

## WSR 21-15-056

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed July 15, 2021, 12:54 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-11-028.

Title of Rule and Other Identifying Information: WAC 182-526-0010 Definitions, 182-526-0030 Contacting the board of appeals, 182-526-0040 Service of documents on another party, 182-526-0070 Filing documents, and 182-526-0340 Hearing location.

Hearing Location(s): On August 24, 2021, at 10:00 a.m. The health care authority (HCA) remains closed in response to the coronavirus disease 2019 (COVID-19) public health emergency. Until further notice, HCA continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of Washington state residents. To attend the virtual public hearing, you must register in advance [https://zoom.us/webinar/register/WN\\_BNCWCwOFQSOhcaAMJzTrTw](https://zoom.us/webinar/register/WN_BNCWCwOFQSOhcaAMJzTrTw). After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than August 25, 2021.

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, by August 24, 2021.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email [amber.lougheed@hca.wa.gov](mailto:amber.lougheed@hca.wa.gov), by August 13, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending procedural rules applicable to adjudicative proceedings to permit the use of electronic means to file and serve documents and conduct and attend hearings.

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.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

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, 360-725-9970.

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.

July 15, 2021

## OTS-3124.2

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

**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.

**"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.

**"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. 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.

**"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 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.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-05-066, § 182-526-0010, filed 2/13/17, effective 3/16/17. 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.]

AMENDATORY SECTION (Amending WSR 15-04-102, filed 2/3/15, effective 3/6/15)

**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	626 8th Avenue S.E. Olympia, Washington
Mailing address	P.O. Box 42700 Olympia, WA 98504-2700
Toll free telephone	1-844-728-5212
Fax	360-507-9018
Electronic service	<a href="mailto:HCABoardofAppeals@hca.wa.gov">HCABoardofAppeals@hca.wa.gov</a>
Internet website	<a href="http://www.hca.wa.gov/appeals">www.hca.wa.gov/appeals</a>

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 15-04-102, § 182-526-0030, filed 2/3/15, effective 3/6/15. 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.]

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

**WAC 182-526-0040 Service of documents on another party.** (1) When the rules in this chapter or in other program rules or statutes require a party to serve copies of documents on other parties, the party must send copies of the documents 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. Documents may be sent only as described in this section to accomplish service.

- (4) 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;
  - (d) Electronic service;
  - (e) Commercial delivery service; or

~~((e))~~ (f) Legal messenger service.

(5) A party must serve all other parties or their representatives whenever the party files a pleading, brief, or other document with the office of administrative hearings (OAH) or the board of appeals (BOA), or when required by law.

(6) Service is complete when:

(a) Personal service is made;

(b) Mail is properly stamped, addressed, and deposited in the United States mail;

(c) A fax produces proof of transmission;

(d) Electronic service is sent;

(e) A parcel is delivered to a commercial delivery service with charges prepaid; or

~~((e))~~ (f) A parcel is delivered to a legal messenger service with charges prepaid.

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

(a) A sworn statement;

(b) The certified mail receipt signed by the person who received the envelope;

(c) An affidavit or certificate ~~((e))~~ 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 or electronic service transmission.

(8) ~~((A party))~~ The OAH or BOA may serve documents, including notices, initial orders, and final orders, by email only if the other parties have agreed to accept electronically served documents.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-05-066, § 182-526-0040, filed 2/13/17, effective 3/16/17. 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.]

AMENDATORY SECTION (Amending WSR 17-23-201, filed 11/22/17, effective 12/23/17)

**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 BOA.

(3) Filing is complete when the documents are received by OAH or BOA during business days between 8:00 a.m. to 5:00 p.m. If the documents are received after 5:00 p.m. on a business day, the filing is effective the next business day.

(4) A party may file documents by delivering them to OAH or BOA by:

(a) Personal service (e.g., hand delivery);

(b) First class, registered, or certified mail;

(c) Fax transmission;

(d) Electronic service;

(e) Other secure electronic means established by the agency or OAH;

(f) Electronic cloud sharing service approved by the agency;

(g) Commercial delivery service; or

~~((e))~~ (h) Legal messenger service.

(5) (~~(A party may deliver documents for filing by email only if OAH or BOA staff agreed to accept electronically filed documents.)~~) A party (~~(must)~~) may obtain confirmation of receipt of the filing from the OAH or BOA staff to prove that the documents were successfully filed electronically.

[Statutory Authority: RCW 41.05.021, 41.05.160, 74.09.741, chapter 34.05 RCW. WSR 17-23-201, § 182-526-0070, filed 11/22/17, effective 12/23/17. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-05-066, § 182-526-0070, filed 2/13/17, effective 3/16/17. 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.]

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

**WAC 182-526-0340 Hearing location.** (1) The office of administrative hearings (OAH) may schedule (~~((a))~~) a hearing to be conducted in-person ((hearing or a telephonic hearing)), by telephone, or by video.

(2) A telephonic or video hearing is where the appellant appears by telephone, video, or other electronic means.

(3) An in-person hearing is where the appellant appears face-to-face with the ALJ. The other parties may choose to appear either in person (~~((or))~~), by telephone, or by video.

(4) Whether a hearing is held in-person, by video, or telephonically, each party has 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 appellant may ask that the ALJ change it to a telephonic or video hearing. Once a telephonic or video 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: RCW 41.05.021 and 41.05.160. WSR 17-05-066, § 182-526-0340, filed 2/13/17, effective 3/16/17. 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.]