



PROPOSED RULE MAKING

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

Do NOT use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: May 06, 2020

TIME: 10:41 AM

WSR 20-10-108

Agency: Health Care Authority

- Original Notice
- Supplemental Notice to WSR
- Continuance of WSR 20-09-033

- Preproposal Statement of Inquiry was filed as WSR 19-17-057 ; 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) 182-509-0300 Modified adjusted gross income (MAGI); 182-509-0320 MAGI income – noncountable income; 182-509-0335 MAGI income – Educational benefits; 182-509-0345 MAGI income – income from employment and training programs; 182-509-0350 MAGI income – Needs-based assistance from other agencies or organizations; 182-509-0355 MAGI income – Gifts and inheritances.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
June 23, 2020	10:00 AM	In response to the Governor's extended orders for <i>Stay Home, Stay Safe</i> , this public hearing will be held virtually. This will not be an in-person hearing and there is not a physical location available.	You must register for the public hearing at: https://attendee.gotowebinar.com/register/6057562907361355533 After registering, you will receive a confirmation email containing information about joining the webinar

Date of intended adoption: Not sooner than June 24, 2020 (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 24, 2020

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) June 5, 2020

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

In response to the Governor's extended orders for *Stay Home, Stay Safe* and to protect the public's health due to the COVID-19 pandemic, the agency is not able to hold the originally scheduled in-person public hearing on May 26, 2020, filed under WSR 20-09-033. The date of this public hearing is being moved to June 23, 2020, and the location of the public hearing is changed from an in-person hearing to a virtual public hearing.

The agency is amending these WACs to: 1) align income exemptions with the Internal Revenue Code; 2) clarify noncountable income provisions; and 3) remove provisions that are no longer applicable.

Additionally, the agency is repealing three sections from Chapter 182-509 because:

- MAGI programs do not count the income from employment and training described in WAC 182-509-0345.
- Rules regarding needs-based assistance from other agencies or organizations set out in 182-509-0350 have been moved to 182-509-0320.
- Gifts and inheritances listed in 182-509-0355 are already identified in 182-509-0320.

Reasons supporting proposal: See Purpose

Statutory authority for adoption: RCW 41.05.021, RCW 41.05.160

Statute being implemented: RCW 41.05.021, RCW 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:	Melinda Froud	PO Box 42716, Olympia WA 98504-2716	360-725-1408
Implementation:	Mark Westenhaver	PO Box 45534, Olympia, WA 98504-5534	360-725-1324
Enforcement:	Mark Westenhaver	PO Box 45534, Olympia, WA 98504-5534	360-725-1324

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:

- | | |
|---|--|
| <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 _____.

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. This rulemaking does not impose 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: May 6, 2020

Name: Wendy Barcus

Title: HCA Rules Coordinator

Signature:



AMENDATORY SECTION (Amending WSR 14-21-040, filed 10/7/14, effective 11/7/14)

WAC 182-509-0300 Modified adjusted gross income (MAGI). (1) The agency uses the modified adjusted gross income (MAGI) methodology to determine eligibility for MAGI-based Washington apple health ~~((WAH))~~ programs described in WAC 182-509-0305.

(2) MAGI methodology is described in WAC 182-509-0300 through 182-509-0375. Generally, MAGI includes adjusted gross income (as determined by the Internal Revenue Code (IRC)) increased by:

(a) Any amount of foreign income excluded from gross income under Section 911 of the IRC;

(b) Any amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax; and

(c) Any amount of Title II Social Security income or Tier 1 Railroad Retirement income which is excluded from gross income under Section 86 of the IRC.

(3) When calculating a person's eligibility for the programs listed in WAC 182-509-0305, the agency uses the person's MAGI income with the following exceptions:

(a) Scholarships or fellowship grants described in WAC 182-509-0335 used for education purposes are excluded from income;

(b) Income received by American Indian/Alaskan Native individuals described in WAC 182-509-0340 is excluded from income; ~~((and))~~

(c) Any income received as a lump sum as described in WAC 182-509-0375 is counted as income only in the month in which it is received; and

(d) Income received by a child age eighteen or younger or a tax dependent as described in WAC 182-509-0360 is excluded from income.

