



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 17-04-032; 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:

182-500-0050 Washington apple health (WAH) definitions
 182-503-0010 Washington apple health – Who can apply
 182-503-0505 Washington apple health – General eligibility requirements
 182-504-0015 Washington apple health – Certification periods for categorically needy programs
 182-514-0260 Program for children under age nineteen
 182-505-0211 Washington apple health (WAH) – Foster care

Hearing location:

Health Care Authority
 Cherry Street Plaza Building; Sue Crystal Conf Rm 106A
 626 - 8th 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
 or directions can be obtained by calling: (360) 725-1000

Date: **May 23, 2017** Time: **10:00 a.m.**

Date of intended adoption: Not sooner than May 24, 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 – 8th Avenue, Olympia WA 98504
 e-mail arc@hca.wa.gov
 fax (360) 586-9727

by **5:00 pm on May 23, 2017**

Assistance for persons with disabilities: Contact Amber Lougheed by May 19, 2017

e-mail: 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 amending these rules to comply with SSB 6430, which requires the agency to suspend, rather than terminate, the medical assistance benefits for people who are incarcerated or committed to a state hospital.

Reasons supporting proposal: This change is required by state law.

Statutory authority for adoption: RCW 41.05.021, 41.05.160

Statute being implemented: RCW 41.05.021, 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:

DATE
April 17, 2017

NAME
Wendy Barcus

SIGNATURE

TITLE
HCA Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: April 17, 2017

TIME: 2:38 PM

WSR 17-09-052

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..... 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

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.

WAC 182-500-0050 Washington apple health (~~(WAH)~~) definitions—

I. "Ineligible spouse" see "spouse" in WAC 182-500-0100.

"Institution" means an entity that furnishes (in single or multiple facilities) food, shelter, and some treatment or services to four or more people unrelated to the proprietor. Eligibility for a Washington apple health (~~(WAH)~~) program may vary depending upon the type of institution in which an individual resides. For the purposes of (~~(WAH)~~) apple health programs, "institution" includes all the following:

(1) **"Institution for mental diseases (IMD)"** - A hospital, nursing facility, or other institution of more than sixteen beds that is primarily engaged in providing diagnosis, treatment or care of people with mental diseases, including medical attention, nursing care and related services. An IMD may include inpatient chemical dependency facilities of more than sixteen beds which provide residential treatment for alcohol and substance abuse.

(2) **"Intermediate care facility for the mentally retarded (ICF/MR)"** - An institution or distinct part of an institution that is:

(a) Defined in 42 C.F.R. 440.150;

(b) Certified to provide ICF/MR services under 42 C.F.R. 483, Subpart I; and

(c) Primarily for the diagnosis, treatment, or rehabilitation for people with mental retardation or a related condition.

(3) **"Medical institution"** - An entity that is organized to provide medical care, including nursing and convalescent care. The terms "medical facility" and "medical institution" are sometimes used interchangeably throughout Title 182 WAC.

(a) To meet the definition of medical institution, the entity must:

(i) Be licensed as a medical institution under state law;

(ii) Provide medical care, with the necessary professional personnel, equipment, and facilities to manage the health needs of the patient on a continuing basis under acceptable standards; and

(iii) Include adequate physician and nursing care.

(b) Medical institutions include:

(i) "Hospice care center" - An entity licensed by the department of health (DOH) to provide hospice services. Hospice care centers must be medicare-certified, and approved by the agency or the agency's designee to be considered a medical institution.

(ii) "Hospital" - Defined in WAC 182-500-0045.

(iii) "Nursing facility (NF)" - An entity certified to provide skilled nursing care and long-term care services to medicaid recipients under Social Security Act Sec. 1919(a), 42 U.S.C. Sec. 1396r. Nursing facilities that may become certified include nursing homes licensed under chapter 18.51 RCW, and nursing facility units within hospitals licensed by DOH under chapter 70.41 RCW. This includes the nursing facility section of a state veteran's facility.

