



# PROPOSED RULE MAKING

**CR-102 (August 2017)**  
**(Implements RCW 34.05.320)**  
Do **NOT** use for expedited rule making

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OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: September 20, 2017

TIME: 8:48 AM

WSR 17-19-107

**Agency:** Health Care Authority, Washington Apple Health

**Original Notice**

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

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

**Preproposal Statement of Inquiry was filed as WSR 17-12-091 ; 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).**

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

**Title of rule and other identifying information:** (describe subject)

WAC 182-526-0070, Filing documents

WAC 182-526-0155, Appellant's representation in the hearing

WAC 182-526-0200, Enrollee appeals of a managed care organization action

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
October 24, 2017	10:00 AM	Health Care Authority Cherry Street Plaza Sue Crystal Conf Room, 106A 626 8 <sup>th</sup> Ave, Olympia WA 98504	Metered public parking is available street side around building. A map is available at: <a href="http://www.hca.wa.gov/documents/directions_to_csp.pdf">www.hca.wa.gov/documents/directions_to_csp.pdf</a> or directions can be obtained by calling: (360) 725-1000

**Date of intended adoption:** Not sooner than October 25, 2017 (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) 589-9727

Other:

By (date) October 24, 2017 at 5:00 PM Close of Business.

**Assistance for persons with disabilities:**

Contact Amber Lougheed

Phone: (360) 725-1349

Fax: (360) 586-9727

TTY: (800) 848-5429 or 711

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

Other:

By (date) October 20, 2017

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The agency is revising these rules to: (1) revise WAC 182-526-0070 to allow for support staff to confirm receipt of filed documents, rather than a judge; and (2) add language to WAC 182-526-0155 that was inadvertently omitted in a previous revision. Federal HIPAA laws stipulate that anyone requesting confidential information must sign an authorization for release of information; and (3) revise WAC 182-526-0200(3) to clarify where the hearing may take place. The Office of the Insurance Commissioner (OIC) was unaware of the changes the agency was making to its managed care rules regarding the independent review (IRO) process. Therefore, at this time, the agency is ensuring the IRO process contained in the managed care rules and in WAC 182-526-0200 is put back to its original state. The agency and OIC have begun a workgroup to discuss future changes.

**Reasons supporting proposal:** See Purpose

**Statutory authority for adoption:** RCW 41.05.021, 41.05.160, chapter 34.05 RCW, RCW 74.09.741

**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:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** N/A

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

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Melinda Froud	PO Box 42716, Olympia WA 98504-2716	360.725.1408
Implementation:	Evelyn Cantrelll	PO Box 45504, Olympia WA 98504-5504	360.725.9970
Enforcement:	Evelyn Cantrelll	PO Box 45504, Olympia WA 98504-5504	360.725.9970

**Is a school district fiscal impact statement required under RCW 28A.305.135?**  Yes  No

If yes, insert statement here:

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 Cost Considerations for a Small Business Economic Impact Statement:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). 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:

- RCW 34.05.310 (4)(b) (Internal government operations)
- RCW 34.05.310 (4)(c) (Incorporation by reference)
- RCW 34.05.310 (4)(d) (Correct or clarify language)
- RCW 34.05.310 (4)(e) (Dictated by statute)
- RCW 34.05.310 (4)(f) (Set or adjust fees)
- RCW 34.05.310 (4)(g) ((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 .

Explanation of exemptions, if necessary:


**COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES**

If 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 analysis showing how costs were calculated.
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert 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:

<b>Date:</b> September 20, 2017	<b>Signature:</b> 
<b>Name:</b> Wendy Barcus	
<b>Title:</b> HCA Rules Coordinator	

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

**WAC 182-526-0070 Filing documents.** (1) Filing is the act of delivering documents to the office of administrative hearings (OAH) or the board of appeals (BOA).

(2) The date of filing is the date documents are received by OAH or BOA.

(3) Filing is complete when the documents are received by OAH or BOA during office hours, 8:00 a.m. to 5:00 p.m. If the documents are received after normal office hours, the filing is effective the next business day.

(4) A party may file documents by delivering them to OAH or BOA by:

- (a) Personal service (e.g., hand delivery);
- (b) First class, registered, or certified mail;
- (c) Fax transmission;
- (d) Commercial delivery service; or
- (e) Legal messenger service.

