



# PROPOSED RULE MAKING

## CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Health Care Authority

- Preproposal Statement of Inquiry was filed as WSR 14-10-070 ; or
- Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

- Original Notice
- Supplemental Notice to WSR 15-19-151
- Continuance of WSR \_\_\_\_\_

### Title of rule and other identifying information:

Amend 182-55-005, Authority and purpose  
 Amend 182-55-010, Definitions  
 Amend 182-55-015, Committee purpose  
 Amend 182-55-020, Committee selection  
 Amend 182-55-025, Committee member requirements and committee member terms  
 New 182-55-026, Committee governance  
 Amend 182-55-030, Committee coverage determination process  
 Amend 182-55-035, Committee coverage determination  
 Amend 182-55-040, Health care authority's implementation of final coverage determinations  
 New 182-55-041, Judicial review of final coverage determination  
 Amend 182-55-045, Advisory group  
 Amend 182-55-050, Health technology selection  
 Amend 182-55-055, Health technology assessment

### Hearing location(s):

Health Care Authority  
 Cherry Street Plaza Building; Sue Crystal Conf Rm 106B  
 626 - 8<sup>th</sup> Avenue, Olympia WA 98504

Metered public parking is available street side around building. A map is available at:  
[http://www.hca.wa.gov/documents/directions\\_to\\_csp.pdf](http://www.hca.wa.gov/documents/directions_to_csp.pdf)  
 or directions can be obtained by calling: 360-725-1000

Date: **June 21, 2016** Time: **10:00 a.m.**

**Date of intended adoption:** Not sooner than June 22, 2016 (Note: This is **NOT** the **effective** date)

### Submit written comments to:

Name: HCA Rules Coordinator  
 Address: PO Box 45504, Olympia WA, 98504-5504  
 Delivery: 626 – 8<sup>th</sup> Avenue, Olympia WA 98504  
 e-mail: [arc@hca.wa.gov](mailto:arc@hca.wa.gov)  
 fax: (360) 586-9727

by **June 21, 2016 5:00 PM**

### Assistance for persons with disabilities:

Contact Amber Lougheed by **June 17, 2016**  
 e-mail: [amber.lougheed@hca.wa.gov](mailto:amber.lougheed@hca.wa.gov) or (360) 725-1349  
 TTY (800) 848-5429 or 711

### Purpose of the proposal and its anticipated effects, including any changes in existing rules:

The Health Care Authority (HCA) has not reviewed Chapter 182-55 WAC since its adoption in 2006. HCA is conducting this rulemaking action to provide clarification and modernization of the rules, add definitions, as well as the adopt rule(s) addressing administrative review processes of Health Technology Assessment (HTA) actions and decisions.

**Reasons supporting proposal:** See purpose of the proposal above.

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

**Statute being implemented:** RCW 41.05.021, 41.05.160

### Is rule necessary because of a:

- Federal Law?  Yes  No
  - Federal Court Decision?  Yes  No
  - State Court Decision?  Yes  No
- If yes, CITATION: King County Superior Court, No. 13-2-03122-1 SEA

**DATE** May 16, 2016

**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:** May 16, 2016

**TIME:** 10:05 AM

**WSR 16-11-067**

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** None

**Name of proponent:** Health Care Authority

- Private
- Public
- Governmental

**Name of agency personnel responsible for:**

Name	Office Location	Phone
Drafting..... Melinda Froud	P.O. Box 42716 Olympia, Washington	(360) 725-1408
Implementation.... David Iseminger	P.O. Box 45504 Olympia, Washington	(360) 725-9792
Enforcement..... David Iseminger	P.O. Box 45504 Olympia, Washington	(360) 725-9792

**Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?**

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone ( ) \_\_\_\_\_

fax ( ) \_\_\_\_\_

e-mail \_\_\_\_\_

No. Explain why no statement was prepared.

The proposed filing does not impose a disproportionate cost impact on small businesses or nonprofits.

