



RULE-MAKING ORDER PERMANENT RULE ONLY

CR-103P (October 2017) (Implements RCW 34.05.360)

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STATE OF WASHINGTON
FILED

DATE: December 05, 2017
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WSR 17-24-103

Agency: Health Care Authority

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

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

- Yes No If Yes, explain:

Purpose: To comply with new federal rules in 42 CFR Part 431, the agency has created a new section WAC 182-526-0100 to allow for expedited administrative hearings for urgent health care needs.

Citation of rules affected by this order:

New: 182-526-0100
 Repealed:
 Amended: 182-526-0280, 182-526-0290
 Suspended:

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

Other authority:

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 17-15-044 on July 11, 2017 (date).
 Describe any changes other than editing from proposed to adopted version:

Proposed/Adopted	WAC Subsection	Reason
Original WAC # 182-526-0100 (Expedited administrative hearings for urgent health care needs)		
Proposed	(1)(c) The applicant or recipient bears the burden of proof to establish an urgent health care need and must submit evidence or arrange for evidence to be submitted to the office of administrative hearings (OAH) with the expedited hearing request to support the need for an expedited hearing.	The agency agreed to add the last sentence by recommendation of a commenter.
Adopted	(1)(c) The applicant or recipient bears the burden of proof to establish an urgent health care need and must submit evidence or arrange for evidence to be submitted to the office of administrative hearings (OAH) with the expedited hearing request to support the need for an expedited hearing.	

	<u>Agency staff may help an applicant or recipient who asks for assistance in obtaining information that the agency has pursuant to WAC 182-503-0120.</u>	
Proposed	(4) 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:	This change was made to clarify the language used when parties waive written notification.
Adopted	(4) 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 <u>the parties waive written notification</u> is waived by the parties . The oral and written notice must clearly state:	
Original WAC # 182-529-0290 (Reinstating a hearing after an order of default or an order of dismissal)		
Proposed	(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.	The agency agreed to add the last sentence by recommendation of a commenter.
Adopted	(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 <u>by operation of law</u> .	
Proposed	(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.	This agency agreed to add this change by recommendation of a commenter.
Adopted	(3) If OAH receives a petition to vacate, <u>or if the BOA receives a petition to vacate in a nursing home rates case,</u> OAH <u>or BOA</u> schedules a prehearing conference and serves all parties with	

	a notice of a prehearing conference under WAC 182-526-0250.	
Proposed	(4) If the appellant fails to appear at the scheduled prehearing conference to address the petition to vacate (((a))) <u>the order becomes ((the)) a final order ((;and</u> ((b)) The ALJ or review judge must dismiss the matter with prejudice)).	The agency agreed to add this change by recommendation of a commenter.
Adopted	(4) If the appellant fails to appear at the scheduled prehearing conference to address the petition to vacate: (a) <u>The order of default or order of dismissal becomes ((the)) a final order ((;and</u> ((b)) The ALJ or review judge must dismiss the matter with prejudice)). <u>by operation of law;</u> <u>(b) OAH, or BOA in a nursing home rates case, will issue an order disposing of the appellant's hearing request, stating that the order of default or order of dismissal became a final order by operation of law under RCW 34.05.440 (2) and (3) because the appellant failed to appear at the prehearing conference to address the petition to vacate, and including information about judicial review under WAC 182-526-0640;</u> <u>(c) The appellant may seek judicial review of the final order of default or final order of dismissal to the superior court under WAC 182-526-0640.</u>	
Proposed	(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.	The agency agreed to add this change by recommendation of a commenter.
Adopted	(5) ((a)) If the appellant appears for the scheduled prehearing conference: ((b)) <u>(a) The ALJ or review judge will receive evidence and argument from the parties regarding whether:</u>	

