

WSR 23-20-051

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed September 28, 2023, 10:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-12-049 and 23-14-092.

Title of Rule and Other Identifying Information: WAC 182-504-0015 Washington apple health—Certification periods for categorically needy programs, 182-504-0035 Washington apple health—Renewals, and 182-505-0210 Eligibility for children.

Hearing Location(s): On November 7, 2023, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_EICEeDr8Q0ap3784rr7LVQ. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not earlier than November 8, 2023.

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 November 7, 2023, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email Johanna.larson@hca.wa.gov, by October 27, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending WAC 182-504-0035 to allow for telephonic eligibility renewals. HCA is amending WAC 182-504-0015, 182-504-0035, and 182-505-0210 to provide continuous enrollment in medicaid through age five for certain children.

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; section 211(36), chapter 475, Laws of 2023 (ESSB 5187).

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Shaunie Long, P.O. Box 42722, Olympia, WA 98504-2716 [2722], 360-725-1343.

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.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rules pertain to client program eligibility and do not impose costs on businesses.

Scope of exemption for rule proposal:

Is fully exempt.

September 28, 2023

OTS-4720.4

AMENDATORY SECTION (Amending WSR 22-21-072, filed 10/13/22, effective 11/13/22)

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

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

(3) If you are eligible for apple health based on pregnancy, the certification period continues through the last day of the month the pregnancy ends. After-pregnancy coverage begins the first day of the month, following the end of the pregnancy, and ends the last day of the 12th month from the time after-pregnancy coverage began.

(4) If you are newly eligible for apple health coverage and had a pregnancy end within the last 12 months, your certification period for after-pregnancy coverage:

(a) Begins the first day of the month you are eligible; and

(b) Ends the last day of the 12th month following the end of your pregnancy.

(5) If you are eligible for the refugee program, the certification period ends at the end of the 12th month following your date of entry to the United States.

(6) If you are a child under age six receiving apple health for kids without a premium, your coverage ends the last day of the month of your sixth birthday.

(7) If you are eligible for newborn coverage, your coverage continues through the last day of the month of your first birthday. Apple health for kids coverage begins automatically on the first day of the month after your newborn coverage ends and ends the last day of the month of your sixth birthday.

(8) For all other CN coverage, the certification period is 12 months.

~~((7))~~ (9) 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 you:

(a) Turn age 19;

(b) Move out-of-state; or

(c) Die.

~~((8))~~ (10) When you turn 19, the certification period ends after the redetermination process described in WAC 182-504-0125 is completed, even if the 12-month period is not over, unless:

(a) You are receiving inpatient services (described in WAC 182-514-0230) on the last day of the month you turn 19;

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

(c) You remain eligible except for turning age 19.

~~((9))~~ (11) A retroactive certification period is described in WAC 182-504-0005.

~~((10))~~ (12) 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.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-21-072, § 182-504-0015, filed 10/13/22, effective 11/13/22; WSR 22-12-033, § 182-504-0015, filed 5/24/22, effective 6/24/22; WSR 17-12-017, § 182-504-0015, filed 5/30/17, effective 6/30/17. Statutory Authority: RCW 41.05.021, 41.05.160, Public Law 111-148, 42 C.F.R. § 431, 435, and 457, and 45 C.F.R. § 155. WSR 14-16-052, § 182-504-0015, filed 7/29/14, effective 8/29/14. WSR 11-24-018, recodified as § 182-504-0015, filed 11/29/11, effective 12/1/11. Statutory Authority: RCW 74.04.050, 74.04.057, and 74.08.090, and Apple Health for Kids Act (ESHB 2128); 42 U.S.C. 1305; Public Law 111-3 (Children's Health Insurance Program Reauthorization Act of 2009). WSR 11-03-001, § 388-416-0015, filed 1/5/11, effective 2/5/11. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.402, 74.09.470, and 2008 session law. WSR 09-07-086, § 388-416-0015, filed 3/17/09, effective 4/17/09. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 74.09.700, and 2007 c 5. WSR 08-05-018, § 388-416-0015, filed 2/12/08, effective 3/14/08. Statutory Authority: RCW 74.04.050, 74.08.090, 74.09.530, and 74.09.700. WSR 06-24-036, § 388-416-0015, filed 11/30/06, effective 1/1/07. Statutory Authority: RCW 74.08.090, 74.09.530, and 74.09.415. WSR 05-19-031, § 388-416-0015, filed 9/12/05, effective 10/13/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 2004 c 54. WSR 04-21-064, § 388-416-0015, filed 10/18/04, effective 11/18/04. Statutory Authority: RCW 74.08.090, 74.09.530, and 2003 c 10. WSR 04-03-019, § 388-416-0015, filed 1/12/04, effective 2/12/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090 and 74.09.450. WSR 00-08-002, § 388-416-0015, filed 3/22/00, effective 5/1/00. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-416-0015, filed 7/31/98, effective 9/1/98. Formerly 388-509-0970, 388-521-2105, 388-522-2210 and 388-522-2230.]