**Is a cost-benefit analysis required under RCW 34.05.328?**

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone ( ) \_\_\_\_\_

fax ( ) \_\_\_\_\_

e-mail \_\_\_\_\_

No: Please explain:

RCW 34.05.328 does not apply to Health Care Authority rules unless requested by the Joint Administrative Rules Review Committee or applied voluntarily.

AMENDATORY SECTION (Amending WSR 06-23-083, filed 11/13/06, effective 12/14/06)

**WAC 182-55-005 Authority and purpose.** Under RCW 70.14.080 through 70.14.140, the ~~((administrator))~~ director of the Washington state health care authority ~~((is required to establish and))~~ provides administrative support for, and ~~((is authorized to))~~ adopts rules to govern~~((7))~~ the health technology clinical committee and a health technology assessment program ~~((that uses evidence to make coverage determinations for participating state agencies that purchased health care))~~ within the health care authority. The health technology assessment program will:

- ~~(1) ((Selects health technologies for assessment;~~
- ~~(2))~~ Contract~~((s))~~ with an evidence-based technology assessment center to produce health technology assessments;
- ~~((3) Establishes an))~~ (2) Administratively support the independent health technology clinical committee; and
- ~~((4))~~ (3) Maintain~~((s))~~ a centralized, internet-based communication tool.

AMENDATORY SECTION (Amending WSR 06-23-083, filed 11/13/06, effective 12/14/06)

**WAC 182-55-010 Definitions.** When used in this chapter:

~~(1) (( "Administrator" means the administrator of the Washington state health care authority under chapter 41.05 RCW, as set forth in RCW 70.14.080, as amended.~~

~~(2))~~ "Advisory group" as defined in RCW 70.14.080 means a group established under RCW 70.14.110 (2)(c).

(2) "Centralized, internet-based communication tool" means the health care authority's health technology assessment program internet web pages established under RCW 70.14.130(1).

(3) "Committee" as defined in RCW 70.14.080 means the health technology clinical committee established under RCW 70.14.090.

(4) "Coverage determination" as defined in RCW 70.14.080 means a determination of the circumstances, if any, under which a health technology will be included as a covered benefit in a state purchased health care program~~((, as set forth in RCW 70.14.080, as amended))~~.

(5) "Decisions made under the federal medicare program" means national coverage determinations issued by the Centers for Medicare and Medicaid Services stating whether and to what extent medicare covers specific services, procedures, or technologies.

(6) "Director" means the director of the Washington state health care authority under chapter 41.05 RCW.

(7) "Health technology" as defined in RCW 70.14.080 means medical and surgical devices and procedures, medical equipment, and diagnostic tests. Health technologies do not include prescription drugs governed by RCW 70.14.050.

~~((6))~~ (8) "Health technology assessment" means a report produced by a contracted, evidence-based, technology assessment center or other appropriate entity, as provided for in RCW 70.14.100(4), based on a systematic review of evidence of a technology's safety, efficacy, and cost-effectiveness.

(9) "Participating agency" as defined in RCW 70.14.080 means the department of social and health services, the state health care authority, and the department of labor and industries ~~((, as set forth in RCW 70.14.080, as amended.~~

~~(7) "Reimbursement determination" means a determination to provide or deny reimbursement for a health technology included as a covered benefit in a specific circumstance for an individual patient who is eligible to receive health care services from the state purchased health care program making the determination, as set forth in RCW 70.14.080, as amended.~~

~~(8) "Health technology assessment" means a report produced by a contracted evidence-based technology assessment center as provided for in RCW 70.14.100(4) that is based on a systematic review of evidence of a technology's safety, efficacy, and cost-effectiveness).~~

AMENDATORY SECTION (Amending WSR 06-23-083, filed 11/13/06, effective 12/14/06)

**WAC 182-55-015 Committee purpose.** The purpose of the committee is to make coverage determinations for the participating agencies ~~((based on: A health technology assessment that reviews the scientific evidence of the relative safety, efficacy, and cost; information from any special advisory groups; and their professional knowledge and expertise))~~ as described under RCW 70.14.110.

