evidence in accordance with RCW 34.05.452.

(12) The ALJ may reject evidence if it:

(a) Is not relevant; or

(b) Repeats evidence already admitted.

(13) The ALJ must reject evidence if required by law.

(14) The ALJ decides:

(a) What evidence is more credible if evidence conflicts; and

(b) The importance given to the evidence.

(15) The ALJ uses the Washington rules of evidence as guidelines when those rules do not conflict with the rules of this chapter or the Washington Administrative Procedure Act, chapter 34.05 RCW.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0390, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0405 Stipulations. (1) A stipulation is an agreement among two or more parties that certain facts or evidence is correct or authentic.

(2) If an administrative law judge (ALJ) accepts a stipulation, the ALJ must enter it into the record.

(3) A stipulation may be made before or during the hearing.

(4) A party may change or reject a stipulation after it has been made.

(5) To change or reject a stipulation, a party must show the administrative law judge that:

(a) The party did not intend to make the stipulation or was mistaken when making it; and

(b) Changing or rejecting the stipulation does not harm the other parties.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0405, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0415 Exhibits. (1) Proposed exhibits.

(a) Proposed exhibits are documents or other objects that a party wants the administrative law judge (ALJ) to consider when reaching a decision.

(b) After the document or object is accepted by the ALJ, it is admitted and becomes an exhibit.

(2) Marking and numbering proposed exhibits and providing copies.

(a) All parties should mark and number their proposed exhibits before the hearing.

(b) All parties should send (exchange) their exhibits in advance of the hearing.

(c) Parties should bring to the hearing enough copies of their proposed exhibits for all parties if those exhibits were not exchanged prior to the hearing.

(d) If the party who requested the hearing cannot afford to provide copies of its exhibits for all parties, the requesting party must make its proposed exhibits available for copying. The ALJ may require proof that the requesting party is unable to afford copies.

(3) Admitting proposed exhibits into the record.

(a) The administrative law judge (ALJ) decides whether to admit a proposed exhibit into the record and also determines the importance of the evidence.

(b) The ALJ admits proposed exhibits into the record by marking, listing, identifying, and admitting the proposed exhibits.

(c) The ALJ may also exclude proposed exhibits from the record.

(d) The ALJ must make rulings on the record to admit or exclude exhibits.

(4) Disagreeing with an exhibit.

(a) A party may object to the authenticity or admissibility of any exhibit, or offer argument about how much importance the ALJ should give the exhibit.

(b) Even if a party agrees that a proposed exhibit is a true and authentic copy of a document, the agreement does not mean that a party agrees with:

(i) Everything in the exhibit or agrees that it should apply to the hearing;

(ii) What the exhibit says; or

(iii) How the administrative law judge should use the exhibit to make a decision.

(5) The following rules apply to filing proposed exhibits with OAH and sending them to the other parties for a telephone conference hearing:

(a) Parties should file their proposed exhibits with OAH and send them to the other parties at least five days before the telephonic hearing. In some cases, the ALJ may require that the parties file and send them earlier.

(b) The health care authority hearing representative may help the party that had requested the hearing file copies of its proposed exhibits with OAH and send to the other parties if that party cannot afford to do so. The ALJ may require the party to provide proof that they are unable to afford to do so.

(8/13/14)

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0415, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0440 Judicial notice. (1) The administrative law judge (ALJ) may consider and admit evidence by taking judicial notice.

(2) Judicial notice is evidence that includes facts or standards that are generally recognized and accepted by judges, government agencies, or national associations. For example, an administrative law judge may take judicial notice of a calendar, a building code, or a standard or practice.

(3) If a party requests judicial notice, or if the ALJ intends to take judicial notice, the ALJ may ask the party to provide a copy of the document that contains the information.

(4) If judicial notice has been requested, or if the ALJ intends to take judicial notice, the ALJ must tell the parties before or during the hearing.

(5) The ALJ must give the parties time to object to judicial notice evidence.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0440, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0450 Witness. (1) A witness may be:

(a) The party that requested the hearing or the health care authority (HCA) hearing representative; or

(b) Anyone the parties or the administrative law judge (ALJ) asks to be a witness.

(2) The ALJ decides who may testify as a witness.

