

WSR 21-08-062

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed April 5, 2021, 1:07 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-11-072 and WSR 21-01-158.

Title of Rule and Other Identifying Information: WAC 182-51-1800 Administrative hearing (formal appeal) right, 182-70-110 Appeals, 182-70-655 Hearing and final order, 182-70-660 Final decision, 182-526-0005 Purpose and scope, 182-526-0195 Prehearing conferences, 182-526-0203 Administrative reviews requested by a reporting entity to the prescription drug pricing transparency program, 182-526-0205 Appeals requested by a data supplier to the Washington all payer health care claims database (WA-APCD), and 182-526-0206 Hearing and final order for penalties imposed under WAC 182-70-600.

Hearing Location(s): On May 11, 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. To attend the virtual public hearing, you must register at the following link <https://attendee.gotowebinar.com/register/3065017719404451084>, Webinar ID 639-429-907. After registering, you will receive a confirmation email containing the information about joining the webinar.

Date of Intended Adoption: Not sooner than May 12, 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 May 11, 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 April 23, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA began rule making under WSR 20-11-072 on May 20, 2020, to amend WAC 182-526-0005 Purpose and scope, to include chapter 182-70 WAC, All payer health care claims database; and chapter 182-51 WAC, Washington prescription drug pricing transparency program, as chapters that this section applies to. HCA also intended to clarify in WAC 182-526-0005 that rules in chapter 182-526 WAC do not apply to the school benefits board found in chapter 182-32 WAC. During the course of the review, HCA identified additional sections in chapters 182-51 and 182-70 WAC that needed related changes. Consistency is needed between chapters 182-51, 182-70, and 182-526 WAC regarding hearings and appeals. HCA filed an additional CR-101 under WSR 21-01-158 on December 18, 2020, to solicit stakeholder participation for these additional rule sections.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, 43.71C.110; and ESSHB [E2SHB] 1224, chapter 334, Laws of 2019.

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: Jason Crabbe, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-9563; 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.

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. These rule amendments do not impose a disproportionate cost impact on small businesses.

April 5, 2021
Wendy Barcus
Rules Coordinator

OTS-2784.1

AMENDATORY SECTION (Amending WSR 20-19-079, filed 9/15/20, effective 10/16/20)

WAC 182-51-1800 Administrative hearing (formal appeal) right.

~~((1))~~ A reporting entity has a right to an administrative hearing (formal appeal), and any resulting appeals process available under chapters 34.05 RCW and 182-526 WAC, if the authority assesses a final notice of violation and fine(s) against the reporting entity under any section of chapter 43.71C RCW and this chapter. ~~((To the extent that there may be a conflict between the general provisions contained in chapter 182-526 WAC and this chapter, the more specific provisions in this chapter apply.~~

~~(2) A reporting entity may appeal both the assessed violation(s) and the amount of the fine(s) assessed in the final notice of violation and fine(s).~~

~~(3) A reporting entity must submit a request for formal hearing to the authority in writing, in a manner that provides proof of receipt, within twenty-eight calendar days after receipt of the final notice of violation and fine(s) under WAC 182-51-1700.~~

~~(4) Requests should specify:~~

~~(a) The name of the reporting entity requesting the hearing and the reporting entity's, or representative's, mailing address, telephone number, and email address (if available);~~

~~(b) The items, facts, or conclusions in the final notice of violation being contested; and~~

~~(c) The basis for contesting the authority's action, including any mitigating factors upon which the reporting entity relies and the outcome the reporting entity is seeking.~~

~~(5) At the administrative hearing and on appeal, the reporting entity bears the burden of proving by a preponderance of the evidence that it has complied with applicable laws, rules, regulations, and agreements.~~

~~(6) The administrative hearing process is governed by chapters 34.05 RCW and 182-526 WAC.~~

~~(7) The authority does not begin the collection process until a decision in the administrative hearing is issued and all levels of appeal have been exhausted.~~

~~(8) Interest on owed and outstanding fines continues to accrue at the rate of one percent per month or portion of a month, but it is not collected until a decision in the administrative hearing is issued and all levels of appeal have been exhausted.) See WAC 182-526-0203.~~

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2019 c 334. WSR 20-19-079, § 182-51-1800, filed 9/15/20, effective 10/16/20.]

OTS-2785.1

AMENDATORY SECTION (Amending WSR 20-08-059, filed 3/25/20, effective 4/25/20)

WAC 182-70-110 Appeals. ~~((1))~~ A data supplier may request an appeal of a denial of its administrative review conducted in accordance with WAC ~~((182-75-100.~~

~~(2) Request for an appeal must be submitted in writing to the authority within fifteen calendar days after receipt of written notification of denial of its administrative review.~~

~~(3) Within ten business days of receipt of a written notice of appeal, the authority will transmit the request to the office of administrative hearings (OAH).~~

~~(a) **Scheduling.** OAH will assign an administrative law judge (ALJ) to handle the appeal. The ALJ will notify parties of the time when any additional documents or arguments must be submitted. If a party fails to comply with a scheduling letter or established timelines, the ALJ may decline to consider arguments or documents submitted after the scheduled timelines. A status conference in complex cases may be scheduled to provide for the orderly resolution of the case and to narrow issues and arguments for hearing.~~

~~(b) **Hearings.** Hearings may be by telephone or in-person. The ALJ may decide the case without a hearing if legal or factual issues are not in dispute, the appellant does not request a hearing, or the appellant fails to appear at a scheduled hearing or otherwise fails to respond to inquiries. The ALJ will notify the appellant by mail whether a hearing will be held, whether the hearing will be in-person or by telephone, the location of any in-person hearing, and the date and time for any hearing in the case. The date and time for a hearing may be continued at the ALJ's discretion. Other authority employees may attend a hearing, and the ALJ will notify the appellant when other authority employees are attending. The appellant may appear in person or may be represented by an attorney.~~

~~(c) **Decisions.** The decision of the ALJ shall be considered a final decision. Either party or both may file a petition for review of the final decision to superior court. If neither party files an appeal within the time period set by RCW 34.05.542, the decision is conclusive and binding on all parties. The appeal must be filed within thir-~~

ty days from service of the final decision)) 182-70-100. See WAC 182-526-0205.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 43.371.020. WSR 20-08-059, § 182-70-110, filed 3/25/20, effective 4/25/20. WSR 19-24-090, recodified as § 182-70-110, filed 12/3/19, effective 1/1/20. Statutory Authority: Chapter 43.371 RCW. WSR 16-04-068, § 82-75-110, filed 1/29/16, effective 2/29/16.]

AMENDATORY SECTION (Amending WSR 20-08-059, filed 3/25/20, effective 4/25/20)

WAC 182-70-655 Hearing and final order. (~~((1) The director may conduct the hearing or delegate to an individual within the authority or to an administrative law judge pursuant to chapter 34.12 RCW the authority to conduct the hearing and prepare a proposed decision. The WA-APCD program director, on behalf of the authority, shall be the petitioner in the hearing, and the requestor shall be the respondent.~~

~~(2) The WA-APCD program director shall have the burden of proving the basis for the finding of a violation and the penalty as set forth in the notice of violation and recommended penalty.~~

~~(3) The hearing shall be conducted in accordance with the Administrative Procedure Act, chapter 34.05 RCW and to the extent not covered in this chapter, by the uniform procedural rules in chapter 10-08 WAC.~~

~~(4) If the director presides over the hearing, the director shall issue a final written decision that includes findings of fact, conclusions of law, and if appropriate, the penalty. The director shall cause service of the final decision on all parties.~~

~~(5) If the director's designee or an administrative law judge presides over the hearing, she or he shall issue a proposed decision that includes findings of fact, conclusions of law and if appropriate the penalty. The proposed decision shall also include instructions on how to file objections and written arguments or briefs with the director. Objections and written arguments and briefs must be filed within twenty days from the date of receipt of the proposed decision.)) For penalties imposed under WAC 182-70-600, the WA-APCD program director or the director's designee conducts a hearing and prepares a final order in accordance with WAC 182-526-0206.~~

[Statutory Authority: RCW 41.05.021, 41.05.160 and 43.371.020. WSR 20-08-059, § 182-70-655, filed 3/25/20, effective 4/25/20. WSR 19-24-090, recodified as § 182-70-655, filed 12/3/19, effective 1/1/20. Statutory Authority: RCW 43.371.070 (1)(h). WSR 18-15-002, § 82-75-655, filed 7/5/18, effective 8/5/18.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-70-660 Final decision.

