



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 is amending the rules to make the hearing process more efficient and streamlined.

Citation of existing rules affected by this order:

Repealed: 182-526-0045, 182-526-0090, 182-526-0105, 182-526-0112, 182-526-0157, 182-526-0170, 182-526-0235, 182-526-0315

Amended: 182-526-0005, 182-526-0010, 182-526-0020, 182-526-0025, 182-526-0035, 182-526-0040, 182-526-0070, 182-526-0080, 182-526-0085, 182-526-0095, 182-526-0102, 182-526-0110, 182-526-0115, 182-526-0135, 182-526-0155, 182-526-0175, 182-526-0185, 182-526-0195, 182-526-0200, 182-526-0215, 182-526-0221, 182-526-0230, 182-526-0240, 182-526-0245, 182-526-0250, 182-526-0255, 182-526-0270, 182-526-0280, 182-526-0285, 182-526-0290, 182-526-0320, 182-526-0340, 182-526-0350, 182-526-0355, 182-526-0360, 182-526-0370, 182-526-0375, 182-526-0380, 182-526-0387, 182-526-0390, 182-526-0415, 182-526-0450, 182-526-0495, 182-526-0500, 182-526-0520, 182-526-0525, 182-526-0540, 182-526-0545, 182-526-0550, 182-526-0555, 182-526-0560, 182-526-0575, 182-526-0580, 182-526-0595, 182-526-0600, 182-526-0605, 182-526-0640, 182-526-0650

Suspended:

Statutory authority for adoption: RCW 41.05.021, 41.05.160

Other authority:

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 16-17-093 on September 28, 2016.

Describe any changes other than editing from proposed to adopted version:

See Attachment

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: February 13, 2017

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: February 13, 2017

TIME: 12:21 PM

WSR 17-05-066

**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 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	<u> 3 </u>	Amended	<u> 58 </u>	Repealed	<u> 8 </u>
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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> 3 </u>	Amended	<u> 58 </u>	Repealed	<u> 8 </u>

Attachment

Note: Strikeouts and underlines indicate language deleted or added since the proposal. An asterisk indicates rules that the agency proposed changes to under the WSR 16-17-093 but the agency has decided to keep the original rule language and not make the proposed changes.

182-526-0005 Purpose and scope

The agency added “, but not limited to,” to subsections (1)(a) and (1)(b) of this subsection.

* 182-526-0010 Definitions

The agency decided not to make changes to the following definitions, and the proposed changes were removed:

~~"Limited-English-proficient (LEP)"~~

~~"Limited-English-speaking (LES) person"~~

~~"Qualified interpreter for a limited-English-speaking person"~~

~~"Qualified interpreter for a person with hearing loss"~~

The agency struck language from the following definition: **"Order of default"**- "An order entered by an administrative law judge (ALJ) or review judge when the appellant fails to appear ~~or participate~~ in a prehearing conference or a hearing."

The agency removed this proposed definition: ~~"Sight-translation" - Oral interpretation of a written text.~~

182-526-0020 Good cause

The agency struck language from subsection (2) and moved it to a new subsection (3). Subsection (2) was replaced with new language. Subsections (2)(a) and (b) keep original rule language that used to be in subsection (1) of this rule but were removed from the CR-102 version.

The agency added subsection (3).

~~(2) The requestor bears the burden to show why a request should be granted or an action excused.~~ To determine if there is good cause, the administrative law judge may consider the provisions of Superior Court Civil Rule 60 as a guideline. Good cause may include, but is not limited to, the following examples:

(a) The party who requested the hearing ignored a notice because he or she was in the hospital or was otherwise prevented from responding; or

(b) The party who requested the hearing could not respond to the notice because it was written in a language that he or she did not understand.

(3) The requestor bears the burden to show why a request should be granted or an action excused.

182-526-0025 Use and location of the office of administrative hearings

The agency struck the following language from subsection (3) (a):

Yakima

~~Office of Administrative Hearings
32 N. 3rd Street, Suite 320
Yakima, WA 98901-2730
509-249-6090
1-800-843-3491
Fax 509-454-7281~~

182-526-0040 Service of documents on another party

The agency struck the last two proposed sentences of subsection (8) of this section:

~~(8) A party may serve documents by e-mail only if the other parties have agreed to accept electronically served documents. A party must obtain confirmation of receipt of the service from the other parties in order to prove that the documents were successfully served. A party serving documents by electronic means must retain proof of service for the hearing.~~

182-526-0070 Filing documents

The agency added office hours in subsection (3) of this section: 8:00 a.m. to 5:00 p.m.

The agency removed the proposed sentence in subsection (5).

~~(5) A party may deliver documents for filing by e-mail only if OAH or BOA staff agreed to accept electronically filed documents. A party must obtain confirmation of receipt of the filing from the ALJ or review judge in order to prove that the documents were successfully filed. A party filing documents by electronic means must retain proof of service for the hearing.~~

182-526-0085 Determining if a hearing right exists

The agency added the following to subsection (6) of this section: If the ALJ or RJ decides that the person or entity does not have a right to a hearing, the ALJ or RJ enters an order ..."

182-526-0095 Requesting a hearing

The agency made the following changes:

~~Subsection (1) "A hearing request may be made orally or in writing, unless a statute or rule requires otherwise. If an oral request is allowed by statute or rule, ..."~~

~~Subsection (2) "Program rules or statutes may require ..."~~

*** 182-526-0135 Interpreters**

The agency removed the proposed language to this section, with the exception of the following:

Subsection (3) "...at a hearing:"

Subsection (5) "~~the ALJ~~ OAH"

*** 182-526-0150 Hearing decisions involving limited-English proficient parties.**

The agency removed the proposed changes to this section. No changes were made to this section in the final proposal.

182-526-0155 Appellant's representation in the hearing

The agency added the following to subsection (1): "An appellant may act as his or her own representative or may choose to have someone represent him or her including, but not limited to, ..."

182-526-0195 Prehearing conferences

The agency removed "and participate in" subsection (2) of this section: All parties must attend ~~and participate in~~ the prehearing conference. If the party who requested the hearing does not attend ~~and participate in~~ the prehearing conference,..."

* The agency decided to not make any changes to subsection (6) of this section and removed the strikeout. "The ALJ may grant additional requests for prehearing conferences."

As a result, the rest of the section was renumbered.

The agency added the following language in subsection (11) of this section: A party may object to the prehearing order by notifying OAH in writing within ten calendar days after the mailing date of the order. The ALJ must issue a ruling on the objection within five days from the date a party files an objection.

*** 182-526-0200 Enrollee appeals of a managed care organization**

The agency decided not to make any changes to subsections (8), (9), or (10) of this section. No changes were made to the final proposal.

*** 182-526-0215 Authority of the administrative law judge when conducting a hearing**

The agency decided not to make any changes to subsection (1) of this section. No changes were made to the final proposal.

182-526-0255 Notice of hearing or notice of prehearing conference

The agency made the following change to subsection (1)(b): " A notice of hearing or prehearing conference must include a statement that the appellant's failure to attend ~~and participate in the~~ prehearing conference ..."

182-526-0280 Continuing a hearing when an applicant is an applicant or recipient.

The agency split subsection (3) into (3)(a) and (b) and added the following language as the introduction to subsection (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:"

Under new (3)(b) of this section, the agency renumbered the items from (a), (b), (c), (d), (e), (f), (g), (h), (i) and (j) to (i) through (xi). The language in (3)(b)(xi) was added: "Other relevant factors."

The agency struck subsection (5) of this section.

The agency revised subsection (6) as follows: "(4) Standard when sixty days or greater."

The agency also added the following subsections to subsection (4):

"(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."

The agency renumbered the rest of the subsections.

The agency revised newly numbered section (6) as follows: "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."

182-526-0282 Continuance requests in provider hearing, estate recovery hearing, or nursing home rate hearing under WAC 388-96-904

The agency added a new subsection (5): "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."

182-526-0284 Orders of default

The agency made the following change to subsection (1): "An order of default may be entered when the appellant fails to attend ~~or participate in~~ a scheduled prehearing conference or hearing."

182-526-0290 Reinstating a hearing after an order of default or an order of dismissal

The agency made the following change to subsection (3): "If OAH receives a petition to vacate, OAH schedules a prehearing conference and serves all parties with a notice of prehearing conference ..."

182-526-0340 Hearing location

The agency made the following changes to subsection (2), (3), and (5):

A telephonic hearing is a hearing where all parties ~~and the administrative law judge (ALJ) appear by telephone conference call from different locations~~ the appellant appears by telephone.

(3) An in-person hearing is where the ~~party that had requested the hearing~~ appellant appears face-to-face with the ALJ. The other parties may choose to appear either in person or by telephone.

(5) If a hearing is originally scheduled as an in-person hearing, the ~~party that requested the hearing~~ appellant may ask that the ALJ change it to a telephonic hearing. Once a telephonic hearing begins, the ALJ may stop, reschedule, and change the hearing to an in-person hearing if any party makes such a request.

*** 182-526-0360 Changing how a hearing is held or how a witness appears at a hearing**

The agency removed the proposed changes to this section, with the exception of one housekeeping change: In-person to in person.

182-526-0375 Summary of the hearing process

The agency has made the following change to subsection (3): "At the end of the hearing, the record ~~will be~~ is closed ..."

182-526-0525 When initial orders become final.

The agency removed the proposed text from subsection (4).

(4) A managed care enrollee requests review by an independent review (IR) organization in accordance with RCW 48.43.535 prior to the initial order becoming final or a final order being entered by a review judge. See WAC 182-526-0200 for information about enrollee appeals.

182-526-0545 How a party requests a corrected initial order

The agency made the following change to subsection (1): "A party may ~~ask~~ request that the administrative law judge ..."

182-526-0555 Process after a party requests a correct initial order

The agency split subsection (3) into subsections (3) and (4), renumbered the remaining subsections, and revised the subsections as follows:

(3) If the ALJ denies a request for a corrected initial order and a party does not request review, the initial order becomes a final order at 5:00 p.m., twenty-one calendar days after the initial order was served.

(4) If the ALJ denies the request for a corrected initial order and the party still wants the initial order ~~changed~~ corrected, the party must request review by a review judge.

The agency also removed the following language from newly renumbered subsection (6) (previously subsection (5)): "When a party needs more time to request review of an initial order, the party must ~~contact the office of administrative hearings (OAH) and ask for more time ...~~"

182-526-0580 Deadline for requesting review of an initial order by a review judge

The agency made the following change to the last sentence of subsection (1): "... A copy of the review request should also be mailed to ~~the~~ BOA."

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0005 Purpose and scope. (1) This chapter:

(a) Describes the general hearing rules and procedures that apply to the resolution of disputes between an appellant and medical services programs established under chapter 74.09 RCW (~~and subsidized basic health under chapter 70.47 RCW. This chapter~~) including, but not limited to, managed care in chapters 182-538, 182-538A, and 182-538B WAC, and crisis and noncrisis services in chapter 182-538C WAC.

(b) Supplements the Administrative Procedure Act (APA), chapter 34.05 RCW, and the model rules, chapter 10-08 WAC, adopted by the office of administrative hearings (OAH).

~~((1) This chapter:~~

~~(a))~~ (c) Establishes rules encouraging informal dispute resolution between the health care authority (HCA), its authorized agents, or an HCA-contracted managed care organization (MCO), and ~~((persons))~~ people or entities who disagree with its actions(~~(+and)~~).

~~((b))~~ (d) Regulates all hearings involving medical services programs established under chapter 74.09 RCW (~~and subsidized basic health under chapter 70.47 RCW~~) including, but not limited to, managed care in chapters 182-538, 182-538A, and 182-538B WAC, and crisis and noncrisis services in chapter 182-538C WAC, unless specifically excluded by this chapter or program rules.

