



# PROPOSED RULE MAKING

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

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STATE OF WASHINGTON  
FILED

DATE: October 31, 2023

TIME: 10:14 AM

WSR 23-22-105

Agency: Health Care Authority

☒ Original Notice

☐ Supplemental Notice to WSR \_\_\_\_\_

☐ Continuance of WSR \_\_\_\_\_

☒ Preproposal Statement of Inquiry was filed as WSR 23-19-087 ; 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) 182-513-1110, Presumptive eligibility (PE) – Long-term services and supports (LTSS) in a home setting or in an alternate living facility (ALF) authorized by home and community services (HCS)

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
December 5, 2023	10:00 AM	The Health Care Authority holds public hearings virtually without a physical meeting place.	To attend the virtual public hearing, <a href="https://us02web.zoom.us/webinar/register/WN_3tyz-7OOQNW4WTLLeVvp-jA">you must register in advance</a> :  <a href="https://us02web.zoom.us/webinar/register/WN_3tyz-7OOQNW4WTLLeVvp-jA">https://us02web.zoom.us/webinar/register/WN_3tyz-7OOQNW4WTLLeVvp-jA</a>  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 earlier than December 6, 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](mailto:arc@hca.wa.gov)

Fax: 360-586-9727

Other:

By (date) December 5, 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](mailto:Johanna.larson@hca.wa.gov)

Other:

By (date) November 22, 2023

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The agency is amending WAC 182-513-1110 to remove presumptive eligibility for long-term services and supports in an alternate living facility. This change is currently effective by emergency rule filed under WSR 23-19-050. The agency adopted WAC 182-513-1110 anticipating federal government approval from the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS). Currently CMS has approved presumptive eligibility for long-term services and supports (LTSS) in the person's home, but discussions continue for alternate living facilities. Because federal funding is not yet available, the agency is amending the rule to remove language related to LTSS in an alternate living facility and hopes to restore that language through future rulemaking upon CMS approval.

**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

<b>Is rule necessary because of a:</b>			
Federal Law?		<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?		<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?		<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If yes, CITATION:			
<b>Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:</b> None			
<b>Type of proponent:</b> <input type="checkbox"/> Private <input type="checkbox"/> Public <input checked="" type="checkbox"/> Governmental			
<b>Name of proponent:</b> (person or organization) Health Care Authority			
<b>Name of agency personnel responsible for:</b>			
	Name	Office Location	Phone
Drafting:	Brian Jensen	PO Box 42716, Olympia, WA 98504-2716	360-725-0815
Implementation:	Paige Lewis	PO Box 42722, Olympia, WA 98504-2722	360-725-0757
Enforcement:	Paige Lewis	PO Box 42722, Olympia, WA 98504-2716	360-725-0757
<b>Is a school district fiscal impact statement required under <a href="#">RCW 28A.305.135</a>?</b>			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If yes, insert statement here:			
<p>The public may obtain a copy of the school district fiscal impact statement by contacting:</p> <p>Name:</p> <p>Address:</p> <p>Phone:</p> <p>Fax:</p> <p>TTY:</p> <p>Email:</p> <p>Other:</p>			
<b>Is a cost-benefit analysis required under <a href="#">RCW 34.05.328</a>?</b>			
<input type="checkbox"/> Yes: A preliminary cost-benefit analysis may be obtained by contacting: Name: Address: Phone: Fax: TTY: Email: Other:			
<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.			
<b>Regulatory Fairness Act and Small Business Economic Impact Statement</b>			
Note: The <a href="#">Governor's Office for Regulatory Innovation and Assistance (ORIA)</a> provides support in completing this part.			
<b>(1) Identification of exemptions:</b>			
This rule proposal, or portions of the proposal, <b>may be exempt</b> from requirements of the Regulatory Fairness Act (see <a href="#">chapter 19.85 RCW</a> ). For additional information on exemptions, consult the <a href="#">exemption guide published by ORIA</a> . Please check the box for any applicable exemption(s):			
<input type="checkbox"/> This rule proposal, or portions of the proposal, is exempt under <a href="#">RCW 19.85.061</a> 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:			
<input type="checkbox"/> This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by <a href="#">RCW 34.05.313</a> 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 <a href="#">RCW 15.65.570(2)</a> 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"/> <a href="#">RCW 34.05.310</a> (4)(b)<br>(Internal government operations) | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(e)<br>(Dictated by statute)                                                                                             |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(c)<br>(Incorporation by reference)     | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(f)<br>(Set or adjust fees)                                                                                              |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(d)<br>(Correct or clarify language)    | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(g)<br>((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 rule pertains to client program eligibility and does not impose any 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:** October 31, 2023

