



# PROPOSED RULE MAKING

## CR-102 (July 2022) (Implements RCW 34.05.320) Do NOT use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: September 05, 2023

TIME: 3:34 PM

WSR 23-18-085

Agency: Health Care Authority

Original Notice

Supplemental Notice to WSR \_\_\_\_\_

Continuance of WSR \_\_\_\_\_

Preproposal Statement of Inquiry was filed as WSR 23-14-106 ; or

Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW \_\_\_\_\_.

Title of rule and other identifying information: (describe subject) 182-501-0200 – Third-party resources

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
October 10, 2023	10:00 AM	The Health Care Authority holds public hearings virtually without a physical meeting place.	To attend the virtual public hearing, you must register in advance:  <a href="https://us02web.zoom.us/webinar/register/WN_fMyM6MV1SmqplcKuyrlgYQ">https://us02web.zoom.us/webinar/register/WN_fMyM6MV1SmqplcKuyrlgYQ</a>  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 (Note: This is **NOT** the effective date)

Submit written comments to:

Name: HCA Rules Coordinator

Address: PO Box 42716, Olympia WA 98504-2716

Email: [arc@hca.wa.gov](mailto:arc@hca.wa.gov)

Fax: 360-586-9727

Other:

By (date) October 10, 2023, by 11:59 PM

Assistance for persons with disabilities:

Contact Johanna Larson

Phone: 360-725-1349

Fax: 360-586-9727

TTY: Telecommunication Relay Services (TRS): 711

Email: [Johanna.larson@hca.wa.gov](mailto:Johanna.larson@hca.wa.gov)

Other:

By (date) 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: The agency 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

Is rule necessary because of a:

Federal Law?

Yes  No

Federal Court Decision?

Yes  No

State Court Decision?

Yes  No

If yes, CITATION: CAA, 2022; P.L. 117-103

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** None

**Type of proponent:**  Private  Public  Governmental

**Name of proponent:** (person or organization) Health Care Authority

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Melinda Froud	PO Box 42716, Olympia, WA 98504-2716	360-725-1406
Implementation:	Kasandra Wilson	PO Box 45564, Olympia, WA 98504-5564	360-725-1351
Enforcement:	Kasandra Wilson	PO Box 45564, Olympia, WA 98504-5564	360-725-1351

**Is a school district fiscal impact statement required under [RCW 28A.305.135](#)?**  Yes  No

If yes, insert statement here:

N/A

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

**Is a cost-benefit analysis required under [RCW 34.05.328](#)?**

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

No: Please explain: RCW 34.05.328 does not apply to Health Care Authority rules unless requested by the Joint Administrative Rules Review Committee or applied voluntarily.

### **Regulatory Fairness Act and Small Business Economic Impact Statement**

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

#### **(1) Identification of exemptions:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570\(2\)](#) because it was adopted by a referendum.

- This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025](#)(3). Check all that apply:
- |   |   |
|---|---|
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(b)<br>(Internal government operations) | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(e)<br>(Dictated by statute)  |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(c)<br>(Incorporation by reference)     | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(f)<br>(Set or adjust fees)   |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(d)<br>(Correct or clarify language)    | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(g)<br>(i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025](#)(4) (does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under RCW [19.85.061](#).

Explanation of how the above exemption(s) applies to the proposed rule: The 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. The CAA also requires that third parties must respond within 60 days of receipt of a state health claim inquiry.

**(2) Scope of exemptions:** *Check one.*

- The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.
- The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):
- The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

**(3) Small business economic impact statement:** *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. The remaining rule revisions that are not exempt (such as describing a responsible third-party payer) do not impose any costs on small businesses.
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

**Date:** September 5, 2023

**Name:** Wendy Barcus

**Title:** HCA Rules Coordinator

**Signature:**



**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.