

WSR 21-22-094

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed November 2, 2021, 11:01 a.m., effective December 3, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: In response to the current public health emergency (PHE) for COVID-19, as declared by the Secretary of Health and Human Services (HHS) under section 319 of the Public Health Service Act (42 U.S.C. § 247d), the health care authority (HCA) is creating these new rules to identify income and resources that HCA does not count when determining apple health eligibility.

Citation of Rules Affected by this Order: New WAC 182-521-0100.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: 42 U.S.C. § 247d.

Adopted under notice filed as WSR 21-18-079 on August 27, 2021.

Changes Other than Editing from Proposed to Adopted Version:

Proposed/ Adopted	WAC Subsection	Reason
<b>WAC 182-521-0100(2)</b>		
Proposed	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:	To clarify which program eligibility the rule is specifying.
Adopted	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 <del>medicaid</del> <u>Apple Health</u> determinations of eligibility or cost-sharing calculations any of the following:	
<b>WAC 182-521-0100 (2)(e)</b>		
Proposed	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	To clarify what pandemic recovery rebates are and to alleviate confusion caused by combining information on income and resources.
Adopted	Pandemic Recovery Rebates ( <u>also known as stimulus checks or economic impact payments</u> ) <del>except that for non-MAGI programs, any unspent portion of such rebates may be counted as a resource starting twelve months after receipt;</del> and	
<b>WAC 182-521-0100 (2)(g) NEW</b>		
Proposed	Nothing	To respond to a stakeholder's request. Created subsection (2)(g) to add pandemic-related changes to federal refundable tax credits to the list of income disregards.
Adopted	Pandemic-related changes to federal refundable tax credits, including but not limited to the child tax credit, the earned income tax credit, and the child and dependent tax care credit.	
<b>WAC 182-521-0100(3)</b>		

Proposed/ Adopted	WAC Subsection	Reason
Proposed	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 spenddown.	To respond to a stakeholder's request. Removed the exception for individuals eligible solely under "special income disregard" categories as described in WAC 182-512-0880. This eligibility category is listed in Title 42 U.S.C. Sec. 1902 (r)(2).
Adopted	<del>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 spenddown.</del>	
<b>WAC 182-521-0100(6)</b>		
Proposed	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.	To align with recently revised Social Security Administration guidance as suggested by a stakeholder. Consolidated disregarded resources into WAC 182-521-0100(6); indicated the period for the PESS disregard; and added other federal disaster assistance that is disregarded as resources.
Adopted	<del>For non-MAGI programs, the agency does not count as a resource:</del> <u>(a) 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 during the period of the Presidential and Secretarial emergency declarations related to the COVID-19 outbreak;</u> <u>(b) Pandemic Recovery Rebates and all other assistance described in Social Security Administration guidance; and</u> <u>(c) Assistance, including but not limited to the Temporary Expansion of the Child Tax Credit of 2021 that is not counted as income and treated under Social Security Administration guidance as not counted as resources for a period of 12 months after receipt.</u>	
<b>WAC 182-521-0100</b>		
Proposed	Nothing (newly added subsection to replace proposed subsection (7)).	To respond to a stakeholder's comment. Added this new subsection as WAC 182-521-0100(7) to indicate how the agency will deal with future federal disaster assistance as it applies to counting resources for determining client eligibility.
Adopted	The agency reviews cases on an individual basis and does not count as resources any disaster assistance identified as excludable under federal law for an indefinite period.	
<b>WAC 182-521-0100(7)</b>		
Proposed	(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.	To add that the agency does not count resources as well in WAC 182-521-0100(8).
Adopted	(8) The agency does not count as income <u>or resources</u> any other payments for pandemic assistance not described in this section to the fullest extent provided for under state or federal law.	
<b>WAC 182-521-0100 (8)-(10)</b>		
Proposed	Subsections were numbered as subsections (8), (9), and (10).	To revise numbers which changed due to the addition of WAC 182-521-0100(7).
Adopted	Subsections were renumbered as subsections (9), (10), and (11).	

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: November 2, 2021.

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Rules Coordinator

OTS-2326.8

**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 Apple Health 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 (also known as stimulus checks or economic impact payments);

(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; and

(g) Pandemic-related changes to federal refundable tax credits including, but not limited to, the child tax credit, the earned income tax credit, and the child and dependent tax care credit.

(3) For non-MAGI programs, the agency does not count as income any unemployment compensation received during the public health emergency.

(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) For non-MAGI programs, the agency does not count as a resource:

(a) 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 during the period of the presidential and secretarial emergency declarations related to the COVID-19 outbreak;

(b) Pandemic recovery rebates and all other assistance described in Social Security Administration guidance; and

(c) Assistance including, but not limited to, the Temporary Expansion of the Child Tax Credit of 2021 that is not counted as income and treated under Social Security Administration guidance as not counted as resources for a period of 12 months after receipt.

(7) The agency reviews cases on an individual basis and does not count as resources any disaster assistance identified as excludable under federal law for an indefinite period.

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

(9) 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.

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

(11) 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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