



PROPOSED RULE MAKING

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

Do NOT use for expedited rule making

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FILED

DATE: March 22, 2019

TIME: 8:38 AM

WSR 19-08-013

Agency: Health Care Authority

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 19-03-089 ; 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 182-513-1340—Determining excluded income for long-term care (LTC) services

WAC 182-512-0600—SSI-related medical—Definition of income

WAC 182-512-0820—SSI-related medical—Child-related income exclusions and allocations

Hearing location(s):

| Date: | Time: | Location: (be specific) | Comment: |
|-------------|----------|---|--|
| May 7, 2019 | 10:00 AM | Health Care Authority Cherry Street Plaza Apple Conf Room 127 626 8 th Ave, Olympia WA 98504 | Metered public parking is available street side around building. A map is available at: https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf or directions can be obtained by calling: (360) 725-1000 |

Date of intended adoption: Not sooner than May 8, 2019 (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) May 7, 2019

Assistance for persons with disabilities:

Contact Amber Lougheed

Phone: (360) 725-1349

Fax: (360) 586-9727

TTY: Telecommunication Relay Services (TRS): 711

Email: amber.lougheed@hca.wa.gov

Other:

By (date) May 3, 2019

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The agency is revising this rule to clarify excluded income requirements by striking references to non-excluded income (child support received from the noncustodial parent) from sections pertaining to excluded income and adding a definition of child support from the noncustodial parent in the appropriate WAC section.

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? | <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:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: Centers for Medicare & Medicaid Services (CMS)

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

| |
|--|
| <input type="checkbox"/> Private |
| <input type="checkbox"/> Public |
| <input checked="" type="checkbox"/> Governmental |

Name of agency personnel responsible for:

| | Name | Office Location | Phone |
|-----------------|------------------|-------------------------------------|----------------|
| Drafting: | Michael Williams | PO Box 42716, Olympia WA 98504-2716 | (360) 725-1346 |
| Implementation: | Stephen Kozak | PO Box 45534, Olympia WA 98504-2716 | (360) 725-1343 |
| Enforcement: | Stephen Kozak | PO Box 45534, Olympia WA 98504-2716 | (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)(c) (Incorporation by reference)
- RCW 34.05.310 (4)(d) (Correct or clarify language)
- RCW 34.05.310 (4)(e) (Dictated by statute)
- RCW 34.05.310 (4)(f) (Set or adjust fees)
- 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: March 22, 2019

Name: Wendy Barcus

Title: HCA Rules Coordinator

Signature:



WAC 182-512-0600 SSI-related medical—Definition of income. (1)

Income is anything a ~~((person))~~ client receives in cash or in-kind that can be used to meet his/her needs for food or shelter. Income can be earned or unearned.

(2) Some receipts are not income because they do not meet the definition of income above. Some types of receipts that are not income are:

(a) Cash or in-kind assistance from federal, state, or local government programs whose purpose is to provide medical care or services;

(b) Some in-kind payments that are not food or shelter coming from nongovernmental programs whose purposes are to provide medical care or medical services;

(c) Payments for repair or replacement of an exempt resource;

(d) Refunds or rebates for money already paid;

(e) Receipts from sale of a resource;

(f) Replacement of income already received (see 20 C.F.R. 416.1103 for a more complete list of receipts that are not income); and

(g) Receipts from extraction of exempt resources for a member of a federally recognized tribe.

(3) Earned income includes the following types of payments:

(a) Gross wages and salaries, including garnished amounts;

(b) Commissions and bonuses;

(c) Severance pay;

(d) Other special payments received because of employment;

(e) Net earnings from self-employment (WAC 182-512-0840 describes earnings exclusions);

(f) Self-employment income of tribal members unless the income is specifically exempted by treaty;

(g) Payments for services performed in a sheltered workshop or work activities center;

(h) Royalties earned by a ~~((person))~~ client in connection with any publication of ~~((his/her))~~ their work and any honoraria received for services rendered; and

(i) In-kind payments made in lieu of cash wages, including the value of food or shelter.

(4) Unearned income is all income that is not earned income. Some types of unearned income are:

(a) Annuities, pensions, and other periodic payments;

(b) Alimony and support payments;

(c) Voluntary or court-ordered child support payments, including arrears, received from a noncustodial parent for the benefit of a child are the income of the child;

(d) Dividends and interest;

~~((d))~~ (e) Royalties (except for royalties earned by a ~~((person))~~ client in connection with any publication of ~~((his/her))~~ their work and any honoraria received for services rendered which would be earned income);

~~((e))~~ (f) Capital gains;

~~((f))~~ (g) Rents;

~~((g))~~ (h) Benefits received as the result of another's death to the extent that the total amount exceeds the expenses of the deceased person's last illness and burial paid by the recipient;

~~((h))~~ (i) Gifts;

~~((i))~~ (j) Inheritances;

~~((j))~~ (k) Prizes and awards; and

~~((k))~~ (l) Amounts received by tribal members from gaming revenues with the exceptions cited in WAC 182-512-0770(3).

