



# RULE-MAKING ORDER EMERGENCY RULE ONLY

## CR-103E (August 2017) (Implements RCW 34.05.350 and 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: November 29, 2017

TIME: 1:31 PM

WSR 17-24-033

**Agency:** Health Care Authority

**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:** As required by new Federal rules, the agency is creating a new section (WAC 182-526-0100) under Chapter 182-526 WAC, Administrative Hearings, to allow for expedited administrative hearings for urgent health care needs.

**Citation of rules affected by this order:**

New: 182-526-100  
Repealed:  
Amended:  
Suspended:

**Statutory authority for adoption:** 42 CFR Part 431, Subpart E – Fair Hearings for Applicants and Beneficiaries, RCW 41.05.021, 41.05.160

**Other authority:**

**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.

**Reasons for this finding:** This emergency rule filing is necessary to cover to gap between the filing of the final permanent rules and the expiration of the current emergency rules filed under WSR 17-16-153 set to expire on November 29, 2017. These rules are necessary comply with new Federal rules, effective January 20, 2017, requiring expedited administrative hearings while the permanent rule process is being completed. The new Federal rules were announced in Federal Register 81 FR 86382, published on November 30, 2016.

**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Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___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 on 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	___

**Date adopted:** November 29, 2017

**Name:** Wendy Barcus

**Title:** HCA Rules Coordinator

**Signature:**



NEW SECTION

**WAC 182-526-100 Expedited administrative hearings for urgent health care needs. (1) Requesting an expedited hearing.**

(a) An expedited hearing may be requested only in matters involving applicants or recipients.

(b) An applicant or recipient may request an expedited administrative hearing when the applicant or recipient believes there is an urgent health care need as defined in subsection (3) of this section.

(c) The applicant or recipient bears the burden of proof to establish an urgent health care need and must submit evidence to the office of administrative hearings (OAH) with the expedited hearing request to support the need for an expedited hearing.

(d) A recipient may be eligible for continued coverage according to WAC 182-504-0130.

(2) **Exception to notice requirements.** The notice requirements in this section prevail over notice requirements in WAC 182-526-0250.

**(3) Standard for granting an expedited hearing request.**

(a) For the purposes of this section an urgent health care need means that waiting for an otherwise timely scheduled hearing could seriously jeopardize the applicant's or recipient's life, health or ability to attain, maintain, or regain maximum function;

(b) The administrative law judge (ALJ) grants a request for an expedited hearing only if the ALJ finds by a preponderance of the evidence submitted with the applicant's or recipient's expedited hearing request and the information listed below that the applicant or recipient has an urgent health care need;

(c) Information the ALJ may consider when determining whether the applicant or recipient has an urgent health care need and whether to subsequently grant or deny an expedited hearing request includes, but is not limited to:

(i) The documentation submitted with the expedited hearing request to show an urgent health care need;

(ii) Whether the recipient is eligible for continued coverage of the benefits denied, reduced, or terminated by the agency or the agency's designee pending resolution of the appeal as an expedited hearing request may not be granted for individuals receiving continued coverage;

(iii) The length of time between the applicant's or recipient's receipt of the agency's or the agency designee's adverse notice and the applicant's or recipient's request for an expedited hearing; and

(iv) Whether the documentation submitted with the expedited hearing request shows that an appointment with a provider for a health care procedure or treatment to address the applicant's or recipient's stated urgent health care need:

(A) Is scheduled; or

(B) Cannot be scheduled due to a lack of coverage.

(4) **Time frame and notice requirements for expedited hearing request determination.** The ALJ must grant or deny the expedited hearing request, and issue the determination within four business days of receipt of the request by OAH, or as expeditiously as possible. OAH must immediately notify the parties orally and in writing of the ALJ's determination, unless notification in writing is waived by the parties. The oral and written notice must clearly state:

(a) Whether the expedited hearing request was approved or denied;

(b) That a hearing has been or will be scheduled; and

(c) The information listed in subsection (3)(c) of this section that the ALJ relied upon.

(5) **Scheduling an expedited hearing.** If the ALJ grants a request for an expedited hearing, OAH will schedule a hearing and provide notice as expeditiously as possible, allowing for a reasonable amount of notice and time for the parties to prepare for hearing. The notice rules in WAC 182-526-0250 do not apply.

(6) **Denial of expedited hearing.** If the ALJ denies an expedited hearing request, OAH will schedule the hearing based on standard scheduling practices and the notice rules in WAC 182-526-0250.

(7) **Appeal right.** There is no right to appeal an ALJ's determination to grant or deny an expedited hearing request.

(8) **Expedited hearing initial order.** If an expedited hearing request is granted and an expedited hearing is held, the ALJ must issue an initial order as expeditiously as possible.

(9) **Expedited final order.** Any party may request administrative review of the initial order with the health care authority board of appeals pursuant to WAC 182-526-0560 through 182-526-0600. The board of appeals will issue a final order as expeditiously as possible.

(10) **Delayed expedited hearing request determination or expedited hearing initial order.** The ALJ has a duty to determine whether to grant or deny an expedited hearing request and, if granted, to issue an expedited hearing initial order as expeditiously as possible, except in unusual circumstances which include:

(a) Being unable to reach a decision because the applicant or recipient requests a delay or does not take a required action; or

(b) An administrative or other emergency beyond OAH's or the agency's control.