(3) An expert witness may not be a former HCA employee, a former HCA authorized agent, or a former employee of the department in the proceeding against HCA or the department if that employee was actively involved in the HCA action while working for HCA or the department, unless the HCA hearing representative agrees.

(4) All witnesses:

(a) Must affirm or take an oath to testify truthfully during the hearing.

(b) May testify in person or by telephone.

(c) May request interpreters from OAH at no cost to the party.

(d) May be subpoenaed and ordered to appear according to WAC 182-526-0315.

(5) Cross-examining a witness.

(a) The parties have the right to cross-examine (question) each witness.

(b) If a party has a representative, only the representative, and not the party, may question the witness.

(c) The administrative law judge may also question witnesses.

(6) Witnesses may refuse to answer questions. However, if a witness refuses to answer a question, the administrative law judge may reject all of the related testimony of that witness.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0450, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0480 Burden of proof. (1) Burden of proof is a party's responsibility to:

- (a) Provide evidence regarding disputed facts; and
- (b) Persuade the administrative law judge (ALJ) that a position is correct.

(2) To persuade the ALJ, the party who has the burden of proof must provide the amount of evidence required by WAC 182-526-0485. The ALJ decides if a party has met the burden of proof.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0480, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0485 Standard of proof. Standard of proof refers to the amount of evidence needed to prove a party's position. Unless the rules or law states otherwise, the standard of proof in a hearing is a preponderance of the evidence. This standard means that it is more likely than not that something happened or exists.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0485, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0495 Equitable estoppel. (1) Equitable estoppel is a legal doctrine that may be used only as a defense to prevent the health care authority (HCA) from taking some action against a person or entity, such as collecting an overpayment. Equitable estoppel may not be used to require HCA to continue to provide something or to require HCA to take action contrary to a statute.

(2) There are five elements of equitable estoppel. The standard of proof is clear and convincing evidence. A party asserting the doctrine of equitable estoppel must prove all of the following five elements:

(a) HCA made a statement or took an action or failed to take an action, which is inconsistent with a later claim or position by HCA.

(b) The party reasonably relied on HCA's original statement, action or failure to act.

(c) The party will be injured to its detriment if HCA is allowed to contradict the original statement, action or failure to act.

(d) Equitable estoppel is needed to prevent a manifest injustice. Factors to be considered in determining whether a manifest injustice would occur include, but are not limited to, whether:

- (i) The party cannot afford to repay the money to HCA;
- (ii) The party gave HCA timely and accurate information when required;
- (iii) The party did not know that HCA made a mistake;
- (iv) The party is free from fault; and
- (v) The overpayment was caused solely by an HCA mistake.

(e) The exercise of government functions is not impaired.

(3) If the ALJ concludes that the party has proven all of the elements of equitable estoppel in subsection (2) of this section with clear and convincing evidence, HCA is stopped or prevented from taking action or enforcing a claim against that party.

[Ch. 182-526 WAC p. 18]

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0495, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0500 Hearing record. (1) Before the record is closed, the administrative law judge may:

- (a) Set another hearing date;
- (b) Enter orders to address limited issues if needed before writing and sending a hearing decision to resolve all issues in the proceeding; or
- (c) Give the parties more time to file exhibits or written argument.

(2) The record is closed:

(a) At the end of the hearing if the administrative law judge does not allow more time to file evidence or argument; or

(b) After the deadline for filing evidence or argument is over.

(3) After the record is closed:

(a) No more evidence may be admitted without good cause;

(b) The administrative law judge (ALJ) must enter an initial order and serve copies to the parties; and

(c) The office of administrative hearings must send the official record of the proceedings to the board of appeals. The record must be complete when it is sent, and include all parts required by WAC 182-526-0512.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0500, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0512 Contents of the hearing record.

(1) The administrative law judge must produce a complete official record of the proceedings.

