



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Health Care Authority, Washington Apple Health

- Preproposal Statement of Inquiry was filed as WSR 14-21-147; or
- Expedited Rule Making--Proposed notice was filed as WSR _____; or
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

- Original Notice
- Supplemental Notice to WSR _____
- Continuance of WSR _____

Title of rule and other identifying information:

Chapter 182-520 WAC Fraud referrals and overpayments

Hearing location:

Health Care Authority
Cherry Street Plaza Building; Sue Crystal Conf Rm 106A
626 - 8th Avenue, Olympia WA 98504

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

Date: **May 24, 2016** Time: **10:00 a.m.**

Date of intended adoption: Not sooner than May 25, 2016
(Note: This is **NOT** the effective date)

Submit written comments to:

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

by **5:00 pm on May 24, 2016**

Assistance for persons with disabilities: Contact Amber Lougheed by May 20, 2016
e-mail: amber.lougheed@hca.wa.gov or (360) 725-1349
TTY (800) 848-5429 or 711

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

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

Reasons supporting proposal: See purpose

Statutory authority for adoption: RCW 41.05.021, 41.05.160

Statute being implemented: RCW 41.05.021, 41.05.160, 41.05A.005, 41.05A.010 and 74.09.741

Is rule necessary because of a:

- Federal Law? Yes No
 - Federal Court Decision? Yes No
 - State Court Decision? Yes No
- If yes, CITATION:

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: April 08, 2016

TIME: 4:26 PM

WSR 16-09-013

DATE
April 8, 2016

NAME
Wendy Barcus

SIGNATURE

TITLE
HCA Rules Coordinator

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: N/A

Name of proponent: Health Care Authority

- Private
- Public
- Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Chantelle Diaz	PO Box 42716, Olympia WA, 98504-2716	(360) 725-1842
Implementation....Amy Johnson	PO Box 45534, Olympia, WA 98504-5534	(360) 725-1329
Enforcement.....Amy Johnson	PO Box 45534, Olympia, WA 98504-5534	(360) 725-1329

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

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

A copy of the statement may be obtained by contacting:

Name:

Address:

phone ()

fax ()

e-mail

No. Explain why no statement was prepared.

The agency has determined that the proposed filing does not impose a disproportionate cost impact on small businesses or nonprofits.

Is a cost-benefit analysis required under RCW 34.05.328?

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

Name:

Address:

phone ()

fax ()

e-mail

No: Please explain:

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

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

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

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

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

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

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

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

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

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

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

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

(b) The agency decides to collect the overpayment.

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

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

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

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

NEW SECTION

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

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

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

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

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

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

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

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

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

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

(2) Notice.

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

(i) Personal service under RCW 4.28.080; or

(ii) Certified mail, return receipt requested.

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

(i) A sworn statement;

(ii) An affidavit or certificate of mailing; or

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

(c) The notice states:

(i) The client's name;

(ii) The client's address;

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

(iv) The amount of the LTSS client overpayment;

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

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

(vii) How the client may make a payment.

(3) Response.

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

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

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

(iii) Requesting an administrative hearing.

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

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