



# RULE-MAKING ORDER

**CR-103P (May 2009)**  
**(Implements RCW 34.05.360)**

**Agency:** Health Care Authority, Washington Apple Health

**Permanent Rule Only**

**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:**

The agency amended this chapter and added new section WAC 182-520-0015 to support agency and agency designee action in establishing and recovering long-term services and supports (LTSS) client overpayments. Housekeeping changes were also made in 182-520-0005 and 182-520-0010 to remove the abbreviation "WAH" and make language about the agency's designee parallel with the new section in the chapter.

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

Repealed:  
 Amended: 182-520-0005, 182-520-0010  
 Suspended:

**Statutory authority for adoption:** RCW 41.05.021, 41.05.160, 41.05A.005, 41.05.010 and 74.09.741

**Other authority:**

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

Adopted under notice filed as WSR 16-09-013 on April 8, 2016.  
 Describe any changes other than editing from proposed to adopted version: N/A

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

Name: \_\_\_\_\_ phone ( ) \_\_\_\_\_  
 Address: \_\_\_\_\_ fax ( ) \_\_\_\_\_  
 e-mail \_\_\_\_\_

**Date adopted:** June 13, 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: June 13, 2016**

**TIME: 9:08 AM**

**WSR 16-13-059**

**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:**

<b>Federal statute:</b>	New	_____	Amended	_____	Repealed	_____
<b>Federal rules or standards:</b>	New	_____	Amended	_____	Repealed	_____
<b>Recently enacted state statutes:</b>	New	_____	Amended	_____	Repealed	_____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 in 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>3</u>	Repealed	_____
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**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Pilot rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Other alternative rule making:</b>	New	_____	Amended	<u>3</u>	Repealed	_____

AMENDATORY SECTION (Amending WSR 14-01-021, filed 12/9/13, effective 1/9/14)

**WAC 182-520-0005 Washington apple health fraud referrals and overpayments.** (1) The agency or ~~((its))~~ the agency's designee may refer a case to the office of fraud and accountability for a fraud investigation when it has reliable information that the person purposely misrepresented their circumstances in order to qualify for Washington apple health ~~((+WAH))~~.

(2) When a fraud investigation reveals substantial evidence to support a finding of fraud, the case is referred for prosecution. The prosecuting attorney's office decides which cases will be prosecuted.

(3) When a referral results in a conviction, an overpayment amount for the cost of the ~~((WAH))~~ apple health coverage is established.

(4) The person is responsible to pay the agency for the amount of overpayment established as a result of a fraud conviction.

AMENDATORY SECTION (Amending WSR 14-01-021, filed 12/9/13, effective 1/9/14)

**WAC 182-520-0010 Washington apple health overpayments resulting from an administrative hearing.** (1) If a person asks for Washington apple health ~~((+WAH))~~ coverage to continue during an appeal, he or she must pay the agency for the cost of that coverage if both (a) and (b) of this subsection occur:

(a) The administrative law judge, or review judge if applicable, enters an order:

(i) That the person was not eligible for ~~((WAH))~~ apple health coverage during the appeal;

(ii) Dismissing the hearing under WAC 182-526-0285(3) because the person defaulted (did not attend or refused to participate) and the agency's action that was appealed included a finding that the person was not eligible for ~~((WAH))~~ apple health coverage; or

(iii) Dismissing the hearing under WAC 182-526-0285(4) due to a written agreement between all the parties that the person will pay for an overpayment of the cost of ~~((WAH))~~ apple health coverage.

(b) The agency decides to collect the overpayment.

(2) The overpayment amount is limited to payments for ~~((WAH))~~ apple health coverage that were spent:

(a) During the sixty days following receipt of the hearing request; and

(b) For a person who was not eligible for ~~((WAH))~~ apple health coverage.

(3) The agency will not attempt to recover ~~((a-WAH))~~ an apple health overpayment from a nonneedy caretaker relative or guardian except in the case of fraud by the caretaker relative or guardian as described in WAC 182-520-0005.

NEW SECTION

**WAC 182-520-0015 Long-term services and supports client overpayments. (1) General right to recover.**

(a) A long-term services and supports (LTSS) client overpayment is any payment for LTSS made by the agency or the agency's designee on a client's behalf in excess of that to which the client is legally entitled.

(b) An LTSS client overpayment may be caused by:

(i) A client or a client's authorized representative misstating or failing to reveal a fact affecting eligibility under WAC 182-503-0505;

(ii) A client or a client's authorized representative failing to timely report a change required under WAC 182-504-0105; or

(iii) The agency or the agency's designee's error.

(c) The agency or the agency's designee may recoup an LTSS client overpayment:

(i) Up to six years after the date of the notice in subsection (2) of this section; and

(ii) Regardless of whether the program is state-funded, federally funded, or both.

(d) The amount of the LTSS client overpayment equals the amount the agency or the agency's designee paid on the client's behalf minus the amount to which the client was legally entitled.

**(2) Notice.**

(a) The agency notifies the client or the client's authorized representative by:

(i) Personal service under RCW 4.28.080; or

(ii) Certified mail, return receipt requested.

(b) The agency or the agency's designee may prove that it notified the client by providing:

(i) A sworn statement;

(ii) An affidavit or certificate of mailing; or

(iii) The certified mail receipt signed by the client or the client's authorized representative.

(c) The notice states:

(i) The client's name;

(ii) The client's address;

(iii) The date the agency or the agency's designee issued the notice;

(iv) The amount of the LTSS client overpayment;

(v) How the agency calculated the LTSS client overpayment;

(vi) How the client may request an administrative hearing; and

(vii) How the client may make a payment.

**(3) Response.**

(a) The client must respond to the notice within ninety days of the date the agency or the agency's designee served the client with the notice of the LTSS client overpayment by:

(i) Paying the agency or the agency's designee;

(ii) Establishing a payment plan with the agency or the agency's designee; or

(iii) Requesting an administrative hearing.

(b) If the client does not respond to the notice within ninety days of the date the agency or the agency's designee served the client with the notice, the agency or the agency's designee may initiate collection action.

(4) **Hearings.** A person who disagrees with agency or the agency's designee's action under this section may request an administrative hearing under chapter 182-526 WAC.