RULE-MAKING ORDER
PERMANENT RULE ONLY

CR-103P (December 2017)
(Implements RCW 34.05.360)

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STATE OF WASHINGTON
FILED

DATE: October 14, 2019
TIME: 2:57 PM

WSR 19-21-084

Agency: Health Care Authority

Effective date of rule:

Permanent Rules

☒ 31 days after filing.

☐ Other (specify) _____ **(If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)**

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

☐ Yes ☒ No If Yes, explain:

Purpose: This rule is being amended to clarify 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

Citation of rules affected by this order:

New:
Repealed:
Amended: 182-512-0350
Suspended:

Statutory authority for adoption: RCW 41.05.021, 41.05.160

Other authority:

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 19-08-088 on April 3, 2019 (date).

Describe any changes other than editing from proposed to adopted version:

Proposed/Adopted	WAC Subsection	Reason
WAC 182-512-0350(1)(b) SSI-related medical – Property and contracts excluded as resources		
Proposed	(1)(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:	The agency has decided not to pursue the proposed changes to the home exclusion rule under WAC 182-512-0350(1)(b) or the hardship considerations for the sale of real property under (1)(c).
Adopted	(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~~)) client has ownership interest ((~~(~~))for ((~~WAH~~)) long-term care	

	programs, see WAC 182-513-1350 for home equity limits((~~:~~)), when:	
WAC 182-512-0350(1)(c) SSI-related medical – Property and contracts excluded as resources		
Proposed	(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.	The agency has decided not to pursue the proposed changes to the home exclusion rule under WAC 182-512-0350(1)(b) or the hardship considerations for the sale of real property under (1)(c).
Adopted	(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~~)) the client's principal place of residence; (ii) Would have to move if the property were sold; and (iii) Has no other readily available housing.	
WAC 182--512-0350(15) SSI-related medical – Property and contracts excluded as resources		
Proposed	(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.	Added "as an employee" to further clarify that this refers to when a person uses personal property as an employee for work.
Adopted	(15) Personal property used by a ((~~person~~)) client as an employee 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.	

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Web site:
Other:

Note: If any category is left blank, it will be calculated as zero. No descriptive text.

Count by whole WAC sections only, from the WAC number through the history note. A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New	____	Amended	____	Repealed	____
Federal rules or standards:	New	____	Amended	____	Repealed	____
Recently enacted state statutes:	New	____	Amended	____	Repealed	____

The number of sections adopted at the request of a nongovernmental entity:

New ____ Amended ____ Repealed ____

The number of sections adopted on the agency's own initiative:

New ____ Amended ____ Repealed ____

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New ____ Amended 1 Repealed ____

The number of sections adopted using:

Negotiated rule making:	New	____	Amended	____	Repealed	____
Pilot rule making:	New	____	Amended	____	Repealed	____
Other alternative rule making:	New	____	Amended	1	Repealed	____

Date Adopted: October 14, 2019	**Signature:** Wendy Barcus
Name: Wendy Barcus	
Title: HCA Rules Coordinator	

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

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~~)) client has ownership interest ((~~(~~))for ((~~WAH~~)) long-term care programs, see WAC 182-513-1350 for home equity limits((~~)~~)), 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~~)) the client's principal place of residence;

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

(iii) 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((~~,~~));

(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 subsection((~~s~~)) (5), (6), or (7) of this section but do not meet the criteria in subsection((~~s~~)) (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 thousand dollars~~)) $6,000. If the total is over the ((~~six thousand dollars~~)) $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 percent 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~~)) client's control((~~,~~)) (e.g., illness), and there is a reasonable expectation 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 dollars~~)) $6,000.

(15) Personal property used by a ((~~person~~)) client as an employee 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~~)) client, is not counted toward the resource limit if permission of the other ((~~persons~~)) people, the tribe, or an agency of the federal government 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~~)) excluded 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 determinations.