



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: February 01, 2018

TIME: 11:29 AM

WSR 18-04-060

Agency: Health Care Authority

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 17-21-035 ; 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) Chapter 182-04 Public Records

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
March 13, 2018	10:00 AM	Health Care Authority Cherry Street Plaza Sue Crystal Conf Rm 106A 626 8 th Ave, Olympia WA 98504	Metered public parking is available street side around building. A map is available at: www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling: (360) 725-1000

Date of intended adoption: Not sooner than March 14, 2018 (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

Fax: (360) 586-9727

Other:

By (date) March 13, 2018

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

Other:

By (date) March 9, 2018

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

The purpose of these amendments is to streamline Chapter 182-04 WAC and to revise the chapter to conform with Engrossed House Bill 1595 (65th Legislature, 2017, Regular Session.). The proposed rules:

- Clarify the ways the public may make requests and how the agency sends the requested records
- Provide that the agency must identify how specific exemptions cited apply to denials of public records
- Allow the requestor to give factors for waiving or reducing copy costs

- Require that an agency employee is present during records inspections
- Specify denial notices include information about the requestor's right to a review
- Remove current costs for copying public records and state the agency charges for copies under the default fees in RCW 42.56.120
- Require the agency to provide a requestor with copies of records at no charge when access is restricted
- Specify the agency provide an estimate of costs and allow the requestor to limit the number of copies
- Clarify the agency may deny part or all of a record and upon review, may affirm part or all of the denial

As part of its streamlining, the agency repealed several sections because the content of those rules is now addressed in other sections of the proposed rules.

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, Chapter 42.56 RCW

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

- 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:	Catherine Taliaferro	PO Box 42704, Olympia WA 98504-2704	360-725-1730
Enforcement:	Catherine Taliaferro	PO Box 42704, Olympia WA 98504-2704	360-725-1730

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)(e)
(Dictated by statute)

RCW 34.05.310 (4)(c)
(Incorporation by reference)

RCW 34.05.310 (4)(f)
(Set or adjust fees)

RCW 34.05.310 (4)(d)
(Correct or clarify language)

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. These rules do not impose any costs on 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 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: February 1, 2018	Signature: 
Name: Wendy Barcus	
Title: HCA Rules Coordinator	

AMENDATORY SECTION (Amending WSR 10-18-051, filed 8/27/10, effective 9/27/10)

WAC 182-04-010 Purpose. ~~((The purpose of))~~ This chapter ~~((shall be to insure compliance by))~~ provides rules for the Washington state health care authority ~~((HCA) with))~~ (agency) to comply with the provisions of chapter 42.56 RCW ~~((dealing with))~~ for access to public records.

AMENDATORY SECTION (Amending WSR 10-18-051, filed 8/27/10, effective 9/27/10)

WAC 182-04-015 Definitions. The following definitions ~~((shall))~~ apply to this chapter:

(1) ~~(("HCA"))~~ "Agency" means the Washington state health care authority ~~((, created pursuant to chapter 41.05 RCW)).~~

(2) "Public record" ~~((is defined in))~~ - See RCW 42.56.010. ~~((Except as otherwise provided by law, public records include any written or recorded communication containing information relating to the conduct of the HCA or the performance of any governmental or proprietary function prepared, owned, used, or retained by the HCA.))~~

(3) "Writing" ~~((is defined in))~~ - See RCW 42.56.010. ~~((It includes handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.))~~

AMENDATORY SECTION (Amending WSR 10-18-051, filed 8/27/10, effective 9/27/10)

WAC 182-04-020 ~~((Whom should I contact about a))~~ Public records ((request?)) officer. The ~~((HCA))~~ agency's public records officer ~~((is in charge of responding to all records requests made to the HCA. The public records officer is responsible for overseeing))~~ oversees:

(1) Responses to all requests for agency public records;

(2) The release of public records ~~((and coordinating HCA public disclosure)); and~~

(3) The coordination of agency public records staff.

NEW SECTION

WAC 182-04-023 Public records—How to submit. (1) Public records requests should be made in writing. The agency accepts public records requests:

(a) Made orally by telephone or in person; or
(b) Sent by email, fax, mail, hand delivery, or commercial delivery.

(2) A public records request form is available on the agency web site or by contacting the agency's public records officer.