(iv) "Psychiatric hospital" - An institution, or a psychiatric unit located in a hospital, licensed as a hospital under applicable Washington state laws and rules, that is primarily engaged to provide psychiatric services for the diagnosis and treatment of mentally ill people under the supervision of a physician.

(v) "Psychiatric residential treatment facility (PRTF)" - A non-hospital residential treatment center licensed by DOH, and certified by the agency or the agency's designee to provide psychiatric inpatient services to medicaid-eligible ~~((individuals))~~ people age twenty-one and younger. A PRTF must be accredited by the Joint Commission on Accreditation of Health care Organizations (JCAHO) or any other accrediting organization with comparable standards recognized by Washington state. A PRTF must meet the requirements in 42 C.F.R. 483, Subpart G, regarding the use of restraint and seclusion.

(vi) "Residential habilitation center (RHC)" - A residence operated by the state under chapter 71A.20 RCW that serves ~~((individuals))~~ people who have exceptional care and treatment needs due to their developmental disabilities by providing residential care designed to develop individual capacities to their optimum. RHCs provide residential care and may be certified to provide ICF/MR services and nursing facility services.

(c) Medical institutions do not include entities licensed by the agency or the agency's designee as adult family homes (AFHs) and boarding homes. AFHs and boarding homes include assisted living facilities, adult residential centers, enhanced adult residential centers, and developmental disability group homes.

(4) "**Public institution**" means an entity that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control.

(a) Public institutions include:

(i) Correctional facility - An entity such as a state ~~((penitentiary))~~ prison, or city, county, or tribal jail, ((includes placement in a work release program or outside of the institution, including home detention)) or juvenile rehabilitation or juvenile detention facility.

(ii) Eastern and Western State mental hospitals. (Medicaid coverage for these institutions is limited to ~~((individuals))~~ people age twenty-one and younger, and ~~((individuals))~~ people age sixty-five and older.)

(iii) Certain facilities administered by Washington state's department of veteran's affairs (see (b) of this subsection for facilities that are not considered public institutions).

(b) Public institutions do not include intermediate care facilities, entities that meet the definition of medical institution (such as Harborview Medical Center and University of Washington Medical Center), or facilities in Retsil, Orting, and Spokane that are administered by the department of veteran's affairs and licensed as nursing facilities.

"**Institution for mental diseases (IMD)**" see "institution" in this section.

"**Institutional review board**" - A board or committee responsible for reviewing research protocols and determining whether:

- (1) Risks to subjects are minimized;
- (2) Risks to subjects are reasonable in relation to anticipated benefits, if any, to subjects, and the importance of the knowledge that may reasonably be expected to result;
- (3) Selection of subjects is equitable;
- (4) Informed consent will be sought from each prospective subject or the subject's legally authorized representative;
- (5) Informed consent will be appropriately documented;
- (6) When appropriate, the research plan makes adequate provision for monitoring the data collected to ensure the safety of subjects;

(7) When appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data; and

(8) When some or all of the subjects are likely to be vulnerable to coercion or undue influence, such as children, prisoners, pregnant ((women)) people, mentally disabled persons, or economically or educationally disadvantaged persons, additional safeguards have been included in the study to protect the rights and welfare of these subjects.

"Institutionalized spouse" see "spouse" in WAC 182-500-0100.

"Intermediate care facility for the mentally retarded (ICF/MR)" see "institution" in this section.

AMENDATORY SECTION (Amending WSR 14-16-052, filed 7/29/14, effective 8/29/14)

WAC 182-503-0010 Washington apple health—Who ~~((can))~~ may apply.

