



# RULE-MAKING ORDER PERMANENT RULE ONLY

## CR-103P (December 2017) (Implements RCW 34.05.360)

CODE REVISER USE ONLY

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STATE OF WASHINGTON  
FILED

DATE: August 28, 2019

TIME: 10:25 AM

WSR 19-18-025

**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:** This new section, WAC 182-526-0210 Appeals requested by intermediate care facilities for individuals with intellectual disabilities (ICF/IID), will allow an ICF/IID to request a hearing when a finding of noncompliance results in the termination of Medicaid funding and any related provider agreement.

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

New: 182-526-0210  
Repealed:  
Amended:  
Suspended:

**Statutory authority for adoption:** RCW 41.05.021, 41.05.160

**Other authority:** 42 CFR Sec. 431.151, 153, 154, and 498.5

**PERMANENT RULE (Including Expedited Rule Making)**

Adopted under notice filed as WSR 19-15-041 on July 11, 2019 (date).  
Describe any changes other than editing from proposed to adopted version: None

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Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___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New	___	Amended	___	Repealed	___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New	___	Amended	___	Repealed	___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	<u>1</u>	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	___	Repealed	___

<b>Date Adopted:</b> August 28, 2019	<b>Signature:</b> 
<b>Name:</b> Wendy Barcus	
<b>Title:</b> HCA Rules Coordinator	

NEW SECTION

**WAC 182-526-0210 Appeals requested by intermediate care facilities for individuals with intellectual disabilities (ICF/IID).** The hearing process described in this section applies to requests for an appeal made by an intermediate care facility for individuals with intellectual disabilities (ICF/IID), as defined in WAC 388-825-020.

(1) **Right to hearing.** An ICF/IID may request a hearing when it is dissatisfied with the medicaid agency's finding of noncompliance resulting in the termination of medicaid funding and any related provider agreements under 42 C.F.R. Sec. 431.151 through 431.154.

(a) An agency review judge conducts the hearing and enters the agency's final order for cases held under this subsection.

(b) An ICF/IID cannot not appeal:

(i) The choice of sanction or remedy;

(ii) The monitoring remedy;

(iii) The level of noncompliance found, except when a favorable review decision would affect the range of civil money penalty amounts the agency could collect; or

(iv) The decision about when to conduct an initial survey of a prospective provider.

(2) **Notice of adverse action.** The agency gives the ICF/IID a written notice of adverse action that includes:

(a) The basis for the finding of noncompliance that resulted in the agency's decision to terminate medicaid funding and any related provider agreements;

(b) A statement of the deficiencies resulting in the decision;

(c) The effective date of the adverse action; and

(d) The ICF/IID's appeal rights and procedures, including deadlines, for filing a hearing request.

(3) **Request for hearing.** The ICF/IID, its legal representative, or other authorized official must file a written request for a hearing with the agency's board of appeals at P.O. Box 42700, Olympia, Washington, or by facsimile at 360-507-9018 within sixty calendar days of receiving the notice of adverse action.

(4) **Hearing.** If an ICF/IID requests a hearing on the termination of medicaid funding and any related provider agreements, the hearing is completed and the agency issues the final order on the hearing within one hundred twenty calendar days of the effective date of the adverse action.

(a) If the agency is unable to hold the hearing until after the effective date of the adverse action, the agency offers the ICF/IID an informal reconsideration that meets the requirements of subsection (5) of this section.

(b) The informal reconsideration process described in subsection (5) of this section is not the same reconsideration process defined in WAC 182-526-0010 or described in WAC 182-526-0605 through 182-526-0635.

(5) **Informal reconsideration for ICF/IID.** The informal reconsideration includes:

(a) Written notice to the ICF/IID of the agency's findings resulting in the termination of medicaid funding and any related provider agreements;

(b) A reasonable opportunity for the ICF/IID to dispute those findings in writing; and

(c) A written affirmation or reversal of the agency's action.

**(6) Termination of medicaid funding and related provider agreements.**

(a) The medicaid funding and any related provider agreements end on the effective date of the termination, unless:

(i) A hearing is timely requested and not provided by the agency until after the effective date of the termination; and

(ii) The termination is based on a survey agency certification stating that there is no jeopardy to beneficiaries' health and safety.

(b) If medicaid funding extends past the termination date, funding will be available only through the earlier of:

(i) The issuance date of a hearing decision that upholds the agency's action; or

(ii) One hundred twenty calendar days after the effective date of termination, as required by 42 C.F.R. Sec. 442.40.