(2) Nothing in this chapter is intended to affect the constitutional rights of any person or to limit or change additional requirements imposed by statute or other rule. Other laws or rules determine if a hearing right exists, including the APA and program rules or laws.

(3) If there is a conflict between this chapter and specific program rules, the specific program rules prevail. HCA's hearing rules and program rules prevail over the model hearing rules in chapter 10-08 WAC.

(4) The hearing rules in this chapter do not apply to the ~~((following programs:~~

~~(a))~~ public employees benefits board program (see chapter 182-16 WAC)(~~(+and~~

~~(b) The Washington health plan (see chapter 182-22 WAC))~~).

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0010 Definitions. The following definitions and those found in RCW 34.05.010 apply to this chapter:

"Administrative law judge (ALJ)" - An impartial decision-maker who is an attorney and presides at an administrative hearing. ALJs are employed by the office of administrative hearings (OAH), which is a separate state agency, as defined in RCW 34.05.010. ALJs are not department of social and health services or health care authority (HCA) employees or representatives.

"Agency" - See WAC 182-500-0010.

"Appellant" - A person or entity who requests a hearing about an action of HCA or its designee.

"Applicant" - Any person who has made a request, or on whose behalf a request has been made, to HCA, or HCA's authorized agent on HCA's behalf, for assistance through a medical service program established under chapter 74.09 RCW.

"Authorized agent" - A person or agency, as defined in RCW 34.05.010, acting on HCA's behalf ~~((pursuant to))~~ under an agreement authorized by RCW 41.05.021 to act as an HCA hearing representative. ~~((The))~~ An authorized ~~((agent(s)))~~ agent may ~~((include))~~ be an employee~~((s))~~ of the department of social and health services or its contractors but ~~((does))~~ may not ~~((include))~~ be an employee~~((s))~~ of an HCA-contracted managed care organization~~((s))~~.

"Board of appeals" or **"BOA"** - The HCA's board of appeals.

"Business days" - All days except Saturdays, Sundays, and ~~((legal holidays))~~ designated holidays under WAC 357-31-005.

"Calendar days" - All days including Saturdays, Sundays, and ~~((legal holidays))~~ designated holidays under WAC 357-31-005.

"Continuance" - A change in the date or time of a prehearing conference, hearing, or the deadline for other action.

"Date of the health care authority (HCA) action" - The date when the HCA's decision is effective.

"Deliver" - Giving a document to a person or entity in person or placing the document into the person or entity's possession as authorized by the rules in this chapter or chapter 34.05 RCW.

"Department" - The department of social and health services.

"Documents" - Papers, letters, writings, or other printed or written items.

"Filing" - The act of delivering documents to the office of administrative hearings (OAH) or the board of appeals (BOA).

"Final order" - An order that is the final HCA decision.

"HCA" - The health care authority.

"Health care authority (HCA) hearing representative" - An employee of HCA, an authorized agent of HCA, HCA contractor or a contractor of HCA's authorized agent, or an assistant attorney general authorized to represent HCA in an administrative hearing. The HCA hearing representative may or may not be an attorney. An employee of an HCA contracted managed care organization is not an HCA hearing representative.

"Hearing" - Unless context clearly requires a different meaning, a proceeding before an ALJ, HCA-employed presiding officer, or a review judge that gives a party an opportunity to be heard in disputes about medical services programs established under chapter 74.09 RCW ~~((and subsidized basic health under chapter 70.47 RCW))~~. For purposes of this chapter, hearings include administrative hearings, adjudicative proceedings, and any other similar term referenced under chapter 34.05 RCW, the Administrative Procedure Act, Titles 182 and 388 WAC, chapter 10-08 WAC, or other law.

"Initial order" - A hearing decision entered (made) by an ALJ that may be reviewed by a review judge at any party's request.

"Intermediary interpreter" - An interpreter who:

(1) Is a certified deaf interpreter (CDI); and
(2) Is able to assist in providing an accurate interpretation between spoken and sign language or between types of sign language by acting as an intermediary between a person with hearing loss and a qualified interpreter.

"Judicial review" - ~~((A superior court's))~~ Review of a final order as provided under RCW 34.05.510 through 34.05.598.

"Limited-English-proficient (LEP)" - Includes limited-English-speaking persons or other persons unable to communicate in spoken English because of hearing loss.

"Limited-English-speaking (LES) person" - A person who, because of non-English-speaking cultural background or disability, cannot readily speak or understand the English language.

"Mail" - Placing a document in the United States Postal system, or commercial delivery service, properly addressed and with the proper postage.

"Managed care organization" or "MCO" - An organization having a certificate of authority or certificate of registration from the office of insurance commissioner that contracts with HCA under a comprehensive risk contract to provide prepaid ((healthcare)) health care services to eligible ((clients)) recipients under HCA's managed care programs.

"OAH" - The office of administrative hearings(~~(, which is a separate state agency from HCA or the department of social and health services))~~).

"Order of default" - An order entered by an administrative law judge (ALJ) or review judge when the appellant fails to appear in a prehearing conference or a hearing. Once the order of default becomes a final order, it terminates the appellant's request for a hearing and ends the hearing process.

"Order of dismissal" - An order from the administrative law judge (ALJ) or review judge ending the hearing process.

"Party":

- (1) The health care authority (HCA);
- (2) HCA-contracted managed care organization (MCO) (if applicable); and
- (3) A person or entity:
 - (a) Named in the action;
 - (b) To whom the action is directed; or
 - (c) Is allowed to participate in a hearing to protect an interest as authorized by law or rule.

"Person with hearing loss" - A person who, because of a loss of hearing, cannot readily speak, understand, or communicate in spoken language.

"Prehearing conference" - A formal proceeding scheduled and conducted by an ALJ or other reviewing officer (~~(to address issues in preparation for a hearing))~~ on the record for the purposes identified in WAC 182-526-0195.

"Prehearing meeting" - An informal, voluntary meeting that may be held before any prehearing conference or hearing.

"Program" - An organizational unit and the services that it provides, including services provided by HCA staff, its authorized agents, and through contracts with providers and HCA-contracted managed care organizations.

"Qualified interpreter" - Includes qualified interpreters for a limited-English-speaking person or a person with hearing loss.

"Qualified interpreter for a limited-English-speaking person" - A person who is readily able to interpret or translate spoken and written English communications to and from a limited-English-speaking person effectively, accurately, and impartially. If an interpreter is court certified, the interpreter is considered qualified.

"Qualified interpreter for a person with hearing loss" - A visual language interpreter who is certified by the Registry of Interpreters for the Deaf (RID) or National Association of the Deaf (NAD) and is

readily able to interpret or translate spoken communications to and from a person with hearing loss effectively, accurately, and impartially.

"Recipient" - Any person receiving assistance through a medical service program established under chapter 74.09 RCW.

"Reconsideration" - Asking a review judge to reconsider a final order entered because the party believes the review judge made a mistake.

"Record" - The official documentation of the hearing process. The record includes recordings or transcripts, admitted exhibits, decisions, briefs, notices, orders, and other filed documents.

"Review" - A review judge evaluating initial orders entered by an ALJ and making the final HCA decision as provided by RCW 34.05.464, or issuing final orders.

"Review judge" - A decision-maker with expertise in program rules ~~((that))~~ who serves as the reviewing officer under RCW 34.05.464. The review judge reviews initial orders and the hearing record exercising decision-making power as if hearing the case as a presiding officer. In some cases, review judges conduct hearings under RCW 34.05.425 as a presiding officer. After reviewing initial orders or conducting hearings, review judges enter final orders. Review judges are employed by HCA but may be physically located at the board of appeals (BOA). The review judge must not have been involved in the initial HCA action.

"Rule" - A ~~((state))~~ regulation adopted by a state agency. Rules are found in the Washington Administrative Code (WAC).

"Service" - The delivery of documents as explained in WAC 182-526-0040.

"Should" - That an action is recommended but not required.

"Stay" - An order temporarily halting the HCA decision or action.

"Witness" - For the purposes of this chapter, means any person who makes statements or gives testimony that becomes evidence in a hearing. One type of witness is an expert witness. An expert witness is qualified by knowledge, skill, experience, training, and education to give opinions or evidence in a specialized area.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0020 Good cause. (1) Good cause is a substantial reason or legal justification ~~((for failing to appear, act, or respond to an action. To show good cause, the administrative law judge must find that a party had a good reason for what they did or did not do, using the provisions of Superior Court Civil Rule 60 as a guideline))~~ allowing the administrative law judge (ALJ) to grant a party's request or to excuse their action or inaction, including granting a continuance or excusing a failure to appear at an administrative proceeding.

(2) ~~((Good cause may include, but is not limited to, the following examples:))~~ To determine if there is good cause, the administrative law judge may consider the provisions of Superior Court Civil Rule 60 as a guideline. Good cause may include, but is not limited to, the following examples:

(a) The party who requested the hearing ignored a notice because he or she was in the hospital or was otherwise prevented from responding; or

(b) The party who requested the hearing could not respond to the notice because it was written in a language that he or she did not understand.

(3) The requestor bears the burden to show why a request should be granted or an action excused.

AMENDATORY SECTION (Amending WSR 14-17-031, filed 8/13/14, effective 9/13/14)

WAC 182-526-0025 Use and location of the office of administrative hearings. (1) The health care authority (HCA) may ~~((utilize))~~ use administrative law judges employed by the office of administrative hearings (OAH) to conduct administrative hearings and issue initial orders in accordance with RCW 34.05.425 (1)(c).

(2) In some situations, HCA may use presiding officers employed by HCA to conduct administrative hearings and issue final orders in accordance with RCW 34.05.425 (1)(a) and (b). When HCA uses HCA-employed presiding officers to conduct administrative hearings, ~~((the HCA))~~ HCA's presiding officer ~~((shall have))~~ has all the duties and responsibilities set forth in this chapter relating to administrative law judges and the office of administrative hearings. The notice of hearing will identify whether the case is to be heard by OAH or an HCA-employed presiding officer.

~~((2)(a) The office of administrative hearings (OAH))~~ (3)(a) OAH headquarters location is:

Office of Administrative Hearings
2420 Bristol Court S.W.
P.O. Box 42488
Olympia, WA 98504-2488
360-664-8717
fax: 360-664-8721

(b) The headquarters office is open from 8:00 a.m. to 5:00 p.m. Monday through Friday, except legal holidays.

~~((3))~~ (4) OAH field offices are at the following locations:

Olympia

Office of Administrative Hearings
2420 Bristol Court S.W.
P.O. Box 42489
Olympia, WA 98504-2489
360-407-2700
1-800-583-8271
fax: 360-586-6563

Seattle

Office of Administrative Hearings
One Union Square
600 University Street, Suite 1500
Mailstop: TS-07
Seattle, WA 98101-1129
206-389-3400
1-800-845-8830
fax: 206-587-5135

((**Vancouver**
Office of Administrative Hearings
5300 MacArthur Blvd., Suite 100
Vancouver, WA 98661
360-690-7189
1-800-243-3451
fax: 360-696-6255))

Tacoma
Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402
253-476-6888
fax: 253-593-2200

Spokane
Office of Administrative Hearings
16201 E. Indiana Avenue, Suite 5600
Spokane Valley, WA 99216
509-456-3975
1-800-366-0955
fax: 509-456-3997

((**Yakima**
Office of Administrative Hearings
32 N. 3rd Street, Suite 320
Yakima, WA 98901-2730
509-249-6090
1-800-843-3491
fax: 509-454-7281

(4)) (5) Contact the Olympia field office, under subsection (2) of this section, if unable to identify the correct field office.

