

WSR 24-01-061

EXPEDITED RULES

HEALTH CARE AUTHORITY

[Filed December 12, 2023, 12:59 p.m.]

Title of Rule and Other Identifying Information: WAC 182-526-0210 Appeals requested by intermediate care facilities for individuals with intellectual disabilities (ICF/IID).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The health care authority (HCA) is amending this rule to correct a typographical error.

Reasons Supporting Proposal: Subsection (1)(b) should read "An ICF/IID cannot appeal:" rather than "An ICF/IID cannot not appeal."

Statutory Authority for Adoption: RCW 41.05.021, 41.06.160.

Statute Being Implemented: RCW 41.05.021, 41.06.160; 42 C.F.R. Sec. 431, Subpart D, and Sec. 498.5.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Kerry Breen, P.O. Box 42700, Olympia, WA 98504-2700, 1-844-728-5212.

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

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

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The expedited rule-making process is appropriate because the proposed rule corrects typographical errors.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Rules Coordinator, HCA, P.O. Box 42716, Olympia, WA 98504-2716, phone 360-725-1306, fax 360-586-9272, email arc@hca.wa.gov, AND RECEIVED BY February 20, 2024.

December 12, 2023
Wendy Barcus
Rules Coordinator

OTS-5110.1

AMENDATORY SECTION (Amending WSR 19-18-025, filed 8/28/19, effective 9/28/19)

WAC 182-526-0210 Appeals requested by intermediate care facilities for individuals with intellectual disabilities (ICF/IID). The hearing process described in this section applies to requests for an

appeal made by an intermediate care facility for individuals with intellectual disabilities (ICF/IID), as defined in WAC 388-825-020.

(1) **Right to hearing.** An ICF/IID may request a hearing when it is dissatisfied with the medicaid agency's finding of noncompliance resulting in the termination of medicaid funding and any related provider agreements under 42 C.F.R. Sec. 431.151 through 431.154.

(a) An agency review judge conducts the hearing and enters the agency's final order for cases held under this subsection.

(b) An ICF/IID cannot (~~not~~) appeal:

(i) The choice of sanction or remedy;

(ii) The monitoring remedy;

(iii) The level of noncompliance found, except when a favorable review decision would affect the range of civil money penalty amounts the agency could collect; or

(iv) The decision about when to conduct an initial survey of a prospective provider.

(2) **Notice of adverse action.** The agency gives the ICF/IID a written notice of adverse action that includes:

(a) The basis for the finding of noncompliance that resulted in the agency's decision to terminate medicaid funding and any related provider agreements;

(b) A statement of the deficiencies resulting in the decision;

(c) The effective date of the adverse action; and

(d) The ICF/IID's appeal rights and procedures, including deadlines, for filing a hearing request.

(3) **Request for hearing.** The ICF/IID, its legal representative, or other authorized official must file a written request for a hearing with the agency's board of appeals at P.O. Box 42700, Olympia, Washington, or by facsimile at 360-507-9018 within (~~sixty~~) 60 calendar days of receiving the notice of adverse action.

(4) **Hearing.** If an ICF/IID requests a hearing on the termination of medicaid funding and any related provider agreements, the hearing is completed and the agency issues the final order on the hearing within (~~one hundred twenty~~) 120 calendar days of the effective date of the adverse action.

(a) If the agency is unable to hold the hearing until after the effective date of the adverse action, the agency offers the ICF/IID an informal reconsideration that meets the requirements of subsection (5) of this section.

(b) The informal reconsideration process described in subsection (5) of this section is not the same reconsideration process defined in WAC 182-526-0010 or described in WAC 182-526-0605 through 182-526-0635.

(5) **Informal reconsideration for ICF/IID.** The informal reconsideration includes:

(a) Written notice to the ICF/IID of the agency's findings resulting in the termination of medicaid funding and any related provider agreements;

(b) A reasonable opportunity for the ICF/IID to dispute those findings in writing; and

(c) A written affirmation or reversal of the agency's action.

(6) **Termination of medicaid funding and related provider agreements.**

(a) The medicaid funding and any related provider agreements end on the effective date of the termination, unless:

(i) A hearing is timely requested and not provided by the agency until after the effective date of the termination; and

- (ii) The termination is based on a survey agency certification stating that there is no jeopardy to beneficiaries' health and safety.
- (b) If medicaid funding extends past the termination date, funding will be available only through the earlier of:
 - (i) The issuance date of a hearing decision that upholds the agency's action; or
 - (ii) One hundred twenty calendar days after the effective date of termination, as required by 42 C.F.R. Sec. 442.40.

WSR 24-01-066
EXPEDITED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed December 13, 2023, 4:18 p.m.]

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-436-0065 What is the pandemic emergency assistance fund (PEAF)?

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These housekeeping amendments clarify the federal poverty level (FPL) year when considering PEAF eligibility.

Reasons Supporting Proposal: These amendments meet the criteria for expedited adoption as set forth in RCW 34.05.353, specifically subsection (1)(c): "The proposed rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect."

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.250.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Sarah Garcia, P.O. Box 45470, Olympia, WA 98504-5470, 360-522-2214.

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

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

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: These amendments clarify language of a rule without changing its effect.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Katherine Vasquez, Department of Social and Health Services, 1115 Washington Street S.E., Olympia, WA 98504-5850, phone 360-664-6097, email DSHSRPAURulescoordinator@dshs.wa.gov, AND RECEIVED BY February 20, 2024.

