

WSR 22-10-089

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed May 3, 2022, 3:55 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-06-096.

Title of Rule and Other Identifying Information: WAC 182-513-1350
Defining the resource standard and determining resource eligibility
for SSI-related long-term care services.

Hearing Location(s): On June 7, 2022, at 10:00 a.m. In response
to the coronavirus disease 2019 (COVID-19) public health emergency,
the health care authority (HCA) continues to hold public hearings vir-
tually without a physical meeting place. This promotes social distanc-
ing and the safety of the residents of Washington state.

To attend the virtual public hearing, you must register in ad-
vance [https://us02web.zoom.us/webinar/register/
WN__edPzYSMR9CMXCEzVivwWw](https://us02web.zoom.us/webinar/register/WN__edPzYSMR9CMXCEzVivwWw). After registering, you will receive a con-
firmation email containing information about joining the public hear-
ing.

Date of Intended Adoption: Not sooner than June 8, 2022.

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 June 7, 2022.

Assistance for Persons with Disabilities: Contact HCA rules coor-
dinator, phone 360-725-1306, fax 360-586-9727, telecommunication[s]
relay service 711, email arc@hca.wa.gov, by May 20, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including
Any Changes in Existing Rules: The agency is increasing the excess
equity amount allowed for homeowners who are eligible for apple health
long-term services and supports (LTSS) benefits to the maximum amount
allowed under federal law.

Reasons Supporting Proposal: State property values have increased
substantially during the last several years. This amendment would al-
low more homeowners who are otherwise eligible for LTSS benefits to
receive them.

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 Lan-
guage, Implementation, Enforcement, and Fiscal Matters: Not applica-
ble.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud,
P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation
and Enforcement: Paige Lewis, P.O. Box 45534, Olympia, WA 98504-5534,
360-725-0757.

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 busi-
nesses. Following is a summary of the agency's analysis showing how
costs were calculated. The amended rules do not impose any costs on
small businesses.

May 3, 2022
Wendy Barcus
Rules Coordinator

OTS-3704.2

AMENDATORY SECTION (Amending WSR 17-18-023, filed 8/28/17, effective 9/28/17)

WAC 182-513-1350 Defining the resource standard and determining resource eligibility for SSI-related long-term care (LTC) services.

(1) General information.

(a) This section describes how the agency or ((~~its~~)) the agency's designee defines the resource standard and countable or excluded resources when determining a person's eligibility for SSI-related long-term care (LTC) services.

(b) "Resource standard" means the maximum amount of resources a person can have and still be resource eligible for program benefits.

(c) For a person not SSI-related, the agency applies program specific resource rules to determine eligibility.

(2) Resource standards.

(a) The resource standard for the following people is \$2000:

- (i) A single person; or
- (ii) An institutionalized spouse.

(b) The resource standard for a legally married couple is \$3000, unless subsection (3) (b) (ii) of this section applies.

(c) The resource standard for a person with a qualified long-term care partnership policy under WAC 182-513-1400 may be higher based on the dollar amount paid out by a partnership policy.

(d) Determining the amount of resources that can be allocated to the community spouse when determining resource eligibility is under WAC 182-513-1355.

(3) Availability of resources.

(a) General. The agency or ((~~its~~)) the agency's designee applies the following rules when determining available resources for LTC services:

- (i) WAC 182-512-0300 SSI-related medical—Resources eligibility;
- (ii) WAC 182-512-0250 SSI-related medical—Ownership and availability of resources; and
- (iii) WAC 182-512-0260 SSI-related medical—How to count a sponsor's resources.

(b) Married couples.

(i) When both spouses apply for LTC services, the resources of both spouses are available to each other through the month in which the spouses stopped living together.

(ii) When both spouses are institutionalized, the agency or ((~~its~~)) the agency's designee determines the eligibility of each spouse as a single person the month following the month of separation.

(iii) If the agency or ((~~its~~)) the agency's designee has already established eligibility and authorized services for one spouse, and the community spouse needs LTC services in the same month, but after eligibility has been established and services authorized for the in-

stitutionalized spouse, then the agency applies the standard under subsection (2)(a) of this section to each spouse. If doing this would make one of the spouses ineligible, then the agency applies subsection (2)(b) of this section for the couple.

(iv) The resources of the community spouse are unavailable to the institutionalized spouse the month after eligibility for LTC services is established, unless (v) or (vi) of this subsection applies.

(v) When a single institutionalized individual marries, the agency or (~~its~~) the agency's designee redetermines eligibility applying the resource and income rules for a legally married couple.

