



PROPOSED RULE MAKING

CR-102 (July 2022) (Implements RCW 34.05.320) Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: December 20, 2023
TIME: 8:25 AM

WSR 24-01-140

Agency: The Health Care Authority

- Original Notice
- Supplemental Notice to WSR _____
- Continuance of WSR _____

- Preproposal Statement of Inquiry was filed as WSR 23-22-075 ; 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 182-530-7050, Reimbursement – Dispensing fee

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
January 23, 2024	10:00 AM	The Health Care Authority holds public hearings virtually without a physical meeting place.	To attend the virtual public hearing, you must register in advance: https://us02web.zoom.us/webinar/register/WN_8kNmW0cKTCai1CLWrP2uKQ If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of intended adoption: January 24, 2024 (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) January 23, 2024, by 11:59 PM

Assistance for persons with disabilities:

Contact Johanna Larson
 Phone: 360-725-1349
 Fax: 360-586-9727
 TTY: Telecommunication Relay Services (TRS): 711
 Email: Johanna.larson@hca.wa.gov
 Other:
 By (date) January 12, 2024

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The agency is revising this rule in accordance with the Settlement Agreement in the case of *National Association of Chain Drug Stores, et al., v. Washington State Health Care Authority, et al.* (Case No. 51489-3-II) and for the purpose of ensuring the continuation of federal Medicaid funding. The agency also filed an emergency rulemaking order under WSR 23-22-074, while the permanent rulemaking process is being completed.

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

Is rule necessary because of a:

- Federal Law? Yes No
- Federal Court Decision? Yes No
- State Court Decision? Yes No

If yes, CITATION: *National Association of Chain Drug Stores, et al., v. Washington State Health Care Authority, et al.* (Case No. 51489-3-II)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Type of proponent: Private Public Governmental

Name of proponent: (person or organization) Health Care Authority

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Valerie Freudenstein	PO Box 42716, Olympia, WA 98504-2716	360-725-1344
Implementation:	Wendy Steffens	PO Box 45510, Olympia, WA 98504-5510	360-725-5145
Enforcement:	Wendy Steffens	PO Box 45510, Olympia, WA 98504-5510	360-725-5145

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 and Small Business Economic Impact Statement

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

(1) Identification of exemptions:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). 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:
- | | |
|---|--|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> 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 19.85.025\(4\)](#) (does not affect small businesses).
- This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of how the above exemption(s) applies to the proposed rule:

(2) Scope of exemptions: *Check one.*

- The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.
- The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):
- The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of 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 minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. The proposed rules do not impose more-than-minor costs on small businesses and are being made in accordance with the settlement agreement in the case of *National Association of Chain Drug Stores, et al., v. Washington State Health Care Authority, et al.* (Case No. 51489-3-II) and for the purpose of ensuring the continuation of federal Medicaid funding.
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact 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: December 20, 2023

Name: Wendy Barcus

Title: HCA Rules Coordinator

Signature:



WAC 182-530-7050 Reimbursement—Dispensing fee determination.

(1) Subject to the provisions of WAC 182-530-7000 and the exceptions permitted in WAC 182-530-2000, the medicaid agency pays a dispensing fee for each covered, prescribed drug.

(2) The agency does not pay a dispensing fee for:

- (a) Nondrug items, devices, or drug-related supplies; or
- (b) Drugs administered by a health care professional.

(3) The agency periodically examines the sufficiency of pharmacy dispensing fees and may adjust the dispensing fee by considering factors including, but not limited to:

- (a) Legislative appropriations for vendor rates;
- (b) Input from provider and advocacy groups;
- (c) Input from state-employed or contracted actuaries; and
- (d) Dispensing fees paid by other third-party payers including, but not limited to, health care plans and other states' medicaid agencies.

(4) The agency uses a tiered dispensing fee system which pays higher volume pharmacies at a lower fee and lower volume pharmacies at a higher fee.

(5) The agency uses total annual prescription volume (both medicaid and nonmedicaid) reported to the agency to determine each pharmacy's dispensing fee tier. The following tier levels are effective for dates of service on and after July 1, 2023:

(a) A pharmacy which fills (~~more than thirty-five thousand~~) 70,000 or more prescriptions annually is a high-volume pharmacy. The agency considers hospital-based pharmacies that serve both inpatient and outpatient clients as high-volume pharmacies.

(b) A pharmacy which fills between (~~fifteen thousand one and thirty-five thousand~~) 30,000 and 69,999 prescriptions annually is a mid-volume pharmacy.

(c) A pharmacy which fills (~~fifteen thousand or fewer~~) less than 30,000 prescriptions annually is a low-volume pharmacy.

(6) The agency determines a pharmacy's annual total prescription volume as follows:

(a) The agency sends out a prescription volume survey form to pharmacy providers during the first quarter of the calendar year;

(b) Pharmacies return completed prescription volume surveys to the agency each year. Pharmacy providers not responding to the survey by the specified date are assigned to the high volume category;

(c) Pharmacies must include all prescriptions dispensed from the same physical location in the pharmacy's total prescription count;

(d) The agency considers prescriptions dispensed to nursing facility clients as outpatient prescriptions; and

(e) Assignment to a new dispensing fee tier is effective on the first of the month, following the date specified by the agency.

(7) A pharmacy may request a change in dispensing fee tier during the interval between the annual prescription volume surveys. The pharmacy must substantiate such a request with documentation showing that the pharmacy's most recent six-month dispensing data, annualized, would qualify the pharmacy for the new tier. If the agency receives the documentation by the twentieth of the month, assignment to a new dispensing fee tier is effective on the first of the following month.

(8) The agency grants general dispensing fee rate increases only when authorized by the legislature. Amounts authorized for dispensing fee increases may be distributed nonuniformly (e.g., tiered dispensing fee based upon volume).

(9) The agency may pay true unit dose pharmacies at a different rate for unit dose dispensing.