



PROPOSED RULE MAKING

CR-102 (July 2022) (Implements RCW 34.05.320) Do NOT use for expedited rule making

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FILED

DATE: August 21, 2023

TIME: 12:08 PM

WSR 23-17-134

Agency: Health Care Authority

☒ Original Notice

☐ Supplemental Notice to WSR _____

☐ Continuance of WSR _____

☒ Preproposal Statement of Inquiry was filed as WSR 23-14-014 ; 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); or

☐ Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) 182-503-0535, Washington apple health – Citizenship and immigration status; 182-507-0135, Immigration status requirement for refugee medical assistance (RMA)

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
September 26, 2023	10:00 AM	The Health Care Authority holds public hearings virtually without a physical meeting place.	To attend the virtual public hearing, you must register in advance: https://us02web.zoom.us/webinar/register/WN_E7tAxNWnSVCG-SlhvxsWg If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of intended adoption: Not sooner than September 27, 2023 (Note: This is NOT the effective date)

Submit written comments to:

Name: HCA Rules Coordinator

Address: PO Box 42716, Olympia WA 98504-2716

Email: arc@hca.wa.gov

Fax: 360-586-9727

Other:

By (date) September 26, 2023 by 11:59 PM

Assistance for persons with disabilities:

Contact Johanna Larson

Phone: 360-725-1349

Fax: 360-586-9727

TTY: Telecommunication Relay Services (TRS): 711

Email: Johanna.larson@hca.wa.gov

Other:

By (date) September 8, 2023

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The agency is amending WAC 182-503-0535 and WAC 182-507-0135 to update the parole period for certain Afghan refugees to qualify for refugee medical assistance. This change is required by federal law.

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: Section 1501, Consolidated Appropriations Act, 2023; Public Law 117-328, div. M, title V, §1501

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Type of proponent: <input type="checkbox"/> Private <input type="checkbox"/> Public <input checked="" type="checkbox"/> Governmental Name of proponent: (person or organization) Health Care Authority			
Name of agency personnel responsible for:			
	Name	Office Location	Phone
Drafting:	Brian Jensen	PO Box 42716, Olympia, WA 98504-2716	360-725-0815
Implementation:	Giovanny Delgado	PO Box 42722, Olympia, WA 98504-2722	360-725-1919
Enforcement:	Giovanny Delgado	PO Box 42722, Olympia, WA 98504-2722	360-725-1919
Is a school district fiscal impact statement required under RCW 28A.305.135?			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If yes, insert statement here: <div style="margin-left: 40px;"> The public may obtain a copy of the school district fiscal impact statement by contacting: Name: Address: Phone: Fax: TTY: Email: Other: </div>			
Is a cost-benefit analysis required under RCW 34.05.328? <input type="checkbox"/> Yes: A preliminary cost-benefit analysis may be obtained by contacting: <div style="margin-left: 40px;"> Name: Address: Phone: Fax: TTY: Email: Other: </div> <input checked="" type="checkbox"/> 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.			
Regulatory Fairness Act and Small Business Economic Impact Statement Note: The Governor's Office for Regulatory Innovation and Assistance (ORIA) provides support in completing this part.			
(1) Identification of exemptions: This rule proposal, or portions of the proposal, may be exempt from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). For additional information on exemptions, consult the exemption guide published by ORIA . Please check the box for any applicable exemption(s): <input checked="" type="checkbox"/> This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted. Citation and description: Section 1501, Consolidated Appropriations Act, 2023; Public Law 117-328, div. M, title V, §1501. Failure to comply with federal law could result in loss of federal funds. <input type="checkbox"/> This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule. <input type="checkbox"/> This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.			

- ☐ This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(3\)](#). Check all that apply:
- | | |
|---|--|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

☒ This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(4\)](#) (does not affect small businesses).

☐ This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of how the above exemption(s) applies to the proposed rule: The proposed rules pertain to client program eligibility and do not impose costs on businesses.

(2) Scope of exemptions: *Check one.*

- ☒ The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.
- ☐ The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):
- ☐ The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- ☐ No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. _____
- ☐ Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Date: August 21, 2023

Name: Wendy Barcus

Title: HCA Rules Coordinator

Signature:



WAC 182-503-0535 Washington apple health—Citizenship and immigration status. (1) Definitions.

(a) **Nonqualified alien** means someone who is lawfully present in the United States (U.S.) but who is not a qualified alien, a U.S. citizen, a U.S. national, or a qualifying American Indian born abroad.

(b) **Qualified alien** means someone who is lawfully present in the United States and who is one or more of the following:

(i) A person lawfully admitted for permanent residence (LPR).