(5) Some items which may be withheld from income, but which the agency considers as received income are:

(a) Federal, state, or local income taxes;

(b) Health or life insurance premiums;

(c) SMI premiums;

(d) Union dues;

(e) Penalty deductions for failure to report changes;

(f) Loan payments;

(g) Garnishments;

(h) Child support payments, court ordered or voluntary (WAC 182-512-0900 has an exception for deemons);

(i) Service fees charged on interest-bearing checking accounts;

(j) Inheritance taxes; and

(k) Guardianship fees if presence of a guardian is not a requirement for receiving the income.

(6) Countable income, for the purposes of this chapter, means all income that is available to the ~~((person))~~ client:

(a) If it cannot be excluded; and

(b) After deducting all allowable disregards and deductions.

AMENDATORY SECTION (Amending WSR 14-07-059, filed 3/14/14, effective 4/14/14)

WAC 182-512-0820 SSI-related medical—Child-related income exclusions and allocations. (1) For the purposes of Washington apple health ~~((WAH))~~ SSI-related medical eligibility determinations under chapter 182-512 WAC, a child is defined as a person who is:

(a) Unmarried;

(b) Living in the household of the SSI-related applicant;

(c) The natural, adopted or stepchild of the SSI-related applicant or the applicant's spouse;

(d) Not receiving a needs-based cash payment such as TANF or SSI; and

(e) Either:

(i) Age seventeen or younger; or

(ii) Age twenty-one or younger and meets the SSI-related definition of a student described in subsection (6) of this section.

(2) The agency allows an allocation for the support of a child when determining the countable income of an SSI-related applicant. The allocation is calculated as follows:

(a) For ~~((WAH))~~ apple health categorically needy (CN) health care coverage, the allocation is deducted from the countable income of a nonapplying spouse before determining the amount of the nonapplying spouse's income to be deemed to the SSI-related applicant. Allocations

to children are not deducted from the income of an unmarried SSI-related applicant.

(b) For ((WAH)) apple health medically needy (MN) medical coverage, the allocation is first deducted from the income of the nonapplying spouse as described in subsection (2)(a) of this section when the SSI-related applicant is married, and from the income of the applicant when the applicant is not married.

(3) The child's countable income, if any, is subtracted from the maximum child's allowance before determining the amount of allocation.

(4) Foster care payments received for a child who is not SSI-eligible and who is living in the household, placed there by a licensed, nonprofit or public child placement or childcare agency are excluded from income regardless of whether the ((person)) client requesting or receiving SSI-related medical is the adult foster parent or the child who was placed.

(5) Adoption support payments, received by an adult for a child in the household that are designated for the child's needs, are excluded as income. Adoption support payments that are not specifically designated for the child's needs are not excluded and are considered unearned income to the adult.

(6) The agency excludes the earned income of a ((person)) client age twenty-one or younger if that ((person)) client is a student. In order to allow the student earned income exclusion, a student must:

(a) Attend a school, college, or university a minimum of eight hours a week; or

(b) Pursue a vocational or technical training program designed to prepare the student for gainful employment a minimum of twelve hours per week; or

(c) Attend school or be home schooled in grades seven through twelve at least twelve hours per week.

(7) Any portion of a grant, scholarship, fellowship, or gift used for tuition, fees and/or other necessary educational expenses at any educational institution is excluded from income and not counted as a resource for nine months after the month of receipt.

(8) One-third of child support payments received for a child who is an applicant for ((WAH)) SSI-related medical is excluded from the child's income. Child support payments that are subject to the one-third deduction may be voluntary or court-ordered payments for current support or arrears.

~~(9) ((The one-third deduction described in subsection (8) of this section does not apply to child support payments received from an absent parent for a child living in the home when the parent(s) or their spouse is the applicant for SSI-related medical. Voluntary or court-ordered payments for current support or arrears are always considered the income of the child for whom they are intended and not income to the parent(s)).~~

~~(10))~~ The following gifts to, or for the benefit of, a ((person)) client under eighteen years old who has a life-threatening condition, from an organization described in section 501 (c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of that code, are excluded:

(a) In-kind gifts that are not converted to cash; and

(b) Cash gifts up to a total of two thousand dollars in a calendar year.

~~((11))~~ (10) Veteran's payments made to, or on behalf of, natural children of Vietnam veterans regardless of their age or marital status, for any disability resulting from spina bifida suffered by

these children are excluded from income. Any portion of a veteran's payment that is designed as the dependent's income is countable income to the dependent and not the applicant (assuming the applicant is not the dependent).

