



EXPEDITED RULE MAKING

CR-105 (December 2017) (Implements RCW 34.05.353)

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FILED

DATE: January 10, 2020
TIME: 2:39 PM

WSR 20-03-076

Agency: Health Care Authority

Title of rule and other identifying information: (describe subject)

182-513-1380 Determining a client's financial participation in the cost of care for long-term care in a medical institution;
182-515-1509 Home and community based (HCB) waiver services authorized by home and community services (HCS)—
Client financial responsibility;
182-515-1514 Home and community based (HCB) services authorized by the developmental disabilities administration
(DDA)—Client financial responsibility

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

To correct typographical errors in WAC 182-513-1380(2)(d), WAC 182-515-1509(4)(b), and WAC 182-515-1514(4)(b).
The WAC citations listed as "WAC 182-513-1505 through 182-513-1525" should be "Chapter 388-79A WAC."

Reasons supporting proposal: To prevent confusion since WACs 182-513-1505 through 182-513-1525 do not exist.

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?	<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:

Name of proponent: (person or organization) Health Care Authority

Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
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Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: N/A

Expedited Adoption - Which of the following criteria was used by the agency to file this notice:

- Relates only to internal governmental operations that are not subject to violation by a person;
- Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;
- Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect;
- Content is explicitly and specifically dictated by statute;
- Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or
- Is being amended after a review under RCW 34.05.328.

Expedited Repeal - Which of the following criteria was used by the agency to file notice:

- The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;
- The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;
- The rule is no longer necessary because of changed circumstances; or
- Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4): This rulemaking is for correction purposes only as allowed by RCW 34.05.353(1)(c)

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO

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AND RECEIVED BY (date) March 24, 2020

Date: January 10, 2020

Name: Wendy Barcus

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Signature:



WAC 182-513-1380 Determining a client's financial participation in the cost of care for long-term care in a medical institution. This rule describes how the agency or the agency's designee allocates income and excess resources when determining participation in the cost of care in a medical institution.

(1) The agency or the agency's designee defines which income and resources must be used in this process under WAC 182-513-1315.

(2) The agency or the agency's designee allocates nonexcluded income in the following order, and the combined total of (a), (b), (c), and (d) of this subsection cannot exceed the effective one-person medically needy income level (MNIL):

(a) A personal needs allowance (PNA) under WAC 182-513-1105.

(b) Mandatory federal, state, or local income taxes owed by the client.

(c) Wages for a client who:

(i) Is related to the supplemental security income (SSI) program under WAC 182-512-0050(1); and

(ii) Receives the wages as part of an agency-approved or department-approved training or rehabilitative program designed to prepare the client for a less restrictive placement. When determining this deduction, employment expenses are not deducted.

(d) Guardianship fees and administrative costs, including any attorney fees paid by the guardian, as allowed under (~~WAC 182-513-1505 through 182-513-1525~~) chapter 388-79A WAC.

(3) The agency or the agency's designee allocates nonexcluded income after deducting amounts under subsection (2) of this section in the following order:

(a) Current or back child support garnished or withheld from income according to a child support order in the month of the garnishment if it is:

(i) For the current month;

(ii) For the time period covered by the PNA; and

(iii) Not counted as the dependent member's income when determining the dependent allocation amount under WAC 182-513-1385.

(b) A monthly maintenance needs allowance for the community spouse as determined using the calculation under WAC 182-513-1385. If the community spouse is also receiving long-term care services, the allocation is limited to an amount that brings the community spouse's income up to the PNA.

(c) A dependent allowance for each dependent of the institutionalized client or the client's spouse, as determined using the calculation under WAC 182-513-1385.

(d) Medical expenses incurred by the institutionalized individual and not used to reduce excess resources. Allowable medical expenses and reducing excess resources are described in WAC 182-513-1350.

(e) Maintenance of the home of a single institutionalized client or institutionalized couple:

(i) Up to one hundred percent of the one-person federal poverty level per month;

(ii) Limited to a six-month period;

(iii) When a physician has certified that the client or couple is likely to return to the home within the six-month period; and

(iv) When social services staff documents the need for the income deduction.

(4) A client may have to pay third-party resources as defined under WAC 182-513-1100 in addition to the participation.

(5) A client is responsible to pay only up to the state rate for the cost of care. If long-term care insurance pays a portion of the state rate cost of care, a client pays only the difference up to the state rate cost of care.

