



RULE-MAKING ORDER

PERMANENT RULE ONLY

CR-103P (December 2017)

(Implements RCW 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: April 25, 2022

TIME: 2:35 PM

WSR 22-10-023

Agency: Health Care Authority

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) June 1, 2022 (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: The agency is adopting new rules to align with E2SSB 5377. This bill provides that if a public option plan is not available in play year 2022 or later, certain hospitals must contract with at least one public option plan to provide in-network services to that plan's enrollees. The bill also provides that the Health Care Authority may adopt rules to enforce compliance. The new rules, in part, describe which hospitals must comply.

Citation of rules affected by this order:

New: 182-400-0100, 182-400-0200, 182-400-0300, 182-400-0400
 Repealed:
 Amended:
 Suspended:

Statutory authority for adoption: RCW 41.05.021, 41.05.160

Other authority: E2SSB 5377

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 22-06-080 on March 1, 2022 (date).
 Describe any changes other than editing from proposed to adopted version:

Proposed/Adopted	WAC Subsection	Reason
WAC 182-400-0100		
Proposed	(2) Each hospital should actively seek to contract with as many carriers that offer public option plans as possible to ensure compliance with this chapter and to avoid sanctions by failing to contract with at least one carrier offering public option plans.	Revised to align with the underlying law, which requires hospitals to contract with at least one public option plan and act when they receive an offer from a public option plan
Adopted	(2) Each hospital should consider all valid offers from public option plans to ensure compliance with this chapter and to avoid sanctions by failing to contract with at least one public option plan.	

WAC 182-400-0300

Proposed	(2) Investigations. The authority may open an investigation: (b) When there are counties in which no public option plans are available; or	Revised based on clarifying language recommended by stakeholders
Adopted	(2) Investigations. The authority may open an investigation: (b) When there are no public option plans available in the county where the hospital is located; or	

WAC 182-400-0400

Proposed	(3) The authority conducts hearings under the Washington state Administrative Procedure Act (chapter 34.05 RCW) and the administrative hearing rules for medical services programs (chapter 182-526 WAC).	Revised to clarify that appeals are part of the review process
Adopted	(3) The authority conducts hearings and appeals under the Washington state Administrative Procedure Act (chapter 34.05 RCW) and the administrative hearing rules for medical services programs (chapter 182-526 WAC).	
Proposed	(7) The authority may impose a one percent interest charge for any nonpayment of sanctions.	Revised to clarify how unpaid interest charges accrue.
Adopted	(7) The authority may impose a one percent interest charge for each month sanctions are unpaid.	

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

Name: N/A

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:

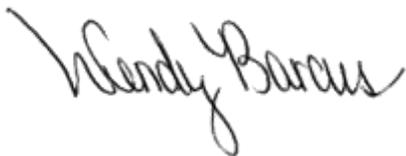
New	___	Amended	___	Repealed	___
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>4</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>4</u>	Amended	___	Repealed	___

Date Adopted: April 25, 2022	Signature: 
Name: Wendy Barcus	
Title: HCA Rules Coordinator	

**Chapter 182-400 WAC
PUBLIC OPTION PLANS (CASCADE CARE SELECT)**

NEW SECTION

WAC 182-400-0100 Public option hospital participation—Purpose and scope. (1) The Washington health benefit exchange, in partnership with the health care authority, administers public purchasing of the Washington state public option plans known as Cascade Care Select.

(2) Each hospital should consider all valid offers from public option plans to ensure compliance with this chapter and to avoid sanctions by failing to contract with at least one public option plan.

(3) In accordance with RCW 41.05.405, beginning in plan year 2023, a hospital that receives payments through a medical assistance program under chapter 74.09 RCW, or a public employees benefits board (PEBB) or a school employees benefits board (SEBB) program under chapter 41.05 RCW must contract with at least one carrier offering public option plans to provide in-network coverage to enrollees, if the hospital received a valid offer to contract with a carrier offering public option plans to provide in-network services.

NEW SECTION

WAC 182-400-0200 Definitions. For the purposes of this chapter:

"Authority" means the Washington state health care authority.

"Carrier" is defined in RCW 48.43.005.

"Health benefit exchange" means the Washington state health benefit exchange established in RCW 43.71.020.

"Hospital" means any hospital licensed under chapter 70.41 RCW that receives payment for services provided:

(a) To enrollees in the public employees benefits program or school employees benefits program under chapter 41.05 RCW; or

(b) Through a medical assistance program under chapter 74.09 RCW.

"Parties" means carriers and hospitals as defined in this chapter.

"Plan year" means the 12-month period beginning on January 1st of each year and ending on December 31st of the same year.

