



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: May 04, 2023

TIME: 11:15 AM

WSR 23-11-006

Agency: Health Care Authority

☒ Original Notice

☐ Supplemental Notice to WSR _____

☐ Continuance of WSR _____

☒ Preproposal Statement of Inquiry was filed as WSR 23-07-094 ; 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) 182-509-0320, MAGI income – Noncountable income; 182-512-0860, SSI-related medical – Income exclusions under federal statute or other state laws

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
June 27, 2023	10:00 AM	The Health Care Authority holds public hearings virtually without a physical meeting place.	To attend the virtual public hearing, you must register in advance: https://us02web.zoom.us/webinar/register/WN_Y517j7-oTzq4pOEKrh1bg 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 sooner than June 28, 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

Fax: 360-586-9727

Other:

By (date) June 27, 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

Other:

By (date) June 16, 2023

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The agency is amending WAC 182-509-0320 and WAC 182-512-0860 to include the working families' tax credit under RCW 82.08.0206 as income that the agency excludes when determining eligibility for modified adjusted gross income (MAGI)-based Washington apple health and Washington apple health SSI-related medical programs.

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: None			
Type of proponent: <input type="checkbox"/> Private <input type="checkbox"/> Public <input checked="" type="checkbox"/> Governmental			
Name of proponent: (person or organization) Health Care Authority			
Name of agency personnel responsible for:			
	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 98504-2722	360-725-0757
Is a school district fiscal impact statement required under RCW 28A.305.135?			<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>			
Is a cost-benefit analysis required under RCW 34.05.328?			
<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.			
Regulatory Fairness Act and Small Business Economic Impact Statement			
Note: The Governor's Office for Regulatory Innovation and Assistance (ORIA) provides support in completing this part.			
(1) Identification of exemptions:			
This rule proposal, or portions of the proposal, may be exempt from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). For additional information on exemptions, consult the exemption guide published by ORIA . Please check the box for any applicable exemption(s):			
<input type="checkbox"/> 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:			
<input type="checkbox"/> 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.			
<input type="checkbox"/> 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:
- | | |
|---|--|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> 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\(4\)](#) (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: May 4, 2023

Name: Wendy Barcus

Title: HCA Rules Coordinator

Signature:



WAC 182-509-0320 MAGI income—Noncountable income. For purposes of determining eligibility for modified adjusted gross income (MAGI)-based Washington apple health (see WAC 182-509-0300):

(1) Some types of income are not counted when determining eligibility for MAGI-based apple health. Under the MAGI income methodology described in WAC 182-509-0300, income is not counted if the Internal Revenue Service (IRS) permits it to be excluded or deducted for purposes of determining the tax liability of a person. (See 26 U.S.C. Sections 62(a) and 101-140.)

(2) Examples of income that are not counted include, but are not limited to:

(a) Bona fide loans, except certain student loans as specified under WAC 182-509-0335;

(b) Federal income tax refunds and earned income tax credit payments for up to ((twelve)) 12 months from the date received;

(c) Child support payments received by any person included in household size under WAC 182-506-0010;

(d) Nontaxable time loss benefits or other compensation received for sickness or injury, such as benefits from the department of labor and industries (L&I) or a private insurance company;

(e) Title IV-E and state foster care and adoption support maintenance payments;

(f) Veteran's benefits including, but not limited to, disability compensation and pension payments for disabilities paid to the veteran or family members; education, training and subsistence; benefits under a dependent-care assistance program for veterans, housebound allowance and aid and attendance benefits;

(g) Money withheld from a benefit to repay an overpayment from the same income source;

(h) One-time payments issued under the Department of State or Department of Justice reception and replacement programs, such as Voluntary Agency (VOLAG) payments;

(i) Nontaxable income from employment and training programs;

(j) Any portion of income used to repay the cost of obtaining that income source;

(k) Insurance proceeds or other income received as a result of being a Holocaust survivor;

(l) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;

(m) Income from a sponsor given to a sponsored immigrant;

(n) Fringe benefits provided on a pretax basis by an employer, such as transportation benefits or moving expenses;

(o) Employer contributions to certain pretax benefits funded by an employee's elective salary reduction, such as amounts for a flexible spending account;

(p) Distribution of pension payments paid by the employee (such as premiums or contributions) that were previously subject to tax;

(q) Gifts as described in IRS *Publication 559: Survivors, Executors, and Administrators*;

(r) Cash or noncash inheritances, except that the agency counts income produced by an inheritance;

(s) Death benefits from life insurance and certain benefits paid for deaths that occur in the line of duty; ~~((and))~~

(t) Working families' tax credit payments under RCW 82.08.0206;
and

(u) Other payments that are excluded from income under state or federal law.

(3) Income received from other agencies or organizations as needs-based assistance is not countable income under this section.