(ii) An abused spouse or child, a parent of an abused child, or a child of an abused spouse who no longer resides with the person who committed the abuse, and who has one of the following:

(A) A pending or approved I-130 petition or application to immigrate as an immediate relative of a U.S. citizen or as the spouse of an unmarried LPR younger than 21 years of age.

(B) Proof of a pending application for suspension of deportation or cancellation of removal under the Violence Against Women Act (VAWA).

(C) A notice of prima facie approval of a pending self-petition under VAWA. An abused spouse's petition covers his or her child if the child is younger than 21 years of age. In that case, the child retains qualified alien status even after he or she turns 21 years of age.

(iii) A person who has been granted parole into the U.S. for one year or more, under the Immigration and Nationality Act (INA) Section 212 (d) (5), including public interest parolees.

(iv) A member of a Hmong or Highland Laotian tribe that rendered military assistance to the U.S. between August 5, 1964, and May 7, 1975, including the spouse, unremarried widow or widower, and unmarried dependent child of the tribal member.

(v) A person who was admitted into the U.S. as a conditional entrant under INA Section 203 (a) (7) before April 1, 1980.

(vi) A person admitted to the U.S. as a refugee under INA Section 207.

(vii) A person who has been granted asylum under INA Section 208.

(viii) A person granted withholding of deportation or removal under INA Section 243(h) or 241 (b) (3).

(ix) A Cuban or Haitian national who was paroled into the U.S. or given other special status.

(x) An Amerasian child of a U.S. citizen under 8 C.F.R. Section 204.4(a).

(xi) A person from Iraq or Afghanistan who has been granted one of the following:

(A) Special immigrant status under INA Section 101 (a) (27);

(B) Special immigrant conditional permanent resident; or

(C) Parole under Section 602 (b) (1) of the Afghan Allies Protection Act of 2009 or Section 1059(a) of the National Defense Authorization Act of 2006.

(xii) An Afghan (~~(granted humanitarian parole between July 31, 2021, and September 30, 2022, their spouse or child, or a parent or guardian of an unaccompanied minor who is granted parole after September 30, 2022))~~ who, under Section 2502 of the Extending Government Funding and Delivering Emergency Assistance Act of 2021, is evaluated

as a qualified alien until March 31, 2023, or the end of their parole term, whichever is later, when granted parole:

(A) Between July 31, 2021, and September 30, 2023; or

(B) After September 30, 2022, and is:

(I) Their spouse or child; or

(II) The parent or guardian of an unaccompanied minor described under this subsection.

(xiii) A citizen or national of Ukraine (or a person who last habitually resided in Ukraine) who, under section 401 of the Additional Ukraine Supplemental Appropriations Act, 2022 (AUSAA), ~~((was))~~ is evaluated as a qualified alien until the end of their parole term when:

(A) Granted parole into the United States between February 24, 2022, and September 30, 2023; or

(B) Granted parole into the United States after September 30, 2023, and is:

(I) The spouse or child of a person described in (b)(xiii)(A) of this subsection; or

(II) The parent, legal guardian, or primary caregiver of a person described in (b)(xiii)(A) of this subsection who is determined to be an unaccompanied child under section 462 (g) (2) of the Homeland Security Act of 2002 or section 412 (d) (2) (B) of the Immigration and Nationality Act.

(xiv) A person who has been certified or approved as a victim of trafficking by the federal office of refugee resettlement, or who is:

(A) The spouse or child of a trafficking victim of any age; or

(B) The parent or minor sibling of a trafficking victim who is younger than 21 years of age.

(xv) A person from the Federated States of Micronesia, the Republic of Palau, or the Republic of the Marshall Islands living in the United States in accordance with the Compacts of Free Association.

(c) **U.S. citizen** means someone who is a United States citizen under federal law.

(d) **U.S. national** means someone who is a United States national under federal law.

(e) **Undocumented person** means someone who is not lawfully present in the U.S.

(f) **Qualifying American Indian born abroad** means someone who:

(i) Was born in Canada and has at least 50 percent American Indian blood, regardless of tribal membership; or

(ii) Was born outside of the United States and is a member of a federally recognized tribe or an Alaska Native enrolled by the Secretary of the Interior under the Alaska Native Claims Settlement Act.

(2) **Eligibility.**

(a) A U.S. citizen, U.S. national or qualifying American Indian born abroad may be eligible for:

(i) Apple health for adults;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Classic medicaid.

(b) A qualified alien who meets or is exempt from the five-year bar may be eligible for:

(i) Apple health for adults;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Classic medicaid.

