



# PROPOSED RULE MAKING

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

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FILED

DATE: April 12, 2019

TIME: 2:37 PM

WSR 19-09-050

Agency: Health Care Authority

Original Notice

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

Continuance of WSR \_\_\_\_\_

Preproposal Statement of Inquiry was filed as WSR 19-03-139 ; 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 182-513-1363 Evaluating an asset transfer for people applying for or receiving long-term care (LTC) services

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
May 21, 2019	10:00 AM	Health Care Authority Cherry Street Plaza <b>Pear Conf Room #107</b> 626 8 <sup>th</sup> Ave, Olympia WA 98504	Metered public parking is available street side around building. A map is available at: <a href="https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf">https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf</a> or directions can be obtained by calling: (360) 725-1000

Date of intended adoption: Not sooner than May 22, 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](mailto:arc@hca.wa.gov)

Fax: (360) 586-9727

Other:

By (date) May 21, 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](mailto:amber.lougheed@hca.wa.gov)

Other:

By (date) May 17, 2019

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The agency is amending language to (1) update and clarify WAC language to be consistent with current drafting practices and (2) clarify the presumptions and burdens regarding asset transfers for long-term care (LTC) to be more in line with Social Security Act (SSA) 1917 [42 U.S.C. 1396p]. During the course of this review, the agency may identify additional changes that are required in order to improve clarity or update policy.

**Reasons supporting proposal:** See purpose

**Statutory authority for adoption:** RCW 41.05.021, 41.05.160, Social Security Act (SSA) 1917 [42 U.S.C. 1396p (a)]

**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:** N/A

**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:	Vance Taylor	PO Box 42716, Olympia WA 98504-2716	360-725-1344
Implementation:	Stephen Kozak	PO Box 42716, Olympia WA 98504-2716	360-725-1343
Enforcement:	Stephen Kozak	PO Box 42716, 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 19.85.025(4).

Explanation of exemptions, if necessary:

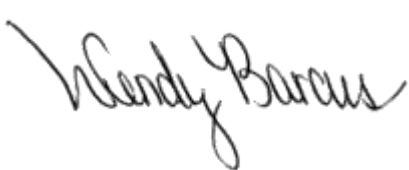
**COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES**

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. \_\_\_\_\_
- 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:

<b>Date:</b> April 12, 2019	<b>Signature:</b> 
<b>Name:</b> Wendy Barcus	
<b>Title:</b> HCA Rules Coordinator	

**WAC 182-513-1363 Evaluating an asset transfer for ((people)) clients applying for or receiving long-term care (LTC) services.** (1) When determining a ((person's)) client's eligibility for long-term care (LTC) services, the medicaid agency or ((its)) the agency's designee evaluates the effect of an asset transfer made within the sixty-month period before the month that the ((person)) client:

(a) Attained institutional status, or would have attained institutional status but for a period of ineligibility; and  
(b) Applied for LTC services.

(2) The agency or ((its)) the agency's designee evaluates all transfers for recipients of LTC services made ((on)) during or after the month the recipient attained institutional status.

(3) The agency or ((its)) the agency's designee establishes a period of ineligibility during which the ((person)) client is not eligible for LTC services if the ((person)) client, the ((person's)) client's spouse, or someone acting on behalf of either:

(a) Transfers an asset within the time period under subsection (1) or (2) of this section; and

(b) Does not receive adequate consideration for the asset, unless the transfer meets one of the conditions in subsection (4)(a) through (g) of this section.

(4) The agency or ((its)) the agency's designee does not apply a period of ineligibility for uncompensated value if:

(a) The total of all asset transfers in a month does not exceed the ((average daily private nursing facility rate in that month)) statewide average daily private cost for nursing facilities at the time of application or the date of transfer, whichever is later;

(b) The transferred ((resource)) asset was an excluded resource under WAC 182-513-1350 except a home, unless the transfer of the home meets the conditions under (d) of this subsection;

(c) The asset was transferred for less than fair market value (FMV), and the ((person)) client can establish one of the following:

(i) An intent to transfer the asset at FMV. ((To establish such an intent, the agency or its designee must be provided with convincing evidence of the attempt to dispose the asset for FMV;

(ii) The transfer was not made to qualify for medicaid, continue to qualify for medicaid, or avoid estate recovery. Convincing evidence must be presented regarding the specific purpose of the transfer;)) This intent is established by providing convincing evidence to the agency or the agency's designee;

(ii) The asset was transferred exclusively for a purpose other than to qualify for medicaid, continue to qualify for medicaid, or avoid estate recovery.

