



RULE-MAKING ORDER PERMANENT RULE ONLY

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

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STATE OF WASHINGTON
FILED

DATE: November 15, 2019

TIME: 2:38 PM

WSR 19-23-063

Agency: Health Care Authority

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) January 1, 2020 (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:

The agency is revising these rules to comply with the requirements of SHB 1199. Specifically, the following changes are being made:

182-511-1000—This rule is being amended to clarify that HWD coverage may provide access to long term services and supports (LTSS), and that approval for LTSS also includes a determination of functional eligibility. If an enrollee is approved for both, then they may choose between paying a monthly premium for HWD or participating in the cost of care according to rules that apply to the specific LTSS program.

182-511-1050—This rule is being amended to remove the income and age limit.

182-511-1060—This rule is being repealed as it is no longer applicable. Effective January 1, 2020, there is no income limit.

182-511-1100—This rule is being amended to allow for the approval of any one month of retroactive coverage for which the full premium amount is paid in advance.

182-511-1150—This rule is being amended to clarify the disability determination for HWD coverage, including requirements that apply to people who are 65 years or older. Statutory authority of the Balanced Budget Act of 1997 is added, which allows people who are 65 years or older to enroll, if they meet all program requirements that include having blindness or a disability.

182-511-1200—This rule is being amended to clarify work activity that meets program requirements for people who are self-employed.

182-511-1250—This rule is being amended to clarify that the monthly premium amount shall not exceed 7.5% of countable income. Also, to allow payment for retroactive coverage, if paid separately, to be applied before payment for a current coverage month.

182-512-0550—This rule is being amended to exclude as a resource the funds held in a separate account that include only the income of a client earned during the time of enrollment in HWD. If the account is maintained separately, its value shall be excluded as a resource when determining the client's subsequent eligibility for another medical assistance program.

Citation of rules affected by this order:

New:

Repealed: 182-511-1060

Amended: 182-511-1000, 182-511-1050, 182-511-1100, 182-511-1150, 182-511-1200, 182-511-1250, 182-512-0550

Suspended:

Statutory authority for adoption: RCW 41.05.021, 41.05.160, Substitute House Bill (SHB) 1199, Chapter 70, Laws of 2019

Other authority:

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 19-20-083 on September 30, 2019 (date).

Describe any changes other than editing from proposed to adopted version: Updated the reference in WAC 182-511-1250(9) from WAC 182-511-1050(4)(b) to WAC 182-511-1050(3)(b).

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


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

New	___	Amended	<u>7</u>	Repealed	<u>1</u>
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The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	<u>7</u>	Repealed	<u>1</u>

Date Adopted: November 15, 2019	Signature: 
Name: Wendy Barcus	
Title: HCA Rules Coordinator	

Chapter 182-511 WAC
((HEALTH CARE)) APPLE HEALTH FOR WORKERS WITH DISABILITIES (HWD)

AMENDATORY SECTION (Amending WSR 15-14-080, filed 6/29/15, effective 7/30/15)

WAC 182-511-1000 Apple health ((care)) for workers with disabilities (HWD)—Program description. This section describes the apple health ((care)) for workers with disabilities (HWD) program.

(1) The HWD program provides categorically needy (CN) scope of care as described in WAC 182-501-0060.

(2) The HWD program also provides long-term services and supports described in chapters 182-513 and 182-515 WAC for a client who meets the functional requirements for those programs, are approved for those services, and choose to enroll in HWD.

(3) The medicaid agency approves HWD coverage for twelve months effective the first of the month in which a person applies and meets program requirements. See WAC 182-511-1100 for ~~((M))~~retroactive~~((M))~~ coverage for months before the month of application.

~~((3))~~ (4) A person who is eligible for another medicaid program may choose not to participate in the HWD program.

~~((4))~~ (5) A person is not eligible for HWD coverage for a month in which the person received medicaid benefits under the medically needy (MN) program.