(6) When a client lives in multiple living arrangements in a month, the agency allows the highest PNA available based on all the living arrangements and services the client has in a month.

(7) Standards under this section for long-term care are found at www.hca.wa.gov/free-or-low-cost-health-care/program-administration/standards-ltc.

WAC 182-515-1509 Home and community based (HCB) waiver services authorized by home and community services (HCS)—Client financial responsibility.

(1) A client eligible for home and community based (HCB) waiver services authorized by home and community services (HCS) under WAC 182-515-1508 must pay toward the cost of care and room and board under this section.

(a) Post-eligibility treatment of income, participation, and participate are all terms that refer to a client's responsibility towards cost of care.

(b) Room and board is a term that refers to a client's responsibility toward food and shelter in an alternate living facility (ALF).

(2) The agency determines how much a client must pay toward the cost of care for HCB waiver services authorized by HCS when living at home:

(a) A single client who lives at home (as defined in WAC 388-106-0010) keeps a personal needs allowance (PNA) of up to the federal poverty level (FPL) and must pay the remaining available income toward cost of care after allowable deductions described in subsection (4) of this section.

(b) A married client who lives with the client's spouse at home (as defined in WAC 388-106-0010) keeps a PNA of up to the effective one-person medically needy income level (MNIL) and pays the remainder of the client's available income toward cost of care after allowable deductions under subsection (4) of this section.

(c) A married client who lives at home and apart from the client's spouse keeps a PNA of up to the FPL but must pay the remaining available income toward cost of care after allowable deductions under subsection (4) of this section.

(d) A married couple living at home where each client receives HCB waiver services is each allowed to keep a PNA of up to the FPL but must pay remaining available income toward cost of care after allowable deductions under subsection (4) of this section.

(e) A married couple living at home where each client receives HCB waiver services, one spouse authorized by the developmental disabilities administration (DDA) and the other authorized by HCS, is allowed the following:

(i) The client authorized by DDA pays toward the cost of care under WAC 182-515-1512 or 182-515-1514; and

(ii) The client authorized by HCS retains the federal poverty level (FPL) and pays the remainder of the available income toward cost of care after allowable deductions under subsection (4) of this section.

(3) The agency determines how much a client must pay toward the cost of care for HCB waiver services authorized by HCS and room and board when living in a department contracted alternate living facility (ALF) defined under WAC 182-513-1100. A Client:

(a) Keeps a PNA of under WAC 182-513-1105;

(b) Pays room and board up to the room and board standard under WAC 182-513-1105; and

(c) Pays the remainder of available income toward the cost of care after allowable deductions under subsection (4) of this section.

(4) If income remains after the PNA and room and board liability under subsection (2) or (3) of this section, the remaining available income must be paid toward the cost of care after it is reduced by deductions in the following order:

(a) An earned income deduction of the first \$65 plus one-half of the remaining earned income;

(b) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed under ((WAC 182-513-1505 through 182-513-1525)) chapter 388-79A WAC;

(c) Current or back child support garnished or withheld from the client's income according to a child support order in the month of the garnishment if it is for the current month. If the agency allows this as a deduction from income, the agency does not count it as the child's income when determining the family allocation amount in WAC 182-513-1385;

(d) A monthly maintenance-needs allowance for the community spouse as determined under WAC 182-513-1385. If the community spouse is also receiving long-term care services, the allocation is limited to an amount that brings the community spouse's income to the community spouse's PNA, as calculated under WAC 182-513-1385;

(e) A monthly maintenance-needs allowance for each dependent of the institutionalized client, or the client's spouse, as calculated under WAC 182-513-1385;

(f) Incurred medical expenses which have not been used to reduce excess resources. Allowable medical expenses are under WAC 182-513-1350.

(5) The total of the following deductions cannot exceed the special income level (SIL) defined under WAC 182-513-1100:

(a) The PNA allowed in subsection (2) or (3) of this section, including room and board;

(b) The earned income deduction in subsection (4)(a) of this section; and

(c) The guardianship fees and administrative costs in subsection (4)(b) of this section.

(6) A client may have to pay third-party resources defined under WAC 182-513-1100 in addition to the room and board and participation.

(7) A client must pay the client's provider the sum of the room and board amount, and the cost of care after all allowable deductions, and any third-party resources defined under WAC 182-513-1100.