(A) An asset transfer is presumed to be for the purpose of establishing or continuing medicaid eligibility, avoiding estate recovery, or both;

(B) A client can rebut this presumption by providing convincing evidence that the transfer of an asset was exclusively for a purpose other than to qualify for medicaid, continue to qualify for medicaid, or avoid estate recovery.

(iii) All assets transferred for less than FMV have been returned to the ((person)) client or the ((person's)) client's spouse; or

(iv) ~~((The))~~ Denial of eligibility ~~((would))~~ results in an undue hardship under WAC 182-513-1367~~((†))~~.

(d) The transferred asset was a home, if the home was transferred to the person's:

- (i) Spouse;
- (ii) Child who meets the disability criteria under WAC 182-512-0050 (1)(b) or (c);
- (iii) Child who was under age twenty-one; or
- (iv) Child who lived in the home and provided care, but only if:
  - (A) The child lived in the person's home for at least two years;
  - (B) The child provided verifiable care to that person during the time period in (d)(iv)(A) of this subsection for at least two years;
  - (C) The period of care under (d)(iv)(B) of this subsection was immediately before ~~((the))~~ that person's current period of institutional status;
  - (D) The care was not paid for by medicaid;
  - (E) The care enabled ~~((the))~~ that person to remain at home; and
  - (F) The ~~((person provided))~~ physician's documentation verifies that the in-home care was necessary to prevent ~~((the))~~ that person's current period of institutional status; or
- (v) Sibling, who has lived in and has had an equity interest in the home for at least one year immediately before the date the person attained institutional status~~((†))~~.

(e) The asset was transferred to the ~~((person's))~~ client's spouse; or to the ~~((person's))~~ client's or their spouse's child, if the child meets the disability criteria under WAC 182-512-0050 (1)(b) or (c);

(f) The transfer was to a family member before the current period of institutional status, and all the following conditions are met. If all the following conditions are not met, the transfer is an uncompensated transfer, regardless of consideration received:

- (i) The transfer is in exchange for care services the family member provided to the ~~((person))~~ client or their spouse;
- (ii) The ~~((person))~~ client or their spouse had a documented need for the care services provided by the family member;
- (iii) The care services provided by the family member are allowed under the medicaid state plan or the department's home and community-based waiver services;
- (iv) The care services provided by the family member do not duplicate those that another party is being paid to provide;
- (v) The FMV of the asset transferred is comparable to the FMV of the care services provided;
- (vi) The time for which care services are claimed is reasonable based on the kind of services provided; and
- (vii) The assets were transferred as the care services were performed, ~~((or))~~ with no more time delay than one calendar month between the provision of the service and the transfer.

(g) The transfer meets the conditions under subsection (5) of this section, and the asset is transferred~~((†or))~~:

- (i) To another party for the sole benefit of the ~~((person's))~~ client's spouse;
- (ii) From the ~~((person's))~~ client's spouse to another party for the sole benefit of the client's spouse;
- (iii) To a trust established for the sole benefit of the ~~((person's))~~ client's or their spouse's child who meets the disability criteria under WAC 182-512-0050 (1)(b) or (c); or

(iv) To a trust established for the sole benefit of a person who is under age sixty-five who meets the disability criteria under WAC 182-512-0050 (1)(b) or (c).

(5) An asset transfer or establishment of a trust is for the sole benefit of a person under subsection (4)(g) of this section if the document transferring the asset:

(a) Was made in writing;

(b) Is irrevocable;

(c) States that the ~~((person's))~~ client's spouse, their blind or disabled child, or another disabled person can benefit from the transferred assets; and

(d) States that all assets involved must be spent for the sole benefit of the person over an actuarially sound period, based on the life expectancy of that person or the term of the document, whichever is less, unless the document is a trust that meets the conditions of a trust established under Section 42 U.S.C. 1396p (d)(4)(A) or Section 42 U.S.C. 1396 (d)(4)(C) as described under chapter 182-516 WAC.

