

WSR 25-01-053

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed December 11, 2024, 10:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-21-073.

Title of Rule and Other Identifying Information: WAC 182-526-0010 Definitions, 182-526-0360 Changing how a hearing is held or how a witness appears at a hearing, 182-526-0387 Requesting that a hearing be consolidated or severed when multiple agencies are parties to the proceeding, and 182-526-0650 Service of petition for judicial review.

Hearing Location(s): On January 22, 2025, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance [https://us02web.zoom.us/webinar/register/WN\\_6bEgewjCTa6c66AYPffGqQ](https://us02web.zoom.us/webinar/register/WN_6bEgewjCTa6c66AYPffGqQ).

If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than January 23, 2025.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, beginning December 12, 2024, at 8:00 a.m., by January 22, 2025, at 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication relay service 711, email [Johanna.Larson@hca.wa.gov](mailto:Johanna.Larson@hca.wa.gov), by January 3, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending chapter 182-526 WAC to update its regulations related to the service of a petition for judicial review.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

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.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Scope of exemption for rule proposal:

Is fully exempt.

December 11, 2024

Wendy Barcus

## OTS-5953.2

AMENDATORY SECTION (Amending WSR 21-18-063, filed 8/26/21, effective 9/26/21)

**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, as defined in RCW 34.05.010. ALJs are not department of social and health services or health care authority (HCA) employees or representatives.

**"Agency"** - See WAC 182-500-0010.

**"Appellant"** - A person or entity who requests a hearing about an action of HCA or its designee.

**"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~~) administered by HCA.

**"Authorized agent"** - A person or agency, as defined in RCW 34.05.010, acting on HCA's behalf under an agreement authorized by RCW 41.05.021 to act as an HCA hearing representative. An authorized agent may be an employee of the department of social and health services or its contractors but may not be an employee of an HCA-contracted managed care organization.

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

**"Business days"** - All days except Saturdays, Sundays, and designated holidays under WAC 357-31-005.

**"Calendar days"** - All days including Saturdays, Sundays, and designated holidays under WAC 357-31-005.

**"Continuance"** - A change in the date or time of a prehearing 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, emails, or other printed or written items.

**"Electronic service"** - The service of documents sent or received through electronic communications, cloud services, or other electronic means established by the agency. For the purpose of effectuating service, as defined below, on HCA or OAH (but not BOA), service via OAH's PRISM participant portal is an acceptable method of "electronic service."

**"Filing"** - The act of delivering documents to the office of administrative hearings (OAH) or the board of appeals (BOA).

**"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. The HCA hearing representative may or may not be an attorney. 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~~) administered by HCA. 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"** - Review of a final order as provided under RCW 34.05.510 through 34.05.598.

**"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 health care services to eligible recipients under HCA's managed care programs.

**"OAH"** - The office of administrative hearings.

**"Order of default"** - An order entered by an administrative law judge (ALJ) or review judge when the appellant fails to appear in a prehearing conference or a hearing. Once the order of default becomes a final order, it terminates the appellant's request for a hearing and ends the hearing process.

**"Order of dismissal"** - An order from the administrative law judge (ALJ) or review judge ending the hearing process.

**"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 formal proceeding scheduled and conducted by an ALJ or other reviewing officer on the record for the purposes identified in WAC 182-526-0195.

**"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)~~) administered by HCA.

**"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~~) decision maker with expertise in program rules who 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 regulation adopted by a state agency. Rules are found in the Washington Administrative Code (WAC).

**"Service"** - The delivery of documents as explained in WAC 182-526-0040.

**"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.

AMENDATORY SECTION (Amending WSR 17-05-066, filed 2/13/17, effective 3/16/17)

**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 who requested a hearing is an applicant or recipient of a medical services program (~~(established under chapter 74.09 RCW)~~) administered by the agency, the hearing must be held according to RCW 74.09.741 (5)(c).

(2) An applicant or recipient may agree to have one or more pre-hearing conferences conducted telephonically without waiving the right to have any subsequent prehearing conference or other hearings held in person.

(3) Any party to the hearing has the right to request that:

(a) The hearing 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 be allowed to appear telephonically even for an in-person hearing.

(4) 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.

(5) 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.

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

(7) The ALJ may schedule a prehearing conference to determine if the request should be granted.

(8) If the ALJ grants the request, the ALJ may orally advise the parties of the change in how the witness or party appears.

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

AMENDATORY SECTION (Amending WSR 17-05-066, filed 2/13/17, effective 3/16/17)

**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,~~) administered by the agency seeks review of decisions made by more than one agency, as defined in RCW 34.05.010. 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 objecting to decisions made by more than one agency, as defined in RCW 34.05.010, the office of administrative hearings (OAH) schedules 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 enters an order and OAH sends 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.

AMENDATORY SECTION (Amending WSR 17-05-066, filed 2/13/17, effective 3/16/17)

**WAC 182-526-0650 Service of petition for judicial review. (1)**

The party requesting judicial review 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)~~) 30 days after the date it was mailed to the parties; and

(c) Serve copies of the 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), or serve it electronically. See WAC 182-526-0030 for the BOA physical, mailing, and electronic service addresses.~~

(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