



# PROPOSED RULE MAKING

## CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

**Agency:** Health Care Authority, Washington Apple Health

- Preproposal Statement of Inquiry was filed as WSR 17-03-075; 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).

- Original Notice
- Supplemental Notice to WSR \_\_\_\_\_
- Continuance of WSR \_\_\_\_\_

**Title of rule and other identifying information:**

New WAC 182-560-100 Achieving a better life experience (ABLE) act

**Hearing location:**

Health Care Authority  
Cherry Street Plaza Building; Pear Conf Rm 107  
626 - 8<sup>th</sup> Avenue, Olympia WA 98504

Metered public parking is available street side around building. A map is available at:  
[http://www.hca.wa.gov/documents/directions\\_to\\_csp.pdf](http://www.hca.wa.gov/documents/directions_to_csp.pdf)  
or directions can be obtained by calling: (360) 725-1000

Date: **May 9, 2017** Time: **10:00 a.m.**

**Date of intended adoption:** Not sooner than May 10, 2017  
(Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: HCA Rules Coordinator  
Address: PO Box 45504, Olympia WA, 98504-5504  
Delivery: 626 – 8<sup>th</sup> Avenue, Olympia WA 98504  
e-mail [arc@hca.wa.gov](mailto:arc@hca.wa.gov)  
fax (360) 586-9727

by **5:00 pm on May 9, 2017**

**Assistance for persons with disabilities:** Contact Amber Lougheed by May 5, 2017  
e-mail: [amber.lougheed@hca.wa.gov](mailto:amber.lougheed@hca.wa.gov) or (360) 725-1349

TTY (800) 848-5429 or 711

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

The agency is creating this new section to implement the Achieving a Better Life Experience (ABLE) Act. An ABLE account allows clients who are blind or have a disability to save funds in tax-advantaged accounts for their disability-related expenses. This section clarifies how ABLE accounts are counted when determining eligibility and which funds held in an ABLE account are subject to estate recovery.

**Reasons supporting proposal:** New WAC 182-559-100 is necessary to implement provisions Engrossed Substitute House Bill (ESHB) 2323, Chapter 39, Laws of 2016, 64<sup>th</sup> Legislature, 2016 Regular Session; Substitute Senate Bill (SSB) 6210, 64<sup>th</sup> Legislature, 2016 Regular Session; and HR 647 – Achieving a Better Life Experience (ABLE) Act of 2014.

**Statutory authority for adoption:** RCW 41.05.021, 41.05.160; ESHB 2323 and SSB 6210, 64<sup>th</sup> Legislature, 2016 Regular Session; HR 647 – Achieving a Better Life Experience (ABLE) Act of 2014

**Statute being implemented:** RCW 41.05.021, 41.05.160; ESHB 2323 and SSB 6210, 64<sup>th</sup> Legislature, 2016 Regular Session; HR 647 – Achieving a Better Life Experience (ABLE) Act of 2014

**Is rule necessary because of a:**

- Federal Law?  Yes  No
  - Federal Court Decision?  Yes  No
  - State Court Decision?  Yes  No
- If yes, CITATION: HR 647 – Achieving a Better Life Experience (ABLE) Act of 2014

**DATE**  
April 4, 2017

**NAME**  
Wendy Barcus

**SIGNATURE**

**TITLE**  
HCA Rules Coordinator

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE: April 04, 2017**

**TIME: 2:57 PM**

**WSR 17-08-086**

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

**Name of proponent:** Health Care Authority

- Private  
 Public  
 Governmental

**Name of agency personnel responsible for:**

Name	Office Location	Phone
Drafting..... Katie Pounds	PO Box 42716, Olympia, WA 98504-2716	(360) 725-1346
Implementation.... Stephen Kozak	PO Box 45534, Olympia, WA 98504-5534	(360) 725-1343
Enforcement..... Stephen Kozak	PO Box 45534, Olympia, WA 98504-5534	(360) 725-1343

**Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?**

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone (    )

fax    (    )

e-mail

No. Explain why no statement was prepared.

The agency has determined that the proposed filing does not impose a disproportionate cost impact on small businesses or nonprofits.

**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    (    )

e-mail

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.

**Chapter 182-560 WAC**  
**ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) ACT**

NEW SECTION

**WAC 182-560-100 Achieving a Better Life Experience (ABLE) Act.**

This rule describes a qualified achieving a better life experience (ABLE) account and its effect on the determination of eligibility for Washington apple health coverage.

(1) A qualified ABLE account:

(a) Is established and maintained by a state, or its designated agency or entity;

(b) Meets federal requirements under 26 U.S.C. Sec. 529A; and

(c) Is used to save funds for the disability related expenses of the account's designated beneficiary.

(2) This section applies to ABLE account beneficiaries who:

(a) Are entitled to benefits based on blindness or disability under Title II or XVI of the Social Security Act; or

(b) Meet the blindness or disability requirements under WAC 182-512-0050 (1)(b) and (c).

(3) The disability or blindness described in subsection (2)(a) or (b) of this section must have occurred before age twenty-six.

(4) This section does not apply if the total combined annual contributions to an ABLE account exceed the gift tax annual exclusion amount identified in the Internal Revenue Service publication 559.

(5) When determining countable income for apple health programs for the account's designated beneficiary, the medicaid agency or the agency's designee does not:

(a) Count contributions made to the ABLE account;

(b) Count funds distributed from the account;

(c) Count earnings generated by the account, such as accrued interest or dividends; or

(d) Reduce income used to determine eligibility by the amount of contributions made to the account, including any funds the designated beneficiary may contribute to it.

(6) When determining eligibility for apple health programs, the agency or the agency's designee excludes as resources:

(a) The value of an ABLE account, including any earnings generated by the account; and

(b) Subject to subsection (8) of this section, distributions from the account for qualified disability expenses as long as the beneficiary:

(i) Maintains an ABLE account;

(ii) Contributes to an ABLE account; or

(iii) Receives distributions from such ABLE account.

(7) "Qualified disability expense (QDE)" means any expense related to the beneficiary's blindness or disability that is made for the benefit of the beneficiary, including the following expenses:

(a) Education;

(b) Housing;

(c) Transportation;

(d) Employment training and support;

(e) Assistive technology and personal support services;

- (f) Health;
- (g) Prevention and wellness;
- (h) Financial management;
- (i) Legal fees;
- (j) Expenses for oversight and monitoring; and
- (k) Funeral and burial expenses.

(8) Distributions under subsection (6)(b) of this section, which are retained into a subsequent calendar month:

(a) Remain excluded as resources as long as the distributions are identifiable and the beneficiary still intends to use the distribution for a QDE;

(b) Are available resources on the first day of a subsequent calendar month if the intent of the beneficiary changes such that the beneficiary will not use the distribution for a QDE; and

(c) Are available resources on the first day of any subsequent month when the distribution is actually used for a non-QDE.

(9) The agency or the agency's designee counts as a resource on the first day of the following month any funds distributed for purposes other than paying a QDE expense described in subsection (7) of this section.

(10) If the beneficiary has multiple ABLE accounts, the agency or the agency's designee applies this section to the first ABLE account established.

(11) Funds remaining in the ABLE account when the beneficiary dies are subject to estate recovery under chapter 182-527 WAC, less any:

(a) Outstanding QDE debts; and

(b) Premium payments made from the ABLE account on behalf of the beneficiary to obtain coverage under the apple health care for workers with disabilities described in WAC 182-511-1000.