~~((5) The HWD program does not provide long-term care (LTC) services described in chapters 182-513 and 182-515 WAC. LTC services include institutional, waived, and hospice services. To receive LTC services, a person must qualify and participate in the cost of care according to the rules of those programs.)~~

AMENDATORY SECTION (Amending WSR 15-14-080, filed 6/29/15, effective 7/30/15)

WAC 182-511-1050 Apple health ((care)) for workers with disabilities (HWD)—Program requirements. This section describes requirements a person must meet to be eligible for the apple health ((care)) for workers with disabilities (HWD) program.

(1) To qualify for the HWD program, a person must:

(a) Meet the general requirements for a medical program described in WAC 182-503-0505 (3)(a) through (f);

(b) Be at least age sixteen ~~((through sixty-four))~~;

(c) Meet the federal disability requirements described in WAC 182-511-1150; and

(d) ~~((Have net income at or below two hundred twenty percent of the federal poverty level (FPL) (see WAC 182-511-1060 for FPL amounts for medical programs); and~~

~~(e))~~ Be employed full or part time (including self-employment) as described in WAC 182-511-1200.

(2) ~~((To determine net income, the medicaid agency applies the following rules to total gross household income in this order:~~

~~(a) Deduct income exclusions described in WAC 182-512-0800, 182-512-0820, 182-512-0840, and 182-512-0860; and~~

~~(b) Follow the CN income rules described in:~~

~~(i) WAC 182-512-0600, SSI-related medical Definition of income;~~

~~(ii) WAC 182-512-0650, SSI-related medical Available income;~~

~~(iii) WAC 182-512-0700 (1) through (5), SSI-related medical Income eligibility;~~

~~(iv) WAC 182-512-0750, SSI-related medical Countable unearned income; and~~

~~(v) WAC 182-512-0960, SSI-related medical clients.~~

~~(3)) The HWD program does not require ((an asset)) a resource test.~~

~~((4)) (3) Once approved for HWD coverage, a person must pay the monthly premium in ((the following manner to continue to qualify for the program:)) order to continue to qualify.~~

~~(a) The agency calculates the premium for HWD coverage according to WAC 182-511-1250((?)).~~

~~(b) If a person does not pay four consecutive monthly premiums, the person is not eligible for HWD coverage for the next four months and must pay all premium amounts owed before HWD coverage can be approved again((? and)).~~

~~(c) Once approved for HWD coverage, a person who experiences a job loss can choose to continue HWD coverage through the original twelve months of eligibility, if the following requirements are met:~~

~~(i) The job loss results from an involuntary dismissal or health crisis; and~~

~~(ii) The person continues to pay the monthly premium.~~

AMENDATORY SECTION (Amending WSR 15-14-080, filed 6/29/15, effective 7/30/15)

WAC 182-511-1100 Apple health ((eare)) for workers with disabilities (HWD)—Retroactive coverage. This section describes requirements for retroactive coverage provided under the apple health ((eare)) for workers with disabilities (HWD) program.

(1) Retroactive coverage refers to the period of up to three months before the month in which a person applies for the HWD program. ~~((The medicaid agency cannot approve HWD coverage for a month that precedes January 1, 2002.))~~

(2) To qualify for retroactive coverage under the HWD program, a person must first:

(a) Meet all program requirements described in WAC 182-511-1050 for each month of the retroactive period; and

(b) Pay the premium amount for each month requested within one hundred twenty days of being billed for such coverage.

(3) ~~((If a person does not pay premiums in full as described in subsection (2)(b) for all months requested in the retroactive period, the agency denies retroactive coverage and refunds any payment received for those months.)) Payment must be received for each month requested of retroactive coverage before such coverage is approved.~~

AMENDATORY SECTION (Amending WSR 19-08-025, filed 3/27/19, effective 4/27/19)

WAC 182-511-1150 Apple health ((care)) for workers with disabilities (HWD)—Disability requirements. This section describes the disability requirements for the ~~((two))~~ following groups of individuals ~~((that))~~ who may qualify for the apple health ((care)) for workers with disabilities (HWD) program.

