

WSR 13-20-008
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-237—Filed September 19, 2013, 3:16 p.m., effective September 19, 2013, 8:00 p.m.]

Effective Date of Rule: September 19, 2013, 8:00 p.m.

Purpose: The purpose of this rule making is to allow nontreaty commercial fishing opportunities in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000H; and amending WAC 220-33-010.

Statutory Authority for Adoption: RCW 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Sets additional fishing periods for the 2013 fall season for non-Indian commercial fisheries in the mainstem Columbia River. Salmon remain available for harvest based on in-season and preseason forecasts. The 2013 fall chinook return to the Columbia River is forecasted to reach nearly 1.2 million fish. The seasons are consistent with the 2008-2017 interim management agreement. The regulation is consistent with compact action of July 25, 2013, and September 18, 2013. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536

that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

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 0, Amended 0, Repealed 0.

Date Adopted: September 19, 2013.

Philip Anderson
Director

NEW SECTION

WAC 220-33-01000I Columbia River season below Bonneville. Notwithstanding the provisions of WAC 220-33-010 and WAC 220-33-020, it is unlawful for a person to take or possess salmon or sturgeon for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas (SMCRA) 1A, 1B, 1C, 1D, and 1E, except as provided below:

1. Mainstem Columbia River

a. SEASON:

(i) 8 PM Thursday September 19 to 6 AM Friday September 20, 2013;

(ii) 8 PM Sunday September 22 to 6 AM Monday September 23, 2013;

(iii) 8 PM Tuesday September 24 to 6 AM Wednesday September 25, 2013.

b. AREA: SMCRA 1D, 1E. The deadline at the lower end of SMCRA 1D is defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation buoy #1 and continuing to the Washington shore.

c. GEAR: Drift gillnets only. 8-inch minimum mesh size.

d. SANCTUARIES: Washougal and Sandy Rivers.

e. ALLOWABLE POSSESSION: Salmon and white sturgeon. A maximum of two white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). The Sturgeon landing limit is specific to the mainstem only.

2. Blind Slough/Knappa Slough Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights effective immediately through October 31. Open hours are 6 PM to 8 AM.

b. AREA: Blind Slough and Knappa Slough. An area closure of an approximately 100-foot radius at the mouth of Big Creek is in effect. Concurrent jurisdiction waters include all areas in Knappa Slough and downstream of the Railroad Bridge in Blind Slough.

c. GEAR: Gillnet. Monofilament gear is allowed. 9 3/4-inch maximum mesh size. Maximum net length of 100 fathoms. No weight restriction on lead line. Use of additional weights and/or anchors attached directly to the lead line is allowed.

3. Tongue Point/South Channel Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights effective immediately through October 31, 2013. Open 4 PM to 10 AM.

b. AREA: Tongue Point and South Channel. All waters are concurrent-jurisdiction waters.

c. GEAR: Gillnet. 6-inch maximum mesh. Maximum length of 250 fathoms maximum.

(i) Tongue Point fishing area: Weight not to exceed two pounds on any one fathom. Fishers participating in the Tongue Point fishery may have onboard un-stored gillnets legal for the South Channel fishing area.

(ii) South Channel area: No weight restriction on lead line. Use of additional weights and/or anchors attached directly to the lead line is allowed.

4. Deep River Select Area.

a. SEASON: Open hours are 7 PM to 7 AM

(i) Sunday, Monday, Tuesday, Wednesday and Thursday nights effective immediately through September 27.

(ii) Monday, Tuesday, Wednesday and Thursday nights from September 30-October 11.

(iii) Monday October 14, and Thursday October 17, nights

b. AREA: The Deep River Select Area. Concurrent-jurisdiction waters extend downstream of the Highway 4 Bridge.

c. GEAR: Gillnet. Monofilament gear is allowed. 6-inch maximum mesh size. Net length, 100 fathoms maximum. No weight restriction on the lead line. Use of additional weights or anchors attached directly to the lead line is allowed. Nets may not be tied off to stationary structures.

(i) Nets may not fully cross the navigation channel. It is unlawful to operate in any river, stream or channel any gillnet gear longer than three-fourths the width of the river, stream, or channel.

(ii) "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of tide or the water level.

(iii) This emergency provision shall supersede the permanent regulation and all other regulations that conflict with it. All other provisions of the permanent regulation remain in effect (WAC 220-20-015(1)).

5. Additional regulations for all Select Area commercial fisheries:

a. Nets not specifically authorized for use may be onboard the vessel if properly stored, consistent with WAC 220-33-001.

b. ALLOWABLE POSSESSION: Salmon and white sturgeon. A maximum of two white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). Sturgeon landing limit specific to Select Areas only.

6. Quick Reporting: 24-hour quick-reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240. When quick-reporting is required, Columbia River reports must be submitted within 24 hours of the closure of each fishing period. This quick-reporting requirement applies to all seasons described above (Columbia River and Select Areas).

Miscellaneous: Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following section of the Washington Administrative Code is repealed 8:00 p.m. September 19, 2013:

WAC 220-33-01000H Columbia River season below Bonneville. (13-231)

WSR 13-20-009

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 13-238—Filed September 19, 2013, 3:22 p.m., effective September 24, 2013, 6:00 a.m.]

Effective Date of Rule: September 24, 2013, 6:00 a.m.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes and federal law governing Washington's relationship with Oregon.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100R; and amending WAC 220-32-051.

Statutory Authority for Adoption: RCW 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife com-

mission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency rule sets another weekly commercial gillnet fishing period for treaty Indian fisheries in the mainstem Columbia River. It also continues to allow the sales of fish caught in platform/hook-and-line fisheries in Zone 6 and the area immediately downstream of Bonneville Dam (consistent with MOUs/MOAs) and in Yakama Nation tributary fisheries, consistent with Yakama Nation regulations. Based on the in-season run size forecasts for chinook and steelhead, fish remain available for harvest. Harvest/ESA limits are expected to remain within the limits and guidelines of the 2008-2017 management agreement. The rule is consistent with action of the Columbia River compact on August 8 and September 18, 2013. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allow for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

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 0, Amended 0, Repealed 0.

Date Adopted: September 19, 2013.

Philip Anderson
Director

NEW SECTION

WAC 220-32-05100S Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052, WAC 220-32-055 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas (SMCRA) 1E, 1F, 1G, and 1H, and in the Klickitat River and Drano Lake, except as provided in the following subsections. However, individuals who possess treaty fishing rights under the Yakama, Warm Springs, Umatilla, or Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

1. Mainstem Columbia River

- a. Open Area: SMCRA 1F, 1G, 1H (Zone 6)
- b. Season: 6:00 AM September 24 through 6:00 PM September 27, 2013:
- c. Gear: Gillnet. 8-inch minimum mesh restriction
- d. Allowable sales: salmon, steelhead, shad, yellow perch, bass, walleye, catfish, and carp. Sturgeon may not be sold. Sturgeon between 38-54 inches in fork length in the Bonneville Pool, and between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes. Sales of fish caught during the open period are allowed after the period concludes.
- e. Standard sanctuaries in effect for this gear type, except the Spring Creek Hatchery sanctuary, is defined as those waters of the Columbia River within a radius of 150 feet of the Spring Creek Hatchery ladder.

2. Mainstem Columbia River Platform and Hook and Line upstream of Bonneville Dam

- a. Open Area: SMCRA 1F, 1G, 1H (Zone 6)
- b. Season: Open until further notice.
- c. Gear: Hoop nets, dip nets, set bag nets, and rod and reel with hook and line.
- d. Allowable sale: salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool, and between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes.
- e. Standard sanctuaries in effect for this gear type.

3. Mainstem Columbia River Platform and Hook and Line downstream of Bonneville Dam

- a. Open Area: SMCRA 1E. Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington

Department of Fish and Wildlife regarding tribal fisheries in the area just downstream of Bonneville Dam. Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe.

b. Participants: Tribal members may participate under the conditions described in the 2007 Memorandum of Agreement (MOA) with the Yakama Nation (YN), in the 2010 Memorandum of Understanding (MOU) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS), and in the 2011 MOU with the Nez Perce Tribe. Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

c. Season: Open until further notice.

d. Gear: Hoop nets, dip nets, set bag nets and rod and reel with hook and line, or as defined by each tribe's MOU or MOA.

e. Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon retention is prohibited; sturgeon may not be sold or retained for ceremonial or subsistence purposes. Sale of platform or hook-and-line-caught fish is allowed. Sales may not occur on USACE property.

4. Yakama Nation Tributary Fisheries

a. Open Area: Columbia River Tributaries upstream of Bonneville Dam.

b. Season: Open until further notice, and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

c. Area: Drano Lake and Klickitat River.

d. Gear: Hoop nets, dip nets, set bag nets and rod and reel with hook and line. Gillnets may only be used in Drano Lake.

e. Allowable Sales: Salmon, steelhead, shad, yellow perch, bass, walleye, catfish and carp which may be sold or retained for subsistence. Sturgeon may not be sold, but sturgeon from 38 to 54 inches fork length may be kept for subsistence purposes.

5. 24-hour quick reporting is required for Washington wholesale dealers, as provided in WAC 220-69-240, for all areas.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. September 24, 2013

WAC 220-32-05100R Columbia River salmon seasons above Bonneville Dam. (13-230)

WSR 13-20-015 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 13-239—Filed September 20, 2013, 4:02 p.m., effective September 23, 2013]

Effective Date of Rule: September 23, 2013.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900E and 232-28-61900R; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.04.020 and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The Columbia River in-season forecast for returning up river bright fall chinook has been upgraded to 832,500. Estimates based on PIT tag expansions from returning chinook suggest that over fifty thousand fall chinook may return to the Snake River this fall. Expansion of the fishery area to include the Snake River/Columbia River Confluence Protection Area is not expected to increase impacts to the Endangered Species Act listed wild fall chinook. Therefore, adipose clipped hatchery fall chinook that are caught can be retained in the Snake River/Columbia River Confluence Protection Area and in the Snake River. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, 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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

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 0, Amended 0, Repealed 0.

Date Adopted: September 20, 2013.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900R Exceptions to statewide rules—Snake River. Notwithstanding the provisions of WAC 232-28-619, effective September 23 through October 31, 2013, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) A person may fish for salmon in waters of the Snake River from the mouth upstream to the Oregon state line (located approximately 7 miles upstream of the mouth of the Grande Ronde River).

(a) Daily limit of three hatchery Chinook adults (24 inches in length and larger), and six hatchery jack Chinook (less than 24 inches). Minimum size for Chinook that can be retained is 12 inches.

(b) Barbless hooks are required, and anglers must stop fishing for salmon once they retain 3 hatchery steelhead (regardless of whether the salmon daily limit has been retained).

(c) Anglers must immediately release unharmed all Chinook and steelhead with unclipped adipose fins. Anglers cannot remove any Chinook or steelhead from the water unless it is retained as part of the daily limit.

(d) Retained adipose fin-clipped fish must have a healed scar at the location of the missing fin.

REPEALER

The following section of the Washington Administrative Code is repealed effective September 23, 2013:

WAC 232-28-61900E Exceptions to statewide rules—
Snake River. (13-194)

The following section of the Washington Administrative Code is repealed effective November 1, 2013:

WAC 232-28-61900R Exceptions to statewide rules—
Snake River.

WSR 13-20-016
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-242—Filed September 20, 2013, 4:38 p.m., effective September 22, 2013, 12:01 a.m.]

Effective Date of Rule: September 22, 2013, 12:01 a.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62000X; and amending WAC 232-28-620.

Statutory Authority for Adoption: RCW 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Catch and sampling information to date, suggests that the amount of effort and recreational harvest of chinook in marine area 2-2 (Grays Harbor) will exceed per-season expectations with no indication that the runsize is commensurately larger. This action is necessary in order to ensure that a sufficient upriver escapement is

achieved to allow other planned fisheries to be maintained to the extent practical while seeking to achieve conservation objectives. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, 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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

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 0, Amended 0, Repealed 0.

Date Adopted: September 20, 2013.

Philip Anderson
Director

NEW SECTION

WAC 232-28-62000C Coastal salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 232-28-620, effective immediately until further notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

1. Grays Harbor (Catch Record Card Area 2-2 east of the Buoy 13 line):

a. Effective 12:01 a.m. September 22, 2013, release Chinook salmon.

b. Effective 12:01 a.m. September 23 through September 28, 2013, closed to salmon fishing.

c. Effective 12:01 a.m. September 29, 2013 until further notice, daily limit 3 salmon; release Chinook. Chum retention permitted.

2. Grays Harbor (Catch Record Card Area 2-2 west of the Buoy 13 line):

a. Immediately until further notice: Closed.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. September 22, 2013:

WAC 232-28-62000X Coastal salmon—Saltwater seasons and daily limits. (13-174)

WSR 13-20-017
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-241—Filed September 20, 2013, 5:05 p.m., effective September 21, 2013]

Effective Date of Rule: September 21, 2013.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900T; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The current in-season run update is for 114,300 adult natural-origin fall chinook to return to the Hanford Reach spawning grounds, which is far in excess of the target spawning escapement. In addition, record returns of hatchery chinook to Priest Rapids and Ringold Spring hatcheries are anticipated. Enhancement of this fishery will allow additional angling opportunity. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, 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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

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 0, Amended 0, Repealed 0.

Date Adopted: September 20, 2013.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900T Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 232-28-619, it is unlawful to violate the following provisions provided that unless otherwise amended all permanent rules remain in effect:

(1) Effective September 21 through October 22, 2013:

(a) It is permissible to fish for salmon with two poles from the Highway 395 Bridge in Pasco to Priest Rapids Dam.

(b) It is permissible to fish for salmon in waters at Jackson (Moran) Creek when angling from a boat. It is unlawful

for boat anglers to fish in the hatchery discharge channel, but may fish in the Columbia River adjacent to the channel.

(c) Daily limit 6 salmon, up to 3 may be adult salmon. Once the daily limit of adult salmon is retained, anglers may not continue to fish for any species for the remainder of the day.

(2) Effective September 21 through October 31, 2013:

(a) It is permissible to fish for salmon in waters between Highway 395 Bridge and the Old Hanford townsite wooden powerline towers.

(b) Daily limit 6 salmon, up to 3 may be adult salmon. Once the daily limit of adult salmon is retained, anglers may not continue to fish for any species for the remainder of the day.

(c) It is permissible to fish for salmon with two poles.

REPEALER

The following section of the Washington Administrative Code is repealed effective November 1, 2013:

WAC 232-28-61900T Exceptions to statewide rules—
Columbia River.

WSR 13-20-018
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-243—Filed September 20, 2013, 5:05 p.m., effective September 21, 2013]

Effective Date of Rule: September 21, 2013.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900U; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.045, 77.12.047, and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Current estimates for the fall chinook run far exceed the forecast. There are currently close to twenty thousand adult fall chinook returning to the Wanapum Pool, which is four times the ten year average. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, 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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

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 0, Amended 0, Repealed 0.

Date Adopted: September 20, 2013.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900U Exceptions to statewide rules—Columbia River (Wanapum Pool) Notwithstanding the provisions of WAC 232-28-619, effective September 21, through October 15, 2013, in those waters of the Columbia River from Wanapum Dam to Rock Island Dam, daily limit of 6 Chinook salmon of which up to 2 may be adult Chinook. Minimum size is 12 inches.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 16, 2013:

WAC 232-28-61900U Exceptions to statewide rules—
Columbia River (Wanapum Pool)

**WSR 13-20-024
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 13-240—Filed September 23, 2013, 10:06 a.m., effective September 24, 2013, 7:00 a.m.]