- (1) You may apply for Washington apple health ~~((WAH))~~ for yourself.
- (2) You ~~((can))~~ may apply for ~~((WAH))~~ apple health for another person if you are:
- (a) A legal guardian;
 - (b) An authorized representative (as described in WAC 182-500-0010);
 - (c) A parent or caretaker relative of a child ~~((less than nineteen years of))~~ age eighteen or younger;
 - (d) A tax filer applying for a tax dependent ~~((less than nineteen years of))~~ age eighteen or younger;
 - (e) A spouse; or
 - (f) A person applying for someone who is unable to apply on their own due to a medical condition and who is in need of long-term care services.
- (3) If you reside in an institution of mental diseases (as defined in WAC 182-500-0050(1)) or a public institution (as defined in WAC 182-500-0050(4)), including a Washington state department of corrections facility, city, tribal, or county jail, or secure community transition facility or total confinement facility (as defined in RCW 71.09.020), ~~((and the facility has entered into and is operating under a memorandum of understanding with the agency, the agency will coordinate with the facility for))~~ you, your representative, or the facility may apply for you to get the ~~((WAH))~~ apple health coverage for which you are determined eligible ~~((no later than the day you are released))~~.
- (4) You are automatically enrolled in ~~((WAH))~~ apple health and do not need to ~~((turn in))~~ submit an application if you are a:
- (a) Supplemental security income (SSI) recipient;
 - (b) Person deemed to be an SSI recipient under 1619(b) of the SSA;
 - (c) Newborn as described in WAC 182-505-0210; or
 - (d) Child in foster care placement as described in WAC 182-505-0211.
- (5) You are the primary applicant on an application if you complete and sign the application on behalf of your household.
- (6) If you are an SSI recipient, then you, your authorized representative as defined in WAC 182-500-0010, or another person applying on your behalf as described in subsection (2) of this section, must turn in a signed application to apply for long-term care services as described in WAC 182-513-1315.

AMENDATORY SECTION (Amending WSR 14-16-052, filed 7/29/14, effective 8/29/14)

WAC 182-503-0505 Washington apple health—General eligibility requirements. (1) ~~((Persons applying))~~ When you apply for Washington apple health ~~((WAH))~~ programs established under chapter 74.09 RCW,

you must meet the eligibility criteria in chapters 182-500 through 182-527 WAC.

(2) ~~((Persons applying for WAH are considered))~~ When you apply for apple health, we first consider you for federally funded or federally matched programs. We consider you for state-funded programs ~~((are considered))~~ after ~~((the person is determined))~~ we have determined that you are ineligible for federally funded and federally matched programs.

(3) Unless otherwise specified in a program specific WAC, the eligibility criteria for each ~~((WAH))~~ program are as follows:

(a) Age (WAC 182-503-0050);

(b) Residence in Washington state (WAC 182-503-0520 and 182-503-0525);

(c) Citizenship or immigration status in the United States (WAC 182-503-0535);

(d) Possession of a valid Social Security account number (WAC 182-503-0515);

(e) Assignment of medical support rights to the state of Washington (WAC 182-503-0540);

(f) Application for medicare and enrollment into medicare's prescription drug program if:

(i) ~~((It is likely that the person is))~~ You are likely entitled to medicare; and

(ii) ~~((The state has))~~ We have authority to pay medicare cost sharing as described in chapter 182-517 WAC.

(g) ~~((For persons whose))~~ If your eligibility is not based on ~~((the basis of))~~ modified adjusted gross income (MAGI) methodology, your countable resources must be within specific program limits (chapters 182-512, 182-513, 182-515, 182-517, and 182-519 WAC); and

(h) Countable income within program limits:

(i) For MAGI-based ~~((WAH))~~ programs, see WAC 182-505-0100;

(ii) For the ~~((WAH))~~ refugee program, see WAC ~~((182-507-0110))~~ 182-507-0130;

(iii) For the ~~((WAH))~~ medical care services program, see WAC ~~((182-508-0150))~~ 182-508-0005;

(iv) For ~~((WAH))~~ the health care for workers with disabilities (HWD) program, see WAC ~~((182-511-0060))~~ 182-511-1000;

(v) For the ~~((WAH))~~ SSI-related program, see WAC 182-512-0010;

(vi) For ~~((WAH))~~ long-term care programs, see ~~((WAC 182-513-1300 and 182-515-1500))~~ chapter 182-513 and 182-515 WAC;

(vii) For ~~((WAH))~~ medicare savings programs, see WAC 182-517-0100; and

(viii) For the ~~((WAH))~~ medically needy program, see WAC 182-519-0050.

