



# 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 15-07-047; or
- Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

- Original Notice
- Supplemental Notice to WSR 15-24-114
- Continuance of WSR \_\_\_\_\_

**Title of rule and other identifying information:**

WAC 182-504-0130 Continued coverage pending an appeal  
 WAC 182-504-0135 Reinstated coverage pending an appeal [repealed]  
 WAC 182-518-0025 Washington apple health – Notice requirements – Changes in and terminations of coverage

**Hearing location:**

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

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

Date: **September 27, 2016** Time: **10:00 a.m.**

**Submit written comments to:**

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

by **5:00 pm on September 27, 2016**

**Assistance for persons with disabilities:** Contact Amber Lougheed by September 23, 2016  
 e-mail: [amber.lougheed@hca.wa.gov](mailto:amber.lougheed@hca.wa.gov) or (360) 725-1349  
 TTY (800) 848-5429 or 711

**Date of intended adoption:** Not sooner than September 28, 2016 (Note: This is **NOT** the **effective** date)

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

The agency is amending these rules to clarify when continued coverage ends, and that reinstated coverage is a remedy for the agency not meeting advance notice requirements in WAC 182-518-0025. The agency proposes repealing WAC 182-504-0135 and moving the relevant reinstated coverage information to WAC 182-518-0025.

**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

**Is rule necessary because of a:**

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

**DATE**  
 August 17, 2016

**NAME**  
 Wendy Barcus

**SIGNATURE**

**TITLE**  
 HCA Rules Coordinator

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
 STATE OF WASHINGTON  
 FILED

**DATE: August 17, 2016**

**TIME: 2:32 PM**

**WSR 16-17-084**

**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.... Rebecca Janeczko	PO Box 45534, Olympia WA, 98504-5534	(360) 725-0752
Enforcement..... Rebecca Janeczko	PO Box 45534, Olympia WA, 98504-5534	(360) 725-0752

**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.

**WAC 182-504-0130 Washington apple health—Continued coverage pending an appeal.** (~~((1) If you disagree with a Washington apple health (WAH) decision that we (the agency or its designee) made, you have the right to appeal under RCW 74.09.741. The appeal rules are found in chapter 182-526 WAC.~~

~~(2) If you appeal a WAH decision on or before the tenth day after the date the person receives the written notice of the WAH decision or before the effective date of the WAH decision, your WAH coverage will continue until the appeals process ends, unless otherwise specified in this section. This is called continued coverage.~~

~~(3) We will treat the fifth day after the date on the notice as the date you received the notice; however, if you show that you received the notice more than five days after the date on the notice, we will use the actual date you received the notice for counting the ten-day appeal period for the purpose of providing continued coverage. If the tenth day falls on a weekend or holiday, you have until the next business day to appeal and still be able to receive continued coverage.~~

~~(4) You receive continued coverage through the end of the month an administrative hearing decision is sent to you unless:~~

~~(a) An administrative law judge or our presiding officer serves an order ending continued coverage; or~~

~~(b) You:~~

~~(i) Tell us in writing that you do not want continued coverage; or~~

~~(ii) Withdraw your appeal in writing or at an administrative proceeding.~~

~~(5) You cannot get continued coverage when a change in your WAH coverage is the result of a mass change. A mass change is when rules change that impact coverage for a class of applicants and recipients or due to a legislative or statutory change. You may get continued coverage while appealing a change in your WAH coverage that is a result of a mass change if:~~

~~(a) There is a question about whether you are in the class of applicants or recipients being affected by the mass change; or~~

~~(b) The mass change is not the only reason for the change in your WAH coverage.~~

~~(6) If you are getting WAH medically needy coverage, then you are not eligible for continued coverage beyond the end of the original certification period described in WAC 182-504-0020.))~~ (1) Continued coverage is when a client continues to receive Washington apple health benefits while appealing a medicaid agency adverse action to terminate, suspend, reduce, or change the client's:

(a) Medicaid eligibility; or

(b) Authorization for a covered service.

(2) To qualify for continued coverage, a client must request a hearing on the adverse action no later than:

(a) The tenth day after the agency sent a notice of the action to the client; or

(b) The last day of the month before the action takes effect.

(3) If a client's last day to request a hearing and still qualify for continued coverage falls on a Saturday, Sunday, or a designated

holiday under WAC 357-31-005, the client has until the end of the next business day to request the hearing.

