



RULE-MAKING ORDER

CR-103E (July 2011)
(Implements RCW 34.05.350)

Agency: Health Care Authority, Washington Apple Health

Emergency Rule Only

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
 - No
- If Yes, explain:

Purpose:

The agency recently filed the permanent rules for Chapter 182-526-WAC under WSR 17-05-066, filed February 13, 2017. This emergency rule corrects an error in subsection (4) and (6) of WAC 182-526-0290. In subsection (4), if an appellant fails to appear at the scheduled prehearing conference to address the petition to vacate, the order becomes a final order. The ALJ or review judge does not dismiss the matter with prejudice. In subsection (6), if the petition to vacate is not filed timely of the appellant fails to establish good cause to excuse any default or to reinstate the matter for hearing, the ALJ must issue an initial order, not a final order, dismissing the appeal.

Citation of existing rules affected by this order:

Repealed:
 Amended: 182-526-0290
 Suspended:

Statutory authority for adoption: RCW 41.05.021, 41.05.160

Other authority: 42 CFR 431.10

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.
- That in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012, or 2013, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this finding: This emergency continues the current emergency filed under WSR 17-08-088 set to expire on August 2, 2017. These rules are necessary to accurately reflect the agency's process for reinstating a hearing after an order of default or an order of dismissal and to comply with the federal single state agency regulation in 42 CFR 431.10. The permanent rule is currently filed under WSR 17-15-044 for Public Hearing on August 22, 2017.

Date adopted: August 1, 2017

NAME (TYPE OR PRINT)

Wendy Barcus

SIGNATURE

TITLE

HCA Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: August 01, 2017

TIME: 10:56 AM

WSR 17-16-141

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	<u>1</u>	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	<u>1</u>	Repealed	_____

WAC 182-526-0290 Reinstating a hearing after an order of default or an order of dismissal. (1) If an order of default was entered under WAC 182-526-0284, or an order of dismissal was entered under WAC 182-526-0285, the appellant may file a petition (request) to vacate (set aside) the order.

(a) The petition to vacate must be filed with the office of administrative hearings (OAH) or the board of appeals (BOA) for nursing home rates cases.

(b) BOA forwards any petition to vacate to OAH except for nursing home rates cases.

(c) The appellant must specify in the petition to vacate the reason why the order should be vacated.

(2) The petition to vacate must be filed within twenty-one calendar days of service (mailing) of the order to the parties. If the petition to vacate is not filed by the deadline, the order of default or order of dismissal becomes a final order.

(3) If OAH receives a petition to vacate, OAH schedules a prehearing conference and serves all parties with a notice of a prehearing conference under WAC 182-526-0250.

(4) If the appellant fails to appear at the scheduled prehearing conference to address the petition to vacate((+
(a)) the order becomes ((the)) a final order((+and

~~(b) The ALJ or review judge must dismiss the matter with prejudice~~)).

(5)(a) If the appellant appears for the scheduled prehearing conference:

(b) The ALJ or review judge will receive evidence and argument from the parties regarding whether:

(i) The petition to vacate was timely filed; and

(ii) The appellant has established good cause to excuse any default and to reinstate the matter for hearing.

(6) The ALJ (~~or review judge~~) must issue ((a final)) an initial order or the review judge must issue a final order dismissing the appeal ~~((and terminating the hearing process))~~ if:

(a) The petition to vacate was not filed timely; or

(b) The appellant fails to establish good cause to excuse any default or to reinstate the matter for hearing.

(7) If the ALJ or review judge rules that the order of default or order of dismissal is vacated, the matter may proceed to hearing and the parties may present argument and evidence about the issues identified in the original request for hearing. The hearing may occur:

(a) Immediately following the prehearing conference if agreed to by the parties and the ALJ; or

(b) At a hearing date scheduled by OAH under WAC 182-526-0250.