PROPOSED RULE MAKING

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

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DATE: February 01, 2018
TIME: 4:23 PM

WSR 18-04-067

Agency: Health Care Authority

☒ **Original Notice**

☐ **Supplemental Notice to WSR _____**

☐ **Continuance of WSR _____**

☒ **Preproposal Statement of Inquiry was filed as WSR** 17-10-057 **; 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)
WAC 182-502A-0201 Program integrity – Definitions
WAC 182-502A-0301 Program integrity – Authority to conduct program integrity activities
WAC 182-502A-0401 Program integrity activities
WAC 182-502A-0601 Program integrity – Extrapolation
WAC 182-502A-0701 Program integrity activity – Agency outcomes
WAC 182-502A-0801 Program integrity – Dispute resolution process
WAC 182-502A-0901 Program integrity activity – Adjudicative proceedings
New WAC 182-502A-1001 Program integrity activity – Metrics

Hearing location(s):

Date:	**Time:**	**Location:** (be specific)	**Comment:**
March 13, 2018	10:00 AM	Health Care Authority Cherry Street Plaza **Sue Crystal Room 106A** 626 8th 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 agency is amending sections of Chapter 182-502A WAC, Program integrity, to add and update definitions, references, and processes. The agency is adding new WAC 182-502A-1001, Program integrity activity – Metrics, to explain the process of annual reporting of program integrity metrics.

Reasons supporting proposal: Changes were made to comply with new legislative requirements under RCW 74.09.195 and Substitute House Bill (SHB) 1314, for clarification, and for housekeeping purposes. New WAC 182-502A-1001, Program integrity activity - Metrics, is being added to comply with RCW 74.09.195 (2)(b) and SHB 1314, Laws of 2017, Chapter 242, Sec. 1.

Statutory authority for adoption: RCW 41.05.021, 41.05.160; RCW 74.09.195; SHB 1314, Chapter 242, Laws of 2017, 65th Legislature, 2017 Regular Session

Statute being implemented: RCW 41.05.021, 41.05.160; RCW 74.09.195; SHB 1314, Chapter 242, Laws of 2017, 65th Legislature, 2017 Regular Session

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:	Katie Pounds	PO Box 42716, Olympia, WA 98504-2716	360-725-1346
Implementation:	Lisa DeLaVergne	PO Box 45503, Olympia, WA 98504-5503	360-725-1705
Enforcement:	Lisa DeLaVergne	PO Box 45503, Olympia, WA 98504-5503	360-725-1705

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. The majority of the changes being made are being made to comply with HB 1314, Laws of 2017, Chapter 242, and RCW 74.09.195. The other changes are being made for clarity or housekeeping purposes and do not impose more-than-minor 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 15-01-129, filed 12/19/14, effective 1/19/15)

WAC 182-502A-0201 Program integrity—Definitions. The definitions in this section and those found in chapter 182-500 WAC apply throughout this chapter.

Adverse determination means a finding of an overpayment identified in a program integrity activity.

Agency means the Washington state health care authority and includes the agency's designees.

Algorithm means the set of rules applied to claim or encounter data to identify overpayments.

Audit means an examination of claims data, an entity's records, or both, to determine whether the entity has complied with applicable laws, rules, regulations, and agreements.

Audit, on-site means an audit conducted partially at an entity's place of business.

Audit, self means an audit conducted by the entity and reviewed by the agency.

Contractor ((~~includes regional support networks (RSNs) as defined in WAC 182-500-0095,~~)) is any person contracted by the agency to oversee how health benefits are provided or to administer health benefits to clients on the agency's behalf. A contractor includes, but is not limited to:

• A behavioral health organization (BHO) as defined in WAC 182-500-0015;

• A behavioral health administrative service organization (BH-ASO) as defined in WAC 182-538C-050;

• A managed care organization((~~s~~)) (MCO((~~s~~))) as defined in WAC 182-538-050((~~, and any other organization that oversees how health benefits are provided to clients on the agency's behalf~~)); or

• An accountable community of health.

Credible allegation of fraud means the agency has investigated an allegation of fraud and concluded that the existence of fraud is more probable than not.

Data mining means using software to detect patterns or aberrancies in a data set.

Designee means a person the agency has designated to perform program integrity activities on its behalf.

Educational intervention means agency-provided education to an entity prior to or following an agency-initiated program integrity activity that has identified an adverse determination. Educational intervention includes, but is not limited to, any notice of adverse determinations issued by the agency or any agency training that has failed to correct the level of payment error.

Encounter includes any service provided by a federally qualified health center, rural health clinic, or tribe, which is paid an enhanced rate; and any service provided to a Washington apple health client who is covered by an MCO or other contractor, and reported to the agency.

Entity includes current and former contractors, providers, and their subcontractors.

Extrapolation means a method of estimating an unknown value by projecting the results of a sample to the universe from which the sample was drawn.

Fraud means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to oneself or some other person. This includes any act that constitutes fraud under applicable federal or state law. See 42 C.F.R. 455.2.

Improper payment means any payment by the agency that was more than or less than the sum to which the payee was legally entitled.

Metrics mean the quantifiable measures used to track and assess the status of program integrity activities and entity performance. Metrics include, but are not limited to:

- Adverse determinations;
- Identified improper payments;
- Cost avoidance;
- Payments; and
- Recoveries.

Net payment error rate means the calculated percentage of the improper payment amount identified in the sample of claims for the audit period divided by the total payment amount sampled claims for the audit period.

Overpayment see RCW 41.05A.010, including any subsequent amendments.

Payee includes providers who are reimbursed by agency-contracted managed care organizations.

Person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, public corporation, or any other legal or commercial entity.

Program integrity activities means those activities conducted by the ((~~agency's office of program integrity or its~~)) agency or the agency's designees to determine compliance with ((~~any~~)) applicable law<u>s</u>, rule<u>s</u>, ((~~or~~)) regulations, and agreement<u>s</u>.

Program integrity compliance plan means a document issued by the agency outlining the importance of ethical behavior on the part of the agency's contracted entities, as well as identified monitoring, auditing, and educational obligations an entity must comply with to remain an agency-contracted entity.

Record means any document or electronically stored information including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations, stored in any medium from which information can be obtained either directly or, if necessary, after translation by the entity into a reasonably usable form.

Risk assessment means to identify potential risk of fraud, waste and abuse, and improper payments within all Washington apple health programs.

Sustained high level of payment error means the net payment error rate is equal to or exceeds five percent for the audit period.

Universe means a defined population of claims or encounters or both.

AMENDATORY SECTION (Amending WSR 15-01-129, filed 12/19/14, effective 1/19/15)

WAC 182-502A-0301 Program integrity—Authority to conduct program integrity activities. The medicaid agency may conduct program integrity activities and designate agents to do so on its behalf, on all Title XIX, Title XXI, and state-only-funded expenditures. See 42 C.F.R. 431, 433, 438, 447, 455, ((~~and~~)) 456, 457, 495, and 1001; 45 C.F.R. 92; 42 U.S.C. 1396a; and chapters 41.05, 41.05A, and 74.09 RCW.

AMENDATORY SECTION (Amending WSR 15-01-129, filed 12/19/14, effective 1/19/15)

WAC 182-502A-0401 Program integrity activities. (1) **Form.** Program integrity activities include:

(a) Conducting audits;

(b) Conducting reviews;

(c) Conducting investigations;

(d) Initiating and reviewing entity self-audits under WAC 182-502A-0501;

(e) Applying algorithms to claim or encounter data;

(f) Conducting ((~~unannounced~~)) on-site inspections of entity locations (see subsection (4) of this section); and

(g) Verifying entity compliance with applicable laws, rules, regulations, and agreements.

(2) **Location.** Program integrity activities may occur:

(a) On the premises of the medicaid agency;

(b) On the premises of the entity.

(3) **Timing.** The agency may commence program integrity activities concerning any current or former agency-contracted entity or agent thereof at any time up to six years after the date of service.

(4) **Notice.**

(a) The agency provides a thirty-calendar-days' notice to entities prior to an on-site visit, except in those instances identified in (c) of this subsection.

(b) Hospitals are entitled to notice as described in RCW 70.41.045(4).

(c) The agency is not required to give notice of an on-site visit if evidence exists of danger to public health and safety or fraudulent activities.

(5) **Scope.** The agency determines the scope of a program integrity activity.

(6) **Selecting information to evaluate.**

(a) The agency may evaluate any information relevant to validating that the payee received only those funds to which it is legally entitled. In this chapter, "relevant" has a meaning identical to Federal Rule of Evidence 401.

(b) The agency may select information to evaluate by:

(i) Conducting a risk assessment of claim or encounter data;

(ii) Applying algorithms;

((~~(ii)~~)) (iii) Data mining;

((~~(iii)~~)) (iv) Claim-by-claim review;

((~~(iv)~~)) (v) Encounter-by-encounter review;

((~~(v)~~)) (vi) Stratified random sampling;

((~~(vi)~~)) (vii) Nonstratified random sampling; or

((~~(vii)~~)) (viii) Applying any other method, or combination of methods, designed to identify relevant information.

((~~(6)~~)) (7) **Collecting records to evaluate.** The entity must submit a copy of all records requested by the agency.

(a) The entity must submit requested records to the agency within the time frame stated in the request.

(b) If an entity fails to timely comply with the request, the agency may:

(i) Deny the entity's claim under a prepay review process;

(ii) Issue a draft audit report or preliminary review notice; or

(iii) Issue a final audit report or notice of improper payment.

(c) An entity that fails to timely comply with a request under (a) of this subsection has no right to contest at an administrative hearing an agency action taken under (b)(i) of this subsection.

(d) The entity must submit records electronically, or by facsimile, unless the agency has given the entity written permission to submit the records in hard copy.

(e) Once a program integrity activity has commenced, the entity must retain all original records and supportive materials until the program integrity activity is completed and all issues resolved, even if the retention period ((~~of retention~~)) for those records and materials extends beyond ((~~the required six-year period~~)) the period otherwise required by law.

((~~(7)~~)) (8) **Evaluating information.**

(a) The agency may evaluate relevant information by applying any method or combination of methods reasonably calculated to determine whether an entity has complied with an applicable law, regulation, or agreement.

(b) ((~~Upon request,~~)) A health care provider's bill for services, appointment books, accounting records, or other similar documents alone do not qualify as appropriate documentation of services rendered.

(c) The agency provides the entity ((~~is entitled to~~)) a description of the method or combination of methods used by the agency under subsection ((~~(5)~~)) (6) of this section.

((~~(8)~~)) (9) **Nonbilled services.** Nonbilled services include any item, drug, code, or payment group that a provider does not submit on the provider's claim to the agency or contractor. When calculating improper payments, the agency does not include nonbilled services in its calculations.

((~~(9)~~)) (10) **Paid-at-zero services.** The agency considers paid-at-zero services or supplies only when conducting program integrity activities involving payment groups or encounters.

(11) **Conducting on-site audits.** The agency may conduct on-site audits at any entity location.

(a) During an on-site audit, the agency may create a copy of an entity's records that are potentially relevant to the audit.

(b) Failure to grant the agency access to the premises constitutes failure to comply with a program integrity activity.

((~~(10)~~)) (12) **Conducting interviews.** The agency may interview any person it reasonably believes has relevant information under subsection ((~~(5)~~)) (6) of this section. Interviews may consist of one or more sessions.

((~~(11)~~)) (13) **Costs.** The agency does not reimburse the costs an entity incurs complying with program integrity activities.

((~~(12)~~)) (14) **Conducting site visits.** The agency may conduct ((~~unannounced~~)) on-site inspections of any entity location to determine whether the entity is complying with all applicable laws, rules, regulations, and agreements. See subsection (4) of this section.

AMENDATORY SECTION (Amending WSR 15-01-129, filed 12/19/14, effective 1/19/15)

WAC 182-502A-0601 Program integrity—Extrapolation. (1) To determine an improper payment from a ((~~probability~~)) sample, the medicaid agency may extrapolate to the universe from which the ((~~probability~~)) sample was drawn:

(a) If the audit identifies a sustained high level of payment error involving the provider; or

(b) When the agency has documented educational intervention to the provider and the education has failed to correct the provider's level of payment error.

(2) If during the course of the audit, an entity adjusts or rebills a claim or encounter that is part of the audit sample or universe, the original claim or encounter amount remains in the audit sample or universe.

(3) When the agency uses the results of an audit sample to extrapolate the amount to be recovered, the ((~~entity is entitled to~~)) agency provides the entity with the following information ((~~upon request~~)):

(a) The sample size.

(b) The method used to select the sample.

(c) The universe from which the sample was drawn.

(d) Any formulas or calculations used to determine the amount of the improper payment.

AMENDATORY SECTION (Amending WSR 15-01-129, filed 12/19/14, effective 1/19/15)

WAC 182-502A-0701 Program integrity activity—Agency outcomes. (1) Following the medicaid agency's evaluation of an entity's records, claims, encounter data, or payments, the agency may do any combination of the following:

(a) Deny a claim.

(b) Adjust or recover an improperly paid claim.

(c) Instruct the entity to submit:

(i) Additional documentation.

(ii) A claim adjustment or a new claim. The entity must submit a claim adjustment or a new claim within sixty calendar days from the date of the agency's instruction or the agency will deny the claim adjustment or new claim ((~~will be denied~~)). An entity has no right to an adjudicative hearing for denial under this subsection.

(d) Request a refund of an improper payment to the agency by check.

(e) Refer an overpayment to the office of financial recovery for collection.

(f) Issue a draft audit report or preliminary review notice that lists preliminary findings and alleged improper payments, which the entity may dispute under WAC 182-502A-0801.

(i) If an entity agrees with the preliminary findings and alleged improper payments before the deadline noted in the report or notice, the entity must notify the agency in writing. The agency ((~~will~~)) then issues a final audit report or notice of improper payment.

(ii) If an entity does not respond by the deadline noted in the report or notice, the agency ((~~will~~)) issues a final audit report or notice of improper payment, unless the agency extends the deadline.