(vi) A redetermination of the couple's resources under this section is required if:

(A) The institutionalized spouse has a break of at least (~~thir-~~~~ty~~) 30 consecutive days in a period of institutional status;

(B) The institutionalized spouse's countable resources exceed the standard under subsection (2)(a) of this section, and WAC 182-513-1355 (2)(b) applies; or

(C) The institutionalized spouse does not transfer the amount, under WAC 182-513-1355 (3) or (5), to the community spouse by either:

(I) The end of the month of the first regularly scheduled eligibility review; or

(II) A reasonable amount of time necessary to obtain a court order for the support of the community spouse.

(4) Countable resources.

(a) The agency or (~~its~~) the agency's designee determines countable resources using the following sections:

(i) WAC 182-512-0200 SSI-related medical—Definition of resources.

(ii) WAC 182-512-0250 SSI-related medical—Ownership and availability of resources.

(iii) WAC 182-512-0260 SSI-related medical—How to count a sponsor's resources.

(iv) WAC 182-512-0300 SSI-related medical—Resources eligibility.

(v) WAC 182-512-0350 SSI-related medical—Property and contracts excluded as resources;

(vi) WAC 182-512-0400 SSI-related medical—Vehicles excluded as resources;

(vii) WAC 182-512-0450 SSI-related medical—Life insurance excluded as a resource; and

(viii) WAC 182-512-0500 SSI-related medical—Burial funds, contracts and spaces excluded as resources.

(ix) Chapter 182-516 WAC, Trusts, annuities, life estates, and promissory notes—Effect on medical programs.

(b) The agency or (~~its~~) the agency's designee determines excluded resources based on federal law and WAC 182-512-0550, except:

(i) For institutional and HCB waiver programs, pension funds owned by a nonapplying spouse are counted toward the resource standard.

(ii) For long-term services and supports (LTSS), based on the need for either nursing facility level of care or intermediate care facility for the intellectually disabled level of care, one home is excluded only if it meets the home equity limits of subsection (8) of this section. See WAC 182-512-0350 (1)(b).

(c) The agency or (~~its~~) the agency's designee adds together the countable resources of both spouses if subsections (3)(b)(i) and (iv)

apply, but not if subsection (3) (b) (ii) or (iii) apply. For a person with a community spouse, see WAC 182-513-1355.

(5) Excess resources.

(a) For LTC programs, a person may reduce excess resources by deducting incurred medical expenses under subsection (6) of this section;

(b) The amount of excess resources is limited to the following amounts:

(i) For LTC services provided under the categorically needy (CN) program:

(A) In a medical institution, excess resources and available income must be under the state medicaid rate based on the number of days the person spent in the medical institution in the month.

(B) For HCB waiver eligibility, incurred medical expenses must reduce resources within allowable resource standards. The cost of care for the HCB waiver services cannot be allowed as a projected expense.

(ii) For LTC services provided under the medically needy (MN) program, see:

(A) WAC 182-513-1395 for LTC programs; and

(B) WAC 182-513-1245 for hospice.

(c) Excess resources not otherwise applied to medical expenses will be applied to the projected cost of care for services in a medical institution under WAC 182-513-1380.

(6) Allowable medical expenses.

(a) The following incurred medical expenses may be used to reduce excess resources:

(i) Premiums, deductibles, coinsurance, or copayment charges for health insurance and medicare;

(ii) Medically necessary care defined under WAC 182-500-0070, but not covered under the state's medicaid plan. Information regarding covered services is under chapter 182-501 WAC;

(iii) Medically necessary care defined under WAC 182-500-0070 incurred prior to medicaid eligibility. Expenses for nursing facility care are reduced at the state rate for the specific facility that provided the services.

(b) To be allowed, the medical expense must:

(i) Have been incurred no more than three months before the month of the medicaid application;

(ii) Not be subject to third-party payment or reimbursement;

(iii) Not have been used to satisfy a previous spenddown liability;

(iv) Not have been previously used to reduce excess resources;

(v) Not have been used to reduce participation;

(vi) Not have been incurred during a transfer of asset penalty under WAC 182-513-1363; and

(vii) Be an amount for which the person remains liable.

(7) Nonallowable expenses. The following expenses are not allowed to reduce excess resources:

(a) Unpaid adult family home (AFH) or assisted living facility expenses incurred prior to medicaid eligibility;

(b) Personal care cost in excess of approved hours determined by the CARE assessment under chapter 388-106 WAC; and

(c) Expenses excluded by federal law.

(8) Excess home equity.