(2) The official record must include, if applicable:

- (a) Notice of all proceedings;
- (b) Any prehearing order;
- (c) Any motions, pleadings, briefs, petitions requests, and intermediate rulings;
- (d) Evidence received or considered;
- (e) A statement of matters officially noticed;
- (f) Offers of proof, objections, and any resulting rulings;
- (g) Proposed findings, requested orders and exceptions;
- (h) A complete audio recording of the entire hearing, together with any transcript of the hearing;
- (i) Any final order, initial order, or order on reconsideration; and
- (j) Matters placed on the record after an ex parte communication.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0512, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0520 Information which must be included in the ALJ's initial order. The administrative law judge (ALJ) must include the following information in the initial order:

- (1) Identify the initial order as a health care authority case;
- (2) List the name and docket number of the case and the names of all parties and representatives;

- (3) Find the facts used to resolve the dispute based on the hearing record;
- (4) Explain why evidence is credible when the facts or conduct of a witness is in question;
- (5) State the law that applies to the dispute;
- (6) Apply the law to the facts of the case in the conclusions of law;
- (7) Discuss the reasons for the decision based on the facts and the law;
- (8) State the result and remedy ordered;
- (9) Explain how to request changes in the initial order and the deadlines for requesting them;
- (10) State the date the initial order becomes final according to WAC 182-526-0525; and
- (11) Include any other information required by law or program rules.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0520, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0525 When initial orders become final. An initial order becomes a final order at 5:00 p.m. on the twenty-first calendar day after OAH serves the initial order, unless:

- (1) Any party files a request for review of the initial order within twenty-one calendar days of the serving (mailing) of the initial order in accordance with WAC 182-526-0580(1);
- (2) Any party files a request for extension of the deadline for filing a request for review which is granted by the review judge pursuant to WAC 182-526-0580(2);
- (3) Any party files a late request for review which is accepted by a review judge in accordance with WAC 182-526-0580(3);
- (4) A managed care enrollee requests review by an independent review (IR) organization in accordance with RCW 48.43.535 prior to the initial order becoming final or a final order being entered by a review judge. See WAC 182-526-0200 for enrollee appeals.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0525, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0530 How to correct or appeal an initial order. (1) If a party disagrees with an administrative law judge's (ALJ) initial order because of a clerical error, the party may ask for a corrected initial order from the ALJ as provided in WAC 182-526-0540 through 182-526-0555.

(2) If a party disagrees with an initial order for a reason other than a clerical error and wants the initial order changed, the party must request review by a review judge as provided in WAC 182-526-0560 through 182-526-0595.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0530, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0540 How clerical errors are corrected in the initial orders. (1) A clerical error is a mistake that does not change the intent of the initial order.

- (2) The administrative law judge corrects clerical errors in the initial order by entering and serving a second decision referred to as a corrected initial order.
- (3) Some examples of clerical error are:
 - (a) Missing or incorrect words or numbers;
 - (b) Dates inconsistent with the decision or evidence in the record such as using May 3, 1989, instead of May 3, 1998; or
 - (c) Math errors when adding the total of an overpayment.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0540, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0545 How a party requests a corrected initial order. (1) A party may ask for a corrected administrative law judge's (ALJ) initial order by calling or writing the office of administrative hearings office that held the hearing.

(2) When asking for a corrected initial order, please identify the clerical error that was found.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0545, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0550 Deadline for a party to request a corrected initial order. (1) The parties must ask the administrative law judge (ALJ) for a corrected initial order on or before the tenth calendar day after the order was served.

(2) The time period provided in subsection (1) of this section and the time it takes the ALJ to deny the request or make a decision regarding the request for a corrected initial order, do not count against any deadline for a review judge to enter a final order.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0550, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0555 Process after a party requests a corrected initial order. (1) When a party requests a corrected initial order, the administrative law judge (ALJ) must either:

- (a) Serve all parties a corrected order; or
- (b) Deny the request within three business days of receiving it.

(2) If the ALJ corrects an initial order and a party does not request review, the corrected initial order becomes a final order at 5:00 p.m., twenty-one calendar days after the original initial order was served.

(3) If the ALJ denies a request for a corrected initial order and the party still wants the initial order changed, the party must request review by a review judge.

(4) Requesting an ALJ to correct the initial order does not automatically extend the deadline to request review of the initial order by a review judge. When a party needs more time to request review of an initial order, the party must ask for more time to request review as permitted by WAC 182-526-0580(2).

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0555, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0560 Review of an initial order by a review judge. (1) Review by a review judge is available to a party who disagrees with the administrative law judge's (ALJ) initial order.

(2) If a party wants the initial order substantively changed, the party must request that a review judge review the initial order.

(3) If a request is made for a review judge to review an initial order, it does not mean there is another hearing conducted by a review judge.

(4) Review judges may not review an ALJ's order after the order becomes final, except as permitted by WAC 182-526-0580.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0560, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0565 Evidence a review judge considers in reviewing an initial order. (1) The review judge, in most cases, only considers evidence admitted in the record by the administrative law judge.

(2) The review judge considers the request, the initial order, and the record before deciding if the initial order should be changed.

(3) The review judge may allow the parties to make oral argument when reviewing initial orders.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0565, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0570 Request for review of an initial order. (1) Any party may request a review judge to review the initial order.

(2) If more than one party requests review, each request must meet the deadlines in WAC 182-526-0580.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0570, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0575 How to request review of an initial order. (1) A party must make the request for review of an initial order in writing and file it with the board of appeals (BOA) at the address given in WAC 182-526-0030 and within the deadlines set forth in WAC 182-526-0580. The party should identify the:

(a) Parts of the initial order with which the party disagrees; and

(b) Evidence supporting the party's position.

(2) A party should also send a copy of the review request to the other parties.

(3) After receiving a party's request for review of an initial order, the BOA serves a copy to the other parties, their representatives, and the office of administrative hearings. The other parties and their representatives may respond as described in WAC 182-526-0590.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0575, filed 12/19/12, effective 2/1/13.]

[Ch. 182-526 WAC p. 20]

WAC 182-526-0580 Deadline for requesting review of an initial order by a review judge. (1) The board of appeals (BOA) must receive the written review request of an initial order on or before 5:00 p.m. on the twenty-first calendar day after the initial order was served, unless an extension of the deadline is granted by the review judge. A party may file the review request by facsimile transmission (fax). A copy of the review request should also be mailed to the BOA.

(2) A review judge may extend the deadline if a party:

(a) Asks for more time before the deadline expires; and

(b) Gives a good reason for more time.

(3) A review judge may accept a review request after the twenty-one calendar day deadline only if:

(a) The BOA receives the review request on or before the thirtieth calendar day after the deadline; and

(b) A party shows good cause for missing the deadline.

(4) The time periods provided by this section for requesting review of an initial order, including any extensions, does not count against a deadline, if any, for a review judge to enter the final order.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0580, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0590 Response to a request for review. (1) A party does not have to respond to the request for review. A response is optional.

(2) If a party decides to respond, that party must file the response so that the board of appeals (BOA) receives it on or before the seventh business day after the date the other party's review request was served to the party by the BOA.

(3) The party should send a copy of the response to all other parties or their representatives.

(4) A review judge may extend the deadline in subsection (2) of this section if a party asks for more time before the deadline to respond expires and gives a good reason.

(5) If a party asks for more time to respond, the time period provided by this section for responding to the review request, including any extensions, does not count against any deadline for a review judge to enter the final order.

(6) A review judge may accept and consider a party's response even if it is filed after the deadline.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0590, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0595 Process after review response deadline. (1) After the response deadline, the record on review is closed unless the review judge finds there is a good reason to keep it open.

(2) A review judge is assigned to review the initial order after the record is closed. To find out which judge is assigned, call the board of appeals.

(3) After the record is closed, the assigned review judge:

(a) Reviews the initial order; and

(b) Enters a final order that affirms, modifies, dismisses or reverses the initial order; or

(c) Returns the case to the office of administrative hearings for further action.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0595, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0600 Authority of the review judge.

(1) In some cases, review judges review initial orders and enter final orders. The review judge has the same decision-making authority as the administrative law judge (ALJ). The review judge considers the entire record and decides the case de novo (anew). In reviewing findings of fact, the review judge must give due regard to the ALJ's opportunity to observe witnesses.

(2) Review judges may return (remand) cases to the office of administrative hearings for further action.

(3) In cases where there is a consolidated hearing pursuant to WAC 182-526-0387, any party may request review of the initial order in accordance with the requirements contained in this chapter.

(4) Review judges may not review an ALJ order after the order becomes final, except as provided in WAC 182-526-0580.

(5) Review judges may preside at a hearing and enter the final order in cases conducted under WAC 182-526-0218.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0600, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0605 Reconsideration of a final order entered by a review judge. (1) If a party does not agree with the final order and believes the review judge made a mistake and wants it reconsidered, the party may request the review judge to reconsider the decision.

(2) The party must make the request in writing and clearly state why the party wants the final order reconsidered. The party must file the written reconsideration request with the BOA and it must be received by the deadline.