	<p>(i) The petition to vacate was timely filed; and</p> <p>(ii) The appellant has established good cause to excuse any default <u>or dismissal</u> and to reinstate the matter for hearing.</p> <p><u>(b) If the petition to vacate was not filed timely, the ALJ or the review judge will issue an order disposing of the appellant's hearing request, stating that the order of default or order of dismissal became a final order by operation of law under RCW 34.05.440(1) because the appellant failed to timely file the petition to vacate, and including information about judicial review under WAC 182-526-0640. The appellant may seek judicial review of the final order of default or final order of dismissal to the superior court under WAC 182-526-0640.</u></p> <p><u>(c) If the petition to vacate was timely filed, but the appellant does not establish good cause to excuse any default or dismissal, the ALJ must issue an initial order, including information about how to petition for review to the BOA, or the review judge must issue a final order dismissing the appeal.</u></p> <p><u>(d) If the petition to vacate was timely filed and the appellant establishes good cause to excuse any default or dismissal, the ALJ or review judge vacates the order of default or order of dismissal and the matter may proceed to hearing on the issues identified in the original request for hearing. The hearing may occur:</u></p> <p><u>(i) Immediately following the prehearing conference if the parties agree; or</u></p> <p><u>(ii) At a hearing date scheduled by OAH or BOA under WAC 182-526-0250 if the ALJ or review judge continues the hearing to a later date.</u></p>	
Proposed	(6) The ALJ ((or review judge)) must issue ((a final)) <u>an initial order or the review judge must issue a final order</u>	The agency agreed to add this change by recommendation of a commenter.

	<p>dismissing the appeal (and terminating the hearing process) if:</p> <p>(a) The petition to vacate was not filed timely; or</p> <p>(b) The appellant fails to establish good cause to excuse any default or to reinstate the matter for hearing.</p>	
Adopted	<p>((6) The ALJ or review judge must issue a final order dismissing the appeal and terminating the hearing process if:</p> <p>(a) The petition to vacate was not filed timely; or</p> <p>(b) The appellant fails to establish good cause to excuse any default or to reinstate the matter for hearing.</p>	
Proposed	<p>(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:</p> <p>(a) Immediately following the prehearing conference if agreed to by the parties and the ALJ; or</p> <p>(b) At a hearing date scheduled by OAH under WAC 182-526-0250.</p>	The agency agreed to add this change by recommendation of a commenter.
Adopted	<p>(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:</p> <p>(a) Immediately following the prehearing conference if agreed to by the parties and the ALJ; or</p> <p>(b) At a hearing date scheduled by OAH under WAC 182-526-0250.)</p>	

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name:

Address:

Phone:
Fax:
TTY:
Email:
Web site:
Other:

**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	<u>1</u>	Amended	<u>2</u>	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	___	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	<u>1</u>	Amended	<u>2</u>	Repealed	___

Date Adopted: December 5, 2017	Signature: 
Name: Wendy Barcus	
Title: HCA Rules Coordinator	

NEW SECTION

WAC 182-526-0100 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 or arrange for evidence to be submitted to the office of administrative hearings (OAH) with the expedited hearing request to support the need for an expedited hearing. Agency staff may help an applicant or recipient who asks for assistance in obtaining information that the agency has pursuant to WAC 182-503-0120.

(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 final order could 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 de-

termination, unless the parties waive written notification. 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 according 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 when:

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

(b) There is an administrative or other emergency beyond OAH's or the agency's control.

WAC 182-526-0280 Continuing a hearing when an appellant is an applicant or recipient. (~~This section applies to continuance requests made by applicants or recipients.~~) (1) Any party may request a continuance under this section either orally or in writing.

(2) Before contacting the office of administrative hearings (OAH) to request a continuance, the party seeking the continuance must make a good faith effort to contact the other parties to find out if they agree to a continuance. The party making the request for a continuance must let OAH know whether the other parties agreed to the continuance.

(3) **Standard when less than sixty days.** When a continuance request is made less than sixty days from the date OAH received the hearing request:

(a) If all parties agree to the continuance, the ALJ must grant the request unless the ALJ holds a prehearing conference and finds that good cause for a continuance does not exist under WAC 182-526-0020.