(a) A person with an equity interest in a primary residence in excess of the home equity limit is ineligible for long-term services and supports (LTSS) that are based on the need for either nursing fa-

cility level of care or intermediate care facility for the intellectually disabled level of care, unless one of the following persons lawfully resides in the home:

(i) That person's spouse; or

(ii) That person's dependent child under age (~~(twenty-one)~~) 21, blind child, or disabled child.

(b) The home equity provision applies to all applications for LTSS received on or after May 1, 2006.

(c) (~~(Effective January 1, 2016,)~~) The excess home equity limit is (~~(\$552,000)~~) the federal maximum allowed. On (~~January 1, 2017, and on~~) January 1st of each year (~~thereafter~~), this standard may change by the percentage in the consumer price (~~index-urban-~~) index for all consumers (CPI-U). The current maximum home equity limit is posted by the Centers for Medicare and Medicaid Services. (See subsection (9) of this section for institutional resource standards.)

(d) A person who is denied or terminated LTC services due to excess home equity may apply for an undue hardship waiver under WAC 182-513-1367.

(9) Institutional resource standards are found at (~~(http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources)~~) https://www.hca.wa.gov/health-care-services-supports/program-standard-income-and-resources.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-18-023, § 182-513-1350, filed 8/28/17, effective 9/28/17. Statutory Authority: RCW 41.05.021, 41.05.160, P.L. 111-148, 42 C.F.R. §§ 431, 435, and 457, and 45 C.F.R. § 155. WSR 17-03-116, § 182-513-1350, filed 1/17/17, effective 2/17/17. WSR 13-01-017, recodified as § 182-513-1350, filed 12/7/12, effective 1/1/13. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, section 6014 of the Deficit Reduction Act of 2005 (DRA), and 2010 1st sp.s. c 37 § 209(1). WSR 12-21-091, § 388-513-1350, filed 10/22/12, effective 11/22/12. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, and 74.09.575. WSR 09-12-058, § 388-513-1350, filed 5/28/09, effective 7/1/09. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 74.09.530. WSR 08-13-072, § 388-513-1350, filed 6/16/08, effective 7/17/08. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.575, 74.09.500, and 74.09.530. WSR 07-19-128, § 388-513-1350, filed 9/19/07, effective 10/20/07. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, 74.09.575, 2005 Federal Deficit Reduction Act (DRA) P.L. 109-171, and Section 1924 of the Social Security Act (42 U.S.C. 1396r-5). WSR 07-01-073, § 388-513-1350, filed 12/18/06, effective 1/18/07. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 42 U.S.C. 9902(2). WSR 05-07-033, § 388-513-1350, filed 3/9/05, effective 4/9/05. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.575; 2003 1st sp.s. c 28, and section 1924 of the Social Security Act (42 U.S.C. 1396R-5). WSR 04-04-072, § 388-513-1350, filed 2/2/04, effective 3/4/04. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500 and Section 1924 (42 U.S.C. 1396R-5). WSR 01-18-055, § 388-513-1350, filed 8/30/01, effective 9/30/01. Statutory Authority: RCW 11.92.180, 43.20B.460, 48.85.020, 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, 74.[09.]575, 74.09.585; 20 C.F.R. 416.1110-1112, 1123 and 1160; 42 C.F.R. 435.403 (j) (2) and 1005; and Sections 17, 1915(c), and 1924 (42 U.S.C. 1396) of the Social Security Act. WSR 00-01-051, § 388-513-1350, filed 12/8/99, effective 1/8/00. Statutory Authority:

RCW 74.08.090 and 74.09.500. WSR 99-06-045, § 388-513-1350, filed 2/26/99, effective 3/29/99. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 74.09.575 and Section 1924 (42 U.S.C. 1396r-5). WSR 98-11-033, § 388-513-1350, filed 5/14/98, effective 6/14/98. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090 and 74.09.575. WSR 97-09-112, § 388-513-1350, filed 4/23/97, effective 5/24/97. Statutory Authority: RCW 74.08.090 and Title XIX State Agency Letter 95-44. WSR 96-09-033 (Order 3963), § 388-513-1350, filed 4/10/96, effective 5/11/96. Statutory Authority: RCW 74.08.090 and Title XIX State Agency Letter 94-49, notice of increase in SSI level. WSR 95-05-022 (Order 3832), § 388-513-1350, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 74.08.090. WSR 94-23-129 (Order 3808), § 388-513-1350, filed 11/23/94, effective 12/24/94; WSR 94-10-065 (Order 3732), § 388-513-1350, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-95-337 and 388-95-340.]