((5)) (6) Further hearing information can be obtained at the OAH web site: www.oah.wa.gov.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0035 Calculating when a hearing deadline ends. (1) When counting days to calculate when a hearing deadline ends under program rules or statutes:

(a) Do not include the day of the action, notice, or order. For example, if a hearing decision is mailed on Tuesday and the party has twenty-one days to request a review, start counting the days with Wednesday.

(b) If the last day of the period is a Saturday, Sunday, or ((legal holiday)) a designated holiday under WAC 357-31-005, the deadline is the next business day.

(c) For periods of seven days or less, count only business days. For example, if the party has seven days to respond to a review request that was mailed on Friday, May 10th, the response period ends on Tuesday, May 21st.

(d) For periods over seven days, count every calendar day, including Saturdays, Sundays, and ~~((legal))~~ designated holidays under WAC 357-31-005.

(2) The deadline is 5:00 p.m. on the last day.

(3) If the party who requested the hearing misses a deadline, that party may lose ~~((its))~~ the right to a hearing or appeal of a decision.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0040 ~~((Sending))~~ Service of documents ~~((to))~~ on another party~~((, the office of administrative hearings, or to the board of appeals))~~. (1) When the rules in this chapter or in other program rules or statutes require a party to ~~((send))~~ serve copies of documents ~~((to))~~ on other parties, the party must ~~((serve))~~ send copies of the documents to ~~((the health care authority (HCA) hearing representative and to))~~ all other parties or their representatives.

(2) When sending documents to the office of administrative hearings (OAH) or the board of appeals (BOA), the party must file the documents at one of the locations listed in WAC 182-526-0025(2) for OAH or in WAC 182-526-0030 for BOA.

(3) When sending documents to the assigned OAH field office, the parties should use the address of the assigned OAH listed on the notice of hearing. If a field office has not been assigned, all written communication about the hearing must be sent to the OAH Olympia field office, which sends the communication to the correct office.

~~((4))~~ Documents may be sent only as ~~((identified))~~ described in ~~((WAC 182-526-0045))~~ this section to accomplish service ~~((and only as identified in WAC 182-526-0070 to accomplish filing))~~.

(4) Unless otherwise stated in law, a party may serve someone by:

(a) Personal service (hand delivery);

(b) First class, registered, or certified mail;

(c) Fax;

(d) Commercial delivery service; or

(e) Legal messenger service.

(5) A party must serve all other parties or their representatives whenever the party files a pleading, brief, or other document with the office of administrative hearings (OAH) or the board of appeals (BOA), or when required by law.

(6) Service is complete when:

(a) Personal service is made;

(b) Mail is properly stamped, addressed, and deposited in the United States mail;

(c) A fax produces proof of transmission;

(d) A parcel is delivered to a commercial delivery service with charges prepaid; or

(e) A parcel is delivered to a legal messenger service with charges prepaid.

(7) A party may prove service by providing any of the following:

(a) A sworn statement;

(b) The certified mail receipt signed by the person who received the envelope;

(c) An affidavit or certificate or mailing;

- (d) A signed receipt from the person who accepted the commercial delivery service or legal messenger service package; or
- (e) Proof of fax transmission.
- (8) A party may serve documents by email only if the other parties have agreed to accept electronically served documents.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0070 Filing documents. (1) Filing is the act of delivering documents to the office of administrative hearings (OAH) or the board of appeals (BOA).

(2) The date of filing is the date documents are received by OAH or ~~((the))~~ BOA.

(3) Filing is complete when the documents are received by OAH or ~~((the))~~ BOA during office hours, 8:00 a.m. to 5:00 p.m. ~~((For))~~ If the documents are received after normal office hours, the filing is effective the next business day.

(4) A party may file documents by delivering them ~~((to the office of administrative hearings))~~ to OAH or ~~((the))~~ BOA by:

- (a) Personal service (e.g., hand delivery);
- (b) First class, registered, or certified mail;
- (c) Fax transmission;
- (d) Commercial delivery service; or
- (e) Legal messenger service.

(5) A party may deliver documents for filing by email only if ~~((the ALJ or review judge has))~~ OAH or BOA staff agreed to accept electronically filed documents. ~~((Parties))~~ A party must ~~((request and receive))~~ obtain confirmation of receipt of the filing from the ALJ or review judge ~~((in order))~~ to prove that the documents were successfully filed.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0080 Resolving a dispute with the health care authority. (1) ~~((There is a limited time to request a hearing. The party must request a hearing within the deadline established in statute or rule to preserve the hearing right.~~

~~((2) If the party who requested the hearing disagrees with a decision or action of the health care authority, or one of its authorized agents, the party has several options for resolving the dispute, which may include the following:))~~ If a person or entity disagrees with a decision or action of the health care authority (HCA) or one of its authorized agents, the person or entity may request a hearing.

(2) A notice of an action or decision by HCA or its authorized agent sent to a person's or entity's correct address is presumed to be received by the person or entity on the fourth business day after it was sent by first class mail. This presumption does not apply to certified or registered mail.

(3) A hearing must be requested in the manner and within the deadlines established in statute or rule.

(4) After a person or entity requests a hearing the dispute may be resolved through:

(a) Any ~~((special))~~ prehearing alternative or administrative process offered by the program, HCA's authorized agent, or the HCA hearing representative;

(b) A prehearing meeting;

(c) A prehearing conference; ((and)) or

(d) A hearing.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0085 Determining if a hearing right exists. (1) A person or entity has a right to a hearing only if a law or program rule gives that right. ~~((If the person or entity is not sure whether a hearing right exists, they should request a hearing to protect their rights.))~~

(2) Some programs may require a person or entity to go through an informal administrative process before requesting or having a hearing. The notice of the agency's action ~~((should))~~ includes information about this requirement if it applies.

(3) Program rules and statutes may limit the time a person or entity has to request a hearing. The deadline for filing the request for hearing varies by the program involved. ~~((All))~~ Hearing requests should be submitted right away to protect the right to a hearing, even if the parties are also trying to resolve the dispute informally. The notice of the agency's action contains information about this requirement.

~~((4))~~ ~~((If a hearing is requested, one is scheduled. +5))~~ If the health care authority (HCA) hearing representative or the administrative law judge (ALJ) questions the person's or entity's right to a hearing, the ALJ or review judge (RJ) must address whether the hearing right exists.

~~((6))~~ (5) If on appeal of the initial order the HCA hearing representative or the review judge questions the right to a hearing, the review judge decides whether the hearing right exists.

~~((7))~~ (6) If the ALJ or ~~((review judge))~~ RJ decides ~~((a))~~ that the person or entity does not have a right to a hearing, the ALJ or RJ enters an order dismissing the hearing ((is dismissed)).

~~((8))~~ (7) If the ALJ or ~~((review judge))~~ RJ decides that a person or entity ~~((does have))~~ has a right to a hearing, the hearing proceeds.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0095 ~~((How to request))~~ Requesting a hearing. ~~((+1))~~ If a person or entity has questions about how, when, and where to request a hearing, they should:

~~(a) Contact the specific program involved, the office of administrative hearings (OAH), or the board of appeals (BOA);~~

~~(b) Review the notice sent by the health care authority (HCA) of the action or decision; or~~

~~(c) Review the applicable statute or program rule.~~

~~(2) A person or entity may request a hearing in writing or orally, unless a written request is specifically required by applicable statutes or program rules.~~

~~(3) An oral request for hearing is allowed unless a program rule or statute requires a written request for hearing. An oral request for hearing can be made to an HCA employee, HCA's authorized agent, or to an OAH employee in person, by telephone, or by voice mail.~~

~~(4) A written request for hearing should be sent to the location on the notice. Program rules or statutes may require a specific method and location for sending a written request for hearing.)~~ (1) A hearing request may be made orally or in writing, unless a rule requires otherwise. If an oral request is allowed by rule, an oral request for hearing can be made to a health care authority (HCA) employee, HCA's authorized agent, or to the office of administrative hearings (OAH) employee in person, by telephone, or by voice mail.

(2) Program rules may require a specific method and location for sending a written request for hearing. A written request for hearing should be sent to the location specified in the notice.

(3) A hearing request should contain:

(a) The requestor's name;

(b) The requestor's address;

(c) The requestor's telephone number;

(d) The applicant's, recipient's, or provider's identification number;

(e) A description of each agency action being contested;

(f) A brief explanation of why the person or entity disagrees with HCA's action; and

(g) Any accommodation to help the requestor fully participate in the hearing, including a foreign or sign language interpreter or any other accommodation for an individual with a disability.

AMENDATORY SECTION (Amending WSR 13-22-094, filed 11/6/13, effective 12/7/13)

WAC 182-526-0102 Coordinated appeals process with the Washington health benefits exchange. (1) The health care authority (HCA) coordinates with the Washington state health benefits exchange (HBE) to ensure a seamless appeal process for determinations related to eligibility for Washington apple health ~~((WAH))~~ when the modified adjusted gross income (MAGI) methodology is used as described in WAC 182-509-0305.

(2) An applicant, recipient, or an authorized representative of an applicant or recipient may request ~~((a WAH))~~ an apple health hearing:

(a) By telephone;

(b) By mail (which should be sent to Health Care Authority, P.O. Box 45504, Olympia, WA 98504-5504);

(c) In person;

(d) By facsimile transmission;

(e) By email; or

(f) By any other commonly available electronic means.

(3) When an applicant or recipient appeals an HBE determination of eligibility for health insurance premium tax credits (HIPTC) or cost-sharing reductions with HBE and also requests a hearing with ~~((the health care authority))~~ HCA related to ~~((WAH))~~ apple health eligibility, the ALJ will not require the applicant or recipient to submit information to the ALJ that the applicant or recipient previously submitted to HBE.

(4) If an applicant or recipient submits to HBE a request for a hearing related to ~~((WAH))~~ apple health eligibility, the ALJ will accept the date HBE received the request for the hearing as the date filed for the purposes of timeliness standards and will treat it as a valid hearing request.

(5) If the applicant or recipient appeals only the determination related to ~~((WAH))~~ apple health eligibility, subsection (3) of this section does not apply.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0110 Process after a hearing is requested. (1) After a hearing is requested, the office of administrative hearings (OAH) must send a copy of the hearing request to the health care authority (HCA) or HCA's authorized agent who made the decision on HCA's behalf, unless OAH received the hearing request from HCA or HCA's authorized agent. ~~((The OAH should send it to HCA or HCA's authorized agent within four business days of the OAH receiving the request.))~~

(2) OAH sends the hearing request to HCA or HCA's authorized agent within four business days of OAH receiving the request.

(3) OAH must serve all ((the)) parties with a notice ((containing)) of hearing, which advises the parties of the hearing date, time, and ((place)) location. This document is called the notice of hearing. ~~((The parties may also receive))~~ In appropriate cases, OAH also serves a written notice of a prehearing conference ((either before or after receiving the notice of the hearing)).

~~((3))~~ (4) Before the hearing or prehearing conference is held:

(a) The HCA hearing representative may contact ~~((the other parties and))~~ any other party to try to resolve the dispute or gather information; and

(b) The party who requested the hearing ~~((is encouraged to))~~ may contact the HCA hearing representative ~~((and))~~ to try to resolve the dispute or gather information.

~~((4))~~ If the party who requested the hearing does not appear for the prehearing conference or the hearing, an administrative law judge may enter an order of default and an order dismissing the hearing according to WAC 182-526-0285.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0115 Withdrawing ((the)) a request for hearing. (1) The ((party who requested the hearing)) appellant may withdraw the hearing request for any reason and at any time by contacting the health care authority hearing representative or the office of administrative hearings (OAH). The request for withdrawal must be made ((in writing or)) orally on the record with the administrative law judge ((and the other parties)) or in writing.

(2) After the request for withdrawal is received, the hearing is canceled and ((OAH)) the administrative law judge (ALJ) enters ((and serves)) an order dismissing the hearing. If a hearing request is withdrawn, the ((party)) appellant may not be able to request another hearing on the same action.