(b) If the parties do not agree to the continuance, the ALJ must schedule a prehearing conference and determine if good cause for a continuance exists under WAC 182-526-0020 and under the following factors:

- (i) Why the party is requesting a continuance;
- (ii) Why the other party or parties are objecting to the request;
- (iii) Whether a continuance in the case has previously been granted at the request of the same party who is now requesting the continuance and, if so, whether it was for the same reason;
- (iv) The extent to which the requesting or objecting parties could have prevented the need for delay;
- (v) The number and duration of previous continuances in the case and who requested them;
- (vi) The legal or factual complexity of the case;
- (vii) The relative harm to the parties if the continuance is granted or denied, including the risk of harm to the appellant if he or she is not receiving continued benefits;
- (viii) The impact of a continuance on the parties' ability to adequately prepare and present their cases;
- (ix) Any need to provide accommodation, translation, or interpreter services; and
- (x) The impact of a continuance on the ability of OAH to issue a timely initial decision; or
- (xi) Other relevant factors.

(4) **Standard when sixty days or greater.** When a continuance request is made sixty days or more from the date OAH received the hearing request:

(a) The ALJ must not only consider whether there is good cause to continue the hearing but also must find a compelling reason for the continuance.

(b) Compelling reasons include:

- (i) Medical evidence is required;
- (ii) Extraordinary circumstances exist, such as the sudden unforeseen onset of an illness or adverse event that was beyond the party's ability to prevent;

(iii) The hearing format changes or the ALJ finds a compelling reason to change the way a witness appears at the hearing according to WAC 182-526-0360;

(iv) The appellant needs more time to prepare or present evidence or argument because the agency issued an amended notice under WAC 182-526-0260;

(v) The need for more time was caused by another party's action or inaction, considering the relative capacity and resources of the parties;

(vi) The need to provide accommodation, translation, or interpreter services;

(vii) A party received notice of the date or deadline thirty days or more after OAH received the hearing request;

(viii) Whether the continuance is needed to allow for effective assistance of counsel of record; or

(ix) Other compelling reasons.

(5) The ALJ must notify all parties whether a continuance was granted or denied orally on the record, or must do so in writing within five business days of the prehearing conference.

(6) If the ALJ grants a continuance, OAH must serve a new notice of hearing on the parties at least fourteen calendar days before the new hearing date, unless the parties agree to a shorter time period.

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 by operation of law.

(3) If OAH receives a petition to vacate, or if the BOA receives a petition to vacate in a nursing home rates case, OAH or BOA 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 of default or order of dismissal becomes ~~((the))~~ a final order ~~((; and~~

~~((b) The ALJ or review judge must dismiss the matter with prejudice.))~~ by operation of law;

(b) OAH, or BOA in a nursing home rates case, will issue an order disposing of the appellant's hearing request, stating that the order of default or order of dismissal became a final order by operation of law under RCW 34.05.440 (2) and (3) because the appellant failed to appear at the prehearing conference to address the petition to vacate, and including information about judicial review under WAC 182-526-0640;

(c) The appellant may seek judicial review of the final order of default or final order of dismissal to the superior court under WAC 182-526-0640.

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

~~((b))~~ (a) 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 or dismissal and to reinstate the matter for hearing.

~~((6) The ALJ or 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.)~~

(b) If the petition to vacate was not filed timely, the ALJ or the review judge will issue an order disposing of the appellant's hearing request, stating that the order of default or order of dismissal became a final order by operation of law under RCW 34.05.440(1) because the appellant failed to timely file the petition to vacate, and including information about judicial review under WAC 182-526-0640. The appellant may seek judicial review of the final order of default or final order of dismissal to the superior court under WAC 182-526-0640.

(c) If the petition to vacate was timely filed, but the appellant does not establish good cause to excuse any default or dismissal, the ALJ must issue an initial order, including information about how to petition for review to the BOA, or the review judge must issue a final order dismissing the appeal.

(d) If the petition to vacate was timely filed and the appellant establishes good cause to excuse any default or dismissal, the ALJ or review judge vacates the order of default or order of dismissal and the matter may proceed to hearing on the issues identified in the original request for hearing. The hearing may occur:

(i) Immediately following the prehearing conference if the parties agree; or

(ii) At a hearing date scheduled by OAH or BOA under WAC 182-526-0250 if the ALJ or review judge continues the hearing to a later date.