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

WAC 182-504-0035 Washington apple health—Renewals. (1) For all Washington apple health (WAH) programs, the following applies:

(a) You are required to complete a renewal of eligibility at least every ~~((twelve))~~ 12 months with the following exceptions:

(i) If you are eligible for WAH medically needy with spenddown, then you must complete a new application at the end of each three- or six-month base period;

(ii) If you are eligible for WAH alien emergency medical, then you are certified for a specific period of time to cover emergency in-patient hospitalization costs only (see WAC 182-507-0115(8)); (~~(or)~~)

(iii) If you are eligible for WAH refugee coverage, you must complete a renewal of eligibility after (~~eight~~) 12 months; or

(iv) If you are a child on apple health for kids without premiums, your first renewal is due the month of your sixth birthday.

(b) You may complete renewals online, by phone, or by paper application that you mail or fax to us (the agency or its designee).

(c) If your WAH is renewed, we decide the certification period according to WAC 182-504-0015.

(d) We review all eligibility factors subject to change during the renewal process.

(e) We redetermine eligibility as described in WAC 182-504-0125 and send you written notice as described in WAC 182-518-0005 before WAH is terminated.

(f) If you need help meeting the requirements of this section, we provide equal access services as described in WAC 182-503-0120.

(2) For programs based on modified adjusted gross income (MAGI) as described in WAC 182-503-0510:

(a) Sixty days prior to the end of the certification period:

(i) When information from electronic sources shows income is reasonably compatible (as defined in WAC 182-500-0095), we administratively renew your coverage (as defined in WAC 182-500-0010) for a new certification period and send you a notice of renewal with the information used. You are required to inform us if any of the information we used is wrong.

(ii) If we are unable to complete an administrative renewal (as defined in WAC 182-500-0010), you must give us a signed renewal in order for us to decide if you will continue to get WAH coverage beyond the current certification period.

(iii) We follow the requirements described in WAC 182-518-0015 to request any additional information needed to complete the renewal process or to terminate coverage for failure to renew.

(b) If your WAH coverage is terminated because you did not renew, you have (~~ninety~~) 90 days from the termination date to give us a completed renewal. If we decide you are still eligible to get WAH coverage, we will restore your WAH without a gap in coverage.

(3) For non-MAGI based programs (as described in WAC 182-503-0510):

(a) Forty-five days prior to the end of the certification period, we send notice with a renewal form (~~(to be completed, signed, and returned by)~~). You must renew before the end of the certification period by either calling the department of social and health services at the number listed on the form to renew by telephone, renew online at www.washingtonconnection.org, or mailing or delivering to the department of social and health services a signed renewal form with the information required by WAC 182-503-0005.

(b) We follow the requirements in WAC 182-518-0015 to request any additional information needed to complete the renewal process or to terminate coverage for failure to renew.

(c) To complete your renewal, you must give us all the other information requested on the application that is needed to determine your eligibility.

(d) If you are terminated for failure to renew, you have (~~thirty~~) 30 days from the termination date to submit a completed renewal. If still eligible, we will restore your WAH without a gap in coverage.

(4) If we determine that you are not eligible for renewal of your WAH coverage, we:

(a) Consider your eligibility for all other WAH programs before ending your WAH coverage; and

(b) Coordinate with the health benefit exchange any request for information that is necessary to determine your eligibility for:

(i) Other WAH programs; and

(ii) With respect to qualified health plans, health insurance premium tax credits (as defined in WAC 182-500-0045) and cost-sharing reductions (as defined in WAC 182-500-0020).