(g) Issue a final audit report, overpayment notice, or notice of improper payment, which the entity may appeal under WAC 182-502A-0901.

(i) The final audit report, overpayment notice, or notice of improper payment includes:

(A) The asserted improper payment amount;

(B) The reason for an adverse determination;

(C) The specific criteria and citation of legal authority used to make the adverse determination;

(D) An explanation of the entity's appeal rights;

(E) The appropriate procedure to submit a claims adjustment, if applicable; and

(F) One or more of the following:

(I) Directives;

(II) Educational intervention; or

(III) A program integrity compliance plan.

(ii) Upon request, the agency will allow an entity with an adverse determination the option of repaying the amount owed according to a negotiated repayment plan of up to twelve months. Interest may be calculated and charged on the remaining balance each month.

(h) Recover interest under RCW 41.05A.220.

(i) Impose civil penalties under RCW 74.09.210.

(j) Refer the entity to appropriate licensing authorities for disciplinary action.

(k) Refer the entity to the medical dental advisory committee for termination of the contract or core provider agreement.

(l) Determine it has sufficient evidence to make a credible allegation of fraud. The agency will then:

(i) Refer the case to the medicaid fraud control unit and any other appropriate prosecuting authority for further action; and

(ii) Suspend some or all Washington apple health payments to the entity unless the agency determines there is good cause not to suspend payments under 42 C.F.R. 455.23.

(2) The agency may assess an overpayment and terminate the core provider agreement if an entity fails to retain adequate documentation for services billed to the agency.

(3) At any time during a program integrity activity, the agency may issue a final audit report or a notice of improper payment if the entity:

(a) Stops doing business with the agency;

(b) Transfers control of the business;

(c) Makes a suspicious asset transfer;

(d) Files for bankruptcy; or

(e) Fails to comply with program integrity activities.

((~~(3)~~)) (4) The entity must repay any overpayment identified by the agency within sixty calendar days of being notified of the overpayment, except when a repayment plan is negotiated with the agency under subsection (1)(g)(ii) of this section.

AMENDATORY SECTION (Amending WSR 15-01-129, filed 12/19/14, effective 1/19/15)

WAC 182-502A-0801 Program integrity—Dispute resolution process. (1) An entity may ((~~object to~~)) dispute a draft audit report or preliminary review notice. The agency must receive any dispute within thirty calendar days of the date the entity received the draft audit report or preliminary review notice. The ((~~objection~~)) dispute must be in writing and include the following:

(a) ((~~Be in writing;~~

~~(b) State each objection and identify why the entity thinks the finding is incorrect;~~

~~(c) Present supporting evidence;~~

~~(d) State the relief sought; and~~

~~(e) Be received by the agency within thirty calendar days of the date the entity received the draft audit report or preliminary review notice~~)) The supporting evidence for each disputed adverse determination; and

(b) The relief sought for each disputed adverse determination.

(2) The ((~~objection~~)) dispute may include a request for a dispute resolution conference (DRC).

(a) If the agency grants the entity's request for a DRC, the DRC must occur within sixty calendar days of the date the entity received the agency's written acceptance of the request for a DRC.

(b) At least five business days before the DRC, the entity must notify the agency of who will attend the DRC on the entity's behalf.

(3) Following the timely submission of a written ((~~objection~~)) dispute under subsection (1) of this section and completion of any DRC, the agency will address in writing each written ((~~objection~~)) dispute raised by the entity.

(4) The agency may terminate the dispute resolution process and issue a final audit report or notice of improper payment if the entity fails to submit a timely ((~~object~~)) dispute or comply with the requirements under subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 15-01-129, filed 12/19/14, effective 1/19/15)

WAC 182-502A-0901 Program integrity activity—Adjudicative proceedings. (1) If an entity objects to any report or notice assessing an overpayment, the entity may request an adjudicative proceeding by following the procedure set out in RCW 41.05A.170.

(2) At the adjudicative proceeding, the entity bears the burden of proving by a preponderance of the evidence that it has complied with applicable laws, rules, regulations, and agreements.

(3) The adjudicative proceeding is governed by chapter 34.05 RCW and chapter 182-526 WAC.

(4) The agency will not recoup overpayments until a decision in the adjudicative proceeding is issued and all appeals, if any, have been exhausted.

(5) Interest on overpayments continues to accrue, but it is not collected until a decision in the adjudicative proceeding is issued and all appeals, if any, have been exhausted. See RCW 74.09.220.

NEW SECTION

WAC 182-502A-1001 Program integrity activity—Metrics. Under RCW 74.09.195 (2)(b), the medicaid agency will, on an annual basis:

(1) Compile metrics of program integrity activities conducted by the agency and its entities; and

(2) Publish the metrics on the agency's web site.