



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: April 14, 2020

TIME: 11:54 AM

WSR 20-09-080

Agency: Health Care Authority

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR

Preproposal Statement of Inquiry was filed as WSR 20-05-055 ; 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 182-501-0200 Third-party resources.

Hearing location(s):

| Date: | Time: | Location: (be specific) | Comment: |
|--------------|----------|--|--|
| May 26, 2020 | 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: 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 May 27, 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

Fax: (360) 586-9727

Other:

By (date) May 26, 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

Other:

By (date) May 15, 2020

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The agency is amending this section to implement requirements in the Bipartisan Budget Act of 2018, which requires state Medicaid agencies to use cost-avoidance on labor, delivery, and postpartum care claims. The Bipartisan Budget Act of 2018 also delayed the implementation of a provision in the Bipartisan Budget Act of 2013 that allowed payment up to 90 days for claims associated with medical support enforcement, rather than 30 days under the previous law. The agency is revising this section to implement this provision, now amended to 100 days, rather than 90, by the Medicaid Services Investment and Accountability Act of 2019

Reasons supporting proposal: See purpose.

Statutory authority for adoption: RCW 41.05.021, 41.05.160, 42 USC Sec. 1902(a)(25)(E) of the Social Security Act and section 53102(a)(1) of the Bipartisan Budget Act of 2018; 42 USC Sec.1305(7)(a)

Statute being implemented: RCW 41.05.021, 41.05.160

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: Section 53102(a)(1) of the Bipartisan Budget Act of 2018

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: | Michael Williams | PO Box 42716, Olympia WA 98504-2716 | (360) 725-1346 |
| Implementation: | Mark Benya | PO Box 45561, Olympia WA 98504-2716 | (360) 725-1891 |
| Enforcement: | Mark Benya | PO Box 45561, Olympia WA 98504-2716 | (360) 725-1891 |

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 cost on small businesses and therefore cannot impose more-than-minor costs.

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: April 14, 2020 | Signature:  |
| Name: Wendy Barcus | |
| Title: HCA Rules Coordinator | |

WAC 182-501-0200 Third-party resources. (1) The medicaid agency requires a provider to seek timely reimbursement from a third party when a client has available third-party resources, except as described under subsections (2) and (3) of this section.

(2) The agency pays for medical services and seeks reimbursement from a liable third party when the claim is for ~~((any of the following:~~

~~(a) Labor, delivery, and postpartum care (except inpatient hospital costs) for a pregnant woman; or~~

~~(b)) preventive pediatric services as covered under the early and periodic screening, diagnosis and treatment (EPSDT) program.~~

(3) The agency pays for medical services and seeks reimbursement from any liable third party when both of the following apply:

(a) The provider submits to the agency documentation of billing the third party and the provider has not received payment after ~~((thirty))~~ one hundred days from the date of services; and

(b) The claim is for a covered service provided to a client on whose behalf the office of support enforcement is enforcing a noncustodial parent to pay support. For the purpose of this section, "is enforcing" means the noncustodial parent either:

(i) Is not complying with an existing court order; or

(ii) Received payment directly from the third party and did not pay for the medical services.

(4) The provider may not bill the agency or the client for a covered service when a third party pays a provider the same amount as or more than the agency rate.

(5) When the provider receives payment from a third party after receiving reimbursement from the agency, the provider must refund to the agency the amount of the:

(a) Third-party payment when the payment is less than the agency's maximum allowable rate; or

(b) Agency payment when the third-party payment is equal to or more than the agency's maximum allowable rate.

(6) The agency does not pay for medical services if third-party benefits are available to pay for the client's medical services when the provider bills the agency, except under subsections (2) and (3) of this section.

(7) The client is liable for charges for covered medical services that would be paid by the third-party payment when the client either:

(a) Receives direct third-party reimbursement for the services; or

(b) Fails to execute legal signatures on insurance forms, billing documents, or other forms necessary to receive insurance payments for services rendered. See WAC 182-503-0540 for assignment of rights.

(8) The agency considers an adoptive family to be a third-party resource for the medical expenses of the birth mother and child only when there is a written contract between the adopting family and either the birth mother, the attorney, the provider, or the adoption service. The contract must specify that the adopting family will pay for the medical care associated with the pregnancy.

(9) A provider cannot refuse to furnish covered services to a client because of a third-party's potential liability for the services.

(10) For third-party liability on personal injury litigation claims, the agency or managed care organization (MCO) is responsible for providing medical services under WAC 182-501-0100.