(5) We reconsider our decision that you are not eligible for WAH coverage without a new application from you when:

(a) We receive the information that we need to decide if you are eligible within (~~(thirty)~~) 30 days of the date on the termination notice; or

(b) You request a hearing within (~~(ninety)~~) 90 days of the date on the renewal denial letter and an administrative law judge (ALJ) or HCA review judge decides our decision was wrong (per chapter 182-526 WAC).

(6) If you disagree with our decision, you can ask for a hearing. If we decided that you are not eligible for renewal because we do not have enough information, the ALJ will consider the information we already have and anymore information you give us. The ALJ does not consider the previous absence of information or failure to respond in determining if you are eligible.

[Statutory Authority: RCW 41.05.021, 41.05.160, Public Law 111-148, 42 C.F.R. § 431, 435, and 457, and 45 C.F.R. § 155. WSR 14-16-052, § 182-504-0035, filed 7/29/14, effective 8/29/14.]

OTS-4721.2

AMENDATORY SECTION (Amending WSR 17-12-018, filed 5/30/17, effective 6/30/17)

WAC 182-505-0210 Eligibility for children. (1) **General eligibility.** For purposes of this section, a child must:

(a) Be a Washington state resident under WAC 182-503-0520 and 182-503-0525;

(b) Provide a Social Security number under WAC 182-503-0515, unless exempt; and

(c) Meet program-specific requirements.

(2) **Deemed eligibility groups.** A child is automatically eligible for coverage without an application if the child meets the program-specific requirements in (a) through (c) of this subsection.

(a) **Newborn coverage.** A child under age one is eligible for categorically needy (CN) coverage if the birth parent was eligible for Washington apple health on the date of delivery:

(i) Including a retroactive eligibility determination; or

(ii) By meeting a medically needy (MN) spenddown liability with expenses incurred by the date of the newborn's birth:

~~((b))~~ **(b) Washington apple health for supplemental security income (SSI) recipients.** A child who is eligible for SSI is automatically eligible for CN coverage under WAC 182-510-0001.

(c) **Foster care coverage.** A child age ~~((twenty))~~ 20 and younger is eligible for CN coverage under WAC 182-505-0211 when the child is in foster care or receives subsidized adoption services. For children who age out of the foster care program, see WAC 182-505-0211(3).

(3) **Continuous eligibility for children under age six.** Children are eligible for Washington apple health continuous eligibility for children under age six when they:

(a) Have household income at or below 215 percent of the federal poverty level at the time of application; or

(b) Received coverage under subsection (5) of this section and are no longer eligible for deemed coverage under subsection (5)(b) or (c) of this section.

(4) **MAGI-based eligibility groups.** A child age ~~((eighteen))~~ 18 and younger is eligible for CN coverage based on modified adjusted gross income (MAGI):

(a) At no cost when the child's countable income does not exceed the standard in WAC 182-505-0100 (6)(a);

(b) With payment of a premium when the child's countable income does not exceed the standard in WAC 182-505-0100 (6)(b), and the child meets additional eligibility criteria in WAC 182-505-0215;

(c) Under chapter 182-514 WAC, if the child needs long-term care services because the child resides or is expected to reside in an institution, as defined in WAC 182-500-0050, for ~~((thirty))~~ 30 days or longer. An institutionalized child is eligible for coverage under the medically needy program if income exceeds the CN income standard for a person in an institution (special income level);

(d) Under WAC 182-505-0117, if a child is pregnant.

~~((4))~~ **(5) Non-MAGI-based children's programs.** The agency determines eligibility for the:

(a) Medically needy (MN) program according to WAC 182-510-0001(6) and 182-519-0100. A child age ~~((eighteen))~~ 18 and younger is eligible if the child:

(i) Is not eligible for MAGI-based coverage under subsection ~~((3))~~ (4) of this section;

(ii) Meets citizenship or immigration requirements under WAC 182-503-0535 (2)(a), (b), (c), or (d); and

(iii) Meets any spenddown liability required under WAC 182-519-0110.

(b) **SSI-related program.** A child age ~~((eighteen))~~ 18 and younger is eligible for CN or MN SSI-related coverage if the child meets:

(i) SSI-related eligibility under chapter 182-512 WAC;

(ii) Citizenship or immigration requirements under WAC 182-503-0535 (2)(a), (b), (c), or (d); and

(iii) Any MN spenddown liability under WAC 182-519-0110.