**Name:** Wendy Barcus

**Title:** HCA Rules Coordinator

**Signature:**



**WAC 182-513-1110 Presumptive eligibility (PE)—Long-term services and supports (LTSS) in a home setting (~~(or in an alternate living facility (ALF))~~) authorized by home and community services (HCS).** (1) A person may be determined presumptively eligible for long-term services and supports (LTSS) in their own home, as defined in WAC 388-106-0010(~~(, or in an alternate living facility, as defined in WAC 182-513-1100)~~):

- (a) Upon completion of a screening interview; and
- (b) When authorized by home and community services (HCS).
- (2) The screening interview described in subsection (3) of this section may be conducted by either:
  - (a) A HCS case manager or social worker;
  - (b) An area agency on aging (AAA) or their subcontractor; or
  - (c) A state designated tribal entity.
- (3) To be presumptively eligible (PE), the person must:
  - (a) Be determined to meet nursing facility level of care under WAC 388-106-0355 during the screening interview; and
  - (b) Attest to information that meets the:
    - (i) Income limits at or below the average monthly state nursing facility rate;
    - (ii) Resource limits defined under WAC 182-513-1350;
    - (iii) Social security requirement under WAC 182-503-0515;
    - (iv) Residency requirement under WAC 182-503-0520; and
    - (v) Aged, blind, or disabled requirement under WAC 182-512-0050.
- (4) The agency or the agency's designee determines how much client responsibility must be paid to the provider for PE home and community-based services authorized by HCS when living at home (~~(or in an alternate living facility)~~) as outlined in WAC 182-513-1215, 182-515-1507, and 182-515-1509.
- (5) The client or the client's representative must submit an on-line application through Washington connection or an HCA 18-005 application for aged, blind, disabled/long-term care coverage to HCS within 10 calendar days of PE determination.
- (6) The PE period begins on the date the screening interview is completed and:
  - (a) Ends on the last day of the month following the month of the PE determination if an LTSS application is not completed and submitted within 10 calendar days of PE determination; or
  - (b) Ends the last day of the month that the final eligibility determination is made if a LTSS application is submitted under subsection (5) of this section within 10 calendar days of PE determination.
- (7) For application processing times, refer to WAC 182-503-0060.
- (8) If the applicant is determined not financially eligible for LTSS under WAC 182-513-1315, there is no overpayment for services received during the PE period; however, client responsibility applies as described in WAC 182-513-1215, 182-515-1507, and 182-515-1509.
- (9) People who qualify for PE under this section receive categorically needy (CN) medical coverage under WAC 182-501-0060 through the PE period. CN medical coverage begins as described in WAC 182-503-0070 (1).

(10) When PE services described in WAC 388-106-1810 and 388-106-1820 are approved or denied, the agency or the agency's designee sends written notice as described in WAC 182-518-0010.

(11) A person may receive services under a PE period only once within a consecutive 24-month period.

(12) The applicant does not have a right to an administrative hearing on PE decisions under chapter 182-526 WAC.

(13) Institutional resource and income standards are found at <https://www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources>.

(14) This section does not apply to medical assistance programs described in WAC 182-507-0125 or 182-508-0005.