December 13, 2023
Katherine I. Vasquez
Rules Coordinator

SHS-5011.1

AMENDATORY SECTION (Amending WSR 22-07-019, filed 3/8/22, effective 4/24/22)

- WAC 388-436-0065 What is the pandemic emergency assistance fund (PEAF)?** (1) What is the pandemic emergency assistance fund (PEAF)?
- The pandemic emergency assistance fund (PEAF) is administered by the department of social and health services and provides a one-time cash benefit to low income families with at least one qualifying child, to support them in meeting their basic needs as a result of the COVID-19 pandemic.
- (2) The following definitions apply to PEAFF:
- (a) "Household" as defined in WAC 388-408-0015 or WAC 388-408-0035.
- (b) "Qualifying child" means a child as defined in WAC 388-404-0005.
- (3) Who is eligible for the PEAFF?
- Each child in your household may be eligible for PEAFF if your child meets all of the following:
- (a) A qualifying child lives in your home and has not already received PEAFF;
- (b) The household is active, eligible, and receiving TANF, SNAP, SFA, or FAP benefits in the month of issuance;
- (c) The reported household income, as defined in chapter 388-450 WAC, at the time of issuance is at or below 75% of the 2022 federal poverty level;
- (d) You reside in Washington state as required under WAC 388-468-0005.
- (4) How do I apply for the pandemic emergency assistance fund?
- (a) The department automatically reviews your eligibility for PEAFF during the month of issuance:
- (b) When you apply for TANF, SFA, SNAP, or FAP; or
- (c) You are an active household receiving TANF, SFA, SNAP, or FAP.
- (5) What benefits will I receive if I am eligible for PEAFF?
- (a) PEAFF is issued only once per qualifying child.
- (b) The amount of the PEAFF benefit is the same for each qualifying child and is determined based on:
- (i) The amount of available PEAFF funding; and
- (ii) The number of qualifying children in the month of issuance.

WSR 24-01-078

EXPEDITED RULES

HEALTH CARE AUTHORITY

[Filed December 15, 2023, 9:32 a.m.]

Title of Rule and Other Identifying Information: WAC 182-513-1105 Personal needs allowance (PNA) and room and board standards in a medical institution and alternate living facility (ALF).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending this rule to comply with statutory program requirements in RCW 74.09.340.

Reasons Supporting Proposal: The legislature amended the PNA governing statute (RCW 74.09.340) so that the cost-of-living adjustment is no longer subject to the availability of appropriated funds. See chapter 201, Laws of 2023 (HB 1128). The agency is amending this rule to comply with the statute by removing language stating that the cost-of-living adjustment is subject to state legislative funding.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160, 74.09.340.

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

Name of Proponent: Health care authority, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Paige Lewis, P.O. Box 42722, Olympia, WA 98504-2722, 360-725-0757.

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

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The expedited rule-making process is appropriate because the proposed rule makes amendments dictated by RCW 74.09.340.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Rules Coordinator, Health Care Authority, P.O. Box 42716, Olympia, WA 98504-2716, phone 360-725-1306, fax 360-586-9272, email arc@hca.wa.gov, AND RECEIVED BY February 20, 2024.

December 15, 2023
Wendy Barcus
Rules Coordinator

OTS-5119.1

AMENDATORY SECTION (Amending WSR 23-04-034, filed 1/25/23, effective 2/25/23)

WAC 182-513-1105 Personal needs allowance (PNA) and room and board standards in a medical institution and alternate living facility (ALF). (1) This section describes the personal needs allowance (PNA), which is an amount set aside from a client's income that is intended for personal needs, and the room and board standard.

(2) The PNA in a state veteran's nursing facility:

(a) Is indicated on the chart described in subsection (8) of this section as "All other PNA Med Inst.", for a veteran without a spouse or dependent children receiving a needs-based veteran's pension in excess of \$90;

(b) Is indicated on the chart described in subsection (8) of this section as "All other PNA Med Inst.", for a veteran's surviving spouse with no dependent children receiving a needs-based veteran's pension in excess of \$90; or

(c) Is \$160 for a client who does not receive a needs-based veteran's pension.

(3) The PNA in a medical institution for clients receiving aged, blind, or disabled (ABD) cash assistance or temporary assistance for needy families (TANF) cash assistance is the client's personal and incidental (CPI) cash payment, as described in WAC 388-478-0006, based on residing in a medical institution, which is \$41.62.

(4) The PNA in an alternate living facility (ALF) for clients receiving ABD cash assistance or TANF cash assistance is the CPI, as described in WAC 388-478-0006, based on residing in an ALF that is not an adult family home, which is \$38.84.

(5) The PNA for clients not described in subsections (2), (3), and (4) of this section, who reside in a medical institution or in an ALF, is indicated on the chart described in subsection (8) of this section as "All other PNA Med Inst." and "HCS & DDA Waivers, CFC & MPC PNA in ALF."

(6) Effective January 1, ~~((2018))~~ 2024, and each year thereafter, the amount of the PNA in subsection (5) of this section may be adjusted by the percentage of the cost-of-living adjustment (COLA) for old-age, survivors, and disability social security benefits as published by the federal Social Security Administration (~~(. This adjustment is subject to state legislative funding)~~), per RCW 74.09.340.

(7) The room and board standard in an ALF used by home and community services (HCS) and the developmental disabilities administration (DDA) is based on the federal benefit rate (FBR) minus the current PNA as described under subsection (5) of this section.

(8) The current PNA and room and board standards used in long-term services and supports are published under the institutional standards on the Washington apple health (medicaid) income and resource standards chart located at www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources.