PROPOSED RULE MAKING

CR-102 (December 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: August 19, 2019
TIME: 11:09 AM

WSR 19-17-056

Agency: Health Care Authority

☒ **Original Notice**

☐ **Supplemental Notice to WSR _____**

☐ **Continuance of WSR _____**

☒ **Preproposal Statement of Inquiry was filed as WSR** 18-23-082 **; 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 182-502-0016 Continuing requirements
WAC 182-502-0017 Employee education about false claims recovery (NEW SECTION)

Hearing location(s):

Date:	**Time:**	**Location:** (be specific)	**Comment:**
September 24, 2019	10:00 AM	Health Care Authority Cherry Street Plaza **Sue Crystal Conf Rm 106A** 626 8th Ave, Olympia WA 98504	Metered public parking is available street side around building. A map is available at: https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf or directions can be obtained by calling: (360) 725-1000

Date of intended adoption: Not sooner than September 25, 2019 (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) September 24, 2019

Assistance for persons with disabilities:
Contact Amber Lougheed
Phone: (360) 725-1349
Fax: (360) 586-9727
TTY: Telecommunication Relay Services (TRS): 711
Email: amber.lougheed@hca.wa.gov
Other:
By (date) September 13, 2019

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The agency is updating this section to provide notice to providers and support enforcement of compliance with state and federal requirements related to the operations of entities receiving more than $5 million in Medicaid payments annually, including but not limited to such entities providing information about the False Claims Act and establishing written policies for employees.

Reasons supporting proposal: See Purpose.

Statutory authority for adoption: RCW 41.05.021, 41.05.160, 42 USC Sec. 1396(a)(68)

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:	Michael Williams	PO Box 42716, Olympia WA 98504-2716	(360) 725-1346
Implementation:	Greg Sandoz	PO Box 45502, Olympia WA 98504-2716	(360) 725-1624
Enforcement:	Greg Sandoz	PO Box 45502, Olympia WA 98504-2716	(360 725-1624

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. This rulemaking does not impose significant costs or requirements on providers.

☐ 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: August 19, 2019	**Signature:** 
Name: Wendy Barcus	
Title: HCA Rules Coordinator	

AMENDATORY SECTION (Amending WSR 15-10-003, filed 4/22/15, effective 5/23/15)

WAC 182-502-0016 Continuing requirements. (1) To continue to provide services for eligible clients and be paid for those services, a provider must:

(a) Provide all services without discriminating on the grounds of race, creed, color, age, sex, sexual orientation, religion, national origin, marital status, the presence of any sensory, mental or physical handicap, or the use of a trained dog guide or service animal by a person with a disability;

(b) Provide all services according to federal and state laws and rules, medicaid agency billing instructions, ((~~numbered memoranda~~)) provider alerts issued by the agency, and other written directives from the agency;

(c) Inform the agency of any changes to the provider's application or contract((~~,~~)) including, but not limited to, changes in:

(i) Ownership (see WAC 182-502-0018);

(ii) Address or telephone number;

(iii) Professional practicing under the billing provider number; or

(iv) Business name.

(d) Retain a current professional state license, registration, certification ((~~and~~)) or applicable business license for the service being provided, and update the agency of all changes;

(e) Inform the agency in writing within seven calendar days of changes applicable to the provider's clinical privileges;

(f) Inform the agency in writing within seven business days of receiving any informal or formal disciplinary order, disciplinary decision, disciplinary action or other action(s)((~~,~~)) including, but not limited to, restrictions, limitations, conditions and suspensions resulting from the practitioner's acts, omissions, or conduct against the provider's license, registration, or certification in any state;

(g) Screen employees and contractors with whom they do business prior to hiring or contracting, and on a monthly ongoing basis thereafter, to assure that employees and contractors are not excluded from receiving federal funds as required by 42 U.S.C. 1320a-7 and 42 U.S.C. 1320c-5;

(h) Report immediately to the agency any information discovered regarding an employee's or contractor's exclusion from receiving federal funds in accordance with 42 U.S.C. 1320a-7 and 42 U.S.C. 1320c-5. See WAC 182-502-0010 (2)(j) for information on the agency's screening process;

(i) Pass any portion of the agency's screening process as specified in WAC 182-502-0010 (2)(j) when the agency requires such information to reassess a provider;

(j) Maintain professional and general liability coverage to the extent the provider is not covered:

(i) Under agency, center, or facility professional and general liability coverage; or

(ii) By the Federal Tort Claims Act, including related rules and regulations;