Effective Date of Rule: September 24, 2013, 7:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-41100U; and amending WAC 220-47-411.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: In-season summer chum conservation goals have been met, allowing for a gillnet fishery targeting coho. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, 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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

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 0, Amended 0, Repealed 0.

Date Adopted: September 23, 2013.

Philip Anderson
Director

NEW SECTION

WAC 220-47-41100U Gillnet—Open periods. Notwithstanding the provisions of WAC 220-47-411, effective immediately until further notice, it is permissible to take, fish for, or possess salmon taken with gillnet gear for commercial purposes from the following designated Puget Sound Salmon Management and Catch Reporting Areas during the times indicated below. Unless otherwise amended, all permanent rules remain in effect.

Area 12A is open to skiff gillnets according to the following dates and times:

Hours	Dates
7:00 AM – 7:00 PM	9/24, 9/26

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:01 p.m. September 26, 2013:

WAC 220-47-41100U Gillnet—Open periods.

**WSR 13-20-038
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 13-244—Filed September 24, 2013, 1:54 p.m., effective October 1, 2013, 12:01 a.m.]

Effective Date of Rule: October 1, 2013, 12:01 a.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900J and 232-28-61900V; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.04.020 and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Harvestable salmon are available allowing the Puyallup River to open for recreational angling opportunity. Conservation objectives are met based upon the Endangered Species Act guidelines. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, 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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

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 0, Amended 0, Repealed 0.

Date Adopted: September 24, 2013.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900V Exceptions to statewide rules—Puyallup River. Notwithstanding the provisions of WAC 232-28-619, effective October 1, through December 31, 2013, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

(1) Puyallup River (Pierce County):

(a) 11th Street Bridge to city of Puyallup outfall structure near junction of Freeman Road and North Levee Road: Trout minimum length 14 inches. Night closure, anti-snagging rule, and barbless hooks required through November 30, 2013. Salmon and gamefish open effective immediately until further notice, except closed on October 1, 2, 6, 7, 8, 9, 13, 14, 15, and 16, 2013. Effective immediately through October 31, daily limit of 2 salmon plus 2 additional pink. Release wild Chinook. Effective November 1 until further notice, daily limit of 2 salmon. Release wild Chinook.

(b) From city of Puyallup outfall structure near junction of Freeman Road and North Levee Road to mouth of the White River: Trout minimum length 14 inches. Night closure, anti-snagging rule, and barbless hooks required through November 30, 2013. Salmon and gamefish open effective immediately until further notice. Effective immediately through October 31, daily limit of 2 salmon plus 2 additional pink. Release wild Chinook. Effective November 1 until further notice, daily limit of 2 salmon. Release wild Chinook.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. October 1, 2013:

WAC 232-28-61900J Exceptions to statewide rules—Puyallup River. (13-160)

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. January 1, 2014:

WAC 232-28-61900V Exceptions to statewide rules—Puyallup River.

**WSR 13-20-044
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 13-248—Filed September 25, 2013, 1:43 p.m., effective September 25, 2013, 1:43 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100K, 220-52-05100L, 220-52-07500M, 220-52-07500N, 220-69-24000E and 220-69-24000F; and amending WAC 220-52-051, 220-52-075, and 220-69-240.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The 2013 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule (1) closes beam trawl Catch Area 1B-21A/22A, as the quota has been reached; (2) reopens beam trawl area 1B-20B to harvest the relatively small amount of quota remaining; (3) closes the nonspot shrimp pot fishery season in the remaining open areas of Puget Sound, and the beam trawl fishery in Shrimp Management Areas 1 and 3 to protect egg-bearing females as per the shrimp management plans; and (4) updates fax number for reporting. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, 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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 0, Repealed 6.

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 0, Amended 0, Repealed 0.

Date Adopted: September 25, 2013.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-52-05100L Puget Sound shrimp pot and beam trawl fishery—Season. Notwithstanding the provisions of WAC 220-52-051, effective immediately until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound, except as provided for in this section:

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 2W and 3 are open to the harvest of all shrimp species, effective immediately, until 6:00 p.m. October 15, 2013, except as provided for in this section:

i) All waters of the Discovery Bay Shrimp District are closed;

ii) All waters of Shrimp Management Areas 2W and 3 are closed to the harvest of spot shrimp;

(d) It is unlawful to pull shellfish pots in more than one catch area per day.

(2) The following areas are open to Shrimp beam trawl gear, effective immediately, until further notice.

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D). Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) Effective immediately, until 6:00 p.m. September 28, 2013, that portion of Catch Areas 20B within SMA 1B.

(c) Effective immediately, until 6:00 p.m. October 15, 2013, all waters of Catch Area 20A.

(3) It is unlawful to sell shrimp taken under this section to any person who is not a licensed Washington wholesale fish dealer.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 220-52-07500N Shellfish harvest logs. Notwithstanding the provisions of WAC 220-52-075, effective immediately, until further notice, it is unlawful for vessel operators engaged in commercial harvest of shrimp from Puget Sound with shellfish pot gear to fail to report their daily catch by text message, e-mail or FAX to WDFW by 10:00 a.m. the day after the shrimp are harvested. Text message and e-mail daily catch reports must be submitted to shrimpreport@dfw.wa.gov, and FAX reports must be transmitted to FAX

number 360-302-3031. Daily catch reports must include the following information as it is recorded on the fish receiving ticket: Fisher name, buyer name, pounds landed per shrimp species, catch area, date of harvest, date of sale, and complete fish ticket serial number, including the first alphanumeric letter. If the fish receiving ticket is faxed as the daily harvest report, the date of harvest must be recorded on the bottom half of the ticket.

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 220-69-24000F Duties of commercial purchasers and receivers. Notwithstanding the provisions of WAC 220-69-240, effective immediately until further notice, it is unlawful for the original receiver of shrimp other than ghost shrimp taken from Puget Sound to fail to report in the following manner:

(1) For Puget Sound shrimp - Pot gear: All buyers of shrimp taken by pot gear (including fishers who buy their own catch) are no longer required to report the previous week's purchases by phone or FAX.

(2) Puget Sound shrimp - Trawl gear: All buyers of shrimp taken by trawl gear (including fishers who buy their own catch) must report the previous day's purchases by 10:00 a.m. the following morning. Reports must be made by text message, e-mail or FAX. Text message and e-mail reports must be submitted to shrimpreport@dfw.wa.gov, and FAX reports must be transmitted to FAX number 360-302-3031. Reports must include dealer name, fisher name, pounds sold per shrimp species, catch area, date sold, and the complete fish ticket serial number, including the first alphanumeric letter. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.560.

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-52-05100K Puget Sound shrimp beam trawl fishery—Season. (13-229)

WAC 220-52-07500M Shellfish harvest logs. (13-209)

WAC 220-69-24000E Duties of commercial purchasers and receivers. (13-209)

The following section of the Washington Administrative Code is repealed effective 6:00 p.m. October 31, 2013:

WAC 220-52-05100L Puget Sound shrimp beam trawl fishery—Season.

WAC 220-52-07500N Shellfish harvest logs.

WAC 220-69-24000F Duties of commercial purchasers and receivers.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 13-20-045
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-252—Filed September 25, 2013, 1:43 p.m., effective October 1, 2013, 7:30 a.m.]

Effective Date of Rule: October 1, 2013, 7:30 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-52-040, 220-52-046, and 220-69-240.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The provisions of this rule will reopen the commercial harvest areas in Puget Sound. There is sufficient allocation available in all of the commercial regions to accommodate this opening. These provisions are in conformity with agreed management plans with applicable tribes. These management plans are entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, 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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 0, Repealed 3 [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 0, Amended 0, Repealed 0.

Date Adopted: September 25, 2013.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-52-04000A Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts. Notwithstanding the provisions of WAC 220-52-040:

(1) Dungeness crab pots may be deployed starting at 7:30 a.m. October 1, 2013 until 7:00 p.m. October 2, 2013, in Puget Sound waters from a vessel not designated on a person's Puget Sound crab license, provided that the primary or alternate operator designated on the license is on board the non-designated vessel ("barge" vessel), and provided prior notice has been given as indicated below. Crab pots can only be deployed during daylight hours.

(2) The licensed owner must leave a telephone message at the Mill Creek annex office, (425) 379-2315 or by email to crabreport@dfw.wa.gov, with the following information:

- a) Name and license number of licensed owner.
- b) Name of designated primary operator if different from licensed owner.
- c) Name of alternate operator if used to deploy pots from a non-designated vessel.
- d) Buoy brand number and number of pots to be deployed from a non-designated vessel.
- e) Name and identification numbers (WN and/or Coast Guard) of the non-designated vessel.

(3) Additional area gear limits. The following Marine Fish-Shellfish Management and Catch Reporting Areas are restricted in the number of pots fished, operated, or used by a person or vessel, and it is unlawful for any person to use, maintain, operate, or control pots in excess of the following limits:

(a) No commercial gear is allowed in that portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123° 7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

(4) Effective 7:30 a.m. October 1, 2013, until further notice it is unlawful for any person to fish for crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Regions 1, Region 2 East, and Region 2 West. These regions include Marine Fish-Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, 24A, 24B, 24C, 24D, 26 AE, 25B, 25D, and 26AW.

(5) The remaining buoy tags per license per region must be onboard the designated vessel and available for inspection.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 220-52-04600Q Puget Sound crab fishery—Seasons and areas. Notwithstanding the provisions of WAC 220-52-046:

(1) Effective 7:30 a.m. October 1, 2013, until further notice, it is permissible to fish for Dungeness crab for commercial purposes in the following areas:

(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A between a line from the boat ramp at the western boundary of Birch Bay State Park to the western point of the entrance of the Birch Bay Marina and a line from the same boat ramp to Birch Point.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Fidalgo Bay south of a line projected from the red number 4 entrance buoy at Cape Sante Marina to the northern end of the eastern most oil dock.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Deer Harbor north of a line projected from Steep Point to Pole Pass.

(d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A-W in Useless Bay north and east of a line from the south end of the Double Bluff State Park seawall (47°58.782'N, 122°30.840'W) projected 110 degrees true to the boulder on shore (47°57.690'N, 122°26.742'W).

(e) Port Gardner: That portion of Marine Fish-Shellfish Catch Reporting Area 26A east of a line projected from the outermost tip of the ferry dock at Mukilteo, projected to the green #3 buoy at the mouth of the Snohomish River, and west of a line projected from that #3 buoy southward to the oil boom pier on the shoreline.

(f) Possession Point to Glendale: That portion of Marine Fish-Shellfish Management and Catch Reporting Area 26A east of a line that extends true north from the green #1 buoy at Possession Point to Possession Point, and west of a line from the green #1 buoy at Possession Point extending northward along the 200-foot depth contour to the Glendale dock.

(g) Langley: That portion of Marine Fish-Shellfish Management and Catch Reporting Area 24C shoreward of the 400-foot depth contour within an area described by two lines projected northeasterly from Sandy Point and the entrance to the marina at Langley.

(2) Effective 7:30 a.m. October 1, 2013, until further notice, the following areas are closed to commercial crab fishing:

(a) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123° 7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

(b) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 23D west of a line from the eastern tip of Ediz Hook to the ITT Rayonier Dock.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A east of a line projected true north from the most westerly tip of Skagit Island and extending south to the most westerly tip of Hope Island, thence southeast to Seal Rocks, thence southeast to the green can buoy at the mouth of Swinomish Channel, thence easterly to the west side of Goat Island.

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 220-69-24000G Duties of commercial purchasers and receivers. Notwithstanding the provisions of WAC 220-69-240, effective at 7:30 am, October 1, 2013, until further notice, it is unlawful for any wholesale dealer acting in the capacity of an original receiver of Dungeness crab taken by non-treaty fishers from Puget Sound, to fail to report to the department the previous day's purchases by 10:00 a.m. the

following business day. Reports must be made by fax to (425) 338-1066 or by e-mail at crabreport@dfw.wa.gov, and must specify the dealer name, dealer phone number, date of delivery of crab to the original receiver, and the total number of pounds of crab caught by non-treaty fishers, by Crab Management Region or by Marine Fish-Shellfish Management and Catch Reporting Area.

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 13-20-046
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-249—Filed September 25, 2013, 2:36 p.m., effective October 1, 2013, 12:01 a.m.]

Effective Date of Rule: October 1, 2013, 12:01 a.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 232-28-61900W; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047, 77.12.045, and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans agreed-to with resource comanagers at the North of Falcon proceedings. These rules are interim until permanent rules take effect.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, 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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

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 0, Amended 0, Repealed 0.

Date Adopted: September 25, 2013.

Philip Anderson
Director

NEW SECTION**WAC 232-28-61900W Exceptions to statewide rules.**

Notwithstanding the provisions of WAC 232-28-619 and WAC 220-56-105, effective October 1, 2013, until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

1. Dungeness River (Clallam County):

From the mouth to the forks at Dungeness Campground: Open October 8 until further notice. Salmon: Open: October 8 until further notice. Daily limit 4 coho only.

2. Nisqually River (Pierce County):

Salmon: Effective immediately until further notice: Daily limit 6; no more than 4 adults, of which only 2 adults may be any combination of Chinook, chum, and coho. Release wild Chinook.

3. Pleasant Lake (Clallam County):

Kokanee minimum length is six inches and maximum length is eighteen inches.

4. Skagit River (Skagit/Whatcom counties):

From the mouth to the Cascade River Road: Salmon: Daily limit 4; no more than 2 wild coho. Release Chinook and chum.

5. Skykomish River (Snohomish County):

From the mouth of the Wallace River to the forks: Salmon: Release Chinook and chum.

6. Snoqualmie River (King County):

From the mouth to Snoqualmie Falls: Salmon: Daily limit 3 plus 1 additional pink. Release Chinook and chum.

7. Wallace River (Snohomish County):

From the mouth to 200 feet upstream of the water intake of the salmon hatchery: Salmon: Open Daily limit 3 plus 1 additional pink. Release Chinook and chum.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. October 24, 2013:

WAC 232-28-61900W Exceptions to statewide rules.

WSR 13-20-047
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-251—Filed September 25, 2013, 2:37 p.m., effective October 1, 2013, 12:01 a.m.]

Effective Date of Rule: October 1, 2013, 12:01 a.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900E and 232-28-61900U; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.045, 77.12.047, and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or

general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The department is in the process of filing permanent rules that were adopted by the Washington fish and wildlife commission for sportfishing, and permanent rules that will be adopted by the department for recreational salmon fishing. The salmon rules were agreed to with resource comanagers at the North of Falcon proceedings. These rules are interim until permanent rules take effect.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, 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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

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 0, Amended 0, Repealed 0.

Date Adopted: September 25, 2013.

Philip Anderson
Director

NEW SECTION**WAC 232-28-61900E Exceptions to statewide rules.**

Notwithstanding the provisions of WAC 232-28-619, effective October 1, until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

1. Chelan River (Chelan County): From the railroad bridge to the Chelan P.U.D. safety barrier below the power house:

(a) It is unlawful to use other than barbless hooks while fishing for salmon and steelhead.

(b) Anti-snagging rule and night closure in effect.