(1) ~~((To qualify for the HWD program,))~~ A person age sixteen through age sixty-four must meet the requirements of the Social Security Act in section 1902(a)(10)(A)(ii):

- (a) (XV) for the basic coverage group (BCG); or
- (b) (XVI) for the medical improvement group (MIG).

(2) The BCG consists of individuals who:

(a) Meet federal disability requirements for the supplemental security income (SSI) or Social Security Disability Insurance (SSDI) program; or

(b) Are determined by the department of social and health services (DSHS), division of disability determination services (DDDS), to meet federal disability requirements for the HWD program.

(3) The MIG consists of individuals who:

(a) Were previously eligible and approved for the HWD program as a member of the BCG; and

(b) Are determined by DDDS to have a medically improved disability. The term "medically improved disability" refers to the particular status granted to persons described in subsection (1)(b). For these people, a continuation of HWD coverage is provided to help them maintain their employment.

(4) A person age sixty-five or older, must meet federal disability requirements as determined by the DSHS DDDS. Coverage under the MIG is not available under federal law for persons age sixty-five or older. Coverage for this age group is authorized under the Balanced Budget Act of 1997 as described under section 1902(a)(10)(A)(ii)(XIII).

(5) When completing a disability determination for the HWD program, DDDS will not ((deny disability status because of employment)) determine a person not disabled based only on earnings or the performance of substantial gainful activity (SGA). (See SSA POMS Section DI 10501.001, <https://secure.ssa.gov/apps10/poms.nsf/lrx/0410501001>).

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

WAC 182-511-1200 Apple health ((care)) for workers with disabilities (HWD)—Employment requirements. This section describes the employment requirements for the basic coverage group (BCG) and the medical improvement group (MIG) for the apple health ((care)) for workers with disabilities (HWD) program.

(1) For the purpose of the HWD program, employment means a person:

- (a) Gets paid for working;
- (b) Has earnings that are subject to federal income tax; and

(c) Has payroll taxes taken out of earnings received, unless self-employed.

(2) To qualify for HWD coverage as a member of the BCG, a person must be employed full or part time.

(3) To qualify for HWD coverage as a member of the MIG, a person must be:

(a) Working at least forty hours per month; and

(b) Earning at least the local minimum wage as described under section 6 of the Fair Labor Standards Act (29 U.S.C. 206).

(4) For a person who is self-employed, the examples described in the Social Security Administration Program Operations Manual System (POMS) provide guidance when determining whether someone meets the HWD work requirements. (See SSA POMS Section SI 00820.200, <http://secure.ssa.gov/poms.nsf/lnx/0500820200>). The guidelines described in POMS for determining the existence of a trade or business may also be used when making this determination. (See SSA POMS Section RS 01802.010, <https://secure.ssa.gov/apps10/poms.nsf/lnx/0301802010>).

AMENDATORY SECTION (Amending WSR 15-14-080, filed 6/29/15, effective 7/30/15)

WAC 182-511-1250 Apple health ((eare)) for workers with disabilities (HWD)—Premium payments. This section describes how the medic-aid agency calculates the premium amount a person must pay for apple health ((eare)) for workers with disabilities (HWD) coverage. This section also describes program requirements regarding the billing and payment of HWD premiums.

(1) When determining the HWD premium amount, the agency counts only the income of the person approved for the program. It does not count the income of another household member.

(2) When determining countable income used to calculate the HWD premium, the agency applies the following rules:

(a) Income is considered available and owned when it is:

(i) Received; and

(ii) Can be used to meet the person's needs for food, clothing, and shelter, except as described in WAC 182-512-0600(5), 182-512-0650, and 182-512-0700(1).

(b) ~~((Loans and certain other))~~ Certain receipts are not ~~((con- sidered to be))~~ income as described in 20 C.F.R. Sec. 416.1103 ~~((e.g., direct payment by anyone of a person's medical insurance premium or a tax refund on income taxes already paid))~~.