(5) A party may deliver documents for filing by email only if OAH or BOA staff agreed to accept electronically filed documents. A party must obtain confirmation of receipt of the filing from the ((ALJ)) OAH or ((~~review judge~~)) BOA staff to prove that the documents were successfully filed.

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

**WAC 182-526-0155 Appellant's representation in the hearing.** (1)

An appellant may act as his or her own representative or may choose to have someone represent him or her including, but not limited to, a friend, relative, community advocate, attorney or paralegal.

(2) All parties, including the health care authority (HCA) and their representatives, must provide their name, address, and telephone number to the office of administrative hearings (OAH) and all other parties prior to the hearing.

(3) The administrative law judge (ALJ) may require an appellant's representative to file a written notice of appearance, limited notice of appearance, or other documentation authorizing the representative to appear on behalf of the appellant.

(4) In cases involving confidential information, the representative must file a legally sufficient signed written consent or release of information document with HCA or HCA's authorized agent.

(5) If an appellant is represented by an attorney admitted to practice law in Washington state, the attorney must file a notice of appearance or limited notice of appearance and a notice of withdrawal if the attorney stops representing the party before the hearing process ends.

~~((+5))~~ (6) The following restrictions apply to an appellant's representative:

(a) HCA and HCA's authorized agents do not pay for an appellant's representation.

(b) OAH does not pay for an appellant's representation.

(c) The following ~~((persons))~~ people may not act as an appellant's representative in a hearing under this chapter:

(i) An employee of HCA;

(ii) HCA's authorized agent;

(iii) An employee of the department of social and health services (DSHS);

(iv) An employee of OAH; or

(v) Anyone under eighteen years of age.

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

**WAC 182-526-0200 Enrollee appeals of a managed care organization action.** (1) The hearing process described in this chapter applies to enrollee appeals of a health care authority (HCA)-contracted managed care organization (MCO) action. Where a conflict exists, the requirements in this section prevail.

(2) An MCO enrollee must exhaust all levels of resolution and appeal within the MCO's grievance system prior to requesting a hearing with HCA. See WAC 182-538-110.

(3) If an MCO enrollee does not agree with the MCO's resolution of the enrollee's appeal, the enrollee may request a hearing at the place and address on the notice. The enrollee must request the hearing within ninety calendar days of the date of receipt of the MCO's notice of resolution of the MCO's appeal process.

(a) An enrollee may request continuation of services pending the outcome of a hearing related to the termination, suspension, or reduction of a previously authorized service.

(b) To receive continuation of services pending the outcome of the hearing, the enrollee must request a hearing and request to continue services within ten days of the date of the MCO's notice of the resolution of the appeal. See WAC 182-538-110 for additional requirements related to continuation of services.

(4) The entire appeal and hearing process, including the MCO appeal process, must be completed within ninety calendar days of the date the MCO enrollee filed the appeal with the MCO, not including the number of days the enrollee took to subsequently file for a hearing.

(5) Expedited hearing process.

(a) The office of administrative hearings (OAH) must establish and maintain an expedited hearing process when the enrollee or the enrollee's representative requests an expedited hearing and OAH determines that the time taken for a standard resolution of the claim could seriously jeopardize the enrollee's life or health and ability to attain, maintain, or regain maximum function.

(b) When approving an expedited hearing, OAH must issue a hearing decision as expeditiously as the enrollee's health condition requires, but not later than three business days after receiving the case file and information from the MCO regarding the action and MCO appeal.

(c) When denying an expedited hearing, OAH must give prompt oral notice to the enrollee followed by written notice within two calendar days of the request and change the hearing to the standard time frame.

(6) Parties to the hearing include HCA, the MCO, the enrollee and the enrollee's representative or the representative of a deceased enrollee's estate.

(7) Any party that disagrees with the initial order may request a review by an HCA review judge in accordance with WAC 182-526-0560 through 182-526-0600.

(8) If an enrollee disagrees with the initial order, the enrollee may request review in accordance with subsection (7) of this section, or an independent review (IR) by an independent review organization (IRO) in accordance with RCW 48.43.535. The enrollee must request the IR within twenty-one calendar days of the date of mailing the initial order. A timely submitted request for an IR stays any review requested pursuant to subsection (7) of this section.

(9) Any party that disagrees with the IR decision may request a review by an HCA review judge in accordance with WAC 182-526-0560 through 182-526-0600 within twenty-one calendar days of the date of mailing of the IR decision.

(10) When an initial order or an IR decision is appealed to an HCA review judge, the review judge issues the final order.