(c) Salmon: Open: Effective through October 15, daily limit 6 hatchery Chinook of which no more than 2 adult hatchery Chinook may be retained. Release all wild Chinook salmon.

2. Columbia River, including impoundments and all connecting sloughs, except Wells Ponds:

(a) From McNary Dam to Chief Joseph Dam:

i. It is unlawful to use other than barbless hooks while fishing for salmon and steelhead.

3. Columbia River, including impoundments and all connecting sloughs, except Wells Ponds:

(a) From Wanapum Dam to Rock Island Dam: Salmon open through October 15, daily limit of 6 Chinook salmon of which up to 2 may be adult Chinook. Minimum size is 12 inches.

(b) From Rock Island Dam to Wells Dam: Effective through October 15, daily limit 6 salmon, of which no more than 2 adult hatchery Chinook.

(c) From Highway 173 Bridge at Brewster to Chief Joseph Dam: Salmon open through October 15, daily limit 6 salmon, of which no more than 2 adult hatchery Chinook.

4. Okanogan River (Okanogan County):

(a) It is unlawful to use other than barbless hooks while fishing for salmon and steelhead.

(b) From the mouth upstream to the first Highway 97 Bridge: Effective through October 15, daily limit 6 salmon, of which only 2 of which may be adult hatchery Chinook. Release all wild salmon.

5. Yakima River (Yakima County):

(a) From mouth (Hwy. 240 Bridge) to 400 feet below Prosser Dam, it is unlawful to use other than barbless hooks while fishing for salmon and steelhead.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. October 1, 2013:

WAC 232-28-61900U Exceptions to state rules—Columbia River (Wanapum Pool) 13-243

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. October 24, 2013:

WAC 232-28-61900E Exceptions to statewide rules.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 13-20-048
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-254—Filed September 25, 2013, 2:39 p.m., effective September 26, 2013, 12:01 a.m.]

Effective Date of Rule: September 26, 2013, 12:01 a.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900K; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.04.020, 77.04.055, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Removes mark-selective regulations for the Columbia River chinook fishery downstream of the Warrior Rock boundary (near the mouth of the Lewis River) prior to the scheduled date of October 1. Mark-selective regulations were imposed to minimize take of Endan-

gered Species Act (ESA) listed lower Columbia River (LCR) wild chinook. ESA impacts on the LCR wild chinook have been tracking less than expected in this fishery. Record breaking abundance of upriver fall chinook returns to the Columbia River resulted in additional chinook available for harvest in non-Indian fisheries. This regulation is to provide opportunity to access these chinook, while remaining within ESA constraints. This regulation is consistent with compact action of September 12 and September 24, 2013. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, 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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

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 0, Amended 0, Repealed 0.

Date Adopted: September 25, 2013.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900N Freshwater exceptions to statewide rules—Columbia River and tributaries. Notwithstanding the provisions of WAC 232-28-619, effective immediately, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

1. Columbia River from a true north/south line through Buoy 10 to a projected line from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank:

(a) Effective immediately until further notice: Barbless hooks are required for salmon and steelhead.

(b) Effective September 26-30. Chinook minimum size 24-inches. Coho minimum size 16-inches. Daily limit 2 salmon or hatchery steelhead or 1 of each. Release all salmon except Chinook and hatchery coho

(c) October 1 through December 31, 2013: Minimum size 12-inches. Daily limit 6. Up to 2 may be adult salmon or hatchery steelhead, or 1 or each. Release all salmon except Chinook and hatchery coho.

2. Columbia River from a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank (Rocky Point/Tongue Point line) to Bonneville Dam:

(a) Effective immediately until further notice: Barbless hooks are required for salmon and steelhead.

(b) Effective immediately until further notice: Barbless hooks are required for cutthroat trout from the Rocky Point/Tongue Point line upstream to the I-5 Bridge.

(c) Effective September 26 through December 31, 2013: Daily limit 6. Up to 2 may be adult salmon or hatchery steelhead or 1 of each. Release all salmon other than Chinook and hatchery coho.

3. In the Columbia River from the Tongue Point/Rocky Point Line upstream to the Highway 395 Bridge near Pasco, Washington, effective immediately through December 31, 2013: Each (legal) angler aboard a vessel may continue to deploy angling gear until the daily limit of salmon/steelhead for all licensed anglers and juvenile anglers aboard is reached.

4. In the Columbia River from Bonneville Dam to Chief Joseph Dam effective immediately until further notice: barbless hooks required for salmon and steelhead.

(a) Open for salmon.

(b) Barbless hooks are required for salmon and steelhead.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900K Exceptions to statewide rules—
Columbia River and tributaries. (13-91)

WSR 13-20-049
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-255—Filed September 25, 2013, 2:40 p.m., effective September 26, 2013, 8:00 p.m.]

Effective Date of Rule: September 26, 2013, 8:00 p.m.

Purpose: The purpose of this rule making is to allow nontreaty commercial fishing opportunities in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000I; and amending WAC 220-33-010.

Statutory Authority for Adoption: RCW 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d

638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Sets two additional fishing periods for the 2013 fall season for non-Indian commercial fisheries in the mainstem Columbia River. Salmon remain available for harvest based on inseason and preseason forecasts. The 2013 fall chinook return to the Columbia River is forecasted to reach nearly 1.2 million fish. The seasons are consistent with the 2008-2017 interim management agreement and are expected to remain within ESA limits. The regulation is consistent with compact action of July 25, 2013, and September 24, 2013. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

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 0, Amended 0, Repealed 0.

Date Adopted: September 25, 2013.

Philip Anderson
Director

NEW SECTION

WAC 220-33-01000J Columbia River season below Bonneville. Notwithstanding the provisions of WAC 220-33-010 and WAC 220-33-020, it is unlawful for a person to take or possess salmon or sturgeon for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas (SMCRA) 1A, 1B, 1C, 1D, and 1E, except as provided below:

1. Mainstem Columbia River

a. SEASON: 8:00 PM September 26 to 6:00 AM September 27, 2013 and

8:00 PM September 29 to 6:00 AM September 30, 2013

b. AREA: SMCRA 1A, 1B, 1C, 1D, 1E (Zones 1-5).

c. GEAR: Drift gillnets only. 8-inch minimum mesh size. Nets not specifically authorized for use may be onboard the vessel if properly stored, consistent with WAC 220-33-001.

d. SANCTUARIES: Elokomin-B, Cowlitz River, Kalama-B, Lewis-B, Washougal River and Sandy River.

e. ALLOWABLE POSSESSION: Salmon and white sturgeon. A maximum of two white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). The Sturgeon landing limit is specific to the mainstem only.

2. Blind Slough/Knappa Slough Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights effective immediately through October 31. Open hours are 6 PM to 8 AM.

b. AREA: Blind Slough and Knappa Slough. An area closure of an approximately 100-foot radius at the mouth of Big Creek is in effect. Concurrent jurisdiction waters include all areas in Knappa Slough and downstream of the Railroad Bridge in Blind Slough.

c. GEAR: Gillnet. Monofilament gear is allowed. 9 3/4-inch maximum mesh size. Maximum net length of 100 fathoms. No weight restriction on lead line. Use of additional weights and/or anchors attached directly to the lead line is allowed.

3. Tongue Point/South Channel Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights effective immediately through October 31, 2013. Open 4 PM to 10 AM.

b. AREA: Tongue Point and South Channel. All waters are concurrent-jurisdiction waters.

c. GEAR: Gillnet. 6-inch maximum mesh. Maximum length of 250 fathoms.

(i) Tongue Point fishing area: Weight not to exceed two pounds on any one fathom. Fishers participating in the Tongue Point fishery may have onboard un-stored gillnets legal for the South Channel fishing area.

(ii) South Channel area: No weight restriction on lead line. Use of additional weights and/or anchors attached directly to the lead line is allowed.

4. Deep River Select Area.

a. SEASON: Open hours are 7 PM to 7 AM

(i) Sunday, Monday, Tuesday, Wednesday and Thursday nights effective immediately through September 27.

(ii) Monday, Tuesday, Wednesday and Thursday nights from September 30-October 11.

(iii) Monday October 14, and Thursday October 17, nights

b. AREA: The Deep River Select Area. Concurrent-jurisdiction waters extend downstream of the Highway 4 Bridge.

c. GEAR: Gillnet. Monofilament gear is allowed. 6-inch maximum mesh size. Net length, 100 fathoms maximum. No weight restriction on the lead line. Use of additional weights or anchors attached directly to the lead line is allowed. Nets may not be tied off to stationary structures.

(i) Nets may not fully cross the navigation channel. It is unlawful to operate in any river, stream or channel any gillnet gear longer than three-fourths the width of the river, stream, or channel.

(ii) "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of tide or the water level.

(iii) This emergency provision shall supersede the permanent regulation and all other regulations that conflict with it. All other provisions of the permanent regulation remain in effect (WAC 220-20-015(1)).

5. Additional regulations for all Select Area commercial fisheries:

a. Nets not specifically authorized for use may be onboard the vessel if properly stored, consistent with WAC 220-33-001.

b. ALLOWABLE POSSESSION: Salmon and white sturgeon. A maximum of two white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). Sturgeon landing limit specific to Select Areas only.

6. Quick Reporting: 24-hour quick-reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240. When quick-reporting is required, Columbia River reports must be submitted within 24 hours of the closure of each fishing period. This quick-reporting requirement applies to all seasons described above (Columbia River and Select Areas).

7. Miscellaneous: Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following section of the Washington Administrative Code is repealed 8:00 p.m. September 26, 2013:

WAC 220-33-01000I Columbia River season below Bonneville. (13-237)

WSR 13-20-050
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-253—Filed September 25, 2013, 2:41 p.m., effective September 25, 2013, 2:41 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-47-41100U.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The department needs to close the gillnet fishery in Area 12A. The fishery is not functioning as a coho directed fishery because there are more chum in the catches than coho, resulting in too many mortalities of Endangered Species Act listed summer chum.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, 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 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 1.

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 0, Amended 0, Repealed 0.

Date Adopted: September 25, 2013.

Philip Anderson
Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-47-41199U Gillnet—Open periods. (13-240)

Reviser's note: The section above appears as filed by the agency pursuant to RCW 34.08.040; however, the reference to WAC 220-47-41199U is probably intended to be WAC 220-47-41100U.

WSR 13-20-053
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-245—Filed September 25, 2013, 2:59 p.m., effective October 1, 2013, 12:01 a.m.]

Effective Date of Rule: October 1, 2013, 12:01 a.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-55-20000F, 220-55-22000G, 220-56-12400M, 220-56-12800M, 220-56-13600B, 220-56-19500A, 220-56-19500B and 220-56-50000C; and amending WAC 220-55-220 and 220-56-195.

Statutory Authority for Adoption: RCW 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans agreed to with resource comanagers at the North of Falcon proceedings. All of these rules are interim until permanent rules take effect.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, 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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 8.

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 0, Amended 0, Repealed 0.

Date Adopted: September 25, 2013.

Philip Anderson
Director

NEW SECTION

WAC 220-55-22000G Two-pole endorsement. Notwithstanding the provisions of WAC 220-55-220, effective October 1, 2013, until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

The use of two poles is allowed in the following waters:

- (1) Drano Lake (Skamania County).
- (2) Columbia River within Camas Slough.
- (3) Lewis River (Clark/Skamania County) from the mouth to mouth of the East Fork Lewis River.
- (4) North Fork Lewis River (Clark/Cowlitz County) from the mouth to Johnston Creek.
- (5) Naselle River (Pacific/Wahkiakum) from Highway 101 Bridge to Highway 401.
- (6) Okanogan River (Okanogan County) effective immediately through October 15.

The use of two poles is not allowed in the following waters:

- (1) Wind River (Skamania County).

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 220-56-19500B Closed areas—Saltwater salmon angling. Notwithstanding the provisions of WAC 220-56-195, effective October 1, 2013, until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

- (1) Port Angeles Harbor - Waters westerly of a line from the tip of Ediz Hook to the I.T.T. Rayonier Dock are closed to fishing for salmon immediately until further notice.
- (2) Kydaka Point - Waters south of a line from Kydaka Point to Shipwreck Point are closed to fishing for salmon immediately until further notice.

[REPEALER]

The following sections of the Washington Administrative Code are repealed effective October 1, 2013:

- WAC 220-55-22000F Two-pole endorsement. (13-170)
 WAC 220-56-19500A Closed areas saltwater salmon angling. (13-170)

The following sections of the Washington Administrative Code are repealed effective October 24, 2013:

- WAC 220-55-22000G Two-pole endorsement. (13-245)
 WAC 220-56-12400M Seasons and areas Hoodspout hatchery. (13-170)
 WAC 220-56-12800M Food fish fishing—Closed areas. (13-170)
 WAC 220-56-13600B Dash Point Dock public fishing pier. (13-170)
 WAC 220-56-19500B Closed areas saltwater salmon angling. (13-245)
 WAC 220-56-50000C Game fish seasons. (13-170)

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

WSR 13-20-055
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-246—Filed September 25, 2013, 4:04 p.m., effective October 1, 2013, 12:01 a.m.]

Effective Date of Rule: October 1, 2013, 12:01 a.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62100X and 232-28-62100Y; and amending WAC 232-28-621.

Statutory Authority for Adoption: RCW 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans agreed-to with resource comanagers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-to management plans, and are interim until permanent rules take effect.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, 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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

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 0, Amended 0, Repealed 0.

Date Adopted: September 25, 2013.

Philip Anderson
 Director

NEW SECTION

WAC 232-28-62100Y Puget Sound salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 232-28-621, effective October 1 until further notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

(1) **Catch Record Card Area 7:** Waters east of a line from Gooseberry Point to Sandy Point: Closed immediately through October 15.

(2) **Catch Record Card Area 7:** Release wild coho immediately until further notice.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. October 1, 2013:

WAC 232-28-62100X Puget Sound salmon—Saltwater seasons and daily limits. (13-201)

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. October 24, 2013:

WAC 232-28-62100Y Puget Sound salmon—Saltwater seasons and daily limits.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 13-20-058
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-250—Filed September 26, 2013, 10:43 a.m., effective October 1, 2013, 12:01 a.m.]

Effective Date of Rule: October 1, 2013, 12:01 a.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900C; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.04.020 and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The department is in the process of adopting permanent rules necessary to implement the personal use fishing plans agreed-to with resource comanagers at the North of Falcon proceedings. These rules are interim until permanent rules take effect.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, 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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

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 0, Amended 0, Repealed 0.

Date Adopted: September 26, 2013.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900C Freshwater exceptions to state-wide rules. Notwithstanding the provisions of WAC 232-28-619, effective October 1 until further notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

Humptulips River (Grays Harbor County), including all channels, sloughs, and interconnected waterways: From the mouth (Jessie Slough) to Highway 101 Bridge: Salmon: Chum retention permitted.

Bear River (Pacific County): From mouth (Highway 101 Bridge) to Lime Quarry Road: Anti-snagging rule, night closure, and barbless hooks required.

Chehalis River (Grays Harbor County), including all channels, sloughs, and interconnected waterways: From mouth to Porter Bridge: Salmon: Open: Daily limit 6; no more than 3 adults of which only 1 adult may be a Chinook and only 2 adults may be wild coho. From Porter Bridge to high bridge on Weyerhaeuser 1000 line approximately 400 yards downstream of Roger Creek: Salmon: Open: Daily limit 6; no more than 3 adults of which only 2 adults may be wild coho. Release chum and Chinook.