OTS-2786.2

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

WAC 182-526-0005 Purpose and scope. (1) This chapter:

(a) Describes the general hearing rules and procedures that apply to:

(i) The resolution of disputes between an appellant and medical services programs established under chapter 74.09 RCW including, but not limited to, managed care in chapters 182-538, 182-538A, and 182-538B WAC, and crisis and noncrisis services in chapter 182-538C WAC; and

(ii) The resolution of disputes between an appellant and the health care authority (HCA) arising from the prescription drug pricing transparency program in chapter 182-51 WAC and the all payer health care claims data base rules in chapter 182-70 WAC.

(b) Supplements the Administrative Procedure Act (APA), chapter 34.05 RCW, and the model rules, chapter 10-08 WAC, adopted by the office of administrative hearings (OAH).

(c) Establishes rules encouraging informal dispute resolution between (~~the health care authority (HCA)~~) HCA, its authorized agents, or an HCA-contracted managed care organization (MCO), and people or entities who disagree with its actions.

(d) Regulates all hearings involving medical services programs established under chapter 74.09 RCW including, but not limited to, managed care in chapters 182-538, 182-538A, and 182-538B WAC, and crisis and noncrisis services in chapter 182-538C WAC, unless specifically excluded by this chapter or program rules.

(2) Nothing in this chapter is intended to affect the constitutional rights of any person or to limit or change additional requirements imposed by statute or other rule. Other laws or rules determine if a hearing right exists, including the APA and program rules or laws.

(3) If there is a conflict between this chapter and specific program rules, the specific program rules prevail. HCA's hearing rules and program rules prevail over the model hearing rules in chapter 10-08 WAC.

(4) The hearing rules in this chapter do not apply to the public employees benefits board or the school employees benefits board programs (see chapters 182-16 and 182-32 WAC).

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-05-066, § 182-526-0005, 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, § 182-526-0005, filed 12/19/12, effective 2/1/13.]

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

WAC 182-526-0195 Prehearing conferences. (1) Unlike a prehearing meeting, a prehearing conference is a formal proceeding conducted on the record by an administrative law judge (ALJ) to address issues and prepare for a hearing.

(a) The ALJ must make an audio record of the prehearing conference.

(b) An ALJ may conduct the prehearing conference in person, by telephone, or in any other manner acceptable to the parties.

(2) All parties must attend the prehearing conference. If the party who requested the hearing does not attend the prehearing conference, the ALJ may enter an order of default and an order dismissing the hearing.

(3) The ALJ may require a prehearing conference. Any party may request a prehearing conference.

(4) The ALJ must grant the first request for a prehearing conference if it is filed with the office of administrative hearings (OAH) at least seven business days before the scheduled hearing date.

(5) When the ALJ grants a party's request for a prehearing conference, the ALJ must continue the previously scheduled hearing when necessary to comply with notice requirements in this section.

(6) The ALJ may grant additional requests for prehearing conferences.

(7) The office of administrative hearings (OAH) must schedule prehearing conferences for all cases which concern:

~~(a) ((The department's division of residential care services under Title XIX of the federal Social Security Act.~~

~~(b-))~~ Provider and vendor overpayment hearings.

~~((e))~~ (b) Estate recovery and predeath liens.

(c) Notice of violation disputes under chapter 182-51 WAC.

(d) Notice of violation disputes under chapter 182-70 WAC.

(8) During a prehearing conference the parties and the ALJ may:

(a) Simplify or clarify the issues to be decided during the hearing;

(b) Agree to the date, time, and place of the hearing;

(c) Identify any accommodation or safety issues;

(d) Agree to postpone the hearing;

(e) Allow the parties to make changes in their own documents, including the notice or the hearing request;

(f) Agree to facts and documents to be entered during the hearing;

(g) Set a deadline to exchange names and phone numbers of witnesses and documents before the hearing;

(h) Schedule additional prehearing conferences;

(i) Resolve the dispute;

(j) Consider granting a stay if authorized by law or program rule; or

(k) Rule on any procedural issues and substantive motions raised by any party.

(9) After the prehearing conference, the ALJ must enter a written order describing:

(a) The actions taken at the prehearing conference;

(b) Any changes to the documents;

(c) A statement of the issue or issues identified for the hearing;

(d) Any agreements reached; and

(e) Any ruling of the ALJ.

(10) OAH must serve the prehearing order on the parties at least fourteen calendar days before the scheduled hearing.

(11) A party may object to the prehearing order by notifying OAH in writing within ten calendar days after the mailing date of the or-

der. The ALJ must issue a ruling on the objection within five days from the date a party files an objection.

(12) If no objection is made to the prehearing order, the order determines how the hearing is conducted, including whether the hearing will be in person or held by telephone conference or other means, unless the ALJ changes the order for good cause.

(13) The ALJ may take further appropriate actions to address other concerns raised by the parties.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-05-066, § 182-526-0195, 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, § 182-526-0195, filed 12/19/12, effective 2/1/13.]

NEW SECTION

WAC 182-526-0203 Administrative reviews requested by a reporting entity to the prescription drug pricing transparency program. (1) (a) A reporting entity as defined in WAC 182-51-0100, seeking administrative review of a fine or other appealable action of the authority taken under chapter 182-51 WAC or chapter 43.71C RCW, must file a written request for administrative review at the address provided in the authority's notice within twenty-eight calendar days after receiving the notice.

(b) When the authority has sent written notice by United States mail, it considers the reporting entity to have received the notice five calendar days after the date of the notification letter, unless actual proof of the date of receipt of the authority's notification letter exists. If such proof exists, the authority uses the actual date of receipt to determine timeliness of the reporting entity's request for administrative review. When the authority has electronically mailed (email) written notice, the date the authority's notification email was sent is considered to be the date of receipt by the reporting entity, irrespective of when the reporting entity reads the email.

(c) The reporting entity's request for administrative review must:

(i) Be signed by a partner, officer, or authorized employee of the reporting entity;

(ii) State the particular issues raised; and

(iii) Include supporting documentation or other information.

(2) After receiving a request for administrative review, the authority either directly schedules the requested administrative hearing or causes the scheduling of the hearing with the office of administrative hearings (OAH). The hearing may be conducted by telephone.

(3) At least five calendar days before the scheduled date of the administrative hearing, the reporting entity must supply to the authority or OAH any additional or supporting documentation or information upon which they intend to rely in presenting its case. In addition, at any time before issuing the initial order, the authority or OAH may request any documentation or information needed to decide the issue raised, and the reporting entity must comply with such a request within five calendar days after it is received. The authority or OAH may extend this period up to fourteen additional calendar days for good cause shown if the reporting entity requests an extension in writing and it is received by the authority or OAH before the initial

five-day period expires. The authority or OAH may dismiss issues that cannot be decided or resolved due to a reporting entity's failure to provide requested documentation or information within the required period.

(4) Within sixty calendar days after conclusion of the hearing conducted as part of the administrative review, the authority or OAH renders an initial order in writing, addressing the issues raised. If the authority or OAH is waiting for additional documentation or information promised by or requested from the reporting entity, the sixty-day period does not begin until the authority or OAH receives the documentation or information or until expiration of the time allowed to provide it. The initial order includes a notice of dismissal of all issues which cannot be decided due to a reporting entity's failure to provide documentation or information promised or requested.

(5) Additional review of a determination.

(a) A reporting entity seeking further review of an initial order issued according to subsection (4) of this section, must file a written application for an adjudicative proceeding signed by one of the individuals authorized by subsection (1) of this section with the authority's board of appeals within twenty-one calendar days after receiving the authority's initial order.

(b) When the authority or OAH has sent the initial order by United States mail, the authority considers the reporting entity to have received the initial order five calendar days after the date of the order, unless proof of the date of receipt of the letter exists. If such proof exists, the authority or OAH uses the actual date of receipt to determine timeliness of the reporting entity's application for an adjudicative proceeding. When the authority or OAH has electronically mailed (email) the initial order, the date of authority's email containing the initial order was sent is considered to be the date of receipt by the reporting entity, irrespective of when the contractor reads the email.

(c) The reporting entity must attach the authority's or OAH's initial order to its application for an adjudicative proceeding. When the authority or OAH delivered the initial order by email, either in the body of the email or as an attachment to the email, the reporting entity must include a copy of the email with the application for an adjudicative proceeding. The application for an adjudicative proceeding must be addressed to the authority's board of appeals. The authority uses the board of appeals date received stamp on the application for an administrative proceeding to determine whether the application is timely. When the application for adjudicative proceeding is filed by fax, the authority uses the date stamped on the application received by fax to determine timeliness.

(6) A review judge employed by the authority's board of appeals conducts a review of any appealed initial order. The scope of any review is generally limited to the issues specifically raised by the reporting entity at the initial hearing and addressed on the merits in the authority's or OAH's initial order. The authority or OAH considers the reporting entity to have waived all issues or claims that could have been raised to challenge the authority's or OAH's action, but which were not previously pursued at the hearing and not addressed in the initial order. The reporting entity must specify its issues in its request for an adjudicative proceeding, or as soon as practicable.