(3) The HWD premium amount equals the lesser of the two following amounts:

(a) A total of the following (rounded down to the nearest whole dollar):

~~((a))~~ (i) Fifty percent of unearned income above the medically needy income level (MNIL) described in WAC 182-519-0050; plus

~~((b))~~ (ii) Five percent of total unearned income; plus

~~((c))~~ (iii) Two ~~((point five))~~ and one-half percent of earned income after first deducting sixty-five dollars; or

(b) Seven and one-half percent of countable income described in subsection (2) of this section, including both earned and unearned in- come.

(4) When determining the premium amount, the agency will use the ~~((current))~~ currently verified income amount until a change in income is reported and processed, unless good cause for delay in verifying changes exists.

(5) A change in the premium amount is effective the month after the change in income is reported and processed.

(6) For current and ongoing coverage, the agency will bill for HWD premiums during the month following the benefit month ~~((in which coverage is approved))~~.

(7) For retroactive coverage, the agency will bill the HWD premiums during the month following the month in which coverage is requested and necessary information ~~((is received))~~ that establishes eligibility is received by the agency.

(8) If initial coverage for the HWD program is approved in a month that follows the month of application, the first monthly premium includes the costs for both the month of application and any following ~~((month(s)))~~ months that have passed during determination of eligibility.

(9) As described in WAC 182-511-1050 ~~((+4))~~ (3)(b), the agency will close HWD coverage ~~((after four consecutive months for which premiums are not paid in full.~~

~~(10) If a person makes only a partial payment toward the cost of HWD coverage for any one month, the person remains one full month behind in the payment schedule.~~

~~(11) The agency first applies payment for current and ongoing coverage to any amount owed for such coverage in an earlier month. Then it applies payment to the current month and then to any unpaid amount for retroactive coverage)) if premiums are not paid in full for four consecutive months.~~

(10) The person must pay the monthly premium in full to avoid losing HWD coverage. If a person makes a partial payment, the payment does not count as a full payment toward the premium.

(11) Payments received are applied to premiums owed in the following order:

(a) If retroactive coverage is requested, the retroactive coverage month(s);

(b) Past due months, beginning with the most delinquent month;

(c) The current coverage month that has been invoiced; then

(d) Future coverage months.

(12) A person must pay a premium for any month that HWD coverage is provided. This includes months when a redetermination of coverage is made, and months when continued coverage that is requested, pending the outcome of an administrative hearing.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-511-1060 Washington apple health—Health care for workers with disabilities (HWD)—Income standard based on the federal poverty guidelines.

WAC 182-512-0550 SSI-related medical—All other excluded resources. All resources described in this section are excluded resources for SSI-related medical programs. Unless otherwise stated, interest earned on the resource amount is counted as unearned income.

(1) Resources necessary for a person who is blind or disabled to fulfill a self-sufficiency plan approved by the agency.

(2) Retroactive payments from SSI or old age, survivors, and disability insurance (OASDI), including benefits a person receives under the interim assistance reimbursement agreement with the Social Security Administration, are excluded for nine months following the month of receipt. This exclusion applies to:

(a) Payments received by the person, the person's spouse, or any other person financially responsible for the person;

(b) SSI payments for benefits due for the month(s) before the month of continuing payment;

(c) OASDI payments for benefits due for a month that is two or more months before the month of continuing payment; and

(d) Proceeds from these payments as long as they are held as cash, or in a checking or savings account. The funds may be commingled with other funds, but must remain identifiable from the other funds for this exclusion to apply. This exclusion does not apply once the payments have been converted to any other type of resource.

(3) All resources specifically excluded by federal law, such as those described in subsections (4) through (11) of this section as long as such funds are identifiable.

(4) Payments made under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(5) The excluded resources described in WAC 182-512-0770 and other resources of American Indians/Alaska Natives that are excluded by federal law.

(6) Restitution payment and any interest earned from this payment to persons of Japanese or Aleut ancestry who were relocated and interned during war time under the Civil Liberties Act of 1988 and the Aleutian and Pribilof Islands Restitution Act.

(7) Funds received from the Agent Orange Settlement Fund or any other funds established to settle Agent Orange liability claims.