(3) If ((a party)) an appellant withdraws the hearing request, the order of dismissal may only be set aside according to WAC 182-526-0290.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0135 Interpreters. (1) The office of administrative hearings (OAH) must provide a qualified interpreter to assist any person at no charge who:

- (a) Has limited-English-proficiency; and
- (b) Is a party or witness in a hearing.

(2) OAH may hire or contract with persons to interpret at hearings.

(3) The following persons may not be used as interpreters at a hearing:

- (a) A relative of any party;
- (b) Health care authority (HCA) employees; or
- (c) HCA authorized agents.

(4) The administrative law judge (ALJ) must determine, at the beginning of the hearing, if an interpreter can accurately interpret all communication for the person requesting the service. To do so, the ALJ considers the interpreter's:

- (a) Ability to meet the needs of the person with hearing loss or limited-English-speaking person;
- (b) Education, certification, and experience;
- (c) Understanding of the basic vocabulary and procedures involved in the hearing; and
- (d) Ability to be impartial.

(5) The parties or their representatives may question the interpreter's qualifications and ability to be impartial.

(6) If at any time before or during the hearing the interpreter does not provide accurate and effective communication, ((the ALJ)) OAH must provide another interpreter.

WAC 182-526-0155 Appellant's representation in the hearing.

~~((1) The party that requested the hearing may be his or her own representative or have anyone represent them except employees of the health care authority (HCA), HCA's authorized agents, and employees of the department of social and health services (DSHS).~~

~~(2) The party's representative may be a friend, relative, community advocate, attorney, or paralegal.~~

~~(3) The party should inform the HCA hearing representative and the office of administrative hearings of his or her representative's name, address, and telephone number.~~

~~(4) Although health care authority (HCA) employees, HCA authorized agents, and other DSHS employees cannot represent other parties to the hearing, they may:~~

~~(a) Act as a witness;~~

~~(b) Provide referrals to community legal resources;~~

~~(c) Assist the party to obtain nonconfidential information; or~~

~~(d) Inform the party about or provide copies of relevant laws or rules.) (1) An appellant may act as his or her own representative or may choose to have someone represent him or her including, but not limited to, a friend, relative, community advocate, attorney or paralegal.~~

(2) All parties, including the health care authority (HCA) and their representatives, must provide their name, address, and telephone number to the office of administrative hearings (OAH) and all other parties prior to the hearing.

(3) The administrative law judge (ALJ) may require an appellant's representative to file a written notice of appearance, limited notice of appearance, or other documentation authorizing the representative to appear on behalf of the appellant.

(4) If an appellant is represented by an attorney admitted to practice law in Washington state, the attorney must file a notice of appearance or limited notice of appearance and a notice of withdrawal if the attorney stops representing the party before the hearing proceeds.

(5) The following restrictions apply to an appellant's representative:

(a) HCA and HCA's authorized agents do not pay for an appellant's representation.

(b) OAH does not pay for an appellant's representation.

(c) The following persons may not act as an appellant's representative in a hearing under this chapter:

(i) An employee of HCA;

(ii) HCA's authorized agent;

(iii) An employee of the department of social and health services (DSHS);

(iv) An employee of OAH; or

(v) Anyone under eighteen years of age.

WAC 182-526-0175 Prehearing meetings. (1) A prehearing meeting is an informal meeting with a health care authority (HCA) hearing representative that may be held before any prehearing conference or hearing.

(2) The HCA hearing representative may contact the party who requested the hearing before the (~~scheduled~~) hearing date to arrange a prehearing meeting. Any party may also contact the HCA hearing representative to request a prehearing meeting.

(3) A prehearing meeting is voluntary, but strongly encouraged. A party is not required to request (~~one,~~) a prehearing meeting and is not required to participate in one. (~~If a party does not~~) A party's refusal to participate(, it) in a prehearing meeting does not affect the party's right to a hearing.

(4) The prehearing meeting may include(~~s the party who requested the hearing and/or its representative, the HCA hearing representative, and any other party.~~) all or some of the parties, but does not include an administrative law judge (ALJ) (~~does not attend a prehearing meeting~~)).

(5) The prehearing meeting gives the parties an opportunity to:

- (a) Clarify issues;
- (b) Exchange documents and witness statements;
- (c) Resolve issues through agreement or withdrawal; and
- (d) Ask questions about the hearing process and the laws and rules that apply.

(6) During a prehearing meeting:

- (a) The HCA hearing representative may:
 - (i) Explain the role of the HCA hearing representative in the hearing process;
 - (ii) Explain how a hearing is conducted and the relevant laws and rules that apply;
 - (iii) Explain the right to representation during the hearing;
 - (iv) Respond to questions about the hearing process;
 - (v) Identify accommodation and safety issues;
 - (vi) Distribute copies of the documents to be presented during the hearing;
 - (vii) Provide, upon request, copies of relevant laws and rules;
 - (viii) Identify additional documents or evidence a party may want or be required to present during the hearing;
 - (ix) Provide information about how to obtain relevant documents;
 - (x) Clarify the issues; and
 - (xi) Attempt to settle the dispute, if possible.
- (b) Parties should explain their position and provide documents that relate to the case. Parties may consult legal resources.
- (c) Parties may enter into written agreements or stipulations, including agreements that settle the dispute.

(7) A prehearing meeting may be held or information exchanged:

- (a) In person;
- (b) By telephone conference call;
- (c) Through correspondence; or
- (d) Any combination of the above that is agreeable to the parties.

(~~(8) If a prehearing conference is required by HCA or its program rules, a prehearing meeting may not be an available option.~~)

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0185 Settlement agreements. (1) If the parties resolve the dispute during the prehearing meeting and put it in writing or present the agreement to an administrative law judge (ALJ), the agreement may be legally enforceable.

(2) If the parties want the ALJ to consider any agreements or stipulations made at the prehearing meeting, the parties must ((be presented to an)) present them to the ALJ either before or during the hearing((, if the parties want the ALJ to consider the agreement)).

(3) If all ((of)) the issues are not resolved in the prehearing meeting, the parties may request a prehearing conference before an ALJ or go to the scheduled hearing. The ALJ may also order a prehearing conference.

(4) ((The party that requested the hearing may withdraw the hearing request at any time if the HCA hearing representative agrees to some action that resolves the dispute, or for any other reason. If the party withdraws their hearing request, the hearing is not held and the ALJ enters and serves a written order of dismissal.)) If all the issues are resolved and the settlement agreement is in writing and signed by both parties, or presented orally by both parties to the ALJ, the ALJ enters the settlement agreement into the record and the agreement constitutes a withdrawal of the appellant's hearing request.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0195 Prehearing conferences. (1) Unlike a prehearing meeting, a prehearing conference is a formal proceeding conducted on the record by an administrative law judge (ALJ) to address issues and prepare for a hearing.

(a) The ALJ must make an audio record of the prehearing conference ((using audio recording equipment (such as a digital recorder or tape recorder))).

(b) An ALJ may conduct the prehearing conference in person, by telephone ((conference call)), or in any other manner acceptable to the parties.

(2) All parties must attend ((and participate in)) the prehearing conference. If the party who requested the hearing does not attend ((and participate in)) the prehearing conference, the ((administrative law judge)) ALJ may enter an order of default and an order dismissing the hearing.

(3) The ((administrative law judge (-))ALJ((+)) may require a prehearing conference. Any party may request a prehearing conference.

(4) The ALJ must grant the first request for a prehearing conference if it is filed with the office of administrative hearings (OAH) at least seven business days before the scheduled hearing date.

(5) When the ALJ grants a party's request for a prehearing conference, ((OAH)) the ALJ must continue the previously scheduled hearing when necessary to comply with ((subsection (10) of)) notice requirements in this section.

(6) The ALJ may grant additional requests for prehearing conferences.

(7) The office of administrative hearings (OAH) must schedule prehearing conferences for all cases which concern:

(a) The department's division of residential care services under Title XIX of the federal Social Security Act(~~(+and)~~).

(b) Provider and vendor overpayment hearings.

~~((+8))~~ (c) Estate recovery and predeath liens.

~~((+8))~~ (8) During a prehearing conference the parties and the ~~((administrative law judge))~~ ALJ may:

(a) Simplify or clarify the issues to be decided during the hearing;

(b) Agree to the date, time, and place of the hearing;

(c) Identify any accommodation (~~and~~) or safety issues;

(d) Agree to postpone the hearing;

(e) Allow the parties to make changes in their own documents, including the notice or the hearing request;

(f) Agree to facts and documents to be entered during the hearing;

(g) Set a deadline to exchange names and phone numbers of witnesses and documents before the hearing;

(h) Schedule additional prehearing conferences;

(i) Resolve the dispute;

(j) Consider granting a stay if authorized by law or program rule; or

(k) Rule on any procedural issues and substantive motions raised by any party.

(9) After the prehearing conference (~~ends~~), the ~~((administrative law judge-))~~ALJ(~~(+)~~) must enter a written order describing:

(a) The actions taken at the prehearing conference;

(b) Any changes to the documents;

(c) A statement of the issue or issues identified for the hearing;

~~((d))~~ (d) Any agreements reached; and

~~((d))~~ (e) Any ruling of the ALJ.

(10) ~~((The ALJ))~~ OAH must serve the prehearing order (~~to~~) on the parties at least fourteen calendar days before the scheduled hearing.

(11) A party may object to the prehearing order by notifying ~~((the ALJ))~~ OAH in writing within ten calendar days after the mailing date of the order. The ALJ must issue a ruling on the objection within five days from the date a party files an objection.

(12) If no objection is made to the prehearing order, the order determines how the hearing is conducted, including whether the hearing will be in person or held by telephone conference or other means, unless the ALJ changes the order for good cause.

(13) The ALJ may take further appropriate actions to address other concerns raised by the parties.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0200 Enrollee appeals of a managed care organization action. (1) The hearing process described in this chapter applies to

enrollee appeals of a health care authority (HCA)-contracted managed care organization (MCO) action. Where a conflict exists, the requirements in this section prevail.

(2) An MCO enrollee must exhaust all levels of resolution and appeal within the MCO's grievance system prior to requesting a hearing with HCA. See WAC 182-538-110.

(3) If an MCO enrollee does not agree with the MCO's resolution of the enrollee's appeal, the enrollee may ~~((file a))~~ request ~~((for))~~ a hearing within ninety calendar days of the date of receipt of the MCO's notice of resolution of the MCO's appeal process.

(a) An enrollee may request continuation of services pending the outcome of a hearing related to the termination, suspension, or reduction of a previously authorized service.

(b) To receive continuation of services pending the outcome of the hearing, the enrollee must ~~((file the hearing))~~ request a hearing and request to continue services within ten days of the date of the MCO's notice of the resolution of the appeal. See WAC 182-538-110 for additional requirements related to continuation of services.

(4) The entire appeal and hearing process, including the MCO appeal process, must be completed within ninety calendar days of the date the MCO enrollee filed the appeal with the MCO, not including the number of days the enrollee took to subsequently file for a hearing.

(5) Expedited hearing process ~~((+))~~.

(a) The office of administrative hearings (OAH) must establish and maintain an expedited hearing process when the enrollee or the enrollee's representative requests an expedited hearing and OAH determines that the time taken for a standard resolution of the claim could seriously jeopardize the enrollee's life or health and ability to attain, maintain, or regain maximum function.

(b) When approving an expedited hearing, OAH must issue a hearing decision as expeditiously as the enrollee's health condition requires, but not later than three business days after receiving the case file and information from the MCO regarding the action and MCO appeal.

(c) When denying an expedited hearing, OAH must give prompt oral notice to the enrollee followed by written notice within two calendar days of the request and change the hearing to the standard time frame.