(a) "Needs-based" means eligibility for the program is based on having limited income, or resources, or both. Examples of needs-based assistance are:

(i) Clothing;

(ii) Food;

(iii) Household supplies;

(iv) Medical supplies (nonprescription);

(v) Personal care items;

(vi) Shelter;

(vii) Transportation; and

(viii) Utilities (e.g., lights, cooking fuel, the cost of heating or heating fuel).

(b) Needs-based cash programs include, but are not limited to, the following apple health programs:

(i) Diversion cash assistance (DCA);

(ii) Temporary assistance for needy families (TANF);

(iii) State family assistance (SFA);

(iv) Pregnant women's assistance (PWA);

(v) Refugee cash assistance (RCA);

(vi) Aged, blind, disabled cash assistance (ABD); and

(vii) Supplemental security income (SSI).

WAC 182-512-0860 SSI-related medical—Income exclusions under federal statute or other state laws. The Social Security Act and other federal statutes or state laws list income that the agency excludes when determining eligibility for Washington apple health (WAH) SSI-related medical programs. These exclusions include, but are not limited to:

- (1) Income tax refunds;
- (2) Federal earned income tax credit (EITC) payments for ~~((twelve))~~ 12 months after the month of receipt;
- (3) Compensation provided to volunteers in the Corporation for National and Community Service (CNCS), formerly known as ACTION programs established by the Domestic Volunteer Service Act of 1973. P.L. 93-113;
- (4) Assistance to a person (other than wages or salaries) under the Older Americans Act of 1965, as amended by section 102 (h) (1) of Pub. L. 95-478 (92 Stat. 1515, 42 U.S.C. 3020a);
- (5) Federal, state and local government payments including assistance provided in cash or in-kind under any government program that provides medical or social services;
- (6) Certain cash or in-kind payments a person receives from a governmental or nongovernmental medical or social service agency to pay for medical or social services;
- (7) Value of food provided through a federal or nonprofit food program such as WIC, donated food program, school lunch program;
- (8) Assistance based on need, including:
 - (a) Any federal SSI income or state supplement payment (SSP) based on financial need;
 - (b) Basic Food;
 - (c) State-funded cash assistance;
 - (d) CEAP;
 - (e) TANF; and
 - (f) Bureau of Indian Affairs (BIA) general assistance.
- (9) Housing assistance from a federal program such as HUD if paid under:
 - (a) United States Housing Act of 1937 (section 1437 et seq. of 42 U.S.C.);
 - (b) National Housing Act (section 1701 et seq. of 12 U.S.C.);
 - (c) Section 101 of the Housing and Urban Development Act of 1965 (section 1701s of 12 U.S.C., section 1451 of 42 U.S.C.);
 - (d) Title V of the Housing Act of 1949 (section 1471 et seq. of 42 U.S.C.);
 - (e) Section 202(h) of the Housing Act of 1959; or
 - (f) Weatherization provided to low-income homeowners by programs that consider income in the eligibility determinations.
- (10) Energy assistance payments including:
 - (a) Those to prevent fuel cutoffs; and
 - (b) Those to promote energy efficiency.
- (11) Income from employment and training programs as specified in WAC 182-512-0780.
- (12) Foster grandparents program;
- (13) Title IV-E and state foster care maintenance payments if the foster child is not included in the assistance unit;

(14) The value of any childcare provided or arranged (or any payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act, as amended by section 8(b) of P.L. 102-586 (106 Stat. 5035);

(15) Educational assistance as specified in WAC 182-512-0760;

(16) The excluded income described in WAC 182-512-0770 and other income received by American Indians/Alaska Natives that is excluded by federal law;

(17) Payments from Susan Walker v. Bayer Corporation, et al., 96-c-5024 (N.D. Ill) (May 8, 1997) settlement funds;

(18) Payments from Ricky Ray Hemophilia Relief Fund Act of 1998, P.L. 105-369;

(19) Disaster assistance paid under Federal Disaster Relief P.L. 100-387 and Emergency Assistance Act, P.L. 93-288 amended by P.L. 100-707 and for farmers P.L. 100-387;

(20) Payments to certain survivors of the Holocaust as victims of Nazi persecution; payments excluded pursuant to section 1(a) of the Victims of Nazi Persecution Act of 1994, P.L. 103-286 (108 Stat. 1450);

(21) Payments made under section 500 through 506 of the Austrian General Social Insurance Act;

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

(23) Restitution payments and interest earned to Japanese Americans or their survivors, and Aleuts interned during World War II, established by P.L. 100-383;

(24) Payments made from the Agent Orange Settlement Funds or any other funds to settle Agent Orange liability claims established by P.L. 101-201;

(25) Payments made under section six of the Radiation Exposure Compensation Act established by P.L. 101-426; ((and))

(26) Any interest or dividend is excluded as income, except for the community spouse of an institutionalized person; and

(27) Working families' tax credit payments under RCW 82.08.0206.