

WSR 21-18-079

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed August 27, 2021, 2:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-15-141.

Title of Rule and Other Identifying Information: WAC 182-521-0100 Noncountable income and resources during the COVID-19 public health emergency.

Hearing Location(s): On October 5, 2021, at 10:00 a.m. The health care authority (HCA) remains closed in response to the coronavirus disease (COVID-19) public health emergency. Until further notice, HCA continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state. To attend the virtual public hearing, you must register in advance https://zoom.us/webinar/register/WN_jHE7VdlCRWi5chy6w6vYnA. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than October 6, 2021.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by October 5, 2021.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email amber.lougheed@hca.wa.gov, by September 24, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In response to the current public health emergency surrounding the outbreak of the coronavirus disease (COVID-19), along with the governor of Washington's emergency proclamations related to COVID-19, HCA is creating these new rules to identify income and resources that HCA does not count when determining apple health eligibility.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Jason Crabbe, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-9563; Implementation and Enforcement: Mark Westenhaver, P.O. Box 45534, Olympia, WA 98504-5534, 360-725-1324.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The changes to the proposed rules apply to clients and do not impose any costs on businesses.

August 27, 2021

OTS-2326.7

**Chapter 182-521 WAC
PUBLIC HEALTH EMERGENCY RULES**NEW SECTION

WAC 182-521-0100 Noncountable income and resources during the COVID-19 public health emergency. (1) This section describes certain types of income and resources received as a result of the COVID-19 public health emergency that the health care authority (agency) does not count as income or resources when determining apple health eligibility. This includes certain unemployment income; any Federal Pandemic Unemployment Compensation (FPUC) or Recovery Rebates authorized under the Coronavirus Aid, Relief, and Economic Security (CARES) Act; and other needs-based and disaster-related benefits authorized as a result of the COVID-19 public health emergency. The noncountable income and resources in this section are in addition to other noncountable income and resources in this title, such as those described in WAC 182-509-0320, 182-512-0860, and 182-513-1340.

(2) For all apple health programs, including both modified adjusted gross income-based (MAGI) and nonmodified adjusted gross income-based (non-MAGI) programs, the agency does not count as income for medicaid determinations of eligibility or cost-sharing calculations any of the following:

(a) Federal pandemic unemployment compensation benefits of six hundred dollars per week issued for the period of March 18, 2020, through July 31, 2020;

(b) Federal pandemic unemployment compensation benefits of three hundred dollars per week issued for the period of December 26, 2020, through September 6, 2021;

(c) Lost wages assistance unemployment compensation benefits of three hundred dollars per week issued for the period of weeks ending August 1, 2020, through September 6, 2021, due to the federal Disaster Relief Fund authorized for states to offset lost wages due to the COVID-19 pandemic, known as Lost Wage Assistance (LWA);

(d) Payments from the pandemic relief payment program as authorized by Governor Jay Inslee on December 27, 2020;

(e) Pandemic Recovery Rebates (stimulus checks) except that for non-MAGI programs, any unspent portion of such rebates may be counted as a resource starting twelve months after receipt; and

(f) Needs-based and disaster-related benefits from other agencies, organizations, or tribal entities including, but not limited to:

(i) Federal Emergency Management Agency (FEMA) programs, such as FEMA COVID-19 Funeral Assistance;

(ii) State programs, such as disaster cash assistance and the Washington immigrant relief fund; and

(iii) Local/municipal programs, such as the city of Seattle hospitality workers relief fund and disaster relief fund for immigrants.

(3) For non-MAGI programs, the agency does not count any unemployment compensation received during the public health emergency, except for individuals eligible solely under "special income disregard" categories as described in WAC 182-512-0880. For these individuals, the agency counts unemployment compensation to determine continued eligibility for that coverage, except payments described in subsection (2) of this section. If the result is medically needy program coverage, then all unemployment income is not counted in calculating spend-down.

(4) The agency does not count for apple health premium calculations all income not counted for eligibility determinations for apple health programs. The agency waives monthly premiums until the first of the month following the calendar quarter in which the COVID-19 public health emergency ends.

(5) All income the agency does not count for eligibility determinations for non-MAGI programs, the agency also does not count in post-eligibility treatment of income (PETI) calculations for long-term services and supports. The agency does not count such income whether it is paid to the community spouse or to the spouse seeking or receiving long-term services and supports. The agency does not count such income when determining the spousal allowance or in any other part of the post-eligibility calculation process.

(6) The agency does not count as a resource the value of property essential for self-support (PESS) described in 20 C.F.R. 416.1222 that is subject to the requirement of producing net annual income of at least six percent of the PESS value for non-MAGI groups.

(7) The agency does not count as income any other payments for pandemic assistance not described in this section to the fullest extent provided for under state or federal law.

(8) Any income received as unemployment compensation not described within this section is otherwise countable and the agency counts it when determining MAGI-based apple health eligibility, unless otherwise specified under state or federal law.

(9) The agency does not terminate an enrollee's eligibility due to changes to an enrollee's income or resources.

(10) These rules are in effect until the later of:

(a) The date the client is receiving any benefits described in this rule; or

(b) The end of the month the Secretary of the U.S. Department of Health and Human Services declares the COVID-19 public health emergency to be over.

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