



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: June 29, 2018

TIME: 12:37 PM

WSR 18-14-070

Agency: Health Care Authority

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 18-08-071 ; 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)

WAC 182-560-100 Achieving a Better Life Experience (ABLE) Act

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
August 7, 2018	10:00 AM	Health Care Authority Cherry Street Plaza Sue Crystal Room 106A 626 8 th Ave, Olympia WA 98504	Metered public parking is available street side around building. A map is available at: www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling: (360) 725-1000

Date of intended adoption: Not sooner than August 8, 2018 (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) August 7, 2018

Assistance for persons with disabilities:

Contact Amber Lougheed

Phone: (360) 725-1349

Fax: (360) 586-9727

TTY: (Telecommunications Relay Service (TRS): 711

Email: amber.lougheed@hca.wa.gov

Other:

By (date) August 3, 2017

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The agency is amending WAC 182-560, Achieving a Better Life Experience (ABLE) act to comply with amendments to federal rules under 26 USC Sec. 529A, Qualified ABLE programs, and to clarify how contributions to ABLE accounts count towards countable income in determining eligibility for Apple Health programs.

Reasons supporting proposal: See Purpose.

Statutory authority for adoption: RCW 41.05.021, 41.05.160; 26 USC Sec. 529A Qualified ABLE programs

Statute being implemented: RCW 41.05.021, 41.05.160; 26 USC Sec. 529A Qualified ABLE programs

Is rule necessary because of a:

Federal Law? Yes No
Federal Court Decision? Yes No
State Court Decision? Yes No

If yes, CITATION: 26 USC Sec. 529A Qualified ABLE programs

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

Name of proponent: (person or organization) Health Care Authority Private Public Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Katie Pounds	PO Box 42716, Olympia, WA 98504-2716	(360) 725-1346
Implementation:	Stephen Kozak	PO Box 45534, Olympia, WA 98504-5534	(360) 725-1343
Enforcement:	Stephen Kozak	PO Box 45534, Olympia, WA 98504-5534	(360) 725-1343

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

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

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:
TTY:
Email:
Other:

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 Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

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:

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.

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:

RCW 34.05.310 (4)(b)
(Internal government operations)

RCW 34.05.310 (4)(e)
(Dictated by statute)

RCW 34.05.310 (4)(c)
(Incorporation by reference)

RCW 34.05.310 (4)(f)
(Set or adjust fees)

RCW 34.05.310 (4)(d)
(Correct or clarify language)

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 ____.

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If 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 analysis showing how costs were calculated. The changes to the proposed rules apply to clients so they do not impose any costs on businesses.

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert 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: June 29, 2018

Name: Wendy Barcus

Title: HCA Rules Coordinator

Signature:



WAC 182-560-100 Achieving a Better Life Experience (ABLE) Act.

This rule describes a qualified achieving a better life experience (ABLE) account and its effect on the determination of eligibility for Washington apple health coverage.

(1) A qualified ABLE account:

(a) Is established and maintained by a state, or its designated agency or entity;

(b) Meets federal requirements under 26 U.S.C. Sec. 529A; and

(c) Is used to save funds for the disability related expenses of the account's designated beneficiary.

(2) This section applies to ABLE account beneficiaries who:

(a) Are entitled to benefits based on blindness or disability under Title II or XVI of the Social Security Act; or

(b) Meet the blindness or disability requirements under WAC 182-512-0050 (1)(b) and (c).

(3) The disability or blindness described in subsection (2)(a) or (b) of this section must have occurred before age twenty-six.

(4) This section does not apply if the total combined annual contributions to an ABLE account exceed the ~~((gift tax annual exclusion amount identified in the Internal Revenue Service publication 559))~~ limit under 26 U.S.C. Sec. 529A.

(5) When determining countable income for apple health programs for the account's designated beneficiary, the medicaid agency or the agency's designee does not:

(a) Count contributions made by a person other than the designated beneficiary to the ABLE account;

(b) Count funds distributed from the account;

(c) Count earnings generated by the account, such as accrued interest or dividends; or

(d) Reduce income used to determine eligibility by the amount of contributions made to the account, including any funds the designated beneficiary may contribute to it.

(6) When determining eligibility for apple health programs, the agency or the agency's designee excludes as resources:

(a) The value of an ABLE account, including any earnings generated by the account; and

(b) Subject to subsection (8) of this section, distributions from the account for qualified disability expenses as long as the beneficiary:

(i) Maintains an ABLE account;

(ii) Contributes to an ABLE account; or

(iii) Receives distributions from such ABLE account.

(7) "Qualified disability expense (QDE)" means any expense related to the beneficiary's blindness or disability that is made for the benefit of the beneficiary, including the following expenses:

(a) Education;

(b) Housing;

(c) Transportation;

(d) Employment training and support;

(e) Assistive technology and personal support services;

(f) Health;

(g) Prevention and wellness;

(h) Financial management;

- (i) Legal fees;
- (j) Expenses for oversight and monitoring; and
- (k) Funeral and burial expenses.

(8) Distributions under subsection (6)(b) of this section, which are retained into a subsequent calendar month:

(a) Remain excluded as resources as long as the distributions are identifiable and the beneficiary still intends to use the distribution for a QDE;

(b) Are available resources on the first day of a subsequent calendar month if the intent of the beneficiary changes such that the beneficiary will not use the distribution for a QDE; and

(c) Are available resources on the first day of any subsequent month when the distribution is actually used for a non-QDE.

(9) The agency or the agency's designee counts as a resource on the first day of the following month any funds distributed for purposes other than paying a QDE expense described in subsection (7) of this section.

(10) If the beneficiary has multiple ABLE accounts, the agency or the agency's designee applies this section to the first ABLE account established.

(11) Funds remaining in the ABLE account when the beneficiary dies are subject to estate recovery under chapter 182-527 WAC, less any:

(a) Outstanding QDE debts; and

(b) Premium payments made from the ABLE account on behalf of the beneficiary to obtain coverage under the apple health care for workers with disabilities described in WAC 182-511-1000.