WAC 388-96-901 Disputes. (1) When a contractor wishes to contest the way in which the department applied a statute or department rule to the contractor's circumstances, the contractor must pursue the administrative review process prescribed in WAC 388-96-904.

(a) Adverse actions taken under the authority of this chapter or chapter 74.46 RCW subject to administrative review under WAC 388-96-904 include but are not limited to the following:
   (i) Determining a nursing facility payment rate;
   (ii) Calculating a nursing facility settlement;
   (iii) Imposing a civil fine on the nursing facility;
   (iv) Suspending payment to a nursing facility; and
   (v) Conducting trust fund and accounts receivable audits.

(b) Adverse actions taken under the authority of this chapter or chapter 74.46 RCW not subject to administrative review under WAC 388-96-904 include but are not limited to:
   (i) Actions taken under the authority of RCW 74.46.421 and sections of this chapter implementing RCW 74.46.421;
   (ii) Case mix accuracy review of minimum data set (MDS) nursing facility resident assessments that are limited to separate administrative review under WAC 388-96-905;
   (iii) Semiannual rate updates to reflect changes in a facility's resident case mix including contractor errors made in the MDSs used to update the facility's resident case mix;
   (iv) Actions taken under the exceptional direct care program codified at WAC 388-96-781 and 388-96-782; and
   (v) Actions taken under WAC 388-96-218 (2)(c).

(2) The administrative review process prescribed in WAC 388-96-904 must not be used to contest or review unrelated or ancillary department actions, whether review is sought to obtain a ruling on the merits, make a record for subsequent judicial review, or other purpose. If an issue is raised that is not subject to review under WAC 388-96-904, the presiding officer must dismiss such issue with prejudice to further review under the provisions of WAC 388-96-904, but without prejudice to other administrative or judicial review as may be provided by law. Unrelated or ancillary actions not eligible for administrative review under WAC 388-96-904 include but are not limited to:

(a) Challenges to the adequacy or validity of the public process followed by the department in proposing or making a change to the nursing facility medicaid payment rate methodology, as required by Title 42 U.S.C. Sec. 1396a (a)(13)(A) and WAC 388-96-718;
(b) Challenges to the nursing facility medicaid payment system that are based in whole or in part on federal laws, regulations, or policies;
(c) Challenges to a contractor's rate that are based in whole or in part on federal laws, regulations, or policies;
(d) Challenges to the legal validity of a statute or regulation; and
(e) Actions of the department affecting a medicaid beneficiary or provider that were not commenced by the office of rates management, aging and long-term support administration.

(3) If a contractor wishes to challenge the legal validity of a statute, rule, or contract provision relating to the nursing facility medicaid payment system or bring a challenge based in whole or in part on federal law, it must bring such action de novo in a court of proper jurisdiction as may be provided by law. The contractor must not use this section or WAC 388-96-904 for such purposes. This prohibition ap-
plies irrespective of whether the contractor wishes to obtain a decision or ruling on an issue of validity or federal compliance or wishes only to make a record for the purpose of subsequent judicial review.

[Statutory Authority: RCW 74.46.800, 74.46.561(1). WSR 17-22-037, § 388-96-901, filed 10/24/17, effective 11/24/17. Statutory Authority: Chapter 74.46 RCW, 2010 1st sp.s. c 34, and 2010 1st sp.s. c 37 § 958. WSR 11-05-068, § 388-96-901, filed 2/14/11, effective 2/26/11. Statutory Authority: RCW 74.46.431 (11) and (12), 74.46.800, chapter 74.46 RCW, 2004 c 276 § 913, 2001 1st sp.s. c 8. WSR 04-21-027, § 388-96-901, filed 10/13/04, effective 11/13/04. Statutory Authority: RCW 74.46.800. WSR 01-12-037, § 388-96-901, filed 5/29/01, effective 6/29/01. Statutory Authority: RCW 74.46.800, 74.46.508. WSR 00-12-098, § 388-96-901, filed 6/7/00, effective 7/8/00. Statutory Authority: RCW 74.46.780 as amended by 1998 c 322 § 41. WSR 98-20-023, § 388-96-901, filed 9/25/98, effective 10/1/98. Statutory Authority: RCW 74.46.800 and 1995 1st sp.s. c 18. WSR 95-19-037 (Order 3896), § 388-96-901, filed 9/12/95, effective 10/13/95. Statutory Authority: RCW 74.46.800 and 74.09.120. WSR 91-12-026 (Order 3185), § 388-96-901, filed 5/31/91, effective 7/1/91. Statutory Authority: RCW 74.09.120. WSR 82-21-025 (Order 1892), § 388-96-901, filed 10/13/82; Order 1262, § 388-96-901, filed 12/30/77.]