(8) Payments or interest accrued on payments received under the Radiation Exposure Compensation Act received by the injured person, the surviving spouse, children, grandchildren, or grandparents.

(9) Payments or interest accrued on payments received under the Energy Employees Occupational Illness Compensation Act of 2000 (EEOICA) received by the injured person, the surviving spouse, children, grandchildren, or grandparents.

(10) Payments from:

(a) The Dutch government under the Netherlands' Act on Benefits for Victims of Persecution (WUV).

(b) The Victims of Nazi Persecution Act of 1994 to survivors of the Holocaust.

(c) Susan Walker vs. Bayer Corporation, et al., 96-C-5024 (N.D. Ill.) (May 8, 1997) settlement funds.

(d) Ricky Ray Hemophilia Relief Fund Act of 1998 P.L. 105-369.

(11) The unspent social insurance payments received due to wage credits granted under sections 500 through 506 of the Austrian General Social Insurance Act.

(12) Tax refunds and earned income tax credit refunds and payments are excluded as resources for twelve months after the month of receipt.

(13) Payments from a state administered victim's compensation program for a period of nine calendar months after the month of receipt.

(14) Cash or in-kind items received as a settlement for the purpose of repairing or replacing a specific excluded resource are excluded:

(a) For nine months. This includes relocation assistance provided by state or local government.

(b) Up to a maximum of thirty months, when:

(i) The person intends to repair or replace the excluded resource; and

(ii) Circumstances beyond the control of the settlement recipient prevented the repair or replacement of the excluded resource within the first or second nine months of receipt of the settlement.

(c) For an indefinite period, if the settlement is from federal relocation assistance.

(d) Permanently, if the settlement is assistance received under the Disaster Relief and Emergency Assistance Act or other assistance provided under a federal statute because of a catastrophe which is declared to be a major disaster by the President of the United States, or is comparable assistance received from a state or local government or from a disaster assistance organization. Interest earned on this assistance is also excluded from resources. Any cash or in-kind items received as a settlement and excluded under this subsection are available resources when not used within the allowable time periods.

(15) Insurance proceeds or other assets recovered by a Holocaust survivor.

(16) Pension funds owned by an ineligible spouse. Pension funds are defined as funds held in a(n):

(a) Individual retirement account (IRA) as described by the IRS code; or

(b) Work-related pension plan (including plans for self-employed persons, known as Keogh plans).

(17) Cash payments received from a medical or social service agency to pay for medical or social services are excluded for one calendar month following the month of receipt.

(18) SSA- or division of vocational rehabilitation (DVR)-approved plans for achieving self-support (PASS) accounts, allowing blind or disabled persons to set aside resources necessary for the achievement of the plan's goals, are excluded.

(19) Food and nutrition programs with federal involvement. This includes Washington Basic Food, school reduced and free meals and milk programs and WIC.

(20) Gifts to, or for the benefit of, a person under eighteen years old who has a life-threatening condition, from an organization described in section 501 (c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of that code, as follows:

(a) In-kind gifts that are not converted to cash; or

(b) Cash gifts up to a total of two thousand dollars in a calendar year.

(21) Veteran's payments made to, or on behalf of, natural children of Vietnam veterans regardless of their age or marital status, for any disability resulting from spina bifida suffered by these children.

(22) The following are among assets that are not resources and as such are neither excluded nor counted:

(a) Home energy assistance/support and maintenance assistance;

(b) Retroactive in-home supportive services payments to ineligible spouses and parents; and

(c) Gifts of domestic travel tickets.

(23) (~~For a more complete list, please see the program operations manual system (POMS) at <http://policy.ssa.gov/poms.nsf/lnx/0501130050>.~~) Resources accumulated in a separate account, designated by the client, that result from work activity during the client's enrollment in apple health for workers with disabilities (HWD) program under chapter 182-511 WAC.

(24) Resources listed in the program operations manual system (POMS), not otherwise excluded under this section, are excluded (see SSA POMS Section SI 01130.050 <http://secure.ssa.gov/apps10/poms.nsf/lnx/0501130050>).