

WSR 21-01-021

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed December 3, 2020, 4:17 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-14-098.

Title of Rule and Other Identifying Information: WAC 182-530-7900
Drugs purchased under the Public Health Service Act.

Hearing Location(s): On January 26, 2021, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the agency will not provide a physical location for this hearing. This promotes social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. The [to] attend the virtual public hearing, you must register at the following link: <https://attendee.gotowebinar.com/register/5895859935949871883>. Webinar ID: 563-710-843. After registering, you will receive a confirmation email containing the information about joining the webinar.

Date of Intended Adoption: Not sooner than January 27, 2021.

Submit Written Comments to: Health care authority (HCA) Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by January 26, 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, by January 8, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency previously filed this proposal under WSR 20-02-073, and held a public hearing on February 4, 2020. Stakeholder comments and then the subsequent public health emergency further delayed this rule making. In accordance with RCW 34.05.335(3), the agency is refileing this proposal without change and will hold a second public hearing. Comments and testimony that were previously submitted on this proposal under WSR 20-02-073 will be included in the agency's concise explanatory statement.

The agency is revising this section to clarify that as part of participation in the 340B program, providers must agree, via an annual attestation form, that all claims for Washington apple health clients in both fee-for-service and managed care are subject to their respective 340B rules. The agency is amending subsection (4) to include the medicaid fee-for-service program.

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: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Natalia Oxford Wilson, P.O. Box 45510, Olympia, WA 98504-5510, 360-725-1861.

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.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule does not impose any costs on businesses.

December 3, 2020
Wendy Barcus
Rules Coordinator

OTS-1525.5

AMENDATORY SECTION (Amending WSR 17-07-001, filed 3/1/17, effective 4/1/17)

WAC 182-530-7900 Drugs purchased under the Public Health Service (PHS) Act. (1) Providers dispensing or administering 340B drugs to Washington apple health clients are required to submit their valid medicaid provider number(s) or national provider identification (NPI) number to the PHS health resources and services administration, office of pharmacy affairs. See WAC 182-530-7500 for information on the drug rebate program.

(2) Drugs purchased under section 340B of the Public Health Service (PHS) Act can be billed to Washington apple health only by PHS-qualified entities. The Washington medicaid rebate process excludes 340B claims from invoicing only when the drug is billed by a medicaid provider number or national provider identification (NPI) number listed on the PHS office of pharmacy affairs national medicaid exclusion file. See WAC 182-530-7500 for information on the drug rebate program.

(3) As part of participation in the 340B program, providers must submit a completed annual attestation form (HCA 13-0047) to the agency acknowledging that all claims for Washington apple health clients in both fee-for-service and managed care are subject to their respective 340B rules. Providers who fail to submit a completed attestation form to the agency may receive a compliance audit and be at risk of duplicate discounts.

(4) With the exception of claim types identified in subsection ((4)) (5) of this section, all 340B purchased drugs under the medicaid fee-for-service program must be billed to the medicaid agency at the 340B actual acquisition cost (340B AAC).

((4)) (5) Exceptions to the 340B AAC billing requirement are only made for:

(a) Outpatient hospital claims paid under the enhanced ambulatory payment group (EAPG) methodology (see WAC 182-550-7000); and

(b) Ambulatory surgery claims paid under payment groups methodology.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-07-001, § 182-530-7900, filed 3/1/17, effective 4/1/17; WSR 16-01-046, § 182-530-7900, filed 12/9/15, effective 1/9/16. WSR 11-14-075, recodified as § 182-530-7900, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.04.050, 74.08.090, 74.09.530, and 74.09.700. WSR 07-20-049, § 388-530-7900, filed 9/26/07, effective 11/1/07.]