Naselle River (Pacific/Wahkiakum County): From Highway 101 Bridge to Highway 4 Bridge: Night closure, anti-snagging rule, and barbless hooks required. From Highway 101 Bridge to Highway 401: Anglers may fish with a Two-Pole Endorsement. From Highway 4 Bridge to the Crown Mainline (Salme) Bridge: Closed from upstream entrance of the hatchery attraction channel downstream 400 feet. Closed through October 15 from Highway 4 upstream to the full spanning concrete diversion structure at the Naselle Hatchery. Internal combustion motors prohibited.

North River (Grays Harbor/Pacific County): From Salmon Creek to Fall River: Night closure, anti-snagging rule, and single-point barbless hooks required.

Palix River, including all forks (Pacific County): From the Highway 101 Bridge to the mouth of the Middle Fork: Salmon: Open: Daily limit 6; no more than 2 adults of which only 1 adult may be a wild coho. Release chum and wild Chinook.

Satsop River and East Fork (Grays Harbor/Mason County): From the mouth to the dam: Salmon: Chum retention is permitted and release wild adult Chinook.

Willapa River, South Fork (Pacific County): From the mouth to the bridge on Pehl Road: Night closure, anti-snagging rule, and barbless hooks required.

Wishkah River (Grays Harbor County): From the mouth of the West Fork to 200 feet below the weir at the Wishkah Rearing Ponds: Closed from 150 feet upstream to 150 feet downstream of the Wishkah adult attraction channel/outfall structure (within the posted fishing boundary) except for anglers with disabilities who permanently use a wheelchair and have a designated harvester companion card.

Wynoochee River (Grays Harbor County): From the mouth to the WDFW White Bridge Access Site: Bait is permitted. Salmon: Chum retention is permitted.

Reviser's note: The spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. October 24, 2013:

WAC 232-28-61900C Exceptions to statewide rules.

WSR 13-20-059
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-247—Filed September 26, 2013, 12:36 p.m., effective September 26, 2013, 12:36 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To lift the burn ban on lands owned or controlled by the Washington department of fish and wildlife (WDFW).

Citation of Existing Rules Affected by this Order: Repealing WAC 232-13-07000B.

Statutory Authority for Adoption: RCW 77.12.210.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: WDFW finds that burning restrictions on department lands are no longer needed. The repeal of these restrictions allows the public to build lawful campfires to cook and warm themselves while engaging in recreational activities. The timing of this repeal action coincides with hunting season, during which many members of the public will be recreating on department lands.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, 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 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 1.

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 0, Amended 0, Repealed 0.

Date Adopted: September 25, 2013.

Philip Anderson
Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-13-07000B Fires and campfires.

WSR 13-20-061
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-257—Filed September 26, 2013, 3:02 p.m., effective October 1, 2013, 8:00 a.m.]

Effective Date of Rule: October 1, 2013, 8:00 a.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-33000L; and amending WAC 220-56-330.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: These rules reopen the recreational crab fishery in the specified marine areas and adjust the open days per week to allow for inclement winter weather. Available harvest shares allow the areas to be opened in this rule. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, 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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

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 0, Amended 0, Repealed 0.

Date Adopted: September 26, 2013.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-56-33000L Crab—Areas and seasons.

Notwithstanding the provisions of WAC 220-56-330, effective 8:00 a.m. October 1, 2013, through 5:00 p.m. December 31, 2013, a person may fish for crab for personal use seven days a week in Marine Areas 4 east of the Bonilla Tatoosh Line, 5, 6, 7, 8-1, 8-2, 9, 12 and 13.

REPEALER

The following section of the Washington Administrative Code is repealed effective 5:01 p.m. December 31, 2013:

WAC 220-56-33000L Crab—Areas and seasons.

**WSR 13-20-068
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 13-258—Filed September 27, 2013, 12:20 p.m., effective September 30, 2013, 6:00 a.m.]

Effective Date of Rule: September 30, 2013, 6:00 a.m.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes and federal law governing Washington's relationship with Oregon.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100S; and amending WAC 220-32-051.

Statutory Authority for Adoption: RCW 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency rule sets another weekly commercial gillnet fishing period for treaty Indian fisheries in the mainstem Columbia River. It also con-

tinues to allow the sales of fish caught in platform/hook-and-line fisheries in Zone 6 and the area immediately downstream of Bonneville Dam (consistent with MOUs/MOAs) and in Yakama Nation tributary fisheries, consistent with Yakama Nation regulations. Based on the in-season run size forecasts for chinook and steelhead, fish remain available for harvest. Harvest/ESA limits are expected to remain within the limits and guidelines of the 2008-2017 management agreement. The rule is consistent with action of the Columbia River compact on August 8 and September 26, 2013. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allow for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

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 0, Amended 0, Repealed 0.

Date Adopted: September 27, 2013.

Philip Anderson
Director

NEW SECTION

WAC 220-32-05100T Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052, WAC 220-32-055 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas (SMCRA) 1E, 1F, 1G, and 1H, and in the Klickitat River and Drano Lake, except as provided in the following subsections. However, individuals who possess treaty fishing rights under the Yakama, Warm Springs, Umatilla, or Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

(1) Mainstem Columbia River

(a) Open Area: SMCRA 1F, 1G, 1H (Zone 6)

(b) Season: 6:00 AM September 30 through 6:00 PM October 3, 2013:

(c) Gear: Gillnet. 8-inch minimum mesh restriction

(d) Allowable sales: salmon, steelhead, shad, yellow perch, bass, walleye, catfish, and carp. Sturgeon may not be sold. Sturgeon between 38-54 inches in fork length in the Bonneville Pool, and between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes. Sales of fish caught during the open period are allowed after the period concludes.

(e) Standard sanctuaries in effect for this gear type, except the Spring Creek Hatchery sanctuary is defined as those waters of the Columbia River within a radius of 150 feet of the Spring Creek Hatchery ladder.

(2) Mainstem Columbia River Platform and Hook and Line upstream of Bonneville Dam

(a) Open Area: SMCRA 1F, 1G, 1H (Zone 6)

(b) Season: Open until further notice.

(c) Gear: Hoop nets, dip nets, set bag nets, and rod and reel with hook and line.

(d) Allowable sale: salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool, and between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes.

(e) Standard sanctuaries in effect for this gear type.

(3) Mainstem Columbia River Platform and Hook and Line downstream of Bonneville Dam

(a) Open Area: SMCRA 1E. Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington Department of Fish and Wildlife regarding tribal fisheries in the area just downstream of Bonneville Dam. Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe.

(b) Participants: Tribal members may participate under the conditions described in the 2007 Memorandum of Agreement (MOA) with the Yakama Nation (YN), in the 2010 Memorandum of Understanding (MOU) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS), and in the 2011 MOU with the

Nez Perce Tribe. Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

(c) Season: Open until further notice.

(d) Gear: Hoop nets, dip nets, set bag nets and rod and reel with hook and line, or as defined by each tribe's MOU or MOA.

(e) Allowable sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon retention is prohibited; sturgeon may not be sold or retained for ceremonial or subsistence purposes. Sale of platform or hook-and-line-caught fish is allowed. Sales may not occur on USACE property.

(4) Yakama Nation Tributary Fisheries

(a) Open Area: Columbia River Tributaries upstream of Bonneville Dam.

(b) Season: Open until further notice, and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

(c) Area: Drano Lake and Klickitat River.

(d) Gear: Hoop nets, dip nets, set bag nets and rod and reel with hook and line. Gillnets may only be used in Drano Lake.

(e) Allowable Sales: Salmon, steelhead, shad, yellow perch, bass, walleye, catfish and carp which may be sold or retained for subsistence. Sturgeon may not be sold, but sturgeon from 38 to 54 inches fork length may be kept for subsistence purposes.

(5) 24-hour quick reporting is required for Washington wholesale dealers, as provided in WAC 220-69-240, for all areas.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. September 30, 2013

WAC 220-32-05100S Columbia River salmon seasons above Bonneville Dam. (13-238)

WSR 13-20-073**EMERGENCY RULES****DEPARTMENT OF****FISH AND WILDLIFE**

[Order 13-260—Filed September 27, 2013, 2:57 p.m., effective September 29, 2013, 5:00 a.m.]

Effective Date of Rule: September 29, 2013, 5:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-40100I; and amending WAC 220-47-401.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The Pacific Salmon Commission Fraser Panel has relinquished control of United States waters allowing an additional day of fishing in Areas 7 and 7A. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, 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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

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 0, Amended 0, Repealed 0.

Date Adopted: September 27, 2013.

Philip Anderson
Director

NEW SECTION

WAC 220-47-40100I Reef net open periods. Notwithstanding the provisions of chapter 220-47 WAC, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas 7 and 7A:

Reef Nets - Open to reef net gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
5:00 AM - 9:00 PM	9/29/13

(a) It is unlawful to retain sockeye, unmarked Chinook, unmarked coho, and chum.

(b) It is unlawful to retain marked Chinook unless the reef net operator is in immediate possession of a Puget Sound Reef Net Logbook. All retained marked Chinook must be recorded in the log book as required by WAC 220-47-401.

(c) It is unlawful to fish for salmon with reef net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in immediate possession of a department issued certification card.

REPEALER

The following section of the Washington Administrative Code is repealed effective 9:01 p.m. September 29, 2013:

WAC 220-47-40100I Reef net open periods.

**WSR 13-20-074
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 13-259—Filed September 27, 2013, 2:57 p.m., effective September 29, 2013, 8:00 p.m.]

Effective Date of Rule: September 29, 2013, 8:00 p.m.

Purpose: The purpose of this rule making is to allow nontreaty commercial fishing opportunities in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000J; and amending WAC 220-33-010.

Statutory Authority for Adoption: RCW 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Sets two series of fishing periods for the 2013 fall season for non-Indian commercial fisheries in the mainstem Columbia River. A series of fishing periods in Zones 4-5 provide opportunity to harvest surplus chinook destined for areas upstream of Bonneville Dam. A series of fishing periods in Zones 1-3 provide opportunity to harvest surplus hatchery coho, by implementing mark-selective regulations for coho. In an effort to minimize impacts to ESA-listed coho, regulations are in place that requires limited soak times, recovery boxes and use of tangle net gear. Salmon remain available for harvest based on current forecasts. The 2013 fall chinook return to the Columbia River is forecasted to reach nearly 1.2 million fish. The seasons are expected to remain within the ESA limits for non-Indian fisheries. The seasons are consistent with the 2008-2017 interim management agreement and are expected to remain within ESA limits. The regulation is consistent with compact action

of July 25, 2013, and September 26, 2013. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

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 0, Amended 0, Repealed 0.

Date Adopted: September 27, 2013.

Philip Anderson
Director

NEW SECTION

WAC 220-33-01000K Columbia River season below Bonneville. Notwithstanding the provisions of WAC 220-33-010 and WAC 220-33-020, it is unlawful for a person to take or possess salmon or sturgeon for commercial purposes from

Columbia River Salmon Management and Catch Reporting Areas (SMCRA) 1A, 1B, 1C, 1D, and 1E, except as provided below:

1. Mainstem Columbia River

a. SEASON: 8:00 PM September 29 to 6:00 AM September 30, 2013

b. AREA: SMCRA 1A, 1B, 1C, 1D, 1E (Zones 1-5).

c. GEAR: Drift gillnets only. 8-inch minimum mesh size. Nets not specifically authorized for use may be onboard the vessel if properly stored, consistent with WAC 220-33-001.

d. SANCTUARIES: Elokomina-B, Cowlitz River, Kalama-B, Lewis-B, Washougal River and Sandy River.

e. ALLOWABLE POSSESSION: Salmon and white sturgeon. A maximum of two white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). The Sturgeon landing limit is specific to the mainstem only.

2. Mainstem Columbia River

a. SEASON: Tuesday, Thursday and Sunday nights during October 1-16, 2013. Open hours are 8 PM to 6 AM.

b. AREA: SMCRA 1D, 1E (Zones 4-5) Lower deadline defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation Buoy #1 and continuing to the Washington shore.

c. GEAR: Drift gillnets only. 8-inch minimum mesh size. Nets not specifically authorized for use may be onboard the vessel if properly stored, consistent with WAC 220-33-001.

d. SANCTUARIES: Washougal River and Sandy River.

e. ALLOWABLE POSSESSION: Chinook, coho and pink salmon. White sturgeon and chum salmon may not be possessed or sold.

3. Mainstem Columbia River

a. SEASON: Daily Monday through Thursday during October 2-15, 2013. Open hours are 6 AM to 6 PM

b. AREA: SMCRA 1A, 1B, 1C (Zones 1-3) Upper deadline defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation Buoy #1 and continuing to the Washington shore.

c. SANCTUARIES: Elokomina-A, Cowlitz River, Kalama-A, Lewis-A

d. ALLOWABLE POSSESSION: Adipose-fin clipped coho; Chinook and pink salmon. White sturgeon and chum salmon may not be possessed or sold.

e. GEAR: Drift gillnets only. 3 3/4-inch maximum mesh size. Net length not to exceed 150 fathoms. Unslackened, single-wall, multi-filament floater nets only. Monofilament nets are not allowed. There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline. The use of slackers or stringers to slacken the net vertically is prohibited. Rip lines are allowed providing they do not vertically slacken the net

f. Mesh size is determined by placing three consecutive meshes under hand tension and the measurement is taken from the inside of one knot to the outside of the opposite knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact

g. Nets not specifically authorized for use may be onboard the vessel if properly stored, consistent with WAC 220-33-001.

h. ADDITIONAL REGULATIONS:

Soak times: defined as the time elapsed from when the first of the gillnet web is deployed into the water until the gillnet web is fully retrieved from the water, must not exceed 30 minutes.

Recovery Box: Each boat is required to have two operable recovery boxes or one box with two chambers, on board. Each chamber of the recovery box(es) must include an operating water pumping system capable of delivering a minimum flow of 16 gallons per minute, not to exceed 20 gallons per minute of freshwater per chamber. Each chamber of the recovery box must meet the following dimensions as measured from within the box: the inside length measurement must be at or within 39 1/2 inches to 48 inches; the inside width measurements must be at or within 8 to 10 inches; and the inside height measurement must be at or within 14 to 16 inches.

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or end wall of the chamber and 1 3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole that is at least 1 1/2 inches in diameter located on either the same or opposite end as the inlet. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber.

Each box and chamber and associated pump shall be operating during any time that the net is being retrieved or picked

All non-legal fish must be released immediately unharmed to the river or placed into an operating recovery box. All non-legal salmon and all steelhead that are bleeding, lethargic or appear lifeless must be placed in the recovery box prior to being released.

All fish placed in recovery boxes must be released to the river prior to landing or docking.

Live Capture workshop: Only licensed Columbia River commercial fishers that have completed the required state-sponsored workshop concerning live capture commercial fishing techniques may participate in this fishery. At least one fisher on each boat must have live capture certification

Observer program: As a condition of fishing, owners or operators of commercial fishing vessels must cooperate with department observers or observers collecting data for the department, when notified by the observer of his or her intent to board the commercial vessel for observation and sampling during an open fishery.

Red corks: A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks must be in color-contrast to the corks used in the remainder of the net.