AMENDATORY SECTION (Amending WSR 06-23-083, filed 11/13/06, effective 12/14/06)

**WAC 182-55-020 Committee selection.** (1) The ~~((administrator))~~ director, in consultation with the participating state agencies, ~~((shall make appointments to))~~ appoints vacant committee positions ~~((including the appointment of a chair,))~~ from a pool of interested applicants. Interested persons ~~((will be))~~ are provided an opportunity to submit applications to the ~~((administrator))~~ director for consideration.

(2) When appointing committee members, the ~~((administrator will))~~ director considers, in addition to the membership requirements imposed by RCW 70.14.090 ~~((and any))~~, other relevant information, ~~((the following factors))~~ including:

(a) Practitioner specialty or type and use of health technologies, especially in relation to current committee member specialty or types;

(b) Practice location and community knowledge;

(c) Length of practice experience;

(d) Knowledge of and experience with evidence-based medicine, including formal additional training in fields relevant to evidence-based medicine;

(e) Medical quality assurance experience; and

(f) Health technology assessment review experience.

**WAC 182-55-025 Committee member requirements and committee member terms.** (1) As a continuing condition of appointment, committee members must:

(a) ~~((Shall))~~ Not have a substantial financial conflict of interest, such as an interest in a health technology company, including the holding of stock options, or the receipt of honoraria, or consultant moneys;

(b) ~~((Must))~~ Complete a conflict of interest disclosure form, update the form annually, and keep disclosure statements current;

(c) ~~((Must))~~ Abide by confidentiality requirements and keep all personal medical information and proprietary information confidential; and

(d) ~~((Shall not utilize))~~ Not use information gained ~~((as a result of))~~ from committee membership outside of committee responsibilities, unless ~~((such))~~ the information is publicly available.

(2) The ~~((administrator, in his/her))~~ director has the sole discretion ~~((, may disqualify))~~ to terminate a committee ~~((members))~~ member's appointment if ~~((he/she))~~ the director determines that the committee member has violated a condition of appointment.

~~((2) Committee members shall be appointed to a term of three years and shall serve until a successor is appointed. A member may be reappointed for additional three year terms for a total of nine years. One year after the end of a nine year term, a person is eligible for appointment to one additional three year term.)~~ (3) Committee members serve staggered three-year terms. ((Of the initial members, in order)) To provide for staggered terms, ((some)) committee members may be appointed initially for less than three years. ((If an initial appointment is for less than twenty four months, that period of time shall not be counted toward the limitation of years of appointment. Vacancies on the committee will be filled for the balance of the unexpired term.

~~((3) The appointed committee chair shall select a vice chair from among the committee membership; ratify committee bylaws approved by the administrator; and operate the committee according to the bylaws and committee member agreements.))~~

(4) A committee member may be appointed for a total of nine years of committee service, but an initial appointment of less than twenty-four months is not included in the nine-year limitation.

(5) A committee member may serve until that member's successor is appointed, notwithstanding the limits on service in subsection (3) of this section.

(6) Mid-term vacancies on the committee are filled for the remainder of the unexpired three-year term.

NEW SECTION

**WAC 182-55-026 Committee governance.** (1) The committee may establish bylaws, within applicable statutory and regulatory requirements, to govern the orderly resolution of the committee's purposes. Proposed bylaw amendments are published on the centralized, internet-

based communication tool at least fourteen calendar days before adoption by the committee. Before adoption, the committee gives an opportunity at an open public meeting for public comment on proposed bylaw amendments. Committee bylaws shall be published on the centralized, internet-based communication tool.

(2) The director appoints a committee chair.

(3) The committee chair:

(a) Selects a vice-chair from among the committee membership;

(b) Presents bylaws, or amendments to the bylaws, to the committee for review and ratification; and

(c) Operates the committee according to the bylaws and committee member agreements.

AMENDATORY SECTION (Amending WSR 06-23-083, filed 11/13/06, effective 12/14/06)

**WAC 182-55-030 Committee coverage determination process.** (1) In making a coverage determination, committee members shall review and consider evidence regarding the safety, efficacy, and cost-effectiveness of the technology as set forth in the health technology assessment. The committee (~~may~~) also considers other information it deems relevant, including other information provided by the (~~administrator~~) director, reports (~~and/or~~) or testimony from an advisory group, and submissions or comments from the public.