"Public option plan" means a qualified health plan contracted by or offered in a response to a procurement issued by the authority under RCW 41.05.410.

"Valid offer to contract" means:

(a) A written offer made by a carrier to a hospital to enter into a contract with the carrier to provide in-network coverage to enrollees of the carrier's public option plans; and

(b) The carrier's offer must contain sufficient information so that a reasonable person would understand that a good faith offer has been made. The carrier must, at a minimum, include the reimbursement rate offered in a manner that constitutes a legally binding document that the parties could execute.

NEW SECTION

WAC 182-400-0300 Enforcement. (1) **Compliance.** The authority conducts investigations, as needed, to ensure compliance with this chapter.

(2) **Investigations.** The authority may open an investigation:

(a) When the authority receives information from a carrier that a hospital failed to contract with that carrier to provide in-network coverage to enrollees of the carrier's public option plans after making a valid offer to contract;

(b) When there are no public option plans available in the county where the hospital is located; or

(c) On a case-by-case basis at the authority's sole discretion.

(3) **Procedure.**

(a) The authority sends a written investigation notice explaining the nature of the allegation to both the hospital and to bidding or contracted carriers.

(b) The authority may request additional information or documentation from the carrier or carriers and the hospital. If the authority sends a written request for information, parties have 30 calendar days to:

(i) Provide the requested information or documentation; or

(ii) Request additional time to complete the request, which the authority may grant on a case-by-case basis.

(c) The authority may request the following information or documentation from any party during an investigation:

(i) A copy of all written communications, including emails, between the hospital and the carriers related to any potential contract offers, or contracts that have been executed related to public option plans and related discussions;

(ii) A copy, including the provider reimbursement rates, of any offer to contract or executed contract;

(iii) A statement from a party explaining the party's position, including information regarding why the offer was not accepted;

(iv) A statement regarding any mitigating factors the hospital or carrier would like the authority to take into consideration when determining whether a sanction is warranted; and

(v) Any other information the authority decides is relevant in determining whether a sanction is appropriate.

(d) If the authority determines that any party has failed to fully and timely respond to the authority's request for information or documentation, the authority may impose an immediate sanction for non-compliance for each incident of noncompliance, as follows:

Number of incidents of noncompliance	Sanction amount
First	\$10,000
Second	\$25,000
Third	\$50,000
Fourth and subsequent incidents	\$100,000

(e) The authority may issue a sanction for each missing item, or for each failure to provide documentation or information within the required time or may issue sanctions for both. Sanctions under this

section are cumulative and immediate but may be stayed if the sanctioned party files an appeal under WAC 182-400-0400.

(f) When issuing an immediate sanction under (d) of this subsection, the authority sends a written notice to demand payment. The authority must receive payment within 28 calendar days of the date the party received the notice.

(4) **Sanctions for failure to accept valid contract offer.**

(a) After an investigation conducted under subsection (3) of this section, if, in the authority's sole discretion, the authority determines that a hospital failed to accept a valid offer to contract from a carrier, and is not contracted with any other public option plan for that plan year, the sanction amount for that plan year is as follows:

(i) For hospitals with 50 beds or fewer, \$182,500; or

(ii) For hospitals with more than 50 beds, \$3,650 per bed.

(b) A party may appeal a sanction notice under WAC 182-400-0400.

(5) **Public disclosure.** The information submitted according to this section is not subject to public disclosure under chapter 42.56 RCW, to the extent set forth in RCW 41.05.410 (3) (b).

NEW SECTION

WAC 182-400-0400 Notice of sanction appeal process. (1) The process described in this section applies only if a party receives a written sanction notice from the authority for noncompliance with this chapter.

(2) The authority must receive a party's appeal within 28 calendar days of the date the party received the notice of sanction.

(a) To file an appeal, a party must send a written request for an administrative hearing to the address listed on the notice of sanction in a manner that provides proof of receipt.

(b) The request for the administrative hearing must provide a copy of the notice of sanction in dispute.

(3) The authority conducts hearings and appeals under the Washington state Administrative Procedure Act (chapter 34.05 RCW) and the administrative hearing rules for medical services programs (chapter 182-526 WAC).

(4) Under WAC 182-526-0025(2), the authority, in its sole discretion, may conduct the administrative hearing or may transfer the hearing to the office of administrative hearings (OAH).

(a) If the authority conducts the administrative hearing, it issues the final agency decision.

(b) If OAH conducts the administrative hearing, it issues an initial order with instructions on how to file an appeal with the authority's board of appeals.

(5) Repayment of sanctions is stayed only if a party timely files an appeal under this section.

(6) If the final order upholds the notice of sanction, the authority immediately begins collection activities.

(7) The authority may impose a one percent interest charge for each month sanctions are unpaid.