(6) Parties to the hearing include HCA, the MCO, the enrollee ~~((7))~~ and the enrollee's representative or the representative of a deceased enrollee's estate.

(7) Any party that disagrees with the initial order may request a review by an HCA review judge in accordance with WAC 182-526-0560 through 182-526-0600.

(8) If an enrollee disagrees with the initial order, the enrollee may request review in accordance with subsection (7) of this section, or an independent review (IR) by an independent review organization (IRO) in accordance with RCW 48.43.535. The enrollee must request the IR within twenty-one calendar days of the date of mailing the initial order. A timely submitted request for an IR stays any review requested pursuant to subsection (7) of this section.

(9) Any party that disagrees with the IR decision may request a review by an HCA review judge in accordance with WAC 182-526-0560 through 182-526-0600 within twenty-one calendar days of the date of mailing of the IR decision.

(10) When an initial order or an IR decision is appealed to an HCA review judge, the review judge issues the final order.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0215 Authority of the administrative law judge when conducting a hearing. (1) The administrative law judge (ALJ) must hear and decide the issues de novo (anew) based on ~~((what is))~~ the evidence presented ~~((during the hearing))~~ and admitted into the record during the hearing.

(2) As needed, the ALJ may:

(a) Determine the order for presenting evidence;

(b) Issue subpoenas or orders directing witnesses to appear or bring documents;

(c) Rule on objections, motions, and procedural matters;

(d) Rule on an offer of proof made to admit evidence;

(e) Admit relevant evidence;

(f) Impartially question witnesses to develop the record;

(g) Call additional witnesses and request exhibits to complete the record;

(h) Give the parties an opportunity to cross-examine witnesses or present more evidence against the witnesses or exhibits;

(i) Keep order during the hearing;

(j) Allow or require oral or written argument and set the deadlines for the parties to submit argument or evidence;

(k) Permit others to attend, photograph, or electronically record hearings, but may place conditions to preserve confidentiality or prevent disruption;

(l) Allow a party to waive rights given by chapters 34.05 RCW or 182-526 WAC, unless another law prevents it;

(m) Decide whether a party has a right to a hearing;

(n) Issue protective orders;

(o) Consider granting a stay if authorized by law or HCA rule; and

(p) Take any other action necessary and authorized under these or other rules.

(3) The ALJ administers oaths or affirmations and takes testimony.

(4) The ALJ enters an initial order ~~((s))~~ after the hearing. Initial orders ~~((may))~~ become final orders ~~((pursuant to))~~ under WAC 182-526-0525.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0221 ~~((Using the))~~ HCA index of significant decisions. (1) A final order may be relied on, used, or cited as precedent by a party if the final order has been indexed in the index of significant decisions maintained by the health care authority (HCA).

(2) The index of significant decisions is available to the public at ~~((http://www.heca.wa.gov/appeals))~~ http://www.hca.wa.gov/about-hca/significant-decisions. For information on how to obtain a copy of the index, contact the ~~((health care authority (-)))~~ HCA ~~((+))~~ hearing representative.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0230 Assigning an administrative law judge to a hearing. (1) The office of administrative hearings (OAH) assigns an administrative law judge (ALJ) at least five business days before the hearing, except when the hearing is expedited.

(2) A party may ask which ALJ is assigned to the hearing by calling or writing to the OAH field office listed on the notice of hearing.

(3) If requested by a party, ~~((the))~~ OAH must send the name of the assigned ALJ to the party by email or in writing at least five business days before the party's scheduled hearing date.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0240 Filing a motion of prejudice. (1) A party requesting a different administrative law judge (ALJ) may do so by filing a written motion of prejudice consistent with RCW 34.12.050. A party must file the motion with the office of administrative hearings (OAH) before the ALJ rules on a discretionary issue in the case, admits evidence, or takes testimony. ~~((A motion of prejudice))~~ The motion must include an affidavit or sworn statement ~~((that a party does not believe))~~ under penalty of perjury supporting the party's claim that the ALJ ~~((can))~~ cannot hear the case fairly.

(2) Rulings that are not considered discretionary rulings for purposes of this section include, but are not limited to ~~((those))~~ rulings that:

(a) ~~((Granting or denying))~~ Grant or deny a request for a continuance; ~~((and))~~ or

(b) ~~((Granting or denying))~~ Grant or deny a request for a prehearing conference.

(3) A party must send the ~~((written))~~ motion of prejudice to the chief ALJ at ~~((the))~~ OAH headquarters ~~((identified in WAC 182-526-0025(1)))~~ and must send a copy to the OAH field office where the ALJ is assigned. The address of OAH headquarters is provided in WAC 182-526-0025(1).

(4) A party may make an oral motion of prejudice at the beginning of the hearing or prehearing conference before the ALJ rules on a discretionary issue in the case, admits evidence, or takes testimony if:

(a) ~~((The))~~ OAH did not assign an ALJ at least five business days before the date of the hearing or prehearing conference; or

(b) ~~((The))~~ OAH changed the assigned ALJ within five business days of the date of the hearing or prehearing conference.

(5) The first request by each party for a different ALJ is automatically granted. The chief ALJ or a designee grants or denies any later requests.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0245 Disqualifying an administrative law judge or review judge. (1) An administrative law judge (ALJ) or review judge may be disqualified for bias, prejudice, or conflict of interest, or if one of the parties or a party's representative has ~~((an))~~ ex parte contact with the ALJ or review judge.

(2) Ex parte contact means ~~((a))~~ any written or oral communication with the ALJ or review judge about something related to the hearing when the other parties are not present. Procedural questions are not considered an ex parte contact. Examples of procedural questions include clarifying the hearing date, time, or location, or asking for directions to the hearing location.

(3) To ~~((ask to disqualify))~~ request disqualification of an ALJ or review judge, a party must file a written petition for disqualification ~~((. A petition for disqualification is a written explanation to request assignment of a different ALJ or review judge))~~ consistent with RCW 34.05.425 explaining why the ALJ or review judge should be disqualified. A party must promptly ~~((make))~~ file the petition upon discovery of possible bias, conflict of interest, or ~~((an))~~ ex parte contact.

(4) A party must deliver the petition to the ALJ or review judge assigned to the case. That ALJ or review judge must decide whether to grant or deny the petition and must state the facts and reasons for the decision.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0250 Time requirements for notices issued by the office of administrative hearings. (1) The office of administrative hearings (OAH) must serve a notice of hearing ~~((to))~~ on all parties and their representatives at least fourteen calendar days before the hearing date.

(2) If ~~((the))~~ OAH schedules a prehearing conference, ~~((the))~~ OAH must serve a notice of prehearing conference to the parties and their representatives at least seven business days before the date of the prehearing conference except:

(a) ~~((The OAH and/or))~~ OAH or an administrative law judge (ALJ) may change a scheduled hearing into a prehearing conference and provide less than seven business days' notice of the prehearing conference; and

(b) ~~((The))~~ OAH may give less than seven business days' notice if the only purpose of the prehearing conference is to consider whether ~~((there is good cause))~~ to grant a continuance under WAC 182-526-0280 or 182-526-0282, as applicable.

(3) ~~((The))~~ OAH must reschedule the hearing if necessary to comply with the notice requirements in this section, unless the parties agree to waive notice requirements.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0255 Notice of hearing or notice of prehearing conference. (1)(a) A notice of hearing or a notice of prehearing conference is a written notice issued by the office of administrative hearings (OAH) that must include the:

(i) Names of all parties ~~((who receive))~~ to whom the notice is sent and, if known, the names and addresses of their representatives;

(ii) Name, mailing address, and telephone number of the administrative law judge (ALJ), if known;

(iii) Date, time, place, and nature of the hearing or prehearing conference;

(iv) Legal authority and jurisdiction for the hearing; and

(v) Date of the hearing request ~~((; and~~

~~(vi) Statement))~~.

(b) A notice of hearing or prehearing conference must include a statement that the appellant's failure to attend ~~((and participate in a))~~ the prehearing conference or ~~((a))~~ hearing ~~((;))~~ may result in the loss of the right to a hearing ~~((. Then the ALJ may send;~~

~~(A))~~.

(c) If the appellant fails to appear, the ALJ may enter an order of default ~~((; and/or~~

~~(B) An order dismissing the hearing.~~

~~(b) If the party who requested a hearing))~~.

(2) Limited-English proficiency. The notice must include a statement that, if the appellant needs a qualified interpreter because they or any of their witnesses are ~~((persons))~~ people with ~~((limited-English-proficiency))~~ limited-English proficiency, OAH will provide an interpreter at no cost to that party.

~~((e) If))~~ (3) The notice must state whether the hearing or prehearing conference is to be held by telephone or in person, and how to request a change in the way it is held.

~~((2) In addition to the information provided in subsection (1) of this section, OAH))~~ (4) The notice of hearing or prehearing conference informs the ~~((party who requested the hearing))~~ appellant:

(a) How to indicate any special needs for the ~~((party))~~ the appellant or their witnesses, including the need for an interpreter in a primary language or for sensory impairments ~~((;))~~;

(b) How to contact OAH if a party has a safety concern; and

(c) That the appellant may request a qualified interpreter if the appellant or any of the appellant's witnesses are people with limited-English proficiency, and that OAH provides such interpreters at no cost to the appellant.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0270 Mailing address changes. (1) The ~~((party who requested the hearing))~~ appellant must tell the health care authority (HCA) hearing representative and the office of administrative hearings (OAH) as soon as possible, when ~~((its))~~ the party's mailing address changes.

(2) If ~~((that))~~ a party does not notify the HCA hearing representative and OAH of a change ~~((in its))~~ of mailing address ~~((and the))~~, OAH continues to send notices and other important papers to the last known mailing address. If this happens, the administrative law judge ~~((ALJ))~~ may find that the party received the documents or waived the right to receive those documents.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0280 ~~((Requesting a continuance.))~~ 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 ~~((administrative law judge (ALJ))~~ office of administrative hearings (OAH) to request a continuance, the party seeking ~~((a))~~ the continuance must make a good faith effort to contact the other parties~~((, if possible,))~~ to find out if they ~~((will))~~ 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) ~~((The party making the request for a continuance must let the ALJ know whether the other parties agreed to the continuance.))~~ **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 ~~((the))~~ all parties agree to ~~((a))~~ the continuance, the ALJ must grant ~~((it))~~ 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.

~~((4))~~ (b) If the parties do not agree to ~~((a))~~ the continuance, the ALJ must schedule a prehearing conference ~~((in accordance with the requirements of WAC 182-526-0250 to decide whether there is))~~ and determine if good cause ~~((to grant the))~~ for a continuance~~((.~~

~~((5))~~ If the ALJ grants a continuance, the OAH must serve a new hearing notice at least fourteen calendar days before the new hearing date unless the parties agree to a shorter time period.

~~((6))~~ If the ALJ denies the continuance request after a prehearing conference is held pursuant to subsections (3) or (4) of this section, the ALJ may proceed with the hearing on the date the hearing is scheduled and must issue a written order setting forth the basis for denying the continuance request) 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.

NEW SECTION

WAC 182-526-0282 Continuance requests in provider hearing, estate recovery hearing, or nursing home rate hearing under WAC 388-96-904. This section applies to continuance requests made in provider hearings, estate recovery hearings, or nursing home rate hearings.

(1) A request for continuance under this section may be made 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.

(3) The party making the request for a continuance must let OAH know whether the other parties agreed to the continuance. If all parties agree to a continuance, the administrative law judge (ALJ) must grant the request unless the ALJ requires a showing of good cause for a continuance.

(4) If the parties do not agree to a continuance, the ALJ must schedule and hold a prehearing conference to decide whether there is good cause to grant the continuance.

(5) 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.