(4) In addition to the general eligibility requirements in subsection (3) of this section, each program has specific eligibility requirements as described in applicable WAC.

(5) ~~((Persons))~~ If you are in a public institution, including a correctional facility, you are not eligible for ~~((WAH programs))~~ full scope apple health coverage, except in the following situations:

(a) ~~((The person is under))~~ If you are age ~~((twenty))~~ twenty-one or younger or ~~((over))~~ age sixty-five or older and ~~((is))~~ are a patient in an institution for mental disease (see WAC 182-513-1315(13)); or

(b) ~~((The person))~~ You receive~~((s))~~ inpatient hospital services outside of the public institution or correctional facility.

(6) ~~((Persons))~~ We limit coverage for people who become residents in a public institution, under subsection (5) of this section, until they are released.

(7) If you are terminated from SSI or ~~((who))~~ lose eligibility for categorically needy (CN) or alternative benefits plan (ABP) coverage, you receive coverage under the ~~((WAH))~~ apple health program with the highest scope of care for which ~~((they))~~ you may be eligible while ~~((their))~~ we determine your eligibility for other health care programs ~~((is determined))~~. See WAC 182-504-0125.

WAC 182-504-0015 Washington apple health—Certification periods for categorically needy programs. (1) A certification period is the period of time ~~((a person is determined))~~ we determine that you are eligible for a categorically needy (CN) Washington apple health ~~((WAH))~~ program. Unless otherwise stated in this section, the certification period begins on the first day of the month of application and continues through the ~~((last day))~~ end of the last month of the certification period.

(2) For a newborn eligible for ~~((WAH))~~ apple health, the certification period begins on the child's date of birth and continues through the end of the month of the child's first birthday.

(3) ~~((For a woman))~~ If you are a person eligible for ~~((WAH))~~ apple health based on pregnancy, the certification period ends the last day of the month that includes the sixtieth day from the day the pregnancy ends.

(4) ~~((For a person))~~ If you are eligible for the ~~((WAH))~~ refugee program, the certification period ends at the end of the eighth month following ~~((the client's))~~ your date of entry to the United States.

(5) For all other ~~((WAH-CN))~~ CN coverage, the certification period is twelve months.

(6) ~~((For children))~~ If you are a child, eligibility is continuous throughout the certification period regardless of a change in circumstances, unless a required premium (described in WAC 182-505-0225) is not paid for three consecutive months or ~~((the child))~~ you:

(a) Turn~~((s))~~ age nineteen;

(b) Move~~((s))~~ out_of_state; or

(c) ~~((Is incarcerated; or~~

~~(d))~~ Die~~((s))~~).

(7) When ~~((the child))~~ you turn~~((s))~~ nineteen, the certification period ends after the redetermination process described in WAC 182-504-0125 is completed, even if the twelve-month period is not over~~((The certification period may be extended past the end of the month the child turns nineteen when))~~, unless:

(a) ~~((The child is))~~ You are receiving inpatient services (described in WAC 182-514-0230) on the last day of the month ~~((the child))~~ you turn~~((s))~~ nineteen;

(b) The inpatient stay continues into the following month or months; and

(c) ~~((The child))~~ You remain~~((s))~~ eligible except for turning age nineteen.

(8) A retroactive certification period is described in WAC 182-504-0005.

(9) Coverage under premium-based programs included in apple health for kids as described in chapter 182-505 WAC begins no sooner than the month after creditable coverage ends.

WAC 182-505-0211 Washington apple health (~~((WAH))~~)—Foster care.

(1) A person under the age of nineteen is eligible for Washington apple health (~~((WAH))~~) when (~~((he or she))~~) they:

(a) (~~((Is))~~) Are in foster care under the legal responsibility of the state, or a federally recognized tribe located within the state; and

(b) Meet(~~((s))~~) Washington residency requirements as described in WAC 182-503-0520 or 182-503-0525.