(4) Continued coverage ends when:

(a) The client states in writing they no longer wish to receive continued coverage;

(b) The client withdraws the appeal;

(c) The client defaults and an order of dismissal is entered;

(d) An administrative law judge or a review judge issues an adverse ruling or written decision:

(i) Terminating the client's continued coverage; or

(ii) Ruling the client does not qualify for benefits.

(5) A client cannot receive continued coverage if the agency's adverse action was due solely to a change in statute, federal regulation, or administrative rule.

(6) A client receiving medically needy coverage cannot receive continued coverage past the end of the certification period described in WAC 182-504-0020.

(7) A client receiving coverage under an alien medical program cannot receive continued coverage past the end of the certification period described in chapter 182-507 WAC.

~~WAC 182-518-0025 Washington apple health—Notice requirements—~~  
~~((Changes in and terminations of coverage)) Actions to terminate, suspend, reduce, or change eligibility or authorization for a covered service.~~

~~((1) We send you written notice before your Washington apple health (WAH) coverage changes or ends. The notice includes:~~

- ~~(a) The change in coverage;~~
- ~~(b) The date your coverage will change or end;~~
- ~~(c) Specific facts and reason(s) for the decision;~~
- ~~(d) Specific rules the decision is based on; and~~
- ~~(e) Information found in WAC 182-518-0005(4).~~

~~(2) Before we send any notices to end your WAH coverage because your income is more than the modified adjusted gross income (MAGI) standard, we determine if you are eligible for other health care coverage (including non-MAGI-based coverage) based on information you have provided, as described in WAC 182-504-0125.~~

~~(3) We notify you at least ten days before we change or end your health care coverage. The ten days start on the day we send you the notice and end on the tenth day. We are not required to give ten days' notice if:~~

- ~~(a) You asked us to change or end your coverage;~~
- ~~(b) We are changing or ending your coverage due to a change in law;~~
- ~~(c) We are ending your coverage because everyone in your household either died or has been accepted to receive medicaid coverage somewhere else (another local jurisdiction, state, territory, or commonwealth);~~

~~(d) We are ending your coverage because mail we sent you was returned to us with no forwarding address and we do not have a more current address for you;~~

~~(e) You are incarcerated and it is expected to last more than thirty days; or~~

~~(f) We have facts indicating probable fraud by you, in which case we may notify you five days before we change or end your coverage.~~

~~(4) If we do not have to give ten days' advance notice, we send the notice right away after getting the information that caused the change, but no later than the date we took the action described in the notice.~~

~~(5) You may request an appeal if you disagree with our decision to change or end your health care coverage and get continued coverage as described in WAC 182-504-0130.)~~ **(1) General rule.**

(a) The medicaid agency sends written notice to a client at least ten days before taking adverse action to terminate, suspend, reduce, or change the client's:

- (i) Medicaid eligibility; or
- (ii) Authorization for a covered service.

(b) The ten-day notice period starts on the day the agency sent the notice.

**(2) Exceptions to ten-day notice period.**

(a) The agency sends written notice to the client at least five days before taking action to terminate, suspend, reduce, or change the client's medicaid eligibility or authorization for a covered service if:

(i) The agency has facts indicating fraud by the client or on the client's behalf; and

(ii) The facts have been verified, if possible, through secondary sources.

(b) The agency sends written notice to the client no later than the date the agency took action to terminate, suspend, reduce or change the client's medicaid eligibility or authorization for a covered service if:

(i) The client requested the action;

(ii) A change in statute, federal regulation or administrative rule is the sole cause of the action;

(iii) The client is incarcerated and is expected to remain incarcerated at least thirty days;

(iv) Mail sent to the client has been returned without a forwarding address, and the agency does not have a more current address for the client; or

(v) The agency is terminating the client's eligibility because the client:

(A) Died; or

(B) Began receiving medicaid from a jurisdiction other than Washington state.

(3) **Notice contents.** Written notice under this section states:

(a) The nature of the action;

(b) The effective date of the action;

(c) The reason for the action;

(d) The regulation on which the action is based;

(e) The client's appeal rights, if any; and

(f) The client's right to continued coverage, if any.

(4) **Reinstated coverage.** If the agency does not meet the advance notice requirements under this section, the agency reinstates the client's coverage back to the date of the action. The agency may still take action once it meets notice obligations under this section.

(5) **Hearing rights.** A client who does not agree with agency action under this section may request an administrative hearing under chapter 182-526 WAC, and may be entitled to continued coverage under WAC 182-504-0130.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-504-0135      Washington apple health—Reinstated  
coverage pending an appeal.