4. Blind Slough/Knappa Slough Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights effective immediately through October 31. Open hours are 6 PM to 8 AM.

b. AREA: Blind Slough and Knappa Slough. An area closure of an approximately 100-foot radius at the mouth of Big

Creek is in effect. Concurrent jurisdiction waters include all areas in Knappa Slough and downstream of the Railroad Bridge in Blind Slough.

c. GEAR: Gillnet. Monofilament gear is allowed. 9 3/4-inch maximum mesh size. Maximum net length of 100 fathoms. No weight restriction on lead line. Use of additional weights and/or anchors attached directly to the lead line is allowed.

5. Tongue Point/South Channel Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights effective immediately through October 31, 2013. Open 4 PM to 10 AM.

b. AREA: Tongue Point and South Channel. All waters are concurrent-jurisdiction waters.

c. GEAR: Gillnet. 6-inch maximum mesh. Maximum length of 250 fathoms.

(i) Tongue Point fishing area: Weight not to exceed two pounds on any one fathom. Fishers participating in the Tongue Point fishery may have onboard un-stored gillnets legal for the South Channel fishing area.

(ii) South Channel area: No weight restriction on lead line. Use of additional weights and/or anchors attached directly to the lead line is allowed.

6. Deep River Select Area.

a. SEASON: Open hours are 7 PM to 7 AM Monday, Tuesday, Wednesday and Thursday nights from September 30-October 11 plus Monday night October 14 and Thursday night October 17

b. AREA: The Deep River Select Area. Concurrent-jurisdiction waters extend downstream of the Highway 4 Bridge.

c. GEAR: Gillnet. Monofilament gear is allowed. 6-inch maximum mesh size. Net length, 100 fathoms maximum. No weight restriction on the lead line. Use of additional weights or anchors attached directly to the lead line is allowed. Nets may not be tied off to stationary structures.

(i) Nets may not fully cross the navigation channel. It is unlawful to operate in any river, stream or channel any gillnet gear longer than three-fourths the width of the river, stream, or channel.

(ii) "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of tide or the water level.

(iii) This emergency provision shall supersede the permanent regulation and all other regulations that conflict with it. All other provisions of the permanent regulation remain in effect (WAC 220-20-015(1)).

7. Additional regulations for all Select Area commercial fisheries:

a. Nets not specifically authorized for use may be onboard the vessel if properly stored, consistent with WAC 220-33-001.

b. ALLOWABLE POSSESSION: Salmon and white sturgeon. A maximum of two white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). Sturgeon landing limit specific to Select Areas only. EXCEPT - Effective beginning September 30: chum salmon may not be possessed or sold

8. Quick Reporting: 24-hour quick-reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240. When quick-reporting is required, Columbia River

reports must be submitted within 24 hours of the closure of each fishing period. This quick-reporting requirement applies to all seasons described above (Columbia River and Select Areas).

9. Miscellaneous: Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following section of the Washington Administrative Code is repealed 8:00 p.m. September 29, 2013:

WAC 220-33-01000J Columbia River season below Bonneville. (13-255)

WSR 13-20-076 EMERGENCY RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed September 27, 2013, 6:14 p.m., effective September 30, 2013]

Effective Date of Rule: September 30, 2013.

Purpose: The department is amending and clarifying rules to revise the assessment process for allocating personal care hours as a result of the Washington State Supreme Court decision in *Samantha A. v. Department of Social and Health Services*. Additionally, the department is making changes based on an agreement with a child development expert from Oregon regarding the ages in WAC 388-106-0130.

The following changes are being made to WAC 388-106-0130:

- To make changes to how personal care services are calculated for children and to clarify the role that responsible adults are expected to play in the lives of children with disabilities.
- To replace irrefutable presumptions regarding age and informal supports with individual determinations of those facts guided by rebuttable presumptions.
- To incorporate changes in what the department considers to be age appropriate functioning for normally developing children, and to clarify language around those developmental milestones.
- To provide better notice to the public regarding the definition of informal supports by separately addressing the situation where the benefit of a personal care task is shared among members of a household, which is not a change in practice but pre-

viously had been subsumed within the broader concept of informal supports.

- To make changes to how living environment factors are considered in determining personal care services.
- To update outdated WAC references.
- To otherwise update and clarify elements of the CARE tool.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0010 and 388-106-0130.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The department is proceeding with the permanent rule process. A public hearing was held on September 24, 2013. This emergency is being requested so that the rule implementation coincides with the necessary enhancements to the department's assessment instrument (CARE) effective September 30, 2013. This CR-103E supercedes the CR-103E filed as WSR 13-14-006 on June 20, 2013.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at 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 0, Amended 2, Repealed 0.

Date Adopted: September 27, 2013.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 13-21 issue of the Register.

WSR 13-20-079
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)
[Filed September 30, 2013, 8:34 a.m., effective October 1, 2013]

Effective Date of Rule: October 1, 2013.

Purpose: The department is amending the following WACs to implement annual adjustments to standards for the Washington Basic Food program: WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits?, 388-450-0190 How does the department figure my shelter cost income deduction for Basic Food?, 388-450-0195 Does the department use my utility costs when calculating my Basic Food or WASHCAP benefits?, 388-478-0060 What are the income limits and maximum benefit amounts for Basic Food?, and 388-492-0070 How are my WASHCAP food benefits calculated?

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0185, 388-450-0190, 388-450-0195, 388-478-0060, and 388-492-0070.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120.

Other Authority: United States Department of Agriculture, Food and Nutrition Service (FNS), per supplemental nutrition assistance program (SNAP) Administrative Notice 13-26: SNAP - Fiscal Year (FY) 2014 Cost-of-Living Adjustments (COLAS) and ARRA Sunset Impact on Allotments dated August 2, 2013, and USDA SNAP 10-6-WA-SUA dated August 8, 2013, approving the proposed SUA.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The proposed amendments update Basic Food standards for federal FY 2014 in order to comply with requirements of the United States Department of Agriculture, FNS, per SNAP Administrative Notice 13-26: SNAP - FY 2014 COLAS and ARRA Sunset Impact on Allotments dated August 2, 2013, and USDA SNAP 10-6-WA-SUA dated August 8, 2013, approving the proposed SUA.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 5, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at 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 0, Amended 5, Repealed 0.

Date Adopted: September 23, 2013.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-24-018, filed 11/27/12, effective 12/28/12)

WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits? We determine if your assistance unit (AU) is eligible for Basic Food and calculate your monthly benefits according to requirements of the Food and Nutrition Act of 2008 and federal regulations related to the supplemental nutrition assistance program (SNAP).

These federal laws allow us to subtract only the following amounts from your AU's total monthly income to determine your countable monthly income under WAC 388-450-0162:

(1) A standard deduction based on the number of eligible people in your AU under WAC 388-408-0035:

Table with 2 columns: Eligible AU members, Standard deduction. Rows include 1, 2, 3, 4, 5, and 6 or more with corresponding deduction amounts like \$((149)) 152.

(2) Twenty percent of your AU's gross earned income (earned income deduction);

(3) Your AU's expected monthly dependent care expense needed for an AU member to:

- (a) Keep work, look for work, or accept work;
(b) Attend training or education to prepare for employment; or
(c) Meet employment and training requirements under chapter 388-444 WAC.

(4) Medical expenses over thirty-five dollars a month owed or anticipated by an elderly or disabled person in your AU as allowed under WAC 388-450-0200.

(5) A portion of your shelter costs as described in WAC 388-450-0190.

AMENDATORY SECTION (Amending WSR 13-11-103, filed 5/20/13, effective 6/20/13)

WAC 388-450-0190 How does the department figure my shelter cost income deduction for Basic Food? The department calculates your shelter cost income deduction as follows:

(1) First, we add up the amounts your assistance unit (AU) must pay each month for shelter. We do not count any overdue amounts, late fees, penalties or mortgage payments you make ahead of time as an allowable cost. We count the following expenses as an allowable shelter cost in the month the expense is due:

- (a) Monthly rent, lease, and mortgage payments;
- (b) Property taxes;
- (c) Homeowner's association or condo fees;
- (d) Homeowner's insurance for the building only;
- (e) Utility allowance your AU is eligible for under WAC 388-450-0195;

(f) Out-of-pocket repairs for the home if it was substantially damaged or destroyed due to a natural disaster such as a fire or flood;

(g) Expense of a temporarily unoccupied home because of employment, training away from the home, illness, or abandonment caused by a natural disaster or casualty loss if your:

- (i) AU intends to return to the home;
- (ii) AU has current occupants who are not claiming the shelter costs for Basic Food purposes; and
- (iii) AU's home is not being leased or rented during your AU's absence.

(2) Second, we subtract all deductions your AU is eligible for under WAC 388-450-0185 (1) through (4) from your AU's gross income. The result is your AU's ~~((net))~~ countable income.

(3) Finally, we subtract one-half of your AU's ~~((net))~~ countable income from your AU's total shelter costs. The result is your excess shelter costs. Your AU's shelter cost deduction is the excess shelter costs:

- (a) Up to a maximum of four hundred ~~((sixty-nine))~~ seventy-eight dollars if no one in your AU is elderly or disabled; or
- (b) The entire amount if an eligible person in your AU is elderly or disabled, even if the amount is over four hundred ~~((sixty-nine))~~ seventy-eight dollars.

AMENDATORY SECTION (Amending WSR 11-24-027, filed 12/1/11, effective 1/1/12)

WAC 388-450-0195 Does the department use my utility costs when calculating my Basic Food or WASH-CAP benefits? (1) We use a standard utility allowance (SUA) of ~~((three hundred ninety-four))~~ four hundred nine dollars instead of your actual utility costs when we determine your assistance unit's:

- (a) Monthly benefits under WAC 388-492-0070 if you receive WASHCAP; or
- (b) Shelter cost income deduction under WAC 388-450-0190 for Basic Food.

(2) We considered the average cost of the following utilities to determine the value of the SUA:

- (a) Heating and cooling fuel such as electricity, oil, or gas;
- (b) Electricity;
- (c) Water and sewer;
- (d) Well or septic tank installation/maintenance;
- (e) Garbage/trash collection; and
- (f) Telephone service.

(3) The department uses the SUA if you have utility costs separate from your rent or mortgage payment or if you receive a low income home energy assistance program (LIHEAP) benefit during the year.

AMENDATORY SECTION (Amending WSR 12-24-018, filed 11/27/12, effective 12/28/12)

WAC 388-478-0060 What are the income limits and maximum benefit amounts for Basic Food? If your assistance unit (AU) meets all other eligibility requirements for Basic Food, your AU must have income at or below the limits in column B and C to get Basic Food, unless you meet one of the exceptions listed below. The maximum monthly food assistance benefit your AU could receive is listed in column D.

EFFECTIVE ~~((10-1-2012))~~ 10-1-2013

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
1	\$(1,211) <u>1,245</u>	\$(931) <u>958</u>	\$200	\$(1,536) <u>1,580</u>
2	((1,640)) <u>1,681</u>	((1,261)) <u>1,293</u>	367	((2,081)) <u>2,133</u>
3	((2,069)) <u>2,116</u>	((1,591)) <u>1,628</u>	526	((2,625)) <u>2,686</u>
4	((2,498)) <u>2,552</u>	((1,921)) <u>1,963</u>	668	((3,170)) <u>3,239</u>
5	((2,927)) <u>2,987</u>	((2,251)) <u>2,298</u>	793	((3,714)) <u>3,791</u>
6	((3,356)) <u>3,423</u>	((2,581)) <u>2,633</u>	952	((4,259)) <u>4,344</u>
7	((3,785)) <u>3,858</u>	((2,911)) <u>2,968</u>	1,052	((4,803)) <u>4,897</u>

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
8	((4,214)) <u>4,294</u>	((3,241)) <u>3,303</u>	1,202	((5,348)) <u>5,450</u>
9	((4,643)) <u>4,730</u>	((3,571)) <u>3,638</u>	1,352	((5,893)) <u>6,003</u>
10	((5,072)) <u>5,166</u>	((3,901)) <u>3,973</u>	1,502	((6,438)) <u>6,556</u>
Each Additional Member	+((429)) <u>436</u>	+((330)) <u>335</u>	+150	+((545)) <u>553</u>

Exceptions:

(1) If your AU is categorically eligible as under WAC 388-414-0001, your AU does not have to meet the gross or net income standards in columns B and C. We do budget your AU's income to decide the amount of Basic Food your AU will receive.

(2) If your AU includes a member who is sixty years of age or older or has a disability, your income must be at or below the limit in column C only.

(3) If you are sixty years of age or older and cannot buy and cook your own meals because of a permanent disability, we will use column E to decide if you can be a separate AU.

(4) If your AU has zero income, your benefits are the maximum allotment in column D, based on the number of eligible members in your AU.

(a) Multiplying your net income by thirty percent and rounding up to the next whole dollar; and

(b) Subtracting the result from the maximum allotment under WAC 388-478-0060.

(c) If you are eligible for WASHCAP, you will get at least the minimum monthly benefit for Basic Food under WAC 388-412-0015.

WSR 13-20-080
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed September 30, 2013, 8:35 a.m., effective October 1, 2013]

Effective Date of Rule: October 1, 2013.

Purpose: Effective October 1, 2013, the department is amending rules in Title 388 WAC to remove medical references. 2E2SHB 1738, Laws of 2011, designated the health care authority (HCA) as the single state agency responsible for the administration and supervision of Washington's medical assistance programs. HCA is recodifying medical assistance program rules at Title 182 WAC, effective October 1, 2013. Accordingly, the department must eliminate corresponding rules under Title 388 WAC.

Citation of Existing Rules Affected by this Order: Amending WAC 388-406-0005, 388-406-0035, 388-406-0045, 388-406-0055, 388-418-0005, 388-424-0010, 388-436-0030, 388-450-0015, 388-450-0025, 388-450-0040, 388-450-0156, 388-450-0162, 388-450-0170, 388-472-0005, and 388-473-0010.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.500, 74.04.510, 74.08.090, and 74.080A-.120 [74.08A.120].

Other Authority: 2E2SHB 1738, chapter 15, Laws of 2011.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The amendments remove medical references in the WACs listed above. More specifically, 2E2SHB 1738, Laws of 2011, designated the HCA as the single state agency responsible for the administration and super-

AMENDATORY SECTION (Amending WSR 11-13-028, filed 6/7/11, effective 7/1/11)

WAC 388-492-0070 How are my WASHCAP food benefits calculated? We calculate your food benefits as follows:

(1) We begin with your gross income.

(2) We subtract the current standard deduction for one person under WAC 388-450-0185 from your gross income to get your countable income.

(3) We figure your shelter cost based on information we receive from the Social Security Administration (SSA), unless you report a change as described under WAC 388-492-0080. If you pay:

(a) Three hundred dollars or more a month for shelter, we use ~~((three hundred eighty))~~ four hundred dollars as your shelter cost; or

(b) Less than three hundred dollars for shelter, we use ~~((one hundred ninety five))~~ two hundred and ten dollars as your shelter cost; and

(c) We add the current standard utility allowance under WAC 388-450-0195 to determine your total shelter cost.

(4) We figure your shelter deduction by subtracting one half of your countable income from your shelter cost.

(5) We figure your net income by subtracting your shelter deduction from your countable income and rounding the resulting figure up from fifty cents and down from forty-nine cents to the nearest whole dollar.

(6) We figure your WASHCAP food benefits (allotment) by:

vision of Washington's medical assistance programs. DSHS has been working with HCA to repeal medical assistance program rules under Title 388 WAC in support of HCA's efforts to recodify medical assistance program rules under Title 182 WAC. HCA is recodifying medical assistance program rules at Title 182 WAC, effective October 1, 2013. Accordingly, the department must eliminate corresponding rules under Title 388 WAC.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 15, Repealed 0.

