

WSR 22-06-080

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed March 1, 2022, 9:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-16-106.

Title of Rule and Other Identifying Information: New chapter 182-400 WAC, Public option plans (Cascade care select).

Hearing Location(s): On April 5, 2022, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the health care authority (HCA) continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state. To attend the virtual public hearing, you must register in advance https://zoom.us/webinar/register/WN_DNowSCHXRGWpziJU7bnNWTw. 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 April 6, 2022.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727.

Assistance for Persons with Disabilities: Contact HCA rules coordinator, phone 360-725-1306, fax 360-586-9727, telecommunication[s] relay service 711, email arc@hca.wa.gov, by March 25, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The new rules align with the requirements of E2SSB 5377. This bill provides that if a public option plan is not available in plan year 2022 or later, certain hospitals must contract with at least one public option plan to provide in-network services to that plan's enrollees. The bill also provides that HCA may adopt rules to enforce compliance. The new rules, in part, describe:

- Which hospitals must comply.
- Agency investigations.
- Sanctions.
- Appeals.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; E2SSB 5377.

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: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Penny Adler, P.O. Box 45502, Olympia, WA 98504-5502, 360-725-9727.

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 rule content is explicitly and specifically dictated by statute.

March 1, 2022
Wendy Barcus
Rules Coordinator

OTS-3528.3

**Chapter 182-400 WAC
PUBLIC OPTION PLANS (CASCADE CARE SELECT)**

NEW SECTION

WAC 182-400-0100 Public option hospital participation—Purpose and scope. (1) The Washington health benefits exchange, in partnership with the health care authority, administers public purchasing of the Washington state public option plans known as Cascade Care Select.

(2) Each hospital should actively seek to contract with as many carriers that offer public option plans as possible to ensure compliance with this chapter and to avoid sanctions by failing to contract with at least one carrier offering public option plans.

(3) In accordance with RCW 41.05.405, beginning in plan year 2023, a hospital that receives payments through a medical assistance program under chapter 74.09 RCW, or a public employees benefits board (PEBB) or a school employees benefits board (SEBB) program under chapter 41.05 RCW must contract with at least one carrier offering public option plans to provide in-network coverage to enrollees, if the hospital received a valid offer to contract with a carrier offering public option plans to provide in-network services.

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NEW SECTION

WAC 182-400-0200 Definitions. For the purposes of this chapter:

"Authority" means the Washington state health care authority.

"Carrier" is defined in RCW 48.43.005.

"Health benefits exchange" means the Washington state health benefits exchange established in RCW 43.71.020.

"Hospital" means any hospital licensed under chapter 70.41 RCW that receives payment for services provided:

(a) To enrollees in the public employees benefits program or school employees benefits program under chapter 41.05 RCW; or

(b) Through a medical assistance program under chapter 74.09 RCW.

"Parties" means carriers and hospitals as defined in this chapter.

"Plan year" means the 12-month period beginning on January 1st of each year and ending on December 31st of the same year.

"Public option plan" means a qualified health plan contracted by or offered in a response to a procurement issued by the authority under RCW 41.05.410.

"Valid offer to contract" means:

(a) A written offer made by a carrier to a hospital to enter into a contract with the carrier to provide in-network coverage to enrollees of the carrier's public option plans; and

(b) The carrier's offer must contain sufficient information so that a reasonable person would understand that a good faith offer has been made. The carrier must, at a minimum, include the reimbursement rate offered in a manner that constitutes a legally binding document that the parties could execute.

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NEW SECTION

WAC 182-400-0300 Enforcement. (1) **Compliance.** The authority conducts investigations, as needed, to ensure compliance with this chapter.

(2) **Investigations.** The authority may open an investigation:

(a) When the authority receives information from a carrier that a hospital failed to contract with that carrier to provide in-network coverage to enrollees of the carrier's public option plans after making a valid offer to contract;

(b) When there are counties in which no public option plans are available; or

(c) On a case-by-case basis at the authority's sole discretion.

(3) **Procedure.**

(a) The authority sends a written investigation notice explaining the nature of the allegation to both the hospital and to bidding or contracted carriers.

(b) The authority may request additional information or documentation from the carrier or carriers and the hospital. If the authority sends a written request for information, parties have 30 calendar days to:

(i) Provide the requested information or documentation; or

(ii) Request additional time to complete the request, which the authority may grant on a case-by-case basis.

(c) The authority may request the following information or documentation from any party during an investigation:

(i) A copy of all written communications, including emails, between the hospital and the carriers related to any potential contract offers, or contracts that have been executed related to public option plans and related discussions;

(ii) A copy, including the provider reimbursement rates, of any offer to contract or executed contract;

(iii) A statement from a party explaining the party's position, including information regarding why the offer was not accepted;

(iv) A statement regarding any mitigating factors the hospital or carrier would like the authority to take into consideration when determining whether a sanction is warranted; and

(v) Any other information the authority decides is relevant in determining whether a sanction is appropriate.

(d) If the authority determines that any party has failed to fully and timely respond to the authority's request for information or documentation, the authority may impose an immediate sanction for non-compliance for each incident of noncompliance, as follows:

Number of incidents of noncompliance	Sanction amount
First	\$10,000
Second	\$25,000
Third	\$50,000
Fourth and subsequent incidents	\$100,000

(e) The authority may issue a sanction for each missing item, or for each failure to provide documentation or information within the required time or may issue sanctions for both. Sanctions under this section are cumulative and immediate but may be stayed if the sanctioned party files an appeal under WAC 182-400-0400.

(f) When issuing an immediate sanction under (d) of this subsection, the authority sends a written notice to demand payment. The authority must receive payment within 28 calendar days of the date the party received the notice.

(4) Sanctions for failure to accept valid contract offer.

(a) After an investigation conducted under subsection (3) of this section, if, in the authority's sole discretion, the authority determines that a hospital failed to accept a valid offer to contract from a carrier, and is not contracted with any other public option plan for that plan year, the sanction amount for that plan year is as follows:

- (i) For hospitals with 50 beds or fewer, \$182,500; or
 - (ii) For hospitals with more than 50 beds, \$3,650 per bed.
- (b) A party may appeal a sanction notice under WAC 182-400-0400.

(5) **Public disclosure.** The information submitted according to this section is not subject to public disclosure under chapter 42.56 RCW, to the extent set forth in RCW 41.05.410 (3) (b).

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NEW SECTION

WAC 182-400-0400 Notice of sanction appeal process. (1) The process described in this section applies only if a party receives a written sanction notice from the authority for noncompliance with this chapter.

(2) The authority must receive a party's appeal within 28 calendar days of the date the party received the notice of sanction.

(a) To file an appeal, a party must send a written request for an administrative hearing to the address listed on the notice of sanction in a manner that provides proof of receipt.

(b) The request for the administrative hearing must provide a copy of the notice of sanction in dispute.

(3) The authority conducts hearings under the Washington state Administrative Procedure Act (chapter 34.05 RCW) and the administrative hearing rules for medical services programs (chapter 182-526 WAC).

(4) Under WAC 182-526-0025(2), the authority, in its sole discretion, may conduct the administrative hearing or may transfer the hearing to the office of administrative hearings (OAH).

(a) If the authority conducts the administrative hearing, it issues the final agency decision.

(b) If OAH conducts the administrative hearing, it issues an initial order with instructions on how to file an appeal with the authority's board of appeals.

(5) Repayment of sanctions is stayed only if a party timely files an appeal under this section.

(6) If the final order upholds the notice of sanction, the authority immediately begins collection activities.

(7) The authority may impose a one percent interest charge for any nonpayment of sanctions.

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