(c) A qualified alien who neither meets nor is exempt from the five-year bar may be eligible for:

- (i) Alien medical programs;
 - (ii) Apple health for kids;
 - (iii) Apple health for pregnant women; or
 - (iv) Medical care services.
- (d) A nonqualified alien may be eligible for:

- (i) Alien medical programs;
 - (ii) Apple health for kids;
 - (iii) Apple health for pregnant women; or
 - (iv) Medical care services.
- (e) An undocumented person may be eligible for:
- (i) Alien medical programs;
 - (ii) State-only funded apple health for kids; or
 - (iii) State-only funded apple health for pregnant women.

(3) **The five-year bar.**

(a) A qualified alien meets the five-year bar if he or she:

- (i) Continuously resided in the U.S. for five years or more from the date he or she became a qualified alien; or
- (ii) Entered the U.S. before August 22, 1996, and:
 - (A) Became a qualified alien before August 22, 1996; or
 - (B) Became a qualified alien on or after August 22, 1996, and has continuously resided in the U.S. between the date of entry into the U.S. and the date he or she became a qualified alien.

(b) A qualified alien is exempt from the five-year bar if he or she is:

- (i) A qualified alien as defined in subsection (1)(b)(vi) through (xv) of this section;
- (ii) An LPR, parolee, or abused person, who is also an armed services member or veteran, or a family member of an armed services member or veteran, as described below:
 - (A) An active-duty member of the U.S. military, other than active-duty for training;
 - (B) An honorably discharged U.S. veteran;
 - (C) A veteran of the military forces of the Philippines who served before July 1, 1946, as described in Title 38 U.S.C. Section 107; or
 - (D) The spouse, unremarried widow or widower, or unmarried dependent child of an honorably discharged U.S. veteran or active-duty member of the U.S. military.

AMENDATORY SECTION (Amending WSR 22-20-074, filed 9/30/22, effective 10/31/22)

WAC 182-507-0135 Immigration status requirement for refugee medical assistance (RMA). (1) An individual is eligible for refugee medical assistance (RMA) if the individual provides documentation issued by the United States Citizenship and Immigration Services (USCIS) to show that the individual is:

(a) Admitted as a refugee under section 207 of the Immigration and Nationalities Act (INA);

(b) Paroled into the United States as a refugee or asylee under section 212 (d)(5) of the INA;

(c) Granted conditional entry under section 203 (a)(7) of the INA;

(d) Granted asylum under section 208 of the INA;

(e) Admitted as an Amerasian immigrant from Vietnam through the orderly departure program, under section 584 of the Foreign Operations Appropriations Act, incorporated in the FY88 continuing resolution P.L. 100-212;

(f) A Cuban-Haitian entrant who was admitted as a public interest parolee under section 212 (d)(5) of the INA;

(g) Certified as a victim of human trafficking by the federal Office of Refugee Resettlement (ORR);

(h) An eligible family member of a victim of human trafficking certified by ORR who has a T-2, T-3, T-4, or T-5 visa; ~~((or))~~

(i) Admitted as special immigrant from Iraq or Afghanistan under one of the following:

(i) Special immigrant status under section 101 (a)(27) of the INA;

(ii) Special immigrant conditional permanent resident; or

(iii) Parole under section 602 (b)(1) of the Afghan Allies Protection Act of 2009 or section 1059(a) of the National Defense Authorization Act of 2006~~((-))~~;

(j) An Afghan granted humanitarian parole between July 31, 2021, and September 30, ~~((2022))~~ 2023, their spouse or child, or a parent or guardian of an unaccompanied minor who is granted parole after September 30, 2022, under section 2502 of the Extending Government Funding and Delivering Emergency Assistance Act of 2021; or

(k) A citizen or national of Ukraine (or a person who last habitually resided in Ukraine) who, under section 401 of the Additional Ukraine Supplemental Appropriations Act, 2022 (AUSAA), ~~((was))~~ is evaluated as a qualified alien when:

(i) Granted parole into the United States between February 24, 2022, and September 30, 2023; or

(ii) Granted parole into the United States after September 30, 2023, and is:

(A) The spouse or child of a person described in (k)(i) of this subsection; or

(B) The parent, legal guardian, or primary caregiver of a person described in (k)(i) of this subsection who is determined to be an unaccompanied child under section 462 (g)(2) of the Homeland Security Act of 2002 or section 412 (d)(2)(B) of the Immigration and Nationality Act.

(2) A permanent resident alien meets the immigration status requirements for RCA and RMA if the individual was previously in one of the statuses described in subsection (1) of this section.