Number of Sections Adopted at 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 0, Amended 15, Repealed 0.

Date Adopted: September 19, 2013.

Katherine I. Vasquez
DSHS

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 13-21 issue of the Register.

WSR 13-20-085

EMERGENCY RULES

HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed September 30, 2013, 11:05 a.m., effective October 1, 2013]

Effective Date of Rule: October 1, 2013.

Purpose: The health care authority (HCA) needs to amend rules, create new rules in order to implement new federal regulations under the federal Patient Protection and Affordable Care Act. This filing is to correctly reference rules that are final October 2013 in the long-term care medical rule.

Citation of Existing Rules Affected by this Order: Amending WAC 182-507-0125, 182-513-1301, 182-513-1305, 182-513-1315, 182-513-1325, 182-513-1330, 182-513-1340, 182-513-1345, 182-513-1350, 182-513-1363, 182-513-1364, 182-513-1365, 182-513-1366, 182-513-1367, 182-513-1380, 182-513-1395, 182-513-1400, 182-513-1405, 182-513-1415, 182-513-1425, 182-513-1430, 182-513-1450, 182-513-1455, 182-515-1500, 182-515-1506, 182-515-1507, 182-515-1508, 182-515-1509, 182-515-1510, 182-515-1511, 182-515-1512, 182-515-1513, 182-515-1514, 182-516-0001, 182-516-0100, 182-516-0200, 182-516-0201, and 182-516-0300.

Statutory Authority for Adoption: RCW 41.05.021, chapter 74.39 RCW.

Other Authority: Patient Protection and Affordable Care Act established under Public Law 111-148; and Code of Federal Regulations at 42 C.F.R. § 431, 435, and 457, and at 45 C.F.R. § 155. Section 1917 of the Social Security Act.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Over the last year the agency has been working diligently with client advocates and other stakeholders in crafting the new rules to implement the provisions of the Affordable Care Act, including the expansion of medicaid. Although the permanent rule-making process is nearing completion, the permanent rules will not be effective by the October 1, 2013, deadline due in part to the anticipated receipt of final federal rules governing this process. Hence the need for the emergency adoption of these rules, while the permanent rule-making process is completed.

Number of Sections Adopted in Order to Comply with Federal Statute: New 38, 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 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 38, Amended 0, Repealed 0.

Date Adopted: September 30, 2013.

Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

WAC 182-507-0125 State-funded long-term care services program. (1) The state-funded long-term care services program is subject to caseload limits determined by legislative funding. Services cannot be authorized for eligible persons prior to a determination by the aging and ~~((disability services))~~ long-term supports administration ~~((ADSA))~~ (AL TSA) that caseload limits will not be exceeded as a result of the authorization.

(2) Long-term care services are defined in this section as services provided in one of the following settings:

- (a) In a person's own home, as described in WAC 388-106-0010;
- (b) Nursing facility, as defined in WAC 388-97-0001;
- (c) Adult family home, as defined in RCW 70.128.010;

(d) Assisted living facility, as described in WAC (~~(388-513-1304)~~) 182-513-1301;

(e) Enhanced adult residential care facility, as described in WAC (~~(388-513-1304)~~) 182-513-1301;

(f) Adult residential care facility, as described in WAC (~~(388-513-1304)~~) 182-513-1301.

(3) Long-term care services will be provided in one of the facilities listed in subsection (2)(b) through (f) of this section unless nursing facility care is required to sustain life.

(4) To be eligible for the state-funded long-term care services program described in this section, an adult nineteen years of age or older must meet all of the following conditions:

(a) Meet the general eligibility requirements for medical programs described in WAC (~~(388-503-0505)~~) 182-503-0505 (2) and (3)(a), (b), (e), and (f);

(b) Reside in one of the settings described in subsection (2) of this section;

(c) Attain institutional status as described in WAC (~~(388-513-1320)~~) 182-513-1320;

(d) Meet the functional eligibility described in WAC 388-106-0355 for nursing facility level of care;

(e) Not have a penalty period due to a transfer of assets as described in WAC (~~(388-513-1363, 388-513-1364, 388-513-1365, and 388-513-1366)~~) 182-513-1363, 182-513-1364, or 182-513-1365;

(f) Not have equity interest in a primary residence more than the amount described in WAC (~~(388-513-1350 (7)(a)(ii))~~) 182-513-1350; and

(g) Any annuities owned by the adult or spouse must meet the requirements described in chapter (~~(388-564)~~) 182-516 WAC.

(5) An adult who is related to the supplemental security income (SSI) program as described in WAC (~~(388-475-0050)~~) 182-512-0050 (1), (2), and (3) must meet the financial requirements described in WAC (~~(388-513-1325, 388-513-1330, and 388-513-1350)~~) 182-513-1315.

(6) An adult who does not meet the SSI-related criteria in subsection (2) of this section may be eligible under the family institutional medical program rules described in WAC (~~(388-505-0250 or 388-505-0255)~~) 182-514-0230.

(7) An adult who is not eligible for the state-funded long-term care services program under categorically needy (CN) rules may qualify under medically needy (MN) rules described in:

(a) WAC (~~(388-513-1395)~~) 182-513-1395 for adults related to SSI; or

(b) WAC (~~(388-505-0255)~~) 182-514-0255 for adults up to age twenty-one related to family institutional medical.

(8) All adults qualifying for the state-funded long-term care services program will receive CN scope of medical coverage described in WAC (~~(388-501-0060)~~) 182-500-0020.

(9) The department determines how much an individual is required to pay toward the cost of care using the following rules:

(a) For an SSI-related individual residing in a nursing home, see rules described in WAC (~~(388-513-1380)~~) 182-513-1380.

(b) For an SSI-related individual residing in one of the other settings described in subsection (2) of this section, see rules described in WAC (~~(388-515-1505)~~) 182-515-1505.

(c) For an individual eligible under the family institutional program, see WAC (~~(388-505-0265)~~) 182-514-0265.

(10) A person is not eligible for state-funded long-term care services if that person entered the state specifically to obtain medical care.

(11) A person eligible for the state-funded long-term care services program is certified for a twelve month period.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1301 Definitions related to long-term care (LTC) services. This section defines the meaning of certain terms used in chapters (~~(388-513)~~) 182-513 and (~~(388-515)~~) 182-515 WAC. Within these chapters, institutional, waiver, and hospice services are referred to collectively as LTC services. Other terms related to LTC services that also apply to other programs are found in the sections in which they are used.

Additional medical definitions that are not specific to LTC services can be found in WAC 182-500-0005 through 182-500-0110 Medical definitions.

Definitions of terms used in certain rules that regulate LTC programs are as follows:

"Adequate consideration" means the reasonable value of the goods or services received in exchange for transferred property approximates the reasonable value of the property transferred.

"Alternate living facility (ALF)" means one of the following community residential facilities that are contracted with the department to provide certain services:

(1) Adult family home (AFH), a licensed family home that provides its residents with personal care and board and room for two to six adults unrelated to the person(s) providing the care. Licensed as an adult family home under chapter 70.128 RCW.

(2) Adult residential care facility (ARC) (formerly known as a CCF) is a licensed facility that provides its residents with shelter, food, household maintenance, personal care and supervision. Licensed as an assisted living under chapter 18.20 RCW.

(3) Adult residential rehabilitation center (ARRC) described in WAC 388-865-0235 or adult residential treatment facility (ARTF) described in WAC 388-865-0465 are licensed facilities that provides their residents with twenty-four hour residential care for impairments related to mental illness.

(4) Assisted living facility (AL), a licensed facility for aged and disabled low-income persons with functional disabilities. COPEs eligible clients are often placed in assisted living. Licensed as an assisted living facility under chapter 18.20 RCW.

(5) (~~(Division of)~~) Developmental disabilities ((~~DDD~~) administration (DDA) group home (GH), a licensed facility that provides its residents with twenty-four hour supervision. Depending on the size, a (~~(~~DDD~~)~~) DDA group home may be licensed as an adult family home under chapter 70.128 RCW

or an assisted living facility under chapter 18.20 RCW. Group homes provide community residential instruction, supports, and services to two or more clients who are unrelated to the provider.

(6) Enhanced adult residential care facility (EARC), a licensed facility that provides its residents with those services provided in an ARC, in addition to those required because of the client's special needs. Licensed as an assisted living facility under chapter 18.20 RCW.

"Authorization date" means the date payment begins for long-term care services described in WAC 388-106-0045.

"CARE assessment" means the evaluation process defined in chapter 388-106 WAC used by a department designated social services worker or a case manager to determine the client's need for long-term care services.

"Clothing and personal incidentals (CPI)" means the cash payment issued by the department for clothing and personal items for individuals living in an ALF described in WAC ((388-478-0045)) 182-515-1500 or medical institution described in WAC ((388-478-0040)) 182-513-1300.

"Community options program entry system (COPEs)" means a medicaid waiver program described in chapter 388-106 WAC that provides an aged or disabled person assessed as needing nursing facility care with the option to remain at home or in an alternate living facility (ALF).

"Community spouse (CS)" means a person who:

- (1) Does not reside in a medical institution; and
- (2) Is legally married to a client who resides in a medical institution or receives services from a home and community-based (HCB) waiver program. A person is considered married if not divorced, even when physically or legally separated from his or her spouse.

"Community spouse excess shelter" means the excess shelter standard is used to calculate whether a community spouse qualifies for the community spouse maintenance allowance because of high shelter costs. The federal maximum standard that is used to calculate the amount is found at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

"Community spouse income and family allocation" means:

(1) The community spouse income standard is used when there is a community spouse. It is used when determining the total allocation for the community spouse from the institutional spouse's income.

(2) The family allocation income standard is used when a dependent resides with the community spouse. This amount is deducted from an institutional spouse's payment for their cost of care to help support the dependent. The federal maximum standard that is used to calculate the amount can be found at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

"Community spouse maintenance allocation" means an amount deducted from an institutional spouse's payment toward their cost of care in order for the community spouse to have enough income to pay their shelter costs. This is a combination of the community spouse income allocation and the community spouse excess shelter calculation. The federal maximum standard that is used to calculate the amount can be found at:

"Community spouse resource allocation (CSRA)" means the resource amount the community spouse is allowed. A community spouse resource evaluation is completed to determine if the standard is more than the state standard up to the federal community spouse transfer maximum standard.

"Community spouse resource evaluation" means a review of the couple owned at the start of the current period of institutional status. This review may result in a resource standard for the community spouse that is higher than the state standard.

"Community spouse transfer maximum" means the federal maximum standard that is used to determine the community spouse resource allocation (CSRA). This standard is found at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

"((DDD)) DDA waiver" means medicaid waiver programs described in chapter 388-845 WAC that provide home and community-based services as an alternative to an intermediate care facility for the intellectually disabled (ICF-ID) to persons determined eligible for services from ((DDD)) DDA.

"Dependent" means an individual who is financially dependent upon another for his well being as defined by financial responsibility regulations for the program. For the purposes of long-term care, rules allow allocation in post eligibility to a dependent. If the dependent is eighteen years or older and being claimed as a dependent for income tax purposes, a dependent allocation can be considered. This can include an adult child, a dependent parent or a dependent sibling.

"Equity" means the equity of real or personal property is the fair market value (see definition below) less any encumbrances (mortgages, liens, or judgments) on the property.

"Exception to rule (ETR)" means a waiver by the secretary's designee to a department policy for a specific client experiencing an undue hardship because of the policy. The waiver may not be contrary to law.

"Fair market value (FMV)" means the price an asset may reasonably be expected to sell for on the open market at the time of transfer or assignment.

"Federal benefit rate (FBR)" means the basic benefit amount the Social Security administration (SSA) pays to clients who are eligible for the supplemental security income (SSI) program.

"Home and community based services" (HCBS) means services provided in the home or a residential setting to individuals assessed by the department.

"Home and community based (HCB) waiver programs" means section 1915(c) of the Social Security Act enables states to request a waiver of applicable federal medicaid requirements to provide enhanced community support services to those medicaid beneficiaries who would otherwise require the level of care provided in a hospital, nursing facility or intermediate care facility for the intellectually disabled (ICF-ID).

"Initial eligibility" means part one of institutional medical eligibility for long-term care services. Once resource and general eligibility is met, the gross nonexcluded income is

compared to three hundred percent of the federal benefit rate (FBR) for a determination of CN or MN coverage.

"Institutional services" means services paid for by medicaid or state funds and provided in a medical institution, through a home and community based (HCB) waiver or program of all-inclusive care for the elderly (PACE).

"Institutional status" means what is described in WAC ((~~388-513-1320~~)) 182-513-1320.

"Institutionalized client" means a client who has attained institutional status as described in WAC ((~~388-513-1320~~)) 182-513-1320.

"Institutionalized spouse" means legally married person who has attained institutional status as described in chapter ((~~388-513~~)) 182-513 WAC, and receives services in a medical institution or from a home and community based waiver program described in chapters ((~~388-513~~)) 182-513 and ((~~388-515~~)) 182-515 WAC. A person is considered married if not divorced, even when physically or legally separated from his or her spouse.

"Legally married" means persons legally married to each other under provision of Washington state law. Washington recognizes other states' legal and common-law marriages. Persons are considered married if they are not divorced, even when they are physically or legally separated.

"Likely to reside" means a determination by the department that a client is reasonably expected to remain in a medical institution for thirty consecutive days. Once made, the determination stands, even if the client does not actually remain in the facility for that length of time.

"Look-back period" means the number of months prior to the month of application for LTC services that the department will consider for transfer of assets.

"Maintenance needs amount" means a monthly income amount a client keeps as a personal needs allowance or that is allocated to a spouse or dependent family member who lives in the client's home. (See community spouse maintenance allocation and community spouse income and family allocation.)

"Medicaid personal care (MPC)" means a medicaid state plan program authorized under RCW 74.09.520. Clients eligible for this program may receive personal care in their own home or in a residential facility. Financial eligibility is based on a client receiving a noninstitutional categorically needy (CN) medical program.

"Noninstitutional medical assistance" means any medical benefits or programs not authorized under chapter ((~~388-513~~)) 182-513 or ((~~388-515~~)) 182-515 WAC. The exception is WAC ((~~388-513-1305~~)) 182-513-1305 noninstitutional SSI-related clients living in an ALF.

"Participation" means the amount a client is responsible to pay each month toward the total cost of care they receive each month. It is the amount remaining after subtracting allowable deductions and allocations from available monthly income. Individuals receiving services in an ALF pay room and board in addition to calculated participation. Participation is the result of the post-eligibility process used in institutional and HCB waiver eligibility.

"Penalty period" means a period of time for which a client is not eligible to receive LTC services due to asset transfers.

"Personal needs allowance (PNA)" means a standard allowance for clothing and other personal needs for long-term care clients who live in a medical institution or alternate living facility, or at home.

"Short stay" means a person who has entered a medical institution but is not likely to remain institutionalized for thirty consecutive days.

"Special income level (SIL)" means the monthly income standard for the categorically needy (CN) program that is three hundred percent of the SSI federal benefit rate (FBR).