(2) The committee shall give the greatest weight to the evidence determined, based on objective factors, to be the most valid and reliable, considering the nature and source of the evidence, the empirical characteristic of the studies or trials upon which the evidence is based, and the consistency of the outcome with comparable studies. The committee (~~may~~) also considers additional evidentiary valuation factors such as recency (~~(date of information)~~); relevance (the applicability of the information to the key questions presented or participating agency programs and clients); and bias (presence of conflict of interest or political considerations)), relevance, and bias.

(3) The committee also considers any unique impacts the health technology has on specific populations based on factors like sex, age, ethnicity, race, or disability, as identified in the health technology assessment.

(4) The committee provides an opportunity for public comment after the health technology assessment is published on the centralized, internet-based communication tool and before the committee's final coverage determination decision.

(5) After the committee makes a final coverage determination, the health technology assessment program publishes it on the centralized, internet-based communication tool and submits a notice in the *Washington State Register*.

AMENDATORY SECTION (Amending WSR 06-23-083, filed 11/13/06, effective 12/14/06)

**WAC 182-55-035 Committee coverage determination.** (~~Based on the evidence regarding safety, efficacy, and cost-effectiveness of the health technology,~~) The committee shall:

(1) Determine the conditions, if any, under which the health technology will be included as a covered benefit in health care programs of participating agencies by deciding that:

(a) Coverage is allowed without special conditions because the evidence is sufficient to conclude that the health technology is safe, efficacious, and cost-effective for all indicated conditions; or

(b) Coverage is allowed with special conditions because the evidence is sufficient to conclude that the health technology is safe, efficacious, and cost-effective in only certain situations; or

(c) Coverage is not allowed because either the evidence is insufficient to conclude that the health technology is safe, efficacious, and cost-effective or the evidence is sufficient to conclude that the health technology is unsafe, (~~ineffectual~~) inefficacious, or not cost-effective.

(2) Identify whether the coverage determination is consistent with (~~the identified medicare~~) decisions made under the federal medicare program and expert treatment guidelines.

(3) For decisions that are inconsistent with either (~~the identified medicare~~) decisions made under the federal medicare program or expert treatment guidelines, including those from specialty physician and patient advocacy organizations, specify the ((reason(s) for the decision and the evidentiary basis)) substantial evidence regarding the safety, efficacy, and cost-effectiveness of the technology that supports the contrary determination.

(4) For covered health technologies, specify criteria for participating agencies to use when deciding whether the health technology is medically necessary or proper and necessary treatment.

AMENDATORY SECTION (Amending WSR 06-23-083, filed 11/13/06, effective 12/14/06)

**WAC 182-55-040 ((Publication of committee)) Health care authority's implementation of final coverage determinations.** (~~(1) The administrator shall publish final committee determinations by posting on a centralized, internet based communication tool within ten days.~~

~~(2) Upon publication, participating agencies will implement the committee determination according to their statutory, regulatory, or contractual process unless:~~

~~(a) The determination conflicts with an applicable federal statute or regulation, or applicable state statute; or~~

~~(b) Reimbursement is provided under an agency policy regarding experimental or investigational treatment, services under a clinical investigation approved by an institutional review board, or health technologies that have a humanitarian device exemption from the federal food and drug administration.) This section applies to all final coverage determinations made after August 1, 2016.~~

(1) The health care authority reviews the final coverage determination for conflicts identified in RCW 70.14.120 (1)(a) and (b).