(c) **SSI-related long-term care program.**

(i) A child age ~~((eighteen))~~ 18 and younger is eligible for home and community based (HCB) waiver programs under chapter 182-515 WAC if the child meets:

(A) SSI-related eligibility under chapter 182-512 WAC;

(B) Citizenship or immigration requirements under WAC 182-503-0535 (2)(a), (b), (c), or (d); and

(C) Program-specific age and functional requirements under chapters 388-106 and 388-845 WAC.

(ii) A child age (~~(eighteen)~~) 18 and younger who resides or is expected to reside in a medical institution as defined in WAC 182-500-0050 is eligible for institutional medical under chapter 182-513 WAC if the child meets:

(A) Citizenship or immigration requirements under WAC 182-503-0535 (2) (a), (b), (c), or (d);

(B) Blindness or disability criteria under WAC 182-512-0050; and

(C) Nursing facility level of care under chapter 388-106 WAC.

~~((5))~~ (6) **Alien emergency medical program.** A child age (~~(twenty)~~) 20 and younger who does not meet the eligibility requirements for a program described under subsections (2) through (~~(4))~~ (5) of this section is eligible for the alien emergency medical (AEM) program if the child meets:

(a) The eligibility requirements of WAC 182-507-0110; and

(b) MN spenddown liability, if any, under WAC 182-519-0110.

~~((6))~~ (7) **Other provisions.**

(a) A child residing in an institution for mental disease (IMD) as defined in WAC 182-500-0050(1) is not eligible for inpatient hospital services, unless the child is unconditionally discharged from the IMD before receiving the services.

(b) A child incarcerated in a public institution as defined in WAC 182-500-0050(4) is only eligible for inpatient hospital services.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-12-018, § 182-505-0210, filed 5/30/17, effective 6/30/17; WSR 16-01-034, § 182-505-0210, filed 12/8/15, effective 1/8/16; WSR 15-15-153, § 182-505-0210, filed 7/21/15, effective 8/21/15. Statutory Authority: RCW 41.05.021, 41.05.160, Public Law 111-148, 42 C.F.R. § 431, 435, and 457, and 45 C.F.R. § 155. WSR 14-16-052, § 182-505-0210, filed 7/29/14, effective 8/29/14. WSR 12-13-056, recodified as § 182-505-0210, filed 6/15/12, effective 7/1/12. Statutory Authority: RCW 41.05.021, 74.04.050, 74.04.057, 74.09.500, and PPACA, § 2102 (b) (1) (A) of the Social Security Act, and Public Law 111-3 (CHIPRA). WSR 11-23-077, § 388-505-0210, filed 11/15/11, effective 12/16/11. Statutory Authority: RCW 74.04.050, 74.04.057, and 74.08.090, and Apple Health for Kids Act (ESHB 2128); 42 U.S.C. 1305; Public Law 111-3 (Children's Health Insurance Program Reauthorization Act of 2009). WSR 11-03-001, § 388-505-0210, filed 1/5/11, effective 2/5/11. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.402, 74.09.470, and 2008 session law. WSR 09-07-086, § 388-505-0210, filed 3/17/09, effective 4/17/09. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 74.09.700, and 2007 c 5. WSR 08-05-018, § 388-505-0210, filed 2/12/08, effective 3/14/08. Statutory Authority: RCW 74.08.090, 74.09.530, and 74.09.415. WSR 05-23-013, § 388-505-0210, filed 11/4/05, effective 1/1/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 04-15-057, § 388-505-0210, filed 7/13/04, effective 8/13/04. Statutory Authority: RCW 74.08.090 and 74.04.050. WSR 03-14-107, § 388-505-0210, filed 6/30/03, effective 7/31/03. Statutory Authority: RCW 74.08.090, 74.08A.100, 74.09.080, and 74.09.415. WSR 02-17-030, § 388-505-0210, filed 8/12/02, effective 9/12/02. Statutory Authority: RCW 74.08.090, 74.04.050, [74.04.]055, and [74.04.]057. WSR 01-11-110, § 388-505-0210, filed 5/21/01, effective 6/21/01. Statutory Authority: RCW 74.08.090 and 74.08A.100. WSR 99-17-023, § 388-505-0210, filed 8/10/99, effective 9/10/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-505-0210,

filed 7/31/98, effective 9/1/98. Formerly WAC 388-509-0905,
388-509-0910 and 388-509-0920.]