(6) To calculate the period of ineligibility under subsection (3) of this section:

(a) Add together the total uncompensated value of all transfers under subsection (3) of this section; and

(b) Divide the total in (a) of this subsection by the statewide average daily private cost for nursing facilities at the time of application or the date of transfer, whichever is later. The result is the length, in days rounded down to the nearest whole day, of the period of ineligibility~~((÷))~~.

(7) The period of ineligibility under subsection (6) of this section begins:

(a) For an LTC services applicant: The date the ~~((person))~~ client would be otherwise eligible for LTC services, but for the transfer, based on an approved application for LTC services or the first day after any previous period of ineligibility has ended; or

(b) For an LTC services recipient: The first of the month following ten-day advance notice of the period of ineligibility, but no later than the first day of the month that follows three full calendar months from the date of the report or discovery of the transfer; or the first day after any previous period of ineligibility has ended.

(8) The period of ineligibility ends after the number of whole days, calculated in subsection (6) of this section, pass from the date the period of ineligibility began in subsection (7) of this section.

(9) If the transfer was to the ~~((person's))~~ client's spouse, from the client's spouse to the client, and it ~~((includes))~~ included the right to receive an income stream, the agency or ~~((its))~~ the agency's designee determines availability of the income stream under WAC 182-513-1330.

(10) If the transferred asset, for which adequate consideration was not received ~~((was made to someone other than the person's spouse and))~~, included the right to receive a stream of income not generated by ~~((the))~~ a transferred asset, the length of the period of ineligibility is calculated and applied in the following way:

(a) The amount of reasonably anticipated future monthly income, after the transfer, is multiplied by the actuarial life expectancy in months of the ~~((person who owned))~~ previous owner of the income. The actuarial life expectancy is based on age of the ~~((person))~~ previous owner in the month the transfer occurs. If the client and their spouse co-owned the asset, the longer actuarial life expectancy is used. This product is the FMV of the asset;

(b) Any consideration received in return for the FMV of the asset under (a) of this subsection is subtracted to calculate the uncompensated value;

~~((b))~~ (c) The ~~((amount))~~ uncompensated value in ~~((a))~~ (b) of this subsection is divided by the statewide average daily private cost for nursing facilities at the time of application or the date of transfer, whichever is later. The result is the length, in days rounded down to the nearest whole day, of the period of ineligibility; and

~~((e))~~ (d) The period of ineligibility begins under subsection (7) of this section and ends under subsection (8) of this section.

(11) A period of ineligibility for the transfer of an asset that is applied to one spouse is not applied to the other spouse, unless both spouses have attained institutional status. When both spouses are institutionalized, the agency or ~~((its))~~ the agency's designee divides the penalty equally between the two spouses. If one spouse is no longer subject to a period of ineligibility, the remaining period of ineligibility that applied to both spouses will be applied to the other spouse.

(12) Throughout this section, the date of an asset transfer is:

(a) For real property:

(i) The day the deed is signed by the grantor if the deed is recorded; or

(ii) The day the signed deed is delivered to the grantee~~((r))~~.

(b) For all other assets, the day the intentional act or the failure to act resulted in the change of ownership or title.

(13) If a ~~((person))~~ client or ~~((the person's))~~ their spouse disagrees with the determination or application of a period of ineligibility, a hearing may be requested under chapter 182-526 WAC.

(14) Additional statutes that apply to transfer of asset penalties, real property transfer for inadequate consideration, disposal of realty penalties, and transfers to qualify for assistance can be found at:

(a) RCW 74.08.331 Unlawful practices—Obtaining assistance—Disposal of realty—Penalties;

(b) RCW 74.08.338 Real property transfers for inadequate consideration;

(c) RCW 74.08.335 Transfers of property to qualify for assistance; and

(d) RCW 74.39A.160 Transfer of assets—Penalties.