(2) The health care authority reviews whether the health technology review process meets the requirements in this subsection before compliance by the health care authority's state-purchased health care programs. The review includes whether the:

(a) Notification of the health technology selected for review was made on the centralized, internet-based communication tool as required by RCW 70.14.130 (1)(a);

(b) Health technology assessment provided to the committee met the requirements in RCW 70.14.100(4) and WAC 182-55-055;

(c) Health technology assessment was published on the centralized, internet-based communication tool at least fourteen calendar days before the committee's consideration of the health technology assessment;

(d) Health technology assessment was considered by the committee in an open and transparent process, as required by RCW 70.14.110 (2)(a);

(e) Committee provided an opportunity for public comment prior to the committee's final coverage determination decision;

(f) Committee acknowledged public comment timely received after publication of the committee's draft coverage determination and before the committee's final coverage determination decision;

(g) Committee's final coverage determination specifies the reason or reasons for a decision that is inconsistent with the identified decisions made under the federal medicare program and expert treatment guidelines, including those from specialty physician and patient advocacy organizations, for the reviewed health technology; and

(h) Committee meetings complied with the requirements of the Open Public Meetings Act as required by RCW 70.14.090(3).

(3) After the health care authority completes its reviews under subsections (1) and (2) of this section, it establishes an implementation date for each of the health care authority's state-purchased health care programs and publishes the implementation dates on the health care authority's web site.

(4) The health care authority's implementation of a final coverage determination can be reviewed as other agency action under RCW 34.05.570(4). A petition for review must be filed in superior court and comply with all statutory requirements for judicial review of other agency action required in chapter 34.05 RCW.

#### NEW SECTION

#### **WAC 182-55-041 Judicial review of final coverage determination.**

Nothing in this chapter limits the superior court's inherent authority to review health technology clinical committee determinations to the extent of assuring the decisions are not arbitrary, capricious, or contrary to law.



**WAC 182-55-045 Advisory group.** (1) The committee chair, upon an affirmative vote of the committee members, may establish ad hoc temporary advisory ~~((group(s) if specialized expertise or input from enrollees or clients is needed to review a particular health technology or group of health technologies. The purpose or scope of the advisory group and time period shall be stated. The advisory group shall provide a report and/or testimony to the committee on the key questions identified by the committee as requiring the input of the advisory group.~~

~~(2) Advisory group membership:))~~ groups under RCW 70.14.110 (2)(c). At the time an ad hoc temporary advisory group is formed, the committee must state the ad hoc temporary advisory group's objective and questions to address. Notice of the formation of an ad hoc temporary advisory group, and information about how to participate, shall be posted on the centralized, internet-based communication tool.

(2) The committee chair, or designee, may appoint or remove an advisory group member. An ad hoc temporary advisory group ((shall)) must include at least three members. ((Membership should reflect the diverse perspectives and/or technical expertise that drive the need for the specialized advisory group.)) The advisory group will generally include at least one enrollee, client, or patient(;-and)). The advisory group must have:

(a) Two or more experts or specialists within the field relevant to the health technology, preferably with demonstrated experience in the use, evaluation, or research of the health technology((. If substantial controversy over the health technology is present,));

(b) At least one expert ((that)) who is a proponent or advocate of the health technology; and

(c) At least one expert ((that)) who is an opponent or critic of the health technology ((should be appointed. A majority of each advisory group shall have no substantial financial interest in the health technology under review)).

~~(3) ((As a continuing condition of appointment, advisory group members:~~

~~(a) Must))~~ Each advisory group member must:

(a) Not have a substantial financial conflict of interest, such as an interest in a health technology company, including the holding of stock options, or the receipt of honoraria, or consultant moneys;

(b) Complete an advisory group member agreement, including a conflict of interest disclosure form, and keep disclosure statements current;

~~((b) Must))~~ (c) Abide by confidentiality requirements and keep all personal medical information and proprietary information confidential; and

~~((c) Shall))~~ (d) Not utilize information gained as a result of advisory group membership outside of advisory group responsibilities, unless such information is publicly available.

**WAC 182-55-050 Health technology selection.** (1) ~~((Prior to selection of a health technology for review or rereview, the administrator shall consider nominations from participating agencies and recommendations from the committee.))~~ The director, in consultation with participating agencies and the committee, selects health technologies to be reviewed or rereviewed by the committee.

