



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: April 03, 2019

TIME: 10:15 AM

WSR 19-08-088

Agency: Health Care Authority

Original Notice

Supplemental Notice to WSR

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 17-15-094 ; 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 182-512-0350 SSI-related medical – Property and contracts excluded as resources

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, 2109

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: This rule is being amended to clarify what an "ownership interest" is in the home exclusion rule. Clarification is also needed to explain that property essential to self-support (PESS) does not include intangible personal property other than cash or cash equivalents used in a trade or business.

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:

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:	Amy Emerson	PO Box 42716, Olympia WA 98504-2716	360-725-1348
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. Amendments to WAC 182-512-0350 do not impose additional compliance costs or requirements on providers.

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: April 3, 2019

Name: Wendy Barcus

Title: HCA Rules Coordinator

Signature:



WAC 182-512-0350 SSI-related medical—Property and contracts excluded as resources. (1) The agency (~~does not count~~) excludes the following resources when determining eligibility for SSI-related medical assistance:

(a) A (~~person's~~) client's household goods and personal effects;
(b) One home (which can be any shelter), including the land on which the dwelling is located, and all contiguous property and related out-buildings in which the (~~person has ownership interest (for WAH long-term care programs, see WAC 182-513-1350 for home equity limits)~~) client has a fee simple interest, life estate interest, or equitable interest (subject to state law), when:

(i) The (~~person~~) client uses the home as (~~his or her~~) a primary residence; (~~or~~)

(ii) The (~~person's~~) client's spouse lives in the home; (~~or~~)

(iii) The (~~person~~) client does not currently live in the home, but the (~~person or his/her~~) client or the client's representative has stated (~~he or she~~) the client intends to return to the home; or

(iv) A relative, who is financially or medically dependent on the (~~person~~) client, lives in the home and either the dependency is documented or a written statement of dependency is provided by the (~~person, or his or her~~) client, the client's authorized representative, or by the client's dependent relative.

(c) (~~The value of ownership interest in jointly owned real property is an excluded resource for as long as sale of the property would cause undue hardship to a co-owner due to loss of housing. Undue hardship would result if the co-owner:~~

~~(i) Uses the property as his or her principal place of residence;~~

~~(ii) Would have to move if the property were sold; and~~

~~(iii) Has no other readily available housing.)~~ The client's interest in jointly owned real property when the sale of the jointly owned interest would cause undue hardship to a joint owner.

(i) For the purposes of this section, jointly owned interest means:

(A) The client and one or more people own a fee simple interest;

(B) The client and one or more people own a life estate interest;

(C) The client and one or more people own an equitable interest (subject to state law); or

(D) One or more people have a fee simple or life estate interest, and the client has an equitable interest (subject to state law) in that interest.

(ii) For the purposes of this section, undue hardship means:

(A) One or more joint owners use the real property as his or her principal place of residence;

(B) A joint owner would have to move if the jointly owned interest were sold; and

(C) A joint owner has no other readily available housing.

(2) (~~Cash~~) Proceeds from the sale of (~~the home~~) an interest described in subsection (1)(b) of this section, are (~~not considered~~) excluded as a resource if the (~~person~~) client uses (~~them~~) the proceeds to purchase another home by the end of the third month after receiving the proceeds from the sale.

(3) An installment contract from the sale of the home described in subsection (1)(b) above is not a resource as long as the ~~((person))~~ client plans to use the entire down payment and the entire principal portion of a given installment payment to buy another excluded home, and does so within three ~~((full-calendar))~~ months after the month of receiving such down payment or installment payment.

(4) The value of sales contracts is excluded when the:

(a) Current market value of the contract is zero~~((τ))~~;

(b) Contract cannot be sold; or

(c) Current market value of the sales contract combined with other resources does not exceed the resource limits.

(5) Sales contracts executed before December 1, 1993, are ~~((exempt))~~ excluded resources as long as they are not transferred to someone other than a spouse.

(6) A sales contract for the sale of the ~~((person's))~~ client's principal place of residence executed between December 1, 1993 and May 31, 2004 is ~~((considered-an-exempt))~~ an excluded resource unless it has been transferred to someone other than a spouse and it:

(a) Provides interest income within the prevailing interest rate at the time of the sale;

(b) Requires the repayment of a principal amount equal to the fair market value of the property; and

(c) The term of the contract does not exceed thirty years.

(7) A sales contract executed on or after June 1, 2004 on a home that was the principal place of residence for the ~~((person))~~ client at the time of institutionalization is ~~((considered-exempt))~~ an excluded resource as long as it is not transferred to someone other than a spouse and it:

(a) Provides interest income within the prevailing interest rate at the time of the sale;

(b) Requires the repayment of a principal amount equal to the fair market value of the property within the anticipated life expectancy of the ~~((person))~~ client; and

(c) The term of the contract does not exceed thirty years.

(8) Payments received on sales contracts of the home described in subsection (1)(b) of this section are treated as follows:

(a) The interest portion of the payment is treated as unearned income in the month of receipt of the payment;

(b) The principal portion of the payment is treated as an excluded resource if reinvested in the purchase of a new home within three months after the month of receipt;

(c) If the principal portion of the payment is not reinvested in the purchase of a new home within three months after the month of receipt, that portion of the payment is ~~((considered))~~ a liquid resource as of the date of receipt.

(9) Payments received on sales contracts described in subsection (4) of this section are treated as follows:

(a) The principal portion of the payment on the contract is treated as a resource and counted toward the resource limit to the extent retained at the first moment of the month following the month of receipt of the payment; and

(b) The interest portion is treated as unearned income the month of receipt of the payment.

(10) For sales contracts that meet the criteria in subsections (5), (6), or (7) of this section but do not meet the criteria in subsections (3) or (4) of this section, both the principal and interest

portions of the payment are treated as unearned income in the month of receipt.

(11) Property essential to self-support (PESS) is ~~((not considered))~~ excluded as a resource within certain limits. ~~((The agency places property essential to self-support in several categories))~~ There are three categories of PESS:

(a) Real and personal property used in a trade or business ~~((income-producing property)), such as:~~

- ~~(i) Land;~~
- ~~(ii) Buildings;~~
- ~~(iii) Equipment;~~
- ~~(iv) Supplies;~~
- ~~(v) Motor vehicles; and~~
- ~~(vi) Tools):~~

(i) That is a resource defined under WAC 182-512-0200;

(ii) That is in current use as described under the Social Security Administration's Program Operations Manual System (POMS) SI 01130.504; and

(iii) Where the trade or business is a sole proprietorship or simple partnership.

(b) Nonbusiness income-producing property (i.e., property not used in a trade or business), such as:

- (i) Houses or apartments for rent; and
- (ii) Land, other than home property.

(c) Property used to produce goods or services essential to a ~~((person's))~~ client's daily activities, such as land used to produce vegetables or livestock, which is ~~((only))~~ used only for personal consumption in the ~~((person's))~~ client's household. This includes personal property necessary to perform daily functions including vehicles such as boats for subsistence fishing and garden tractors for subsistence farming, but does not include other vehicles such as those that qualify as automobiles (e.g., cars, trucks).

(12) The agency excludes a ~~((person's equity in))~~ client's real and personal property used in a trade or business ~~((income-producing property listed in)), described under~~ subsection (11)(a) of this section ~~((+)),~~ regardless of value as long as it is ~~((currently in use))~~ in current use (as described under POMS SI 01130.504) in the trade or business and remains used in the trade or business.

(13) The agency excludes up to ~~((six thousand dollars))~~ \$6,000 of a ~~((person's))~~ client's equity in nonbusiness income-producing property ~~((listed in)), described under~~ subsection (11)(b) of this section, if it produces a net annual income to the ~~((person))~~ client of at least six percent of the excluded equity.

(a) If a ~~((person's))~~ client's equity in the property is over ~~((six thousand dollars))~~ \$6,000, only the amount over ~~((six thousand dollars))~~ \$6,000 is counted toward the resource limit, as long as the net annual income requirement of six percent is met on the excluded equity.

(b) If the six percent requirement is not met due to circumstances beyond the ~~((person's))~~ client's control (e.g., illness), and there is a reasonable expectation that the activities will again meet the six percent rule, the same exclusions as in subsection (13)(a) of this section apply.

(c) If a ~~((person))~~ client has more than one piece of real property in this category, each is ~~((looked at))~~ independently evaluated to see if it meets the six percent return, and the total equities of all those properties are added to see if the total is over ~~((six thou-~~

~~sand dollars~~) \$6,000. If the total is over the (~~six thousand dol-~~
~~lars~~) \$6,000 limit, the amount exceeding the limit is counted toward
the resource limit.

(d) The equity in each property that does not meet the six per-
cent annual net income limit is counted toward the resource limit,
with the exception of property that represents the authority granted
by a governmental agency to engage in an income-producing activity if
it is:

(i) Used in a trade or business or nonbusiness income-producing
activity; or

(ii) Not used due to circumstances beyond the (~~person's~~) cli-
ent's control(~~(r)~~) (e.g., illness), and there is a reasonable expecta-
tion that the use will resume.

(14) Property used to produce goods or services essential to a
(~~person's~~) client's daily activities is excluded if the (~~person's~~)
client's equity in the property does not exceed (~~six thousand dol-~~
~~lars~~) \$6,000.

(15) Personal property used by a (~~person~~) client for work is
not counted toward the resource limit, regardless of value, while in
current use (as described under POMS SI 01130.504), or if the required
use for work is reasonably expected to resume.

(16) Interests in trust or in restricted Indian land owned by a
(~~person~~) client who is of Indian descent from a federally recognized
Indian tribe or held by the spouse or widow/er of that (~~person~~) cli-
ent, is not counted toward the resource limit if permission of the
other (~~persons~~) people, the tribe, or an agency of the federal gov-
ernment must be received in order to dispose of the land.

(17) Receipt of money by a member of a federally recognized tribe
from exercising federally protected rights or extraction of (~~exempt~~)
excluded resources, such as fishing, shell-fishing, or selling timber
from protected land, is considered conversion of an (~~exempt~~) exclu-
ded resource during the month of receipt. Any amount remaining from
the conversion of this (~~exempt~~) excluded resource on the first of
the month after the month of receipt will remain (~~exempt~~) excluded
if it is used to purchase another (~~exempt~~) excluded resource. Any
amount remaining in the form of a countable resource (such as in a
checking or savings account) on the first of the month after receipt,
will be added to other countable resources for eligibility determina-
tions.