(2) A person (~~((under the))~~) age (~~((of twenty-one))~~) twenty or younger is eligible for (~~((WAH))~~) coverage when (~~((he or she))~~) the person meets:

(a) Washington residency requirements as described in WAC 182-503-0520 or 182-503-0525;

(b) Citizenship or immigration status requirements as described in WAC 182-503-0535;

(c) Social Security number requirements as described in WAC 182-503-0515; and

(d) One of the following requirements:

(i) Is in foster care, or is eligible for continued foster care services as determined by the children's administration, under the legal responsibility of the state, or a federally recognized tribe located within the state; or

(ii) Receives subsidized adoption services through the children's administration; or

(iii) Is enrolled in the unaccompanied refugee minor (URM) program as authorized by the office of refugee and immigrant assistance (ORIA); or

(iv) Is living in a group home operated or contracted by the juvenile rehabilitation administration; or

(v) Is placed in a foster home or group home through the voluntary placement waiver program managed by the division of developmental disabilities.

(3) A person age nineteen or older but under age twenty-six is eligible for (~~((WAH))~~) coverage when (~~((he or she))~~) the person:

(a) Was both in foster care under the legal responsibility of the state or a federally recognized tribe located within the state and enrolled in medicaid:

(i) On (~~((his or her))~~) the person's eighteenth birthday; or

(ii) At such higher age at which foster care assistance ended; and

(b) Meets residency, Social Security number, and citizenship requirements as described in subsection (2) of this section.

(4) A person described in subsections (1) through (3) of this section is not eligible for (~~((WAH))~~) full-scope coverage if (~~((he or she))~~) the person is confined to a public institution as defined in WAC 182-500-0050, except:

(a) If (~~((he or she))~~) the person is under age twenty-one;

(b) Resides in an institution for mental disease (IMD); and

(c) Meets the institutional status requirements in WAC 182-505-0240.

WAC 182-514-0260 Institutional program for children under age nineteen.

(1) To qualify for the modified adjusted gross income (MAGI)-based long-term care (LTC) program under this section, you (a child under age nineteen) must meet:

- (a) The general eligibility requirements in WAC 182-514-0240; and
- (b) Program requirements under WAC 182-505-0210 or 182-505-0117.

(2) If ~~((a child under age nineteen is))~~ you are eligible for the premium-based children's program under WAC 182-505-0215, ~~((the medic-aid agency redetermines the child's))~~ we redetermine your eligibility under this section so that ~~((the child's))~~ your family is not required to pay the premium.

(3) The categorically needy (CN) income level for LTC coverage under this section is two hundred ten percent of the federal poverty level after the standard five percentage point income disregard.

(4) To determine countable income for CN coverage under this section, we apply the MAGI methodology under chapter 182-509 WAC.

(5) ~~((The agency))~~ We approve~~((s))~~ CN coverage under this section for twelve calendar months (certification period). If ~~((the child is))~~ you are discharged from the facility before the end of the certification period, ~~((the child))~~ you remain~~((s))~~ continuously eligible for CN coverage through the certification period, unless ~~((the child))~~ you age~~((s))~~ out of the program, move~~((s))~~ out_of_state, ~~((is in career-ated,))~~ or die~~((s))~~.

(6) If ~~((a child is))~~ you are not eligible for CN coverage under this section, ~~((the agency determines the child's))~~ we determine your eligibility for coverage under the institutional medically needy program described in WAC 182-514-0263.

(7) The institution where ~~((the child))~~ you reside~~((s))~~ may submit an application on ~~((the child's))~~ your behalf and may act as ~~((the child's))~~ your authorized representative if ~~((the child is))~~ you are:

- (a) In a court-ordered, out-of-home placement under chapter 13.34 RCW; or
- (b) Involuntarily committed to an inpatient treatment program by a court order under chapter 71.34 RCW.