(k) Not surrender, voluntarily or involuntarily, ((~~his or her~~)) the provider's professional state license, registration, or certification in any state while under investigation by that state or due to

findings by that state resulting from the practitioner's acts, omissions, or conduct;

(l) Furnish documentation or other assurances as determined by the agency in cases where a provider has an alcohol or chemical dependency problem, to adequately safeguard the health and safety of medical assistance clients that the provider:

(i) Is complying with all conditions, limitations, or restrictions to the provider's practice both public and private; and

(ii) Is receiving treatment adequate to ensure that the dependency problem will not affect the quality of the provider's practice; and

(m) Submit to a revalidation process at least every five years. This process includes, but is not limited to:

(i) Updating provider information including, but not limited to, disclosures;

(ii) Submitting forms as required by the agency including, but not limited to, a new core provider agreement; and

(iii) Passing the agency's screening process as specified in WAC 182-502-0010 (2)(j).

(n) Comply with the employee education requirements regarding the federal and the state false claims recovery laws, the rights and protections afforded to whistleblowers, and related provisions in Section 1902 of the Social Security Act (42 U.S.C. 1396a(68)) and chapter 74.66 RCW when applicable. See WAC 182-502-0017 for information regarding the agency's requirements for employee education about false claims recovery.

(2) A provider may contact the agency with questions regarding its programs. However, the agency's response is based solely on the information provided to the agency's representative at the time of inquiry, and in no way exempts a provider from following the laws and rules that govern the agency's programs.

(3) The agency may refer the provider to the appropriate state health professions quality assurance commission.

NEW SECTION

WAC 182-502-0017 Employee education about false claims recovery. (1) The medicaid agency (agency) requires any entity (including providers) that makes or receives medical assistance payments from the agency or the agency designee of at least $5,000,000 annually under the state plan to meet the requirements of Section 1902(a)(68) of the Social Security Act in order to receive payments.

(2) **Entity policies and procedures.** Entities must adopt and disseminate policies and procedures for their employees, contractors, and agents regarding federal and state false claims and whistleblower protection laws.

(a) Written policies and procedures may be in paper or electronic form, but must be readily available to all employees, contractors, and agents.

(b) If the entity has an employee handbook, it must include a specific discussion of the laws described in written policies regarding the rights of employees to be protected as whistleblowers, and a specific discussion of the entity's policies and procedures for detecting and preventing fraud, waste, and abuse.

(3) **Entity.** An "entity" may include, but is not limited to, individual providers, a governmental agency, organization, unit, corporation, partnership, or other business arrangement irrespective of the form of business structure by which it exists or whether for-profit or not-for-profit.

(a) An organization may have multiple subsidiaries, locations, federal employer identification numbers (FEIN), or provider numbers and still be combined for the purposes of meeting the definition of an entity.

(b) Whether subsidiaries would be aggregated or viewed as separate entities depends on the corporate structure and assessment of the largest separate organizational unit that furnishes medicaid health care items or services.

(c) The agency and its designee administering the medicaid program, or any agent performing an administrative function, are not considered entities.

(4) **Payments received.** For any entity that receives medical assistance payments under the state plan of at least $5,000,000 annually, the total amount includes:

(a) All payments received by an entity who furnishes items or services at one or more location(s);

(b) All payments received by an entity who furnishes items or services under one or more contractual or other payment arrangement(s);

(c) Only the amounts received from the agency or the agency designee. The amounts paid by a managed care organization (MCO) to the entity are only counted against the MCO, not the entity, when calculating the $5,000,000 threshold; and

(d) Only payments received from Washington state. Payments from multiple states are not aggregated to reach the $5,000,000 annual threshold.

(5)(a) **Annual monitoring.** At the conclusion of each federal fiscal year, the agency identifies who qualifies as an entity subject to the requirements in Section 1902(a)(68) of the Social Security Act.

(b) If the agency determines that an entity is subject to and must comply with Section 1902(a)(68) of the act:

(i) The agency provides written notice to the entity that it must comply;

(ii) The entity must submit an attestation to the agency under penalty of perjury to verify the entity has adopted and disseminated compliant written policies as required; and

(iii) The agency may request copies of the written policies and proof of dissemination to verify compliance with the requirements.

(c) If the agency does not receive the required documentation by the due date, the agency sends a warning to the entity to become compliant by a specified deadline.

(d) If the entity remains noncompliant after the deadline, the agency ceases medical assistance payments until the entity is compliant.