(3) If the agency's form is not used, the public records request should include:

(a) The requestor's name and contact information;
(b) The date of the request;
(c) A detailed description of an identifiable record, as described in RCW 42.56.080(1);
(d) The requestor's preferred format and delivery method for the requested records; and

(e) Any factors the requestor would like the agency to consider when deciding whether not to charge for or reduce the costs to copy and deliver the records.

(4) The agency may ask a person requesting a public record for personal identification when a law allows a record to be disclosed only to a specific person.

(5) The public records officer or designee assists requestors with identifying the public records requested, if necessary.

AMENDATORY SECTION (Amending WSR 10-18-051, filed 8/27/10, effective 9/27/10)

WAC 182-04-025 (~~How will the HCA respond~~) Response to ((my)) public records ((request?)) requests. (1) Except as provided by law, ~~((all)) the agency makes public records ((of the HCA as defined in WAC 182-04-015(2)) will be made)~~ available ~~((upon))~~ following a public records request for inspection ((and)), or copying, or both.

(2) The agency provides a written response within five business days ((after)) of receiving a request for public records.

(a) A business day is 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding Saturday, Sunday, and recognized holidays described in WAC 357-31-005.

(b) The agency treats a request received on a Saturday, Sunday, recognized holiday, or after 5:00 p.m. on any other day as received on the next business day.

(3) When responding to the requestor, the ((HCA)) agency's public ((disclosure)) records officer, or designee ((will)):

(a) Provides the ((record(s)) requested records;
(b) Acknowledges ((your)) the request and gives ((you)) a reasonable estimate of ((how long)) the ((HCA will need)) time needed to provide the records. If the request is not ((clear)) for an identifiable record, the public ((disclosure)) records officer ((may)) or designee asks ((you)) for more information. (See WAC 182-04-027.)((-)) If ((you fail to clarify)) the requestor does not respond to the agency's

request for clarification, the public ((disclosure)) records officer or designee need not respond to ((it)) the public records request and may consider the request closed; or

(c) ((Deny)) Denies all or part of the public records request in writing ((with the reason(s) for the denial (see WAC 182-04-050 and 182-04-053)).

(3) At his or her discretion,)) as required by RCW 42.56.070(1), to include:

(i) The specific exemption authorizing the agency to withhold part or all of the record;

(ii) A brief explanation of how the exemption applies to the records or parts of the records withheld; and

(iii) The right to request agency review of the denial and information about how to make that request.

(4) At the public records ((officer)) officer's discretion, the agency may send the requested records ((to you)) by email, fax, or regular mail. The ((records may be delivered on computer or compact disks, or by use of other methods of transmittal or storage)) agency sends the requested records as hard copies or in an electronic format. The agency works with the requestor to send records in a method and format requested by the requestor that is used by the agency.

AMENDATORY SECTION (Amending WSR 10-18-051, filed 8/27/10, effective 9/27/10)

WAC 182-04-027 ((Why might the HCA need to extend the)) Additional time to respond to a public records request((?)). The ((HCA)) agency may ((need to)) extend the time to respond to a public records request when necessary to:

(1) ((Locate)) Identify and gather the ((information)) records requested;

(2) Notify ((an individual)) a person or organization affected by the request;

(3) Perform a comprehensive review to determine whether all or portions of the ((information requested is)) responsive records are exempt from disclosure ((and whether all or part of the public record requested can be released)); or

(4) Contact ((you)) the requestor to clarify ((the intent, scope or specifies)) part or all of the request. ((If you fail to clarify the request, the HCA may not have to respond to your request.))

AMENDATORY SECTION (Amending WSR 10-18-051, filed 8/27/10, effective 9/27/10)

WAC 182-04-029 ((What records can I request and/or copy?)) Inspection of public records. ((You may inspect or get copies of)) (1) All of the agency's public records are available for inspection and copying unless they are ((exempted)) exempt from disclosure by chapter 42.56, ((19.183 or)) 70.02 RCW, or other applicable law.

(2) People may inspect public records with an agency employee present at the agency's offices between 9:00 a.m. and 12:00 p.m. and

between 1:00 p.m. and 4:00 p.m. during business days as defined in WAC 182-04-025 (2)(a). Records are not available for inspection if the agency is closed during a business day for reasons such as inclement weather or emergencies.