NEW SECTION

WAC 182-526-0284 Orders of default. (1) An order of default may be entered when the appellant fails to attend a scheduled prehearing conference or hearing. The order of default will include an inquiry as to whether the appellant wants to petition to reinstate the hearing.

(2) The appellant may file a petition to vacate an order of default under WAC 182-526-0290.

(3) An order of default becomes a final order dismissing the appellant's request for a hearing if the appellant does not file a petition to vacate within twenty-one calendar days of the order being served (mailed) on the parties.

(4) The health care authority or managed care organization action stands after an order of default becomes a final order.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0285 Orders of dismissal. (1) An order of dismissal ~~((is an order from the administrative law judge (ALJ) ending the hearing process. The order is entered because the party who requested the hearing withdrew the request, or the ALJ entered an order of default because the party who requested the hearing failed to attend or refused to participate in the hearing (which includes all prehearing conferences)).~~

~~(2) The order of dismissal becomes a final order if no party files a request to vacate the order within twenty one days after the date the ALJ serves the order of dismissal. A party may request a vacate of the order of dismissal according to WAC 182-526-0290.~~

~~(3) If the hearing is dismissed because the party who requested the hearing was defaulted because that party did not attend or refused to participate in the hearing, the health care authority or managed care organization action stands unless the hearing is reinstated after a vacate of the order of dismissal under WAC 182-526-0290.~~

~~(4) If the hearing is dismissed due to a written agreement between all the parties, the parties must follow the agreement)) may be entered when the appellant withdraws the request for hearing under WAC 182-526-0115.~~

~~(2) An appellant may file a petition (request) to vacate an order of dismissal under WAC 182-526-0290.~~

~~(3) An order of dismissal becomes a final order if the appellant does not file a petition to vacate the order within twenty-one calendar days of the order being served (mailed) on the parties.~~

~~(4) The health care authority or managed care organization action stands after an order of dismissal becomes a final order.~~

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0290 Reinstating a hearing after an order of default or an order of dismissal. ~~(1) If ((the administrative law judge (ALJ) enters and serves)) an order ((dismissing the hearing)) of default was entered under WAC 182-526-0284, or an order of dismissal was entered under WAC 182-526-0285, the ((party that originally requested the hearing)) appellant may file a petition (request) to vacate (set aside) the order ((of dismissal. Upon receipt of a request to vacate an order of dismissal, OAH will schedule and serve notice of a prehearing conference. At the prehearing conference, the party asking that the order of dismissal be vacated must show good cause according to WAC 182-526-0020 for an order of dismissal to be vacated and the hearing to be reinstated.~~

~~(2) The request)).~~

~~(a) The petition to vacate ((an order of dismissal)) must be filed with the office of administrative hearings (OAH) or the board of appeals (BOA)((. The party requesting that an order of dismissal be vacated should specify in the request why the order of dismissal should be vacated. BOA forwards any request received to OAH to schedule a prehearing conference on the request to vacate.~~

~~(3)) 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 ((request)) petition to vacate ((an order of dismissal)) must be filed ((with the office of administrative hearings (OAH) or the board of appeals (BOA)) within twenty-one calendar days ((after the date the order of dismissal was entered and served)) of service (mailing) of the order to the parties. If ((no request is received within that)) the petition to vacate is not filed by the deadline, the ((dismissal)) order of default or order of dismissal becomes a final order.~~

~~((a) The party seeking to vacate the order of dismissal may file a late request to vacate the order of dismissal for up to one year after the ALJ entered and served the order to the parties but must show good cause for the late request to be accepted and for the dismissal to be vacated.~~

~~(b) If the party files a request to vacate the order of dismissal more than one year after the order was served, the administrative law~~

judge or review judge may vacate the order of dismissal if the health care authority hearing representative and all parties agree to waive (excuse) the deadline.

~~(4) OAH serves all parties a notice of the prehearing conference on the request to vacate the order of dismissal in accordance with WAC 182-526-0250. At the prehearing conference, the ALJ will receive evidence and argument from the parties on whether the order of dismissal should be vacated for good cause.~~

~~(5) If the ALJ finds good cause for the order of dismissal to be vacated, the ALJ must enter and serve a written order to the parties setting forth the findings and reinstate the hearing. This means the party who originally requested the hearing has another opportunity for a hearing on the initial request for hearing.~~

~~(6) If the order of dismissal is vacated, the ALJ will conduct a hearing at which the parties may present argument and evidence about the original request for hearing. The hearing may occur immediately following the prehearing conference on the request to vacate if agreed to by the parties and the ALJ or at a later hearing date scheduled by OAH in accordance with WAC 182-526-0250.)~~ (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.

(4) If the appellant fails to appear at the scheduled prehearing conference to address the petition to vacate:

(a) The order becomes the final order; and

(b) The ALJ or review judge must dismiss the matter with prejudice.

(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.

(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.

NEW SECTION

WAC 182-526-0300 Order of dismissal based on subject matter. An order of dismissal issued based on lack of subject matter jurisdiction must be entered as an initial order subject to the requirements of WAC 182-526-0520.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0320 Subpoenas. (1) An administrative law judge((s)) (ALJ((s))), the health care authority hearing representative, and an attorney((s)) for ((the parties)) a party may ((prepare)) issue subpoenas. If ((an attorney does not represent)) a party is not represented by an attorney, that party may ask the ALJ to ((prepare)) issue a subpoena on ((its)) the party's behalf. The ALJ may schedule a prehearing conference to decide whether to issue a subpoena.

(2) An ALJ may deny a party's request for a subpoena. For example, an ALJ may deny a request for a subpoena when the ALJ determines that a witness has no actual knowledge regarding the facts or that the documents are not relevant.

(3) There is no cost ((to prepare)) when OAH issues a subpoena on behalf of a party, but ((a)) the party may have to pay for:

- (a) Serving ((a)) the subpoena;
- (b) Complying with ((a)) the subpoena; and
- (c) Witness fees according to RCW 34.05.446(7).

(4) Any person who is at least eighteen years old and not a party to the hearing may serve a subpoena.

(5) Service of a subpoena is complete when the server:

- (a) Gives the witness a copy of the subpoena; or
- (b) Leaves a copy at the residence of the witness with a person over the age of eighteen.

(6) To prove that a subpoena was served on a witness, the person serving the subpoena must sign a written, dated statement including:

- (a) Who was served with the subpoena;
- (b) When the subpoena was served;
- (c) The address where the subpoena was served; and
- (d) The name, age, and address of the person who served the subpoena.

(7) A party may request that an ((administrative law judge +))ALJ((+)) quash (set aside) or change the requirements of a subpoena ((request)) at any time before the deadline given in the subpoena.

(8) An ALJ may set aside or change a subpoena if it is unreasonable.

(9) Witnesses with safety or accommodation concerns should contact the office of administrative hearings (OAH) upon receipt of a subpoena.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0340 Hearing location. (1) The office of administrative hearings (OAH) may ((be held)) schedule an in-person hearing or ((as)) a telephonic hearing.

(2) A telephonic hearing is where ((all parties)) the appellant appears by telephone.

(3) An in-person hearing is where the ((party that had requested the hearing appellant appears face-to-face with the ((administrative law judge (ALJ) and)) ALJ. The other parties may choose to appear either in person or by telephone.

(4) Whether a hearing is held in-person or telephonically, ~~((the parties have))~~ each party has the right to see all documents, hear all testimony, and question all witnesses.

(5) If a hearing is originally scheduled as an in-person hearing, the ~~((party that requested the hearing))~~ appellant may ask that the ALJ change it to a telephonic hearing. Once a telephonic hearing begins, the ALJ may stop, reschedule, and change the hearing to an in-person hearing if any party makes such a request.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0350 Recording the hearing. The administrative law judge must make an audio record of the entire hearing ~~((using audio recording equipment (such as a digital recorder or a tape recorder)))~~.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0355 ((Persons)) People who may attend the hearing.

(1) All parties and their representatives may attend ~~((the))~~ a hearing under this chapter.

(2) Witnesses may be excluded from the hearing if the administrative law judge (ALJ) finds good cause to do so.

(3) The ALJ may also exclude other ~~((persons))~~ people from all or part of the hearing.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0360 Changing how a hearing is held or how a witness appears at a hearing. (1) For cases in which the party ~~((that))~~ who requested a hearing is an applicant or recipient of a medical services program established under chapter 74.09 RCW, the hearing ~~((shall be conducted))~~ must be held according to RCW 74.09.741 (5)(c).

(2) An applicant or recipient may agree to have one or more pre-hearing conferences conducted telephonically without waiving the right to have any subsequent prehearing conference or other hearings held ~~((in-person))~~ in person.

~~((2))~~ (3) Any party to the hearing ~~((have))~~ has the right to request that:

(a) ~~((A))~~ The hearing ~~((format))~~ be changed from an in-person hearing to a telephonic hearing or from a telephonic hearing to an in-person hearing; or

(b) A witness ~~((may))~~ be allowed to appear ~~((in-person or))~~ telephonically even for an in-person hearing. ~~((The office of administrative hearings (OAH) must advise the party of the right to request a change in how a witness appears.~~

~~(3)~~) (4) A party must show a compelling reason to change the way a witness appears (~~((in person))~~) in person or by telephone). Some examples of compelling reasons are:

(a) A party does not speak or understand English well.

(b) A party wants to present a significant number of documents during the hearing.

(c) A party does not believe that one of the witnesses or another party is credible(~~(7)~~) and wants the administrative law judge (ALJ) to have the opportunity to see the testimony.

(d) A party has a disability or communication barrier that affects its ability to present its case.

(e) A party believes that the personal safety of someone involved in the hearing process is at risk.

~~((4))~~) (5) A compelling reason to change the way a witness appears at a hearing can be overcome by a more compelling reason not to change how a witness appears for a hearing.

~~((5))~~) (6) If a party wants to change ~~((the))~~ how a hearing is held or change how their witnesses or other parties appear, the party must contact the office of administrative hearings (OAH) to request the change.

~~((6))~~) (7) The ~~((administrative law judge--))~~ALJ~~((+))~~ may schedule a prehearing conference to determine if the request should be granted.

~~((7))~~) (8) If the ALJ grants the request, the ALJ ~~((reschedules the hearing or changes))~~ may orally advise the parties of the change in how the witness or party appears.

~~((8))~~) (9) If the ALJ denies the request, the ALJ must issue a written order that includes findings of fact supporting why the request was denied.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0370 Submitting documents for a telephonic hearing.

(1) When a hearing is conducted by telephone, an administrative law judge (ALJ) may order the parties to file and serve ~~((the hearing))~~ any documents or proposed exhibits at least five days before the hearing(~~(, so all parties have an opportunity to view them during the hearing))~~).

(2) The health care authority hearing representative may be able to help a party copy and file their documents with the office of administrative hearings (OAH) and send them to any other party.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0375 Summary of the hearing process. At ~~((the))~~ a hearing under this chapter:

(1) The administrative law judge (ALJ):

(a) Explains the hearing rights of the parties;

(b) Marks and admits or rejects exhibits;

- (c) Ensures that a record is made;
 - (d) Explains that a decision is mailed after the hearing;
 - (e) Notifies the parties of appeal rights;
 - (f) May keep the record open for a time after the hearing if needed to receive more evidence or argument; and
 - (g) May take actions as authorized (~~according to WAC 182-526-0215~~) under this chapter.
- (2) The parties may:
- (a) Make opening statements to explain the issues;
 - (b) Offer evidence to prove their positions, including oral or written statements of witnesses;
 - (c) Question the witnesses presented by the other parties; and
 - (d) Give closing arguments about what the evidence shows and what laws apply.
- (3) At the end of the hearing, the record (~~will be~~) is closed unless the ALJ allows more time to file additional evidence. See WAC 182-526-0390.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0380 Group hearing requests (~~and withdrawals~~).