WAC 182-513-1340 Determining excluded income for long-term care (LTC) services. This section describes income the agency or its designee excludes when determining a ~~((person's))~~ client's eligibility and participation in the cost of care for long-term care (LTC) services.

(1) When determining a ~~((person's))~~ client's eligibility and participation in the cost of care for LTC services, the agency excludes:

- (a) Crime victim's compensation;
- (b) Earned income tax credit (EITC) for twelve months after the month of receipt;
- (c) American Indian/Alaskan native benefits excluded by federal statute (refer to WAC 182-512-0770);
- (d) Tax rebates or special payments excluded by other statutes;
- (e) Any public agency's refund of taxes paid on real property and/or on food;
- (f) Supplemental security income (SSI) and certain state public assistance based on financial need;
- (g) The amount a representative payee charges to provide services when the services are a requirement for the ~~((person))~~ client to receive the income;
- (h) The amount of expenses necessary for a ~~((person))~~ client to receive compensation, e.g., legal fees necessary to obtain settlement funds;
- (i) Education benefits under WAC ~~((182-509-0335))~~ 182-512-0760;
- (j) ~~((Child support payments received from a noncustodial parent for a child living in the home are the income of the child;~~
- ~~((k))~~ Self-employment income allowed as a deduction by the Internal Revenue Service (IRS);
- ~~((l))~~ (k) Payments to prevent fuel cut-offs and to promote energy efficiency that are excluded by federal statute;
- ~~((m))~~ (l) Assistance (other than wages or salary) received under the Older Americans Act;
- ~~((n))~~ (m) Assistance (other than wages or salary) received under the foster grandparent program;
- ~~((o))~~ (n) Certain cash payments a ~~((person))~~ client receives from a governmental or nongovernmental medical or social service agency to pay for medical or social services;
- ~~((p))~~ (o) Interest earned on excluded burial funds and any appreciation in the value of an excluded burial arrangement that are left to accumulate and become part of the separately identified burial funds set aside;
- ~~((q))~~ (p) Tax exempt payments received by Alaska natives under the Alaska Native Settlement Act established by P.L. 100-241;
- ~~((r))~~ (q) Compensation provided to volunteers in ACTION programs under the Domestic Volunteer Service Act of 1973 established by P.L. 93-113;
- ~~((s))~~ (r) Payments made from the Agent Orange Settlement Fund or any other funds to settle Agent Orange liability claims established by P.L. 101-201;
- ~~((t))~~ (s) Payments made under section six of the Radiation Exposure Compensation Act established by P.L. 101-426;
- ~~((u))~~ (t) Payments made under the Energy Employees Occupational Illness Compensation Program Act of 2000, (EEOICPA) Pub. L. 106-398;

~~((v))~~ (u) Restitution payment, and interest earned on such payment to a civilian of Japanese or Aleut ancestry established by P.L. 100-383;

~~((w))~~ (v) Payments made under sections 500 through 506 of the Austrian General Social Insurance Act;

~~((x))~~ (w) Payments made from *Susan Walker v. Bayer Corporation, et, al.*, 95-C-5024 (N.D. Ill.) (May 8, 1997) settlement funds;

~~((y))~~ (x) Payments made from the Ricky Ray Hemophilia Relief Fund Act of 1998 established by P.L. 105-369;

~~((z))~~ (y) Payments made under the Disaster Relief and Emergency Assistance Act established by P.L. 100-387;

~~((aa))~~ (z) Payments made under the Netherlands' Act on Benefits for Victims of Persecution (WUV);

~~((bb))~~ (aa) Payments made to certain survivors of the Holocaust under the Federal Republic of Germany's Law for Compensation of National Socialist Persecution or German Restitution Act;

~~((cc))~~ (bb) Interest or dividends received by the institutionalized individual is excluded as income. Interest or dividends received by the community spouse of an institutional individual is counted as income of the community spouse. Dividends and interest are returns on capital investments such as stocks, bonds, or savings accounts. Institutional status is defined in WAC 182-513-1320;

~~((dd))~~ (cc) Income received by an ineligible or nonapplying spouse from a governmental agency for services provided to an eligible ~~((person))~~ client, e.g., chore services~~((t))~~.

(2) The agency or its designee treats Department of Veterans Affairs (VA) benefits as follows:

(a) Any VA dependent allowance is ~~((considered))~~ countable income to the dependent unless it is paid due to unusual medical expenses (UME);

(b) UME, aid and attendance allowance, special monthly compensation (SMC) and housebound allowance are third-party resources;

(c) Benefits in subsection (2)(b) of this section for a ~~((person))~~ client who receives long-term care services are excluded when determining eligibility, but are available as a third-party resource (TPR) as defined under WAC 182-513-1100 when determining the amount the institutionalized ~~((individual))~~ client contributes in the cost of care.

(3) Any other income excluded by federal law is excluded.