(3) During inspection, public records must:

(a) Not be removed from the agency's offices.

(b) Not be marked, torn, or otherwise damaged.

(c) Be kept as they are filed or in a chronological manner.

(d) Not be taken apart except for copying by an agency employee.

(4) The agency restricts access to file cabinets and other places where public records are kept.

(5) The agency reserves the right to restrict access to public records if the agency determines it is necessary to preserve the integrity of the public records or prevent interference with the agency's essential business functions. This does not limit the agency's duty to provide public records to the requestor. If the agency restricts access to requested public records, the agency promptly provides the requestor with:

(a) Written notice of the restriction, including the reason for restricting access; and

(b) Copies of the restricted records at no charge.

AMENDATORY SECTION (Amending WSR 10-18-051, filed 8/27/10, effective 9/27/10)

WAC 182-04-041 Preserving requested records. ~~If ((a public record request is made at a time when such))~~ the agency receives a public records request when the record exists but is scheduled for destruction in the near future, the public ((disclosure)) records officer ((will)) or designee retains ((possession of)) the record((,)) and ((will)) does not destroy or erase the record until the request is resolved.

AMENDATORY SECTION (Amending WSR 10-18-051, filed 8/27/10, effective 9/27/10)

WAC 182-04-045 Copying costs. (1) ~~((No fee is charged for the inspection of))~~ The agency does not charge a fee to inspect public records.

(2) ~~((The HCA collects the following fees to reimburse the HCA for its actual costs incident to providing copies of public records:~~

~~(a) Fifteen cents per page for black and white photocopies; and~~

~~(b) The cost of postage, if any.~~

~~(3) Copies of some records may be provided electronically or on disk to the requestor at no charge.~~

~~(4) The public disclosure officer is authorized to waive the foregoing costs.)~~ Under RCW 42.56.120 (2)(b), the agency does not calculate all actual costs to copy records as it would be unduly burdensome because:

(i) The agency does not have the resources to conduct a study to determine all its actual copying costs;

(ii) To conduct such a study would interfere with other essential agency functions; and

(iii) Through the 2017 legislative process, the public and requestors commented on and were informed of authorized fees and costs, including those for electronic records, described in RCW 42.56.120 (2)(b) and (c), (3) and (4).

(3) The agency charges for copies of records under the default fees in RCW 42.56.120 (2)(b) and (c).

(4) The agency charges for customized services under RCW 42.56.120(3).

(5) Under RCW 42.56.130, the agency may charge other copy fees authorized by statutes outside of chapter 42.56 RCW.

(6) The agency may enter into a contract, memorandum of understanding, or other agreement with a requestor that provides an alternative fee agreement for copying charges under RCW 42.56.120(4).

(7) Before copying any records, the agency provides the requestor with the estimated copying charge. The requestor may revise the request to limit the number of records copied and the applicable copying charges.

(8) The agency may waive the costs to copy or deliver requested records, including any charges for customized services under RCW 42.56.120(4).

AMENDATORY SECTION (Amending WSR 10-18-051, filed 8/27/10, effective 9/27/10)

WAC 182-04-055 ~~((Will the HCA))~~ **Agency review** ~~((the denial of my))~~ **of a denied request** ~~((?)).~~ (1) If the ((HCA)) agency denies ((your)) all or part of a public records request, ((you may ask the HCA to)) the requestor may ask, in writing, that the agency review the denial((. To request a review, you must make your request in writing)).

~~((Following receipt of a written))~~ (2) After receiving a written request ((for)) to review ((of)) a decision denying all or part of a public records request, the ((disclosure officer will)) agency considers the matter and either affirms or reverses the denial, or affirms part of the denial and reverses the remaining part of it. This ((shall constitute)) decision is the agency's final ((HCA)) action for the purposes of judicial review((, pursuant to)) under RCW 42.56.520.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- | | |
|----------------|---|
| WAC 182-04-035 | When can I inspect or obtain copies of documents? |
| WAC 182-04-040 | How do I make a public record request? |
| WAC 182-04-050 | What happens if the record I requested is exempt from disclosure? |
| WAC 182-04-060 | Protection of public records. |

WAC 182-04-070

Request for inspection of records.