"Spousal impoverishment" means financial provisions to protect income and assets of the noninstitutional (community spouse) through income and resource allowances. The spousal allocation process is used to discourage the impoverishment of a spouse due to the need for LTC services by their husband or wife. That law and those that have extended and/or amended it are referred to as spousal impoverishment legislation. (Section 1924 of the Social Security Act.)

"State spousal resource standard" means minimum resource standard allowed for a community spouse. (See community spouse resource transfer maximum.)

"Swing bed" means a bed in a critical access hospital that is contracted to be used as either a hospital or a nursing facility bed based on the need of the individual.

"Third party resource (TPR)" means a resource where the purpose of the payment is for payment of assistance of daily living or medical services or personal care. Third party resources are described in WAC 182-501-0200. The department is considered the payer of last resort as described in WAC 182-502-0100.

"Transfer of a resource or asset" means changing ownership or title of an asset such as income, real property, or personal property by one of the following:

- (1) An intentional act that changes ownership or title; or
- (2) A failure to act that results in a change of ownership or title.

"Transfer date for real property or interest in real property" means:

- (1) The date of transfer for real property is the day the deed is signed by the grantor if the deed is recorded; or
- (2) The date of transfer for real property is the day the signed deed is delivered to the grantee.

"Transfer month" means the calendar month in which resources were legally transferred.

"Uncompensated value" means the fair market value (FMV) of an asset at the time of transfer minus the value of compensation the person receives in exchange for the asset.

"Undue hardship" means the person is not able to meet shelter, food, clothing, or health needs. Clients who are denied or terminated from LTC services due to a transfer of asset penalty or having excess home equity may apply for an undue hardship waiver based on criteria described in WAC ((~~388-513-1367~~)) 182-513-1367.

"Value of compensation received" means the consideration the purchaser pays or agrees to pay. Compensation includes:

- (1) All money, real or personal property, food, shelter, or services the person receives under a legally enforceable purchase agreement whereby the person transfers the asset; and

(2) The payment or assumption of a legal debt the seller owes in exchange for the asset.

"Veterans benefits" means different types of benefits paid by the federal Department of Veterans Affairs (VA). Some may include additional allowances for:

(1) Aid and attendance for an individual needing regular help from another person with activities of daily living;

(2) "Housebound" for an individual who, when without assistance from another person, is confined to the home;

(3) Improved pension, the newest type of VA disability pension, available to veterans and their survivors whose income from other sources (including service connected disability) is below the improved pension amount;

(4) Unusual medical expenses (UME), determined by the VA based on the amount of unreimbursed medical expenses reported by the person who receives a needs-based benefit. The VA can use UME to reduce countable income to allow the person to receive a higher monthly VA payment, a one-time adjustment payment, or both;

(5) Dependent allowance veteran's payments made to, or on behalf of, spouses of veterans or children regardless of their ages or marital status. Any portion of a veteran's payment that is designated as the dependent's income is countable income to the dependent; or

(6) Special monthly compensation (SMC). Extra benefit paid to a veteran in addition to the regular disability compensation to a veteran who, as a result of military service, incurred the loss or loss of use of specific organs or extremities.

"Waiver programs/services" means programs for which the federal government authorizes exceptions to federal medicaid rules. Such programs provide to an eligible client a variety of services not normally covered under medicaid. In Washington state, home and community based (HCB) waiver programs are authorized by the ~~((division of))~~ developmental disabilities ~~((DDD))~~ administration (DDA), or home and community services (HCS).

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1305 Determining eligibility for non-institutional medical assistance in an alternate living facility (ALF). This section describes how the department defines the monthly income standard and uses it to determine eligibility for noninstitutional medical assistance for a client who lives in a department-contracted ALF. Refer to WAC ~~((388-478-0045))~~ 182-515-1500 for the personal needs allowance (PNA) amount that applies in this rule.

(1) The eligibility criteria for noninstitutional medical assistance in an ALF follows SSI-related medical rule described in WAC 182-512-0050 through 182-512-0960 with the exception of the higher medical standard based on the daily rate described in subsection (3) of this section.

(2) Alternate living facilities ~~((AFH)-(ALF))~~ (ALF) include the following:

(a) An adult family home (AFH), a licensed family home that provides its residents with personal care and board and room for two to six adults unrelated to the person(s) provid-

ing the care. Licensed as an adult family home under chapters 70.128 RCW and 388-76 WAC;

(b) An adult residential care facility (ARC) (formally known as a CCF) is a licensed facility that provides its residents with shelter, food, household maintenance, personal care and supervision. Licensed as an assisted living facility under chapters 18.20 RCW and 388-78A WAC;

(c) An adult residential rehabilitation center (ARRC) described in WAC 388-865-0235 or adult residential treatment facility (ARTF) described in WAC 388-865-0465. These are licensed facilities that provide its residents with twenty-four hour residential care for impairments related to mental illness;

(d) Assisted living facility (AL), a licensed facility for aged and disabled low-income persons with functional disabilities. COPEL eligible clients are often placed in assisted living. Licensed as an assisted living facility under chapters 18.20 RCW and 388-78A WAC;

(e) ~~((Division of))~~ Developmental disabilities ((DDD)) administration (DDA) group home (GH), a licensed facility that provides its residents with twenty-four hour supervision. Depending on size of a ~~((DDD))~~ DDA group home may be licensed as an adult family home under chapter 70.128 RCW or a boarding home under chapter 18.20 RCW. Group home means a residence that is licensed as either an assisted living facility or an adult family home by the department under chapters 388-78A or 388-76 WAC. Group homes provide community residential instruction, supports, and services to two or more clients who are unrelated to the provider; and

(f) Enhanced adult residential care facility (EARC), a licensed facility that provides its residents with those services provided in an ARC, in addition to those required because of the client's special needs. Licensed as an assisted living facility under chapter 18.20 RCW.

(3) The monthly income standard for noninstitutional medical assistance under the categorically needy (CN) program has two steps:

(a) The gross nonexcluded monthly income cannot exceed the special income level (SIL) which is three hundred percent of the federal benefit rate (FBR); and

(b) The countable income cannot be greater than the department contracted daily rate times thirty-one days, plus the thirty-eight dollars and eighty-four cents PNA/CPI described in WAC ~~((388-478-0045))~~ 182-513-1300.

(4) The monthly income standard for noninstitutional medical assistance under the medically needy (MN) program equals the private facility daily rate times thirty one days, plus the thirty-eight dollars and eight-four cents PNA/CPI described in WAC ~~((388-478-0045))~~ 182-513-1300. Follow MN rules described in chapter 182-519 WAC.

(5) The department approves CN noninstitutional medical assistance for a period of up to twelve months for a client who is SSI-related as described in WAC 182-512-0050, if:

(a) The client's nonexcluded resources do not exceed the standard described in WAC ~~((388-513-1350))~~ 182-513-1350(1); and

(b) The client's nonexcluded income does not exceed the CN standard described in subsection (3) of this section. SSI-related program as described in chapter 182-512 WAC.

(6) The department approves MN noninstitutional medical assistance for a period of months described in chapter 182-504 WAC for an SSI-related client, if:

(a) The client's nonexcluded resources do not exceed the standard described in WAC ~~((388-513-1350))~~ 182-513-1350(1); and

(b) The client satisfies any spenddown liability as described in chapter 182-519 WAC.

(7) The department determines eligibility for a cash grant for individuals residing in an alternate living facility using the following program rules:

(a) WAC 388-400-0005 temporary assistance for needy families (TANF);

(b) WAC 388-400-0060 aged, blind, disabled (ABD) cash benefit;

(c) WAC 388-400-0030 refugee assistance.

(8) The client described in subsection (7) residing in an adult family home (AFH) receives a grant based on a payment standard described in WAC 388-478-0033 due to an obligation to pay shelter costs to the adult family home. The client keeps a CPI/PNA in the amount of thirty-eight dollars and eighty-four cents described in WAC ~~((388-478-0045))~~ 182-515-1500 and pays the remainder of the grant to the adult family home as room and board.

(9) The client described in subsection (7) residing in an ALF described in subsection ~~((s))~~ (2)(b), (c), (d), (e), (f) or (g) (all ~~((nonadult family home))~~ residential settings other than an adult family home) keeps the thirty-eight dollars and eighty-four cents CPI amount based on WAC ~~((388-478-0045))~~ 182-515-1500.

(10) The client described in subsection (3) of this section and receiving medicaid personal care (MPC) from the department keeps sixty-two dollars and seventy-nine cents as a PNA and pays the remainder of their income to the ALF for room and board and personal care.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1315 Eligibility for long-term care (institutional, waiver, and hospice) services. This section describes how the department determines a client's eligibility for medical for clients residing in a medical institution, on a waiver, or receiving hospice services under the categorically needy (CN) or medically needy (MN) programs. Also described are the eligibility requirements for these services under the aged, blind, or disabled (ABD) cash assistance, medical care services (MCS) and the state funded long-term care services program described in subsection (11).

(1) To be eligible for long-term care (LTC) services described in this section, a client must:

(a) Meet the general eligibility requirements for medical programs described in WAC 182-503-0505 ~~((2) and (3)(a) through (g))~~;

(b) Attain institutional status as described in WAC ~~((388-513-1320))~~ 182-513-1320;

(c) Meet functional eligibility described in chapter 388-106 WAC for home and community services (HCS) waiver and nursing facility coverage; or

(d) Meet criteria for ~~((division of))~~ developmental disabilities ~~((DDD))~~ administration (DDA) assessment under chapter 388-828 WAC for ~~((DDD))~~ DDA waiver or institutional services;

(e) Not have a penalty period of ineligibility as described in WAC ~~((388-513-1363, 388-513-1364, or 388-513-1365))~~ 182-513-1363, 182-513-1364, or 182-513-1365;

(f) Not have equity interest in their primary residence greater than the home equity standard described in WAC ~~((388-513-1350))~~ 182-513-1350; and

(g) Must disclose to the state any interest the applicant or spouse has in an annuity and meet annuity requirements described in chapter ~~((388-564))~~ 182-516 WAC:

(i) This is required for all institutional or waiver services and includes those individuals receiving supplemental security income (SSI).

(ii) A signed and completed eligibility review for long term care benefits or application for benefits form can be accepted for SSI individuals applying for long-term care services.

(2) To be eligible for institutional, waiver, or hospice services under the CN program, a client must either:

(a) Be related to the supplemental security income (SSI) program as described in WAC 182-512-0050 (1), (2) and (3) and meet the following financial requirements, by having:

(i) Gross nonexcluded income described in subsection (8)(a) of this section that does not exceed the special income level (SIL) (three hundred percent of the federal benefit rate (FBR)); and

(ii) Countable resources described in subsection (7) of this section that do not exceed the resource standard described in WAC ~~((388-513-1350))~~ 182-513-1350; or

(b) Be approved and receiving aged, blind, or disabled cash assistance described in WAC 388-400-0060 and meet citizenship requirements for federally funded medicaid described in WAC ~~((388-424-0010))~~ 182-503-0530; or

(c) Be eligible for CN apple health for kids described in WAC 182-505-0210; or CN family medical described in WAC 182-505-0240; or family and children's institutional medical described in WAC 182-514-0230 through 182-514-0260. Clients not meeting the citizenship requirements for federally funded medicaid described in WAC ~~((388-424-0010))~~ 182-503-0530 are not eligible to receive waiver services. Nursing facility services for noncitizen children require prior approval by aging and ~~((disability services))~~ long-term support administration ((ADSA)) (ALISA) under the state funded nursing facility program described in WAC 182-507-0125 ~~((or~~

~~((d) Be eligible for the temporary assistance for needy families (TANF) program as described in WAC 388-400-0005. Clients not meeting disability or blind criteria described in WAC 182-512-0050 are not eligible for waiver services))~~.

(3) The department allows a client to reduce countable resources in excess of the standard. This is described in WAC ~~((388-513-1350))~~ 182-513-1350.

(4) To be eligible for waiver services, a client must meet the program requirements described in:

(a) WAC ~~((388-515-1505))~~ 182-515-1505 through ~~((388-515-1509))~~ 182-515-1509 for COPEs, New Freedom, PACE, and WMIP services; or

(b) WAC ~~((388-515-1510))~~ 182-515-1510 through ~~((388-515-1514))~~ 182-515-1514 for ~~((DD))~~ DDA waivers.

(5) To be eligible for hospice services under the CN program, a client must:

(a) Meet the program requirements described in chapter 182-551 WAC; and

(b) Be eligible for a noninstitutional categorically needy program (CN) if not residing in a medical institution thirty days or more; or

(c) Reside at home and benefit by using home and community based waiver rules described in WAC ~~((388-515-1505))~~ 182-515-1505 through ~~((388-515-1509))~~ 182-515-1509 (SSI-related clients with income over the effective one-person MNIL and gross income at or below the 300 percent of the FBR or clients with a community spouse); or

(d) Receive home and community waiver (HCS) or ~~((DD))~~ DDA waiver services in addition to hospice services. The client's responsibility to pay toward the cost of care (participation) is applied to the waiver service provider first; or

(e) Be eligible for institutional CN if residing in a medical institution thirty days or more.

(6) To be eligible for institutional or hospice services under the MN program, a client must be:

(a) Eligible for MN children's medical program described in WAC 182-514-0230, 182-514-0255, or 182-514-0260; or

(b) Related to the SSI-program as described in WAC 182-512-0050 and meet all requirements described in WAC ~~((388-513-1395))~~ 182-513-1395; or

(c) Eligible for the MN SSI-related program described in WAC 182-512-0150 for hospice clients residing in a home setting; or

(d) Eligible for the MN SSI-related program described in WAC ~~((388-513-1305))~~ 182-513-1305 for hospice clients not on a medically needy waiver and residing in an alternate living facility(-);

(e) Be eligible for institutional MN if residing in a medical institution thirty days or more described in WAC ~~((388-513-1395))~~ 182-513-1395.

(7) To determine resource eligibility for an SSI-related client under the CN or MN program, the department:

(a) Considers resource eligibility and standards described in WAC ~~((388-513-1350))~~ 182-513-1350; and

(b) Evaluates the transfer of assets as described in WAC ~~((388-513-1363, 388-513-1364, or 388-513-1365))~~ 182-513-1363, 182-513-1364, or 182-513-1365.

(8) To determine income eligibility for an SSI-related client under the CN or MN program, the department:

(a) Considers income available as described in WAC ~~((388-513-1325))~~ 182-513-1325 and ~~((388-513-1330))~~ 182-513-1330;

(b) Excludes income for CN and MN programs as described in WAC ~~((388-513-1340))~~ 182-513-1340;

(c) Disregards income for the MN program as described in WAC ~~((388-513-1345))~~ 182-513-1345; and

(d) Follows program rules for the MN program as described in WAC ~~((388-513-1395))~~ 182-513-1395.

(9) A client who meets the requirements of the CN program is approved for a period of up to twelve months.

(10) A client who meets the requirements of the MN program is approved for a period of months described in WAC ~~((388-513-1395))~~ 182-513-1395 for:

(a) Institutional services in a medical institution; or

(b) Hospice services in a medical institution.

(11) The department determines eligibility for state funded programs under the following rules:

(a) A client who is eligible for ABD cash assistance program described in WAC 388-400-0060 but is not eligible for federally funded medicaid due to citizenship requirements receives MCS medical described in WAC 182-508-0005. A client who is eligible for MCS may receive institutional services but is not eligible for hospice or HCB waiver services.