(8) A client on HCB waiver services does not pay more than the state rate for cost of care.

(9) When a client lives in multiple living arrangements in a month, the agency allows the highest PNA available based on all the living arrangements and services the client has received in a month.

(10) Standards described in this section are found at www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources.

AMENDATORY SECTION (Amending WSR 17-23-039, filed 11/8/17, effective 1/1/18)

WAC 182-515-1514 Home and community based (HCB) services authorized by the developmental disabilities administration (DDA)—Client

financial responsibility. (1) A client eligible for home and community based (HCB) waiver services authorized by the developmental disabilities administration (DDA) under WAC 182-515-1513 must pay toward the cost of care and room and board under this section.

(a) Post-eligibility treatment of income, participation, and participate are all terms that refer to a client's responsibility towards cost of care.

(b) Room and board is a term that refers to a client's responsibility toward food and shelter in an alternate living facility (ALF).

(2) The agency determines how much a client must pay toward the cost of care for home and community based (HCB) waiver services authorized by the DDA when the client is living at home, as follows:

(a) A single client who lives at home (as defined in WAC 388-106-0010) keeps a personal needs allowance (PNA) of up to the special income level (SIL) defined under WAC 182-513-1100.

(b) A single client who lives at home on the roads to community living program authorized by DDA keeps a PNA up to the SIL but must pay any remaining available income toward cost of care after allowable deductions described in subsection (4) of this section.

(c) A married client who lives with the client's spouse at home (as defined in WAC 388-106-0010) keeps a PNA of up to the SIL but must pay any remaining available income toward cost of care after allowable deductions under subsection (4) of this section.

(d) A married couple living at home where each client receives HCB waiver services, one authorized by DDA and the other authorized by home and community services (HCS) is allowed the following:

(i) The client authorized by DDA keeps a PNA of up to the SIL but must pay any remaining available income toward the client's cost of care after allowable deductions in subsection (4) of this section; and

(ii) The client authorized by HCS pays toward the cost of care under WAC 182-515-1507 or 182-515-1509.

(3) The agency determines how much a client must pay toward the cost of care for HCB waiver services authorized by DDA and room and board when the client is living in a department-contracted ALF defined under WAC 182-513-1100. A client:

(a) Keeps a PNA under WAC 182-513-1105;

(b) Pays room and board up to the room and board standard under WAC 182-513-1105; and

(c) Pays the remainder of available income toward the cost of care after allowable deductions under subsection (4) of this section.

(4) If income remains after the PNA and room and board liability under subsection (2) or (3) of this section, the remaining available income must be paid toward the cost of care after it is reduced by allowable deductions in the following order:

(a) An earned income deduction of the first \$65, plus one-half of the remaining earned income;

(b) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed under (~~WAC 182-513-1505 through 182-513-1525~~) chapter 388-79A WAC;

(c) Current or back child support garnished or withheld from the client's income according to a child support order in the month of the garnishment if it is for the current month. If the agency allows this as a deduction from income, the agency does not count it as the child's income when determining the family allocation amount in WAC 182-513-1385;

(d) A monthly maintenance-needs allowance for the community spouse under WAC 182-513-1385. If the community spouse is on long-term

care services, the allocation is limited to an amount that brings the community spouse's income to the community spouse's PNA;

(e) A monthly maintenance-needs allowance for each dependent of the institutionalized client, or the client's spouse, as calculated under WAC 182-513-1385; and

(f) Incurred medical expenses which have not been used to reduce excess resources. Allowable medical expenses are under WAC 182-513-1350.

(5) The total of the following deductions cannot exceed the SIL defined under WAC 182-513-1100:

(a) The PNA described in subsection (2) or (3) of this section, including room and board;

(b) The earned income deduction in subsection (4)(a) of this section; and

(c) The guardianship fees and administrative costs in subsection (4)(b) of this section.

(6) A client may have to pay third-party resources defined under WAC 182-513-1100 in addition to the room and board and participation.

(7) A client must pay the client's provider the sum of the room and board amount, the cost of care after all allowable deductions, and any third-party resources defined under WAC 182-513-1100.

(8) A client on HCB waiver services does not pay more than the state rate for cost of care.

(9) When a client lives in multiple living arrangements in a month, the agency allows the highest PNA available based on all the living arrangements and services the client has received in a month.

(10) Standards described in this section are found at www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources.