WSR 23-18-085
PROPOSED RULES
HEALTH CARE AUTHORITY
[Filed September 5, 2023, 3:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-14-106.

Title of Rule and Other Identifying Information: WAC 182-501-0200 Third-party resources.

Hearing Location(s): On October 10, 2023, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_fMyM6MV1SmqpIcKuyrlgYQ. 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: October 11, 2023.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by October 10, 2023, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email Johanna.larson@hca.wa.gov, by September 29, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rule:

(1) Identifies responsible third parties and requires them to respond within 60 days to agency inquiries regarding certain payment claims;

(2) Describes the circumstances that prevent responsible third parties from failing to pay claims, including the lack of prior authorization for the claim under the third-party's rules; and

(3) Includes an exemption to the third-party response requirement and the bar on a third-party's failure to pay claims.

Reasons Supporting Proposal: HCA is making these revisions to align with Sec. 1902 (a)(25)(I) of the Consolidated Appropriations Act of 2022 (CAA, 2022; P.L. 117-103).

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

Rule is necessary because of federal law, CAA, 2022; P.L. 117-103.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1406; Implementation and Enforcement: Kasandra Wilson, P.O. Box 45564, Olympia, WA 98504-5564, 360-725-1351.

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 19.85.061.

Explanation of exemptions: CAA requires states to have laws that bar liable third-party payers from refusing payment for a health care item or service solely on the basis that the item or service did not

receive prior authorization under the third-party payer's rules. CAA also requires that third parties must respond within 60 days of receipt of a state health claim inquiry.

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 remaining rule revisions that are not exempt (such as describing a responsible third-party payer) do not impose any costs on small businesses.

September 5, 2023
Wendy Barcus
Rules Coordinator

OTS-4826.1

AMENDATORY SECTION (Amending WSR 20-15-015, filed 7/6/20, effective 8/6/20)

WAC 182-501-0200 Third-party resources. (1) The medicaid agency requires a provider to seek timely reimbursement from a responsible third party when a client has available third-party resources, except as described under subsections (2) and (3) of this section. Responsible third parties include health insurers and other third parties legally liable for health care items and services received by clients.

(2) The agency pays for medical services and seeks reimbursement from a ((~~liable~~)) responsible third party when the claim is for preventive pediatric services as covered under the early and periodic screening, diagnosis and treatment (EPSDT) program.

(3) The agency pays for medical services and seeks reimbursement from any ((~~liable~~)) responsible third party when both of the following apply:

(a) The provider submits to the agency documentation of billing the third party and the provider has not received payment after ((~~one hundred~~)) 100 days from the date of services; and

(b) The claim is for a covered service provided to a client on whose behalf the office of support enforcement is enforcing a noncustodial parent to pay support. For the purpose of this section, "is enforcing" means the noncustodial parent either:

(i) Is not complying with an existing court order; or

(ii) Received payment directly from the third party and did not pay for the medical services.

(4) Responsible third parties, except those identified in subsection (5) of this section, must:

(a) Respond within 60 days to any agency inquiry regarding a claim for payment for any health care item or service submitted within three years after the date the item or service was provided; and

(b) Not deny a claim submitted by the agency solely based on:

(i) The submission date of the claim;

(ii) The type or format of the claim form;

(iii) Lack of prior authorization under the responsible third-party's rules; or

(iv) Any other requirement as described in RCW 74.09A.030.

(5) The following programs found in Title XVIII of the federal Social Security Act are exempt from subsection (4) of this section:

(a) The original medicare fee-for-service program under parts A and B;

(b) A medicare advantage plan offered by a medicare advantage organization under part C;

(c) A reasonable cost reimbursement plan under section 1876 of the federal Social Security Act;

(d) A health care prepayment plan under section 1833 of the federal Social Security Act; or

(e) A prescription drug plan offered under part D that requires prior authorization for an item or service furnished to a person eligible to receive medical assistance under Title XIX of the federal Social Security Act.

(6) The provider may not bill the agency or the client for a covered service when a third party pays a provider the same amount as or more than the agency rate.

((~~(5)~~)) (7) When the provider receives payment from a third party after receiving reimbursement from the agency, the provider must refund to the agency the amount of the:

(a) Third-party payment when the payment is less than the agency's maximum allowable rate; or

(b) Agency payment when the third-party payment is equal to or more than the agency's maximum allowable rate.

((~~(6)~~)) (8) The agency does not pay for medical services if third-party benefits are available to pay for the client's medical services when the provider bills the agency, except under subsections (2) and (3) of this section.

((~~(7)~~)) (9) The client is liable for charges for covered medical services that would be paid by the third-party payment when the client either:

(a) Receives direct third-party reimbursement for the services; or

(b) Fails to execute legal signatures on insurance forms, billing documents, or other forms necessary to receive insurance payments for services rendered. See WAC 182-503-0540 for assignment of rights.

((~~(8)~~)) (10) The agency considers an adoptive family to be a third-party resource for the medical expenses of the birth ((~~mother~~)) parent and child only when there is a written contract between the adopting family and either the birth ((~~mother~~)) parent, the attorney, the provider, or the adoption service. The contract must specify that the adopting family will pay for the medical care associated with the pregnancy.

((~~(9)~~)) (11) A provider cannot refuse to furnish covered services to a client because of a third-party's potential liability for the services.

((~~(10)~~)) (12) For third-party liability on personal injury litigation claims, the agency or managed care organization (MCO) is responsible for providing medical services under WAC 182-501-0100.

[Statutory Authority: RCW 41.05.021, 41.05.160, 42 U.S.C. Sec. 1902 (a)(25)(E), section 53102 (a)(1) of the Bipartisan Budget Act of 2018 and 42 U.S.C. Sec. 1305 (7)(a). WSR 20-15-015, § 182-501-0200, filed 7/6/20, effective 8/6/20. Statutory Authority: RCW 41.05.021, 41.05.160 and 42 U.S.C. 1396a (a)(25)(E). WSR 19-23-008, § 182-501-0200, filed 11/6/19, effective 12/7/19. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 16-23-021, § 182-501-0200, filed

11/4/16, effective 1/1/17; WSR 15-15-053, § 182-501-0200, filed 7/9/15, effective 8/9/15. WSR 11-14-075, recodified as § 182-501-0200, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090. WSR 10-19-057, § 388-501-0200, filed 9/14/10, effective 10/15/10. Statutory Authority: RCW 74.04.050, 74.08.090. WSR 00-11-141, § 388-501-0200, filed 5/23/00, effective 6/23/00; WSR 00-01-088, § 388-501-0200, filed 12/14/99, effective 1/14/00.]