

WAC 388-96-901 Disputes. (1) When a contractor wishes to contest the way in which the department applied a statute or department rule to the contractor's circumstances, the contractor must pursue the administrative review process prescribed in WAC 388-96-904.

(a) Adverse actions taken under the authority of this chapter or chapter 74.46 RCW subject to administrative review under WAC 388-96-904 include but are not limited to the following:

- (i) Determining a nursing facility payment rate;
- (ii) Calculating a nursing facility settlement;
- (iii) Imposing a civil fine on the nursing facility;
- (iv) Suspending payment to a nursing facility; and
- (v) Conducting trust fund and accounts receivable audits.

(b) Adverse actions taken under the authority of this chapter or chapter 74.46 RCW not subject to administrative review under WAC 388-96-904 include but are not limited to:

- (i) Actions taken under the authority of RCW 74.46.421 and sections of this chapter implementing RCW 74.46.421;
- (ii) Case mix accuracy review of minimum data set (MDS) nursing facility resident assessments that are limited to separate administrative review under WAC 388-96-905;
- (iii) Semiannual rate updates to reflect changes in a facility's resident case mix including contractor errors made in the MDSs used to update the facility's resident case mix;
- (iv) Actions taken under the exceptional direct care program codified at WAC 388-96-781 and 388-96-782; and
- (v) Actions taken under WAC 388-96-218 (2)(c).

(2) The administrative review process prescribed in WAC 388-96-904 must not be used to contest or review unrelated or ancillary department actions, whether review is sought to obtain a ruling on the merits, make a record for subsequent judicial review, or other purpose. If an issue is raised that is not subject to review under WAC 388-96-904, the presiding officer must dismiss such issue with prejudice to further review under the provisions of WAC 388-96-904, but without prejudice to other administrative or judicial review as may be provided by law. Unrelated or ancillary actions not eligible for administrative review under WAC 388-96-904 include but are not limited to:

(a) Challenges to the adequacy or validity of the public process followed by the department in proposing or making a change to the nursing facility medicaid payment rate methodology, as required by Title 42 U.S.C. Sec. 1396a (a)(13)(A) and WAC 388-96-718;

(b) Challenges to the nursing facility medicaid payment system that are based in whole or in part on federal laws, regulations, or policies;

(c) Challenges to a contractor's rate that are based in whole or in part on federal laws, regulations, or policies;

(d) Challenges to the legal validity of a statute or regulation; and

(e) Actions of the department affecting a medicaid beneficiary or provider that were not commenced by the office of rates management, aging and long-term support administration.

(3) If a contractor wishes to challenge the legal validity of a statute, rule, or contract provision relating to the nursing facility medicaid payment system or bring a challenge based in whole or in part on federal law, it must bring such action de novo in a court of proper jurisdiction as may be provided by law. The contractor must not use this section or WAC 388-96-904 for such purposes. This prohibition ap-

plies irrespective of whether the contractor wishes to obtain a decision or ruling on an issue of validity or federal compliance or wishes only to make a record for the purpose of subsequent judicial review.

[Statutory Authority: RCW 74.46.800, 74.46.561(1). WSR 17-22-037, § 388-96-901, filed 10/24/17, effective 11/24/17. Statutory Authority: Chapter 74.46 RCW, 2010 1st sp.s. c 34, and 2010 1st sp.s. c 37 § 958. WSR 11-05-068, § 388-96-901, filed 2/14/11, effective 2/26/11. Statutory Authority: RCW 74.46.431 (11) and (12), 74.46.800, chapter 74.46 RCW, 2004 c 276 § 913, 2001 1st sp.s. c 8. WSR 04-21-027, § 388-96-901, filed 10/13/04, effective 11/13/04. Statutory Authority: RCW 74.46.800. WSR 01-12-037, § 388-96-901, filed 5/29/01, effective 6/29/01. Statutory Authority: RCW 74.46.800, 74.46.508. WSR 00-12-098, § 388-96-901, filed 6/7/00, effective 7/8/00. Statutory Authority: RCW 74.46.780 as amended by 1998 c 322 § 41. WSR 98-20-023, § 388-96-901, filed 9/25/98, effective 10/1/98. Statutory Authority: RCW 74.46.800 and 1995 1st sp.s. c 18. WSR 95-19-037 (Order 3896), § 388-96-901, filed 9/12/95, effective 10/13/95. Statutory Authority: RCW 74.46.800 and 74.09.120. WSR 91-12-026 (Order 3185), § 388-96-901, filed 5/31/91, effective 7/1/91. Statutory Authority: RCW 74.09.120. WSR 82-21-025 (Order 1892), § 388-96-901, filed 10/13/82; Order 1262, § 388-96-901, filed 12/30/77.]