- (1) A group hearing may be held when two or more parties request a hearing about similar issues.
- (2) Hearings may be combined at the request of the parties or the administrative law judge (ALJ).
- (3) All parties participating in a group hearing may have their own representative present.
- (4) A party may withdraw from a group hearing by asking the (~~administrative law judge (-)~~)ALJ(~~(+)~~) for a separate hearing.
- (5) If a party asks to withdraw from a group hearing before the ALJ makes a discretionary ruling or the hearing begins, the ALJ must give the party a separate hearing.
- (6) If a party later shows good cause, the ALJ may give the party a separate hearing at any time during the hearing process.
- (7) The ALJ must grant a party's request to withdraw from a group hearing when participation in the group hearing could require the release of confidential or protected health care information and the party does not consent to the release of such information.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0387 Requesting that a hearing be consolidated or severed when multiple agencies are parties to the proceeding. (1) The following requirements apply only to hearings in which an applicant or recipient of medical services programs set forth in chapter 74.09 RCW, seeks review of decisions made by more than one agency, as defined in RCW 34.05.010. For example: A medical services program recipient appeals a termination of medical assistance by the health care authority and in the same request for hearing the recipient appeals a termina-

tion of cash assistance issued by the department of social and health services.

(2) When the applicant or recipient of a medical services program files a single request for hearing (~~((seeking review of))~~) objecting to decisions made by more than one agency, ((this review shall be conducted initially in)) as defined in RCW 34.05.010, the office of administrative hearings (OAH) schedules one hearing. The administrative law judge (ALJ) may sever the proceeding into multiple hearings on the motion of any of the parties, when:

(a) All parties consent to the severance; or

(b) Any party requests severance without another party's consent, and the ALJ finds there is good cause for severing the hearing and that the proposed severance is not likely to prejudice the rights of the applicant or recipient in accordance with RCW 74.09.741(5).

(3) If there are multiple hearings involving common issues or parties where there is one appellant and both the health care authority and the department are parties, upon motion of any party or upon the ALJ's motion, the ALJ may consolidate the hearings if the ALJ finds that the consolidation is not likely to prejudice the rights of the applicant or recipient who is a party to any of the consolidated hearings in accordance with RCW 74.09.741(5).

(4) If the ALJ grants the motion to sever the hearing into multiple hearings or consolidate multiple hearings into a single hearing, the ALJ (~~((will))~~) enters ((and serve)) an order and OAH sends a new notice of hearing to the appropriate parties in accordance with WAC 182-526-0250, unless service of notice is waived by the parties.

(5) Petitions for judicial review must be served on all agencies involved in the hearing.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0390 Evidence. (1) Evidence includes documents, objects, and testimony of witnesses that parties (~~((give))~~) offer during the hearing to help prove their positions.

(2) Evidence may be all or parts of original documents (~~((or))~~) and may be copies of the originals.

(3) Parties may offer statements signed by a witness under oath or affirmation as evidence, if the witness cannot appear.

(4) Testimony subject to cross examination by the other parties may be given more importance by the administrative law judge (ALJ).

(5) The parties may bring evidence to any prehearing meeting, prehearing conference, or hearing, or may file evidence before these events with the office of administrative hearings (OAH).

(6) The ALJ may set a deadline before the hearing for the parties to file proposed exhibits and the names of witnesses. If (~~((the parties miss))~~) a party misses the deadline, the ALJ may refuse to admit the evidence unless (~~((the parties show))~~):

(a) (~~((They have))~~) The ALJ finds that the offering party has good cause.

(b) The other parties agree that party has good cause for missing the deadline; or

(~~((b) That))~~) (c) The other parties agree the ALJ may consider the evidence.

~~(7) ((If the ALJ gives the parties more time to submit evidence, the parties may file it after the hearing. The ALJ may allow more time for the other parties to respond and object to the evidence.~~

~~(8)) Parties may bring any documents and witnesses to the hearing to support their position. However, the ((following provisions apply:~~

~~(a) The)) other parties may object to ((the)) any evidence that is offered and ((question the)) may cross-examine witnesses((+~~

~~(b))).~~
~~(8) The ALJ determines whether the evidence is admitted and what importance to give it((+~~

~~(e))).~~
~~(a) If the ALJ does not admit the evidence, the parties may make an offer of proof to show why the ALJ should admit it((+~~

~~(d))).~~
~~(b) To make an offer of proof, a party presents evidence and argument on the record to show why the ALJ should consider the evidence((+ and~~

~~(e))).~~
~~(c) The offer of proof preserves the argument for appeal.~~

~~(9) The ALJ may only consider admitted evidence and matters officially noticed in the proceeding (judicial notice) to decide the case.~~

~~(10) Admission of evidence is based upon the reasonable person standard. This standard means evidence that a reasonable person would rely on in making a decision.~~

~~(11) The ALJ may admit and consider hearsay evidence in accordance with RCW 34.05.452.~~

~~(12) The ALJ may reject evidence ((if it:~~

~~(a) Is not relevant; or~~
~~(b) Repeats evidence already admitted)) using the Washington rules of evidence as guidelines.~~

~~(13) The ALJ must reject evidence if required by law.~~

~~(14) The ALJ decides:~~

~~(a) What evidence is more credible if evidence conflicts; and~~

~~(b) The importance given to the evidence.~~

~~(15) The ALJ uses the Washington rules of evidence as guidelines when those rules do not conflict with the rules of this chapter or the Washington Administrative Procedure Act, chapter 34.05 RCW.~~

~~(16) The ALJ may permit a party or parties to submit additional evidence after the date of the hearing. The ALJ also may allow an appropriate amount of time for the other parties to respond and object to any evidence submitted after the hearing.~~

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0415 Exhibits. (1) Proposed exhibits.

(a) Proposed exhibits are documents or other objects that a party wants the administrative law judge (ALJ) to consider when reaching a decision.

(b) After the document or object is accepted by the ALJ, it is admitted and becomes an exhibit.

(2) Marking and numbering proposed exhibits and providing copies.

(a) All parties should mark and number their proposed exhibits before the hearing.

(b) All parties should send ~~((exchange))~~ their proposed exhibits to the office of administrative hearings (OAH) and to all other parties in advance of the hearing.

(c) Parties should bring to the hearing enough copies of their proposed exhibits for all parties if those exhibits ~~((where not exchanged))~~ were not provided prior to the hearing.

(d) If the party who requested the hearing cannot afford to provide copies of its exhibits for all parties, the requesting party must make its proposed exhibits available for copying. The ALJ may require proof that the requesting party is unable to afford copies.

(3) Admitting proposed exhibits into the record.

(a) The ~~((administrative law judge(-)))~~ALJ~~((+))~~ decides whether to admit a proposed exhibit into the record and also determines the importance of the evidence.

(b) The ALJ admits proposed exhibits into the record by marking, listing, identifying, and admitting the proposed exhibits.

(c) ~~((The ALJ may also exclude proposed exhibits from the record.~~

~~(+))~~) The ALJ must make rulings on the record to admit or exclude exhibits.

(4) Disagreeing with an exhibit proposed by another party.

(a) A party may object to the authenticity or admissibility of any exhibit, or offer argument about how much importance the ALJ should give the exhibit.

(b) Even if a party agrees that a proposed exhibit is a true and authentic copy of a document, the agreement does not mean that a party agrees with:

(i) Everything in the exhibit or agrees that it should apply to the hearing;

(ii) What the exhibit says; or

(iii) How the ~~((administrative law judge))~~ ALJ should use the exhibit to make a decision.

(c) The ALJ may also exclude proposed exhibits from the record.

(5) The following rules apply to filing proposed exhibits with OAH and ~~((sending))~~ serve them ~~((to))~~ on the other parties for a ~~((telephone conference))~~ telephonic hearing:

(a) Parties should file their proposed exhibits with OAH and ~~((send))~~ serve them ~~((to))~~ on the other parties at least five days before the telephonic hearing. In some cases, the ALJ may require that the parties file and ~~((send))~~ serve them earlier.

(b) The health care authority hearing representative may help the ~~((party that had requested the hearing))~~ appellant file copies of ~~((its))~~ proposed exhibits with OAH and ~~((send to))~~ serve the other parties if ~~((that party))~~ the appellant cannot afford to do so. The ALJ may require the ~~((party))~~ appellant to provide proof that they are unable to afford to do so.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0450 Witness. (1) ~~((A witness))~~ The following persons may be witnesses in a hearing:

(a) The (~~party that requested the hearing~~) appellant or the health care authority (HCA) hearing representative; or

(b) Anyone the parties or the administrative law judge (ALJ) asks to be a witness.

(2) The ALJ decides who may testify as a witness.

(3) An expert witness may not be a former HCA employee, a former HCA authorized agent, or a former employee of the department in the proceeding against HCA or the department if that employee was actively involved in the HCA action while working for HCA or the department, unless the HCA hearing representative agrees.

(4) All witnesses:

(a) Must affirm or take an oath to testify truthfully during the hearing.

(b) May testify in person or by telephone.

(c) May request interpreters from the office of administrative hearings (OAH) at no cost to the party offering the witness.

(d) May be subpoenaed and ordered to appear according to WAC (~~(182-526-0315)~~) 182-526-0320.

(5) Cross-examining a witness.

(a) (~~The parties have~~) Each party has the right to cross-examine (question) each witness.

(b) If a party has a representative, only the representative, and not the party, may question the witness.

(c) The (~~administrative law judge~~) ALJ may also question witnesses.

(6) Witnesses may refuse to answer questions. However, if a witness refuses to answer a question, the (~~administrative law judge~~) ALJ may reject all of the related testimony of that witness.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0495 Equitable estoppel. (1) Equitable estoppel is a legal doctrine that may be used only as ((a)) an affirmative defense to prevent the health care authority (HCA) from (~~taking some action against a person or entity, such as~~) collecting an overpayment. Equitable estoppel may not be used to require HCA to continue to provide something or to require HCA to take action contrary to a statute.

(2) There are five elements of equitable estoppel. (~~The standard of proof is clear and convincing evidence.~~) A party asserting the doctrine of equitable estoppel must prove all of the following five elements by clear and convincing evidence:

(a) HCA made a statement or took an action or failed to take an action, which is inconsistent with a later claim or position by HCA.

(b) The party reasonably relied on HCA's original statement, action or failure to act.

(c) The party will be injured to its detriment if HCA is allowed to contradict the original statement, action or failure to act.

(d) Equitable estoppel is needed to prevent a manifest injustice. Factors to be considered in determining whether a manifest injustice would occur include, but are not limited to, whether:

(i) The party cannot afford to repay the money to HCA;

(ii) The party gave HCA timely and accurate information when required;

- (iii) The party did not know that HCA made a mistake;
- (iv) The party is free from fault; and
- (v) The overpayment was caused solely by an HCA mistake.
- (e) The exercise of government functions is not impaired.

(3) If the administrative law judge (ALJ) concludes that the party has proven all of the elements of equitable estoppel (~~(in subsection (2) of this section with)~~) by clear and convincing evidence, HCA is (~~stopped~~) estopped or prevented from taking action or enforcing a claim of overpayment against that party.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0500 Hearing record. (1) Before the record is closed, the administrative law judge (ALJ) may:

- (a) Set another hearing date;
- (b) If needed, enter orders (~~(to address)~~) addressing limited issues (~~(if needed before writing and sending)~~) before issuing a hearing decision (~~(to resolve)~~) resolving all issues in the proceeding; or
- (c) Give the parties more time to file exhibits or written argument.

(2) The record is closed:

(a) At the end of the hearing if the (~~(administrative law judge)~~) ALJ does not allow more time to file evidence or argument; or

(b) After the deadline for filing evidence or argument is over.