(7) Any party dissatisfied with an order of the board of appeals may file a petition for reconsideration within ten calendar days after the order is served on the party. The petition must state the specific

grounds upon which relief is sought. The review judge may extend the time for seeking reconsideration for good cause upon motion of either party if the extension request is made within ten calendar days after the order was entered. The review judge rules on a petition for reconsideration and may seek additional argument, briefing, testimony, or other evidence as considered necessary. Filing a petition for reconsideration is not a requisite for seeking judicial review; however, if either party files a reconsideration petition, the authority's order is not considered final until the review judge makes a ruling.

(8) The authority's board of appeals assigns a review judge to conduct the review and render the final agency order. A reporting entity dissatisfied with a board of appeals' order may file a petition for judicial review under RCW 34.05.570(3) or other applicable authority.

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NEW SECTION

WAC 182-526-0205 Appeals requested by a data supplier to the Washington all payer health care claims database (WA-APCD). (1) **Appeal.** A data supplier may request an appeal of a denial of its administrative review conducted in accordance with WAC 182-70-100.

(a) Request for an appeal must be submitted in writing to the health care authority (HCA) within fifteen calendar days after receipt of written notification of denial of its administrative review.

(b) An appeal request must contain:

(i) The requestor's name;

(ii) The requestor's mailing address;

(iii) The requestor's telephone number;

(iv) A description of HCA's action being contested;

(v) A brief explanation of why the person or entity disagrees with HCA's action; and

(vi) Any accommodation to help the requestor fully participate in the hearing, if applicable.

(c) Within ten business days of receipt of a written notice of appeal, HCA transmits the request to the office of administrative hearings (OAH).

(2) **Scheduling.**

(a) OAH will assign an administrative law judge (ALJ) to handle the appeal.

(b) The ALJ will notify parties of the time when any additional documents or arguments must be submitted.

(c) If a party fails to comply with a scheduling letter or established timelines, the ALJ may decline to consider arguments or documents submitted after the scheduled timelines.

(d) A status conference in complex cases may be scheduled to provide for the orderly resolution of the case and to narrow issues and arguments for hearing.

(3) **Hearings.**

(a) The hearing must be conducted in accordance with the Administrative Procedure Act, chapter 34.05 RCW, and this chapter. To the extent that there may be a conflict between the general provisions contained in this chapter and this section, the more specific provisions in this section apply.

(b) Hearings may be by telephone or in person.

(c) The ALJ may decide the case without a hearing if legal or factual issues are not in dispute, the appellant does not request a hearing, or the appellant fails to appear at a scheduled hearing or otherwise fails to respond to inquiries.

(d) The ALJ will notify the appellant by mail whether a hearing will be held, whether the hearing will be in person or by telephone, the location of any in-person hearing, and the date and time for any hearing in the case.

(e) The date and time for a hearing may be continued at the ALJ's discretion.

(f) Other authority employees may attend a hearing, and the ALJ notifies the appellant when other authority employees are attending. The appellant may appear in person or may be represented by an attorney.

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NEW SECTION

WAC 182-526-0206 Hearing and final order for penalties imposed under WAC 182-70-600. (1) For penalties imposed under WAC 182-70-600, the Washington all payer health care claims database (WA-APCD) program director or the director's designee conducts a hearing and prepares a final order.

(2) The hearing must be conducted in accordance with this chapter and the Administrative Procedure Act, chapter 34.05 RCW.

(3) The WA-APCD program director, on behalf of the health care authority, must be the petitioner in the hearing, and the requestor must be the respondent.

(4) The WA-APCD program director has the burden of proving the basis for the finding of a violation and the penalty as set forth in the notice of violation and recommended penalty.

(5) The WA-APCD program director or the director's delegate issues a final written order that includes findings of fact, conclusions of law, and if appropriate, the penalty.

(6) If the order finds a violation and assesses monetary penalties, the order must include notice that payment must be made no later than forty-five days after service of the order or the period to appeal has expired, whichever is later.

(7) The WA-APCD program director must cause service of the final order on all parties.

(8) Any party to whom a violation is found may file a petition for review of the final order to superior court.

(9) If an appeal is not filed within the period set by RCW 34.05.542, the WA-APCD program director's order is conclusive and binding on all parties.

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