



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Health Care Authority, Washington Apple Health

Permanent Rule Only

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: 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.

Citation of existing rules affected by this order:

Repealed:
 Amended: 182-500-0050, 182-503-0010, 182-503-0505, 182-504-0015, 182-505-0211, 182-514-0260
 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 17-09-052 on April 17, 2017.
 Describe any changes other than editing from proposed to adopted version: None.

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

Name: _____ phone () _____
 Address: _____ fax () _____
 e-mail _____

Date adopted: May 30, 2017

NAME (TYPE OR PRINT)

Wendy Barcus

SIGNATURE

TITLE

HCA Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
 STATE OF WASHINGTON
 FILED

DATE: May 30, 2017
TIME: 10:52 AM

WSR 17-12-017

**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Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____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New	_____	Amended	_____	Repealed	_____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 in 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New	_____	Amended	_____	Repealed	_____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>6</u>	Repealed	_____
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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>6</u>	Repealed	_____

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.