



# 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: December 27, 2019

TIME: 1:09 PM

WSR 20-02-078

Agency: Health Care Authority

Original Notice

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

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

Preproposal Statement of Inquiry was filed as WSR 19-22-071 ; 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 182-530-4050 Drug use and claims review

### Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
February 4, 2020	10:00 AM	Health Care Authority Cherry Street Plaza <b>Sue Crystal Room 106A</b> 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="https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf">https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf</a> or directions can be obtained by calling: (360) 725-1000

Date of intended adoption: Not sooner than February 5, 2020 (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) February 4, 2020

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

Other:

By (date) January 24, 2020

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The agency is revising this rule to comply with the requirements of section 1004 of the Support for Patients and Communities Act under 42 U.S.C. 1396a(a) by more accurately detailing the drug use review (DUR) activities to include reference to prior authorization requirements adding subsection (1)(a)(iv) and (2)(c) and include the activities of prescribing practitioners in addition to dispensing pharmacies in subsection (2) and (2)(b). The agency is also revising subsection (1)(b) to update language in accordance with the Support Act including prescribing billing practices that indicate abuse or excessive utilization.

**Reasons supporting proposal:** See purpose

**Statutory authority for adoption:** RCW 41.05.021, 41.05.160, H.R. 6, Section 1004, 42 U.S.C. 1396a(a) and 42 U.S.C. 1396r-8(g).

**Statute being implemented:** RCW 41.05.021, 41.05.160, H.R. 6, Section 1004, 42 U.S.C. 1396a(a) and 42 U.S.C. 1396r-8(g).

**Is rule necessary because of a:**

Federal Law?	<input checked="" type="checkbox"/> Yes	<input 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:	Valerie Freudenstein	PO Box 42716, Olympia WA 98504-2716	360-725-1344
Implementation:	Charles Agte	PO Box 45502, Olympia, WA 98504-5502	360-725-1301
Enforcement:	Charles Agte	PO Box 45502, Olympia, WA 98504-5502	360-725-1301

**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:

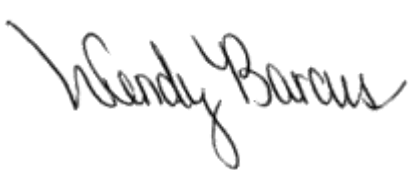
**COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES**

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 proposed rule does 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:

<b>Date:</b> December 27, 2019	<b>Signature:</b> 
<b>Name:</b> Wendy Barcus	
<b>Title:</b> HCA Rules Coordinator	

**WAC 182-530-4050 Drug use and claims review.** (1) The agency's drug use review (DUR) consists of:

(a) A prospective drug use review (Pro-DUR) that requires all pharmacy providers to:

(i) Obtain patient histories of allergies, idiosyncrasies, or chronic condition or conditions which may relate to drug utilization;

(ii) Screen for potential drug therapy problems; ~~((and))~~

(iii) Counsel the patient in accordance with existing state pharmacy laws and federal regulations; and

(iv) Obtain authorization prior to dispensing when required by the agency or an agency designee.

(b) A retrospective drug use review (Retro-DUR), in which the agency provides for the ongoing periodic examination of claims data and other records in order to identify patterns of fraud, abuse, gross overuse, ~~((or))~~ excessive utilization, inappropriate or medically unnecessary care, or prescribing billing practices that indicate abuse or excessive utilization among physicians, pharmacists, and individuals receiving benefits.

(2) The agency reviews a periodic sampling of claims to determine if drugs are appropriately ordered, prescribed, administered, dispensed, and billed. If a review of the sample finds that a provider is inappropriately ordering, prescribing, administering, dispensing, or billing for drugs, the agency may implement corrective action that includes, but is not limited to:

(a) Educating the provider regarding the problem practice or practices;

(b) Requiring the provider to maintain specific documentation in addition to the normal documentation requirements regarding the provider's ordering, prescribing, administering, dispensing, or billing ~~((actions))~~ practices;

(c) Applying additional provider-specific requirements for obtaining authorization prior to ordering, prescribing, administering, dispensing, or billing for drugs;

(d) Recouping the payment for the drug or drugs; or

~~((d))~~ (e) Terminating the provider's core provider agreement (CPA).