



# PROPOSED RULE MAKING

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

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STATE OF WASHINGTON  
FILED

DATE: October 24, 2017  
TIME: 8:17 AM

WSR 17-22-029

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

**Original Notice**

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

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

**Preproposal Statement of Inquiry was filed as WSR 17-18-010 ; 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)

Amends WAC 182-550-2301 – Hospital and medical criteria requirements for bariatric surgery

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
December 5, 2017	10:00 AM	Health Care Authority (HCA) Cherry Street Plaza Bldg; Pear Room 107 626 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 December 6, 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: 360-586-9727

Other:

By (date) December 5, 2017 5:00 PM

**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) December 1, 2017

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The agency has revised the requirements a hospital must meet to perform and be paid for bariatric surgery provided to eligible Apple Health clients. To qualify, a hospital must be accredited by the Metabolic and Bariatric Surgery Accreditation and Quality Improvement Program (MBSAQIP).

**Reasons supporting proposal:** See purpose

**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?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> 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

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> Governmental

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Vance Taylor	PO Box 42716, Olympia WA 98504-2716	360-725-1344
Implementation:	Tonja Nichols	PO Box 42716, Olympia WA 98504-2716	360-725-1658
Enforcement:	Tonja Nichols	PO Box 42716, Olympia WA 98504-2716	360-725-1658

**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 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 19.85.025(4).

Explanation of exemptions, if necessary: This rule does not affect small businesses. The businesses affected by this amendment are hospitals. Hospitals do not meet the definition of a small business.


**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> October 24, 2017	<b>Signature:</b> 
<b>Name:</b> Wendy Barcus	
<b>Title:</b> HCA Rules Coordinator	

**WAC 182-550-2301 Hospital and medical criteria requirements for bariatric surgery.** (1) The medicaid agency pays a hospital for bariatric surgery and bariatric surgery-related services only when the surgery is provided in an inpatient hospital setting and only when:

(a) The client:

(i) Qualifies for bariatric surgery by successfully completing all requirements under WAC 182-531-1600; and

~~((b) The client))~~ (ii) Continues to meet the criteria to qualify for bariatric surgery under WAC 182-531-1600 up to the actual surgery date

~~(c) The hospital providing the bariatric surgery and bariatric surgery related services meets the requirements in this section and other applicable WAC; and~~

~~(d))~~.

(b) The hospital:

(i) Is accredited by the metabolic and bariatric surgery accreditation and quality improvement program (MBSAQIP); and

(ii) Receives prior authorization from the agency before performing a bariatric surgery for a Washington apple health client.

(2) ~~((A hospital must meet the following requirements to be paid for bariatric surgery and bariatric surgery related services provided to an eligible Washington apple health client. The hospital must:~~

~~(a) Be approved by the agency to provide bariatric surgery and bariatric surgery related services and:~~

~~(i) For dates of admission after June 30, 2007, be located in Washington state or approved bordering cities (see WAC 182-501-0175).~~

~~(ii) For dates of admission after June 30, 2007, be located in Washington state, or be an agency designated critical border hospital.~~

~~(b) Have an established bariatric surgery program in operation under which at least one hundred bariatric surgery procedures have been performed. The program must have been in operation for at least five years and be under the direction of an experienced board certified surgeon. In addition, the agency requires the bariatric surgery program to:~~

~~(i) Have a mortality rate of two percent or less;~~

~~(ii) Have a morbidity rate of fifteen percent or less;~~

~~(iii) Document patient follow up for at least five years postsurgery;~~

~~(iv) Have an average loss of at least fifty percent of excess body weight achieved by patients at five years postsurgery; and~~

~~(v) Have a reoperation or revision rate of five percent or less.~~

~~(c) Submit documents to the agency's division of health care services that verify the performance requirements listed in this section.~~

~~(3) The agency waives the program requirements listed in subsection (2)(b) of this section if the hospital participates in a state-wide bariatric surgery quality assurance program such as the surgical Clinical Outcomes Assessment Program (COAP).~~

~~(4)) See WAC 182-531-1600(13) for requirements for surgeons who perform bariatric surgery.~~

~~((5))~~ (3) Authorization does not guarantee payment. Authorization for bariatric surgery and bariatric surgery-related services is valid only if:

- (a) The client is eligible on the date of admission and date of service; and
- (b) The hospital and professional providers meet the criteria in this section and other applicable WAC to perform bariatric surgery or to provide bariatric surgery-related services.