(4) Countable MAGI income is reduced by an amount equal to five percentage points of the federal poverty level (FPL) based on household size to determine net income except that there is no such reduction of countable MAGI income for parents or caretaker relatives with an eligible dependent child ~~((whose net countable income is below fifty-four percent of the FPL))~~ (as described in WAC 182-509-0305(1)). Net income is compared to the applicable standard described in WAC 182-505-0100.

(5) When calculating a person's eligibility for MAGI-based programs listed in WAC 182-509-0305, the agency determines the medical assistance unit for each person according to WAC 182-506-0010 and 182-506-0012.

AMENDATORY SECTION (Amending WSR 14-01-021, filed 12/9/13, effective 1/9/14)

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

(1) Some types of income are not counted when determining eligibility for MAGI-based ~~((WAH))~~ 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 deduc-

ted 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 (~~((EITC))~~) payments for up to twelve 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) ~~((Educational assistance that is not counted under WAC 182-509-0335;~~

~~(h) Native American benefits and payments that are not counted under WAC 182-509-0340;~~

~~(i) Income from employment and training programs that is not counted under WAC 182-509-0345;~~

~~(j) Needs-based assistance from other agencies or organizations that is not counted under WAC 182-509-0350;~~

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

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

~~((m)) (h) Nontaxable income from employment and training programs;~~

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

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

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

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

~~((p) Federal twenty-five dollar supplement weekly unemployment compensation payment authorized by the American Recovery and Reinvestment Act of 2009;~~

~~(q)) (l) Income from a sponsor given to a sponsored immigrant;~~

~~((r) Energy assistance payments;~~

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

~~((t)) (n) Employer contributions to certain pretax benefits funded by an employee's elective salary reduction, such as amounts for a flexible spending account;~~

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

~~((v)) Gifts or inheritances to the person that are not counted under WAC 182-509-0355;~~

~~((w))~~ (p) Gifts as described in IRS Publication 559: Survivors, Executors, and Administrators;

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

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

~~((x))~~ (s) Other payments that are excluded from income under state or federal law.

(3) Income received from ~~((the following cash programs is not countable income for MAGI-based WAH))~~ 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:

~~((a))~~ (i) Diversion cash assistance (DCA);

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

~~((c))~~ (iii) State family assistance (SFA);

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

~~((e))~~ (v) Refugee cash assistance (RCA);

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

~~((g))~~ (vii) Supplemental security income (SSI).

AMENDATORY SECTION (Amending WSR 14-01-021, filed 12/9/13, effective 1/9/14)

WAC 182-509-0335 MAGI income—Educational benefits. For purposes of determining eligibility for modified adjusted gross income (MAGI)-based Washington apple health ~~((WAH))~~ (see WAC 182-509-0300), the agency or its designee does not count educational ~~((assistance))~~ benefits as income when they are used for education expenses, unless the educational benefits are used for living expenses. Examples include, but are not limited to:

(1) Educational assistance in the form of grants or loans issued under Title IV of the Higher Education Amendments (Title IV - HEA) or through a program administered by the Department of Education (DOE), such as:

(a) Pell grants (Title IV);

(b) Stafford loans (Title IV);

(c) Perkins loan program (Title IV);

(d) State need grant program (Title IV);

~~(e) ((Christa McAuliffe fellowship program (DOE);~~
~~(f) Jacob K. Javits fellowship program (DOE); and~~
~~(g) Library career)) Training programs administered by the Department of Education (DOE).~~

(2) Payments received for education, training, or subsistence under any law administered by the department of Veteran's Affairs (VA).

(3) Student financial assistance provided under the Bureau of Indian Affairs education programs.

(4) Educational assistance in the form of grants or loans under the Carl D. Perkins Vocational and Applied Technology Education Act, P.L. 101-392.

(5) Work study income including:

(a) Federal or state work study income; and

(b) WorkFirst work study income.

(6) Payments to service academy cadets at a military academy.

(7) Payments for the purposes of tuition made on behalf of the individual to an educational organization for the education or training of such individual.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 182-509-0345 MAGI income—Income from employment and training programs.

WAC 182-509-0350 MAGI income—Needs-based assistance from other agencies or organizations.

WAC 182-509-0355 MAGI income—Gifts and inheritances.