

WSR 24-01-061

EXPEDITED RULES

HEALTH CARE AUTHORITY

[Filed December 12, 2023, 12:59 p.m.]

Title of Rule and Other Identifying Information: WAC 182-526-0210 Appeals requested by intermediate care facilities for individuals with intellectual disabilities (ICF/IID).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The health care authority (HCA) is amending this rule to correct a typographical error.

Reasons Supporting Proposal: Subsection (1)(b) should read "An ICF/IID cannot appeal:" rather than "An ICF/IID cannot not appeal."

Statutory Authority for Adoption: RCW 41.05.021, 41.06.160.

Statute Being Implemented: RCW 41.05.021, 41.06.160; 42 C.F.R. Sec. 431, Subpart D, and Sec. 498.5.

Rule is not necessitated by federal law, federal or state court decision.

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, 1-844-728-5212.

This notice meets the following criteria to use the expedited adoption process for these rules:

Corrects typographical errors, makes address or name changes, or clarifies language of a rule without changing its effect.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The expedited rule-making process is appropriate because the proposed rule corrects typographical errors.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Rules Coordinator, HCA, P.O. Box 42716, Olympia, WA 98504-2716, phone 360-725-1306, fax 360-586-9272, email arc@hca.wa.gov, AND RECEIVED BY February 20, 2024.

December 12, 2023
Wendy Barcus
Rules Coordinator

OTS-5110.1

AMENDATORY SECTION (Amending WSR 19-18-025, filed 8/28/19, effective 9/28/19)

WAC 182-526-0210 Appeals requested by intermediate care facilities for individuals with intellectual disabilities (ICF/IID). The hearing process described in this section applies to requests for an

appeal made by an intermediate care facility for individuals with intellectual disabilities (ICF/IID), as defined in WAC 388-825-020.

(1) **Right to hearing.** An ICF/IID may request a hearing when it is dissatisfied with the medicaid agency's finding of noncompliance resulting in the termination of medicaid funding and any related provider agreements under 42 C.F.R. Sec. 431.151 through 431.154.

(a) An agency review judge conducts the hearing and enters the agency's final order for cases held under this subsection.

(b) An ICF/IID cannot (~~not~~) appeal:

(i) The choice of sanction or remedy;

(ii) The monitoring remedy;

(iii) The level of noncompliance found, except when a favorable review decision would affect the range of civil money penalty amounts the agency could collect; or

(iv) The decision about when to conduct an initial survey of a prospective provider.

(2) **Notice of adverse action.** The agency gives the ICF/IID a written notice of adverse action that includes:

(a) The basis for the finding of noncompliance that resulted in the agency's decision to terminate medicaid funding and any related provider agreements;

(b) A statement of the deficiencies resulting in the decision;

(c) The effective date of the adverse action; and

(d) The ICF/IID's appeal rights and procedures, including deadlines, for filing a hearing request.

(3) **Request for hearing.** The ICF/IID, its legal representative, or other authorized official must file a written request for a hearing with the agency's board of appeals at P.O. Box 42700, Olympia, Washington, or by facsimile at 360-507-9018 within (~~sixty~~) 60 calendar days of receiving the notice of adverse action.

(4) **Hearing.** If an ICF/IID requests a hearing on the termination of medicaid funding and any related provider agreements, the hearing is completed and the agency issues the final order on the hearing within (~~one hundred twenty~~) 120 calendar days of the effective date of the adverse action.

(a) If the agency is unable to hold the hearing until after the effective date of the adverse action, the agency offers the ICF/IID an informal reconsideration that meets the requirements of subsection (5) of this section.

(b) The informal reconsideration process described in subsection (5) of this section is not the same reconsideration process defined in WAC 182-526-0010 or described in WAC 182-526-0605 through 182-526-0635.

(5) **Informal reconsideration for ICF/IID.** The informal reconsideration includes:

(a) Written notice to the ICF/IID of the agency's findings resulting in the termination of medicaid funding and any related provider agreements;

(b) A reasonable opportunity for the ICF/IID to dispute those findings in writing; and

(c) A written affirmation or reversal of the agency's action.

(6) **Termination of medicaid funding and related provider agreements.**

(a) The medicaid funding and any related provider agreements end on the effective date of the termination, unless:

(i) A hearing is timely requested and not provided by the agency until after the effective date of the termination; and

(ii) The termination is based on a survey agency certification stating that there is no jeopardy to beneficiaries' health and safety.

(b) If medicaid funding extends past the termination date, funding will be available only through the earlier of:

(i) The issuance date of a hearing decision that upholds the agency's action; or

(ii) One hundred twenty calendar days after the effective date of termination, as required by 42 C.F.R. Sec. 442.40.