(3) The party should send a copy of the request to all other parties or their representatives.

(4) After receiving a reconsideration request, BOA serves a copy to the other parties and representatives and gives them time to respond.

(5) The final order or the reconsideration decision is the final HCA decision. If a party disagrees with that decision, the party must petition for judicial review to change it.

(6) If a party asks for reconsideration of the final order, the reconsideration process must be completed before a party requests judicial review. However, the party does not need to request reconsideration of a final order before requesting judicial review.

(7) The party may ask the court to stay or stop the HCA action after filing the petition for judicial review.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0605, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0620 Deadline for requesting reconsideration. (1) To request reconsideration of a final order entered by a review judge, the BOA must receive a written reconsideration request on or before the tenth calendar day after the final order was served.

(8/13/14)

(2) The review judge may extend its deadline for filing a request for reconsideration if a party:

- (a) Asks for more time before the deadline expires; and
- (b) Gives a good reason for the extension.

(3) If a reconsideration request is filed after the deadline, the final order will not be reconsidered and the deadline to ask for judicial review of the final HCA decision continues to run.

(4) If a party does not request reconsideration or fails to ask for an extension within the deadline, the final order may not be reconsidered and it becomes the final HCA decision.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0620, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0630 Responding to a reconsideration request. (1) A party does not have to respond to a request for reconsideration of a final order. A response is optional.

(2) If a party responds, that party must file a response with the board of appeals (BOA) by or before the seventh business day after the date the review judge mailed the request to the party.

(3) A party should send a copy of the response to any other party or representative.

(4) If a party needs more time to respond, the review judge may extend its deadline if the party gives a good reason within the deadline in subsection (2) of this section.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0630, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0635 Process after a party requests reconsideration. (1) After the review judge receives a reconsideration request, the review judge has twenty calendar days to enter and serve a reconsideration decision unless the review judge serves notice allowing more time.

(2) After the BOA receives a reconsideration request, the review judge must either:

- (a) Write a reconsideration decision; or
- (b) Serve all parties an order denying the request.

(3) If the review judge does not serve an order or notice granting more time within twenty days of receipt of the reconsideration request, the request is denied.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0635, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0640 Judicial review of a final order. (1) Judicial review is the process of appealing a final order to a court.

(2) The party that had requested the hearing may appeal a final order by filing a written petition for judicial review that meets the requirements of RCW 34.05.546. HCA may not request judicial review.

(3) The party must consult RCW 34.05.510 to 34.05.598 for further details of the judicial review process.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0640, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0645 Deadline for petition for judicial review and filing requirements. A party must file a petition for judicial review with the superior court within thirty calendar days after the final order is served to the parties.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0645, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0647 Exhaustion of administrative remedies required. Generally, a party may file a petition for judicial review only after it has completed the administrative hearing process. See RCW 34.05.534.

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0647, filed 12/19/12, effective 2/1/13.]

WAC 182-526-0650 Service of petition for judicial review. (1) The party must:

- (a) File a petition for judicial review with the court;
- (b) File and serve the petition for judicial review of a final order within thirty days after the date it was mailed to the parties; and
- (c) Serve copies of its petition on the health care authority (HCA), the office of the attorney general, and all other parties.

(2) To serve HCA, the petitioning party must deliver a copy of the petition for judicial review to the director of HCA and send a copy to the board of appeals (BOA). The party may hand deliver the petition or send it by mail that gives proof of receipt.

The physical location of the director is:

Director
Health Care Authority
626 8th Avenue S.E.
Olympia, WA 98501

The mailing address of the director is:

Director
Health Care Authority
P.O. Box 45502
Olympia, WA 98504-5502

The physical and mailing addresses for BOA are in WAC 182-526-0030.

(3) To serve the office of the attorney general and other parties, the petitioning party may send a copy of the petition for judicial review by regular mail. The party may send a petition to the address for the attorney of record to serve a party. The party may serve the office of the attorney general by hand delivery to:

Office of the Attorney General
7141 Cleanwater Drive S.W.
Tumwater, WA 98501

The mailing address of the attorney general is:

Office of the Attorney General
P.O. Box 40124
Olympia, WA 98504-0124

[Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0650, filed 12/19/12, effective 2/1/13.]