(3) After the record is closed:

(a) No more evidence may be admitted without good cause;

(b) The (~~(administrative law judge (-))~~)ALJ(~~(+)~~) must enter an initial order and the office of administrative hearings (OAH) must serve copies (~~(to)~~) on all of the parties; and

(c) (~~(The office of administrative hearings)~~) OAH must send the official record of the proceedings to the board of appeals. The record must be complete when it is sent, and include all parts required by WAC 182-526-0512.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0520 Information which must be included in the ALJ's initial order. In an initial order, the administrative law judge (ALJ) must (~~(include the following information in the initial order)~~):

(1) Identify the (~~(initial order)~~) matter as a health care authority (~~(ease)~~) appeal;

(2) List the name and docket number of the case and the names of all parties and representatives;

(3) (~~(Find)~~) Make findings concerning the facts used to resolve the dispute based on the hearing record;

(4) Explain (~~(why)~~) how the ALJ determined that evidence is credible or not credible when the facts or conduct of a witness is (~~(in question)~~) questioned;

(5) State the law that applies to the dispute;

- (6) Apply the law to the facts of the case in the conclusions of law;
- (7) Discuss the reasons for the decision based on the facts and the law;
- (8) State the result and remedy ordered;
- (9) Explain how to request ~~((changes in))~~ corrections to the initial order or petition for review by the board of appeals (BOA) and provide the deadlines for ~~((requesting them))~~ such requests;
- (10) State the date the initial order becomes final according to WAC 182-526-0525; and
- (11) Include any other information required by law or program rules.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0525 When initial orders become final. An initial order becomes a final order at 5:00 p.m. on the twenty-first calendar day after the office of administrative hearings (OAH) serves the initial order, unless:

- (1) Any party files a request for review of the initial order within twenty-one calendar days of the serving (mailing) of the initial order in accordance with WAC 182-526-0580(1);
- (2) Any party files a request for extension of the deadline for filing a request for review which is granted by the review judge ~~((pursuant to))~~ under WAC 182-526-0580(2); or
- (3) Any party files a late request for review which is accepted by a review judge in accordance with WAC 182-526-0580(3);
- (4) A managed care enrollee requests review by an independent review (IR) organization in accordance with RCW 48.43.535 prior to the initial order becoming final or a final order being entered by a review judge. See WAC 182-526-0200 for enrollee appeals.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0540 ~~((How))~~ Correction of clerical errors ~~((are corrected))~~ in ~~((the))~~ an initial order~~((s))~~. (1) A clerical error is a mistake that does not change the intent of the initial order.

- (2) The administrative law judge (ALJ) may correct~~((s))~~ clerical errors in the initial order by entering ~~((and serving))~~ a ~~((second decision referred to as a))~~ corrected initial order. The ALJ may correct clerical errors in response to a request by one of the parties.
- (3) Some examples of clerical error are:
 - (a) Missing or incorrect words or numbers;
 - (b) Dates inconsistent with the decision or evidence in the record such as using May 3, ~~((1989))~~ 2004, instead of May 3, ~~((1998))~~ 2014; or
 - (c) Math errors when adding the total of an overpayment.

(4) If the ALJ does not agree that the initial order contains one or more clerical errors, the ALJ enters a written order denying the request for a corrected order.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0545 How a party requests a corrected initial order.

(1) A party may ~~((ask for))~~ request that the administrative law judge (ALJ) issue a corrected ((administrative law judge's (ALJ))) initial order by calling or writing to the office of administrative hearings field office that held the hearing.

(2) When asking for a corrected initial order, ~~((please))~~ the party must identify the clerical error that ((was found)) is claimed.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0550 Deadline for a party to request a corrected initial order. (1) ~~((The parties must ask))~~ A party requesting a corrected initial order from the administrative law judge (ALJ) ((for a corrected initial order)) must make the request on or before the tenth calendar day after the order was served.

(2) The time period provided in subsection (1) of this section and the time it takes the ALJ to deny the request or make a decision regarding the request for a corrected initial order, do not count against any deadline for a review judge to enter a final order.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0555 Process after a party requests a corrected initial order. (1) When a party requests a corrected initial order, the administrative law judge (ALJ) must either:

(a) Serve all parties a corrected order within ten calendar days;
or

(b) Deny the request in writing within three business days of receiving it.

(2) If the ALJ corrects an initial order and a party does not request review, the corrected initial order becomes a final order at 5:00 p.m., twenty-one calendar days after the ~~((original))~~ corrected initial order was served.

(3) If the ALJ denies a request for a corrected initial order and a party does not request review, the initial order becomes a final order at 5:00 p.m., twenty-one calendar days after the initial order was served.

(4) If the ALJ denies the request for a corrected initial order and the party still wants the initial order ((changed)) corrected, the party must request review by a review judge.

~~((4))~~ (5) Requesting an ALJ to correct the initial order ((does not automatically)) only extends the deadline to request review of the initial order by a review judge if a corrected initial order is subsequently issued.

(6) When a party needs more time to request review of an initial order, the party must ask for more time to request review as permitted by WAC 182-526-0580(2).

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0560 Review of an initial order by a review judge.

(1) A party who disagrees with the initial order entered by an administrative law judge (ALJ) may request review by a review judge ((is available to a party who disagrees with the administrative law judge's (ALJ) initial order)) at the board of appeals (BOA).

~~((2) ((If a party wants the initial order substantively changed, the party must request that a review judge review the initial order.~~

~~((3) If a request is made for)) When a review judge ((to)) reviews an initial order, ((it)) the review judge does not ((mean there is)) hold another hearing ((conducted by a review judge)). See WAC 182-526-0595.~~

~~((4))~~ (3) Review judges may not review an ((ALJ's)) initial order after the order becomes a final order, except as permitted by WAC 182-526-0580.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0575 How to request review of an initial order. (1)

A party must make the request for review of an initial order in writing and file ~~((it))~~ the request with the board of appeals (BOA) at the address given in WAC 182-526-0030 and within the deadlines set forth in WAC 182-526-0580. ~~((The party should identify the:~~

~~(a))~~

(2) The request for review should identify the parts of the initial order with which the party disagrees~~((and~~

~~(b))~~ and should identify the evidence in the hearing record supporting the party's position.

~~((2) A))~~ (3) The party seeking review should also send a copy of the review request to the other parties.

~~((3))~~ (4) After receiving a ((party's)) request for review of an initial order, ((the)) BOA serves a copy ((to)) on the other parties, their representatives, and the office of administrative hearings. The other parties and their representatives may respond as described in WAC 182-526-0590.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0580 Deadline for requesting review of an initial order by a review judge. (1) The board of appeals (BOA) must receive the written review request of an initial order on or before 5:00 p.m. on the twenty-first calendar day after the initial order was served, unless an extension of the deadline is granted by the review judge. A party may file the review request by facsimile transmission (fax). A copy of the review request should also be mailed to ((the)) BOA.

(2) A review judge may extend the deadline to request review if a party:

- (a) Asks for more time before the deadline expires; and
- (b) Gives a good reason for more time.

(3) A review judge may accept a review request after the twenty-one calendar day deadline only if:

(a) ((The)) BOA receives the review request on or before the thirtieth calendar day after the deadline; and

- (b) A party shows good cause for missing the deadline.

(4) The time periods provided by this section for requesting review of an initial order, including any extensions, does not count against a deadline, if any, for a review judge to enter the final order.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0595 Process after review response deadline. (1) After the response deadline, the record on review is closed unless the review judge finds there is a good reason to keep it open.

(2) A review judge is assigned to review the initial order after the record on review is closed. To find out which judge is assigned, call the board of appeals.

(3) After the record is closed, the assigned review judge:

- (a) Reviews the record, including the initial order; and
- (b) Enters a final order that affirms, modifies, dismisses or reverses the initial order; or

(c) Returns the case to the office of administrative hearings for further action.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0600 Authority of the review judge. (1) In some cases, review judges review initial orders and enter final orders. The review judge has the same decision-making authority as the administrative law judge (ALJ). The review judge considers the entire record and decides the case de novo (anew). In reviewing findings of fact, the review judge must give due regard to the ALJ's opportunity to observe witnesses.

(2) Review judges may ~~((return--(remand)))~~ remand (return) cases to the office of administrative hearings for further action.

(3) In cases where there is a consolidated hearing ~~((pursuant to))~~ under WAC 182-526-0387, any party may request review of the initial order in accordance with the requirements contained in this chapter.

(4) Review judges may not review an ALJ order after the order becomes final, except as provided in WAC 182-526-0580.

~~((Review judges may preside at a hearing and enter the final order in cases conducted under WAC 182-526-0218.))~~ A review judge conducts the hearing and enters the final order in cases where a contractor for the delivery of nursing facility services requests an administrative hearing under WAC 388-96-904(5).

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0605 Reconsideration of a final order entered by a review judge. (1) If a party does not agree with the final order ~~((and believes the review judge made a mistake))~~ and wants it reconsidered, the party may request the review judge to reconsider the decision.

(2) The party must make the request in writing and clearly state why the party wants the final order reconsidered. The party must file the written reconsideration request with ~~((the))~~ BOA and it must be received by the deadline under WAC 182-526-0620.

(3) The party should send a copy of the request to all other parties or their representatives.

(4) After receiving a reconsideration request, BOA serves a copy to the other parties and representatives and gives them time to respond.

(5) The final order or the reconsideration decision is the final HCA decision. If a party disagrees with that decision, the party must petition for judicial review to change it.

(6) If a party asks for reconsideration of the final order, the reconsideration process must be completed before a party requests judicial review. However, the party does not need to request reconsideration of a final order before requesting judicial review.

(7) The party may ask the court to stay or stop the HCA action after filing the petition for judicial review.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0640 Judicial review of a final order. (1) Judicial review is the process of appealing a final order to a court.

(2) The party that ~~((had))~~ requested the hearing may appeal a final order by filing a written petition for judicial review that meets the requirements of RCW 34.05.546. HCA may not request judicial review.

(3) The party seeking judicial review must consult RCW 34.05.510 to 34.05.598 for further details of the judicial review process.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0650 Service of petition for judicial review. (1) The party requesting judicial review must:

(a) File a petition for judicial review with the court;
(b) File and serve the petition for judicial review of a final order within thirty days after the date it was mailed to the parties; and

(c) Serve copies of (~~its~~) the petition on the health care authority (HCA), the office of the attorney general, and all other parties.

(2) To serve HCA, the petitioning party must deliver a copy of the petition for judicial review to the director of HCA and send a copy to the board of appeals (BOA). The party may hand deliver the petition or send it by mail that gives proof of receipt.

The physical location of the director is:

Director
Health Care Authority
626 8th Avenue S.E.
Olympia, WA 98501

The mailing address of the director is:

Director
Health Care Authority
P.O. Box 45502
Olympia, WA 98504-5502

The physical and mailing addresses for BOA are in WAC 182-526-0030.

(3) To serve the office of the attorney general and other parties, the petitioning party may send a copy of the petition for judicial review by regular mail. The party may send a petition to the address for the attorney of record to serve a party. The party may serve the office of the attorney general by hand delivery to:

Office of the Attorney General
7141 Cleanwater Drive S.W.
Tumwater, WA 98501

The mailing address of the attorney general is:

Office of the Attorney General
P.O. Box 40124
Olympia, WA 98504-0124

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 182-526-0045 Serving documents.

WAC 182-526-0090 Authority to request a hearing.

WAC 182-526-0105 Required information for requesting a hearing.

WAC 182-526-0112 Rescheduling a hearing.

WAC 182-526-0157 Requirements to appear and represent a party in the administrative hearing process.

WAC 182-526-0170 Representation of the health care authority in the hearing process.

WAC 182-526-0235 Requesting a different judge.

WAC 182-526-0315 Requiring witnesses to testify or provide documents.