(2) ~~The ((administrator))~~ director or committee may also consider petitions requesting initial review of a health technology from interested parties. ~~((The administrator shall make available, including publication to the centralized internet based communication tool required at RCW 70.14.130, a petition for interested parties to request a health technology be selected for a review or rereview. Interested parties shall complete the petition and submit it to the administrator. The administrator, or designee, will provide copies of the petition to participating agencies and the committee for comment, and provide the completed petition, with any comments, to the administrator for consideration.~~

~~(2) Interested parties that have submitted a petition for the review or rereview of a health technology that was not selected by the administrator may submit the petition to the committee for review or rereview.~~

~~(3) The committee may consider petitions submitted by interested parties for review or rereview of a health technology. The committee shall apply the priority criteria set forth in RCW 70.14.100.~~

~~(4))~~ To suggest a topic for initial review, interested parties must use the petition form made available on the centralized, internet-based communication tool. The health technology assessment program will provide copies of the petition to the director, committee members, and participating agencies.

(a) Petitions are considered by the director, in consultation with participating agencies and the committee.

(b) Only after the director has declined to grant the petition can a petition be considered for selection by the committee, as described in RCW 70.14.100(3).

(c) If a health technology is selected by the committee ((shall be)), the health technology is referred to the ((administrator)) director for assignment to the next available contract for a health technology assessment review as described in RCW 70.14.100(4).

(3) Interested parties may submit a petition for the rereview of a health technology. Interested parties must use the petition form available on the centralized, internet-based communication tool and may submit to the health technology assessment program evidence that has since become available that could change the previous coverage determination. The health technology assessment program will provide copies of the petition to the director, committee members, and participating agencies.

(a) Petitions are considered by the director, in consultation with participating agencies and the committee.

(b) Only after the director has declined to grant the petition can a petition be reviewed by the committee, as described in RCW 70.14.100(3).

**WAC 182-55-055 Health technology assessment.** (1) Upon providing notice ~~((of the selection of the health technology for review, the administrator))~~ on the centralized, internet-based communication tool required by RCW 70.14.100 (1)(b) that the health technology has been selected for review, the director shall post an invitation for interested parties to submit information relevant to the health technology for consideration by the evidence-based technology assessment center. ~~((Such))~~ The information ~~((shall be required to))~~ must be submitted to the ~~((administrator,))~~ director or designee ~~((,no earlier than))~~ within thirty calendar days from the date of the notice.

(2) Upon notice of the ~~((selection of the))~~ health technology selected for review, the ~~((administrator))~~ director or designee shall request participating agencies to provide information relevant to the health technology, including data on safety, health outcome, and cost. ~~((Such))~~ The relevant information ~~((shall be required to))~~ must be submitted to the ~~((administrator,))~~ director or designee ~~((,no earlier than))~~ within thirty calendar days from the date of the notice.

(3) Upon notice of the ~~((selection of the))~~ health technology selected for review, the ~~((administrator))~~ director or designee shall ~~((require staff to))~~ identify ~~((and organize))~~ relevant decisions made under the federal medicare ((national coverage determinations)) program and expert treatment guidelines, including those from specialty physician and patient advocacy organizations, and any referenced information used as the basis for such determinations ~~((and/or))~~ or guidelines.

(4) The ~~((administrator))~~ director shall provide all information ~~((relevant to the selected health technology))~~ gathered under subsections (1), (2), and (3) of this section to the evidence-based technology assessment center ~~((+))~~ and shall post such information, along with the key questions for review, on ~~((a))~~ the centralized, internet-based communication tool.

(5) Upon completion of the health technology assessment by the evidence-based technology assessment center, the ~~((administrator))~~ director shall publish a copy of the health technology assessment on the centralized, internet-based communication tool and provide the committee with:

(a) ~~((Final))~~ A copy of the health technology assessment;

(b) ~~((Information as to whether the federal medicare program has made a national coverage determination;))~~

~~((+))~~ A copy of ((identified national coverage)) decisions made under the federal medicare program related to the health technology being reviewed and accompanying information describing the basis for the decision;

~~((+))~~ (c) Information as to whether expert treatment guidelines exist, including those from specialty physician organizations and patient advocacy organizations ~~((+ and~~

~~((+))~~ (e) ~~A copy of identified guidelines and accompanying information), and~~ describing the basis for the guidelines.