(b) A client who is not eligible for ABD cash assistance but is eligible for MCS coverage only described in WAC 182-508-0005 may receive institutional services but is not eligible for hospice or HCB waiver services.

(c) A noncitizen client who is not eligible under ~~((subsections (11))~~(a) or (b) of this subsection and needs long-term care services may be eligible under WAC 182-507-0110 and ~~((82-507-0125))~~ 182-507-0125. This program must be ~~((pre-approved))~~ preapproved by aging and ~~((disability services))~~ long-term support administration ~~((ADSA))~~ (AL TSA).

(12) A client is eligible for medicaid as a resident in a psychiatric facility, if the client:

(a) Has attained institutional status as described in WAC ~~((388-513-1320))~~ 182-513-1320; and

(b) Is under the age of twenty-one at the time of application; or

(c) Is receiving active psychiatric treatment just prior to their twenty-first birthday and the services extend beyond this date and the client has not yet reached age twenty-two; or

(d) Is at least sixty-five years old.

(13) The department determines a client's eligibility as it does for a single person when the client's spouse has already been determined eligible for LTC services.

(14) If an individual under age twenty one is not eligible for medicaid under SSI-related in WAC 182-512-0050 or ABD cash assistance described in WAC 388-400-0060 or MCS described in WAC 182-508-0005, consider eligibility under WAC 182-514-0255 or 182-514-0260.

(15) Noncitizen clients under age nineteen can be considered for the apple health for kids program described in WAC 182-505-0210 if they are admitted to a medical institution for less than thirty days. Once a client resides or is likely to reside in a medical institution for thirty days or more, the department determines eligibility under WAC 182-514-0260 and must be preapproved for coverage by ~~((ADSA))~~ AL TSA as described in WAC 182-507-0125.

(16) Noncitizen clients not eligible under subsection (15) of this section can be considered for LTC services under WAC 182-507-0125. These clients must be preapproved by ~~((ADSA))~~ AL TSA.

(17) The department determines a client's total responsibility to pay toward the cost of care for LTC services as follows:

(a) For SSI-related clients residing in a medical institution see WAC ~~((388-513-1380))~~ 182-513-1380;

(b) For clients receiving HCS CN waiver services see WAC ~~((388-515-1509))~~ 182-515-1509;

(c) For clients receiving ~~((DDD))~~ DDA CN waiver services see WAC ~~((388-515-1514))~~ 182-515-1514; or

(d) For ~~((TANF-related clients))~~ family and children residing in a medical institution see WAC 182-514-0265.

(18) Clients not living in a medical institution who are considered to be receiving SSI-benefits for the purposes of medicaid do not pay service participation toward their cost of care. Clients living in a residential setting do pay room and board as described in WAC ~~((388-515-1505))~~ 182-515-1505 through ~~((388-515-1509))~~ 182-515-1509 or ~~((WAC 388-515-1514))~~ 182-515-1514. Groups deemed to be receiving SSI and for medicaid purposes are eligible to receive CN medicaid. These groups are described in WAC 182-512-0880.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1325 Determining available income for an SSI-related single client for long-term care (LTC) services (institutional, waiver or hospice). This section describes income the department considers available when determining an SSI-related single client's eligibility for LTC services (institutional, waiver or hospice).

(1) Refer to WAC ~~((388-513-1330))~~ 182-513-1330 for rules related to available income for legally married couples.

(2) The department must apply the following rules when determining income eligibility for SSI-related LTC services:

(a) WAC 182-512-0600 Definition of income;

(b) WAC 182-512-0650 Available income;

(c) WAC 182-512-0700 Income eligibility;

(d) WAC 182-512-0750 Countable unearned income;

(e) WAC 182-514-0840(3) Self-employment income-allowable expenses;

(f) WAC ~~((388-513-1315))~~ 182-513-1315(15), Eligibility for long-term care (institutional, waiver, and hospice) services; and

(g) WAC ~~((388-450-0155, 388-450-0156, 388-450-0160))~~ 182-512-0785, 182-512-0790, 182-512-0795, and 182-509-0155 for sponsored immigrants and how to determine if sponsors' income counts in determining benefits.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1330 Determining available income for legally married couples for long-term care (LTC) services. This section describes income the department considers available when determining a legally married client's eligibility for LTC services.

(1) The department must apply the following rules when determining income eligibility for LTC services:

(a) WAC 182-512-0600 Definition of income SSI-related medical;

(b) WAC 182-512-0650 Available income;

(c) WAC 182-512-0700 Income eligibility;

(d) WAC 182-512-0750 Countable unearned income;

(e) WAC 182-512-0840(3) Self-employment income-allowance expenses;

(f) WAC 182-512-0960, SSI-related medical clients; and

(g) WAC ~~((388-513-1315))~~ 182-513-1315, Eligibility for long-term care (institutional, waiver, and hospice) services.

(2) For an institutionalized client married to a community spouse who is not applying or approved for LTC services, the department considers the following income available, unless subsection (4) applies:

(a) Income received in the client's name;

(b) Income paid to a representative on the client's behalf;

(c) One-half of the income received in the names of both spouses; and

(d) Income from a trust as provided by the trust.

(3) The department considers the following income unavailable to an institutionalized client:

(a) Separate or community income received in the name of the community spouse; and

(b) Income established as unavailable through a court order.

(4) For the determination of eligibility only, if available income described in subsection ~~((s))~~ (2)(a) through (d) of this section minus income exclusions described in WAC ~~((388-513-1340))~~ 182-513-1340 exceeds the special income level (SIL), then:

(a) The department follows community property law when determining ownership of income;

(b) Presumes all income received after marriage by either or both spouses to be community income; ~~((and))~~

(c) Considers one-half of all community income available to the institutionalized client ~~((;-))~~; and

(d) If the total of ~~((subsection (4)))~~ (c) of this subsection plus the client's own income is over the SIL, follow subsection (2) of this section.

(5) The department considers income generated by a transferred resource to be the separate income of the person or entity to which it is transferred.

(6) The department considers income available to the client not generated by a transferred resource available to the client, even when the client transfers or assigns the rights to the stream of income to:

(a) The spouse; or

(b) A trust for the benefit of their spouse.

~~((s))~~ (7) The department evaluates the transfer of a resource described in subsection (5) of this section according to WAC ~~((388-513-1363, 388-513-1364, and 388-513-1365))~~ 182-513-1363, 182-513-1364, and 182-513-1365 to determine whether a penalty period of ineligibility is required.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1340 Determining excluded income for long-term care (LTC) services. This section describes income the department excludes when determining a client's eligibility and participation in the cost of care for LTC ser-

vices with the exception described in subsection (31) of this section.

- (1) Crime victim's compensation;
- (2) Earned income tax credit (EITC) for twelve months after the month of receipt;
- (3) Native American benefits excluded by federal statute (refer to WAC ((~~388-450-0040~~) 182-512-0700);
- (4) Tax rebates or special payments excluded by other statutes;
- (5) Any public agency's refund of taxes paid on real property and/or on food;
- (6) Supplemental security income (SSI) and certain state public assistance based on financial need;
- (7) The amount a representative payee charges to provide services when the services are a requirement for the client to receive the income;
- (8) The amount of expenses necessary for a client to receive compensation, e.g., legal fees necessary to obtain settlement funds;
- (9) ~~((Any portion of a grant, scholarship, or fellowship used to pay tuition, fees, and/or other necessary educational expenses at any educational institution))~~ Education benefits described in WAC 182-509-0335;
- (10) Child support payments received from an absent parent for a child living in the home are considered the income of the child;
- (11) Self-employment income allowed as a deduction by the Internal Revenue Service (IRS);
- (12) Payments to prevent fuel cut-offs and to promote energy efficiency that are excluded by federal statute;
- (13) Assistance (other than wages or salary) received under the Older Americans Act;
- (14) Assistance (other than wages or salary) received under the foster grandparent program;
- (15) Certain cash payments a client receives from a governmental or nongovernmental medical or social service agency to pay for medical or social services;
- (16) Interest earned on excluded burial funds and any appreciation in the value of an excluded burial arrangement that are left to accumulate and become part of the separately identified burial funds set aside;
- (17) Tax exempt payments received by Alaska natives under the Alaska Native Settlement Act established by P.L. 100-241;
- (18) Compensation provided to volunteers in ACTION programs under the Domestic Volunteer Service Act of 1973 established by P.L. 93-113;
- (19) Payments made from the Agent Orange Settlement Fund or any other funds to settle Agent Orange liability claims established by P.L. 101-201;
- (20) Payments made under section six of the Radiation Exposure Compensation Act established by P.L. 101-426;
- (21) Payments made under the Energy Employee Occupational Compensation Program Act of 2000, (EEOICPA) Pub. L. 106-398;
- (22) Restitution payment, and interest earned on such payment to a civilian of Japanese or Aleut ancestry established by P.L. 100-383;
- (23) Payments made under sections 500 through 506 of the Austrian General Social Insurance Act;

(24) Payments made from *Susan Walker v. Bayer Corporation, et. al.*, 95-C-5024 (N.D. Ill.) (May 8, 1997) settlement funds;

(25) Payments made from the Ricky Ray Hemophilia Relief Fund Act of 1998 established by P.L. 105-369;

(26) Payments made under the Disaster Relief and Emergency Assistance Act established by P.L. 100-387;

(27) Payments made under the Netherlands' Act on Benefits for Victims of Persecution (WUV);

(28) Payments made to certain survivors of the Holocaust under the Federal Republic of Germany's Law for Compensation of National Socialist Persecution or German Restitution Act;

(29) Interest or dividends received by the client is excluded as income. Interest or dividends received by the community spouse of an institutional individual is counted as income of the community spouse. Dividends and interest are returns on capital investments such as stocks, bond, or savings accounts. Institutional status is defined in WAC ((~~388-513-1320~~) 182-513-1320);

(30) Income received by an ineligible or nonapplying spouse from a governmental agency for services provided to an eligible client, e.g., chore services;

(31) Department of Veterans Affairs benefits designated for:

(a) The veteran's dependent when determining LTC eligibility for the veteran. The VA dependent allowance is considered countable income to the dependent unless it is paid due to unusual medical expenses (UME);

(b) Unusual medical expenses, aid and attendance allowance, special monthly compensation (SMC) and housebound allowance, with the exception described in subsection (32) of this section;

(32) Benefits described in subsection (31)(b) of this section for a client who receives long-term care services are excluded when determining eligibility, but are considered available as a third-party resource (TPR) when determining the amount the client contributes in the cost of care.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1345 Determining disregarded income for institutional or hospice services under the medically needy (MN) program. This section describes income the department disregards when determining a client's eligibility for institutional or hospice services under the MN program. The department considers disregarded income available when determining a client's participation in the cost of care.

(1) The department disregards the following income amounts in the following order:

(a) Income that is not reasonably anticipated, or is received infrequently or irregularly, when such income does not exceed:

(i) Twenty dollars per month if unearned; or

(ii) Ten dollars per month if earned.

(b) The first twenty dollars per month of earned or unearned income, unless the income paid to a client is:

(i) Based on need; and

(ii) Totally or partially funded by the federal government or a private agency.

(2) For a client who is related to the supplemental security income (SSI) program as described in WAC 182-512-0050(1), the first sixty-five dollars per month of earned income not excluded under WAC (~~(388-513-1340)~~) 182-513-1340, plus one-half of the remainder.

(3) Department of Veterans Affairs benefits designated for:

(a) The veteran's dependent when determining LTC eligibility for the veteran. The VA dependent allowance is considered countable income to the dependent unless it is paid due to unusual medical expenses (UME);

(b) Unusual medical expenses, aid and attendance allowance, special monthly compensation (SMC) and household allowance, with the exception described in subsection (4) of this section.

(4) Benefits described in subsection (3)(b) of this section for a client who receives long-term care services are excluded when determining eligibility, but are considered available as a third-party resource (TPR) when determining the amount the client contributes in the cost of care.

(5) Income the Social Security Administration (SSA) withholds from SSA Title II benefits for the recovery of an SSI overpayment.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1350 Defining the resource standard and determining resource eligibility for long-term care (LTC) services. This section describes how the department defines the resource standard and countable or excluded resources when determining a client's eligibility for LTC services. The department uses the term "resource standard" to describe the maximum amount of resources a client can have and still be resource eligible for program benefits.

(1) The resource standard used to determine eligibility for LTC services equals:

(a) Two thousand dollars for:

(i) A single client; or

(ii) A legally married client with a community spouse, subject to the provisions described in subsections (9) through (12) of this section; or

(b) Three thousand dollars for a legally married couple, unless subsection (4) of this section applies.

(2) Effective January 1, 2012, if an individual purchases a qualified long-term care partnership policy approved by the Washington insurance commissioner under the Washington long-term care partnership program, the department allows the individual with the long-term care partnership policy to retain a higher resource amount based on the dollar amount paid out by a partnership policy. This is described in WAC (~~(388-513-1400)~~) 182-513-1400.

(3) When both spouses apply for LTC services the department considers the resources of both spouses as available to each other through the month in which the spouses stopped living together.

(4) When both spouses are institutionalized, the department will determine the eligibility of each spouse as a single client the month following the month of separation.

(5) If the department 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 institutional spouse), then the department applies the standard described in subsection (1)(a) of this section to each spouse. If doing this would make one of the spouses ineligible, then the department applies subsection (1)(b) of this section for a couple.

(6) When a single institutionalized individual marries, the department will redetermine eligibility applying the rules for a legally married couple.

(7) The department applies the following rules when determining available resources for LTC services:

(a) WAC 182-512-0300, Resource eligibility;

(b) WAC 182-512-0250, How to determine who owns a resource; and

(c) WAC (~~(388-470-0060)~~) 182-512-0260, Resources of an alien's sponsor.

(8) For LTC services the department determines a client's countable resources as follows:

(a) The department determines countable resources for SSI-related clients as described in WAC 182-512-0350 through 182-512-0550 and resources excluded by federal law with the exception of:

(i) WAC 182-512-0550 pension funds owned by an:

~~((H))~~ (A) Ineligible spouse. Pension funds are defined as funds held in an individual retirement account (IRA) as described by the IRS code; or

~~((H))~~ (B) Work-related pension plan (including plans for self-employed individuals, known as Keogh plans).

(ii) WAC 182-512-0350 (1)(b) clients who have submitted an application for LTC services on or after May 1, 2006, and have an equity interest greater than five hundred thousand dollars in their primary residence are ineligible for LTC services. This exception does not apply if a spouse or blind, disabled or dependent child under age twenty-one is lawfully residing in the primary residence. Clients denied or terminated LTC services due to excess home equity may apply for an undue hardship waiver described in WAC (~~(388-513-1367)~~) 182-513-1367. Effective January 1, 2011, the excess home equity limits increase to five hundred six thousand dollars. On January 1, 2012, and on January 1st of each year thereafter, this standard may be increased or decreased by the percentage increased or decreased in the consumer price index-urban (CPIU). For current excess home equity standard starting January 1, 2011, and each year thereafter, see <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

(b) For an SSI-related client one automobile per household is excluded regardless of value if it is used for transportation of the eligible individual/couple.

(i) For an SSI-related client with a community spouse, the value of one automobile is excluded regardless of its use or value.

(ii) A vehicle not meeting the definition of automobile is a vehicle that has been junked or a vehicle that is used only as a recreational vehicle.

(c) For an SSI-related client, the department adds together the countable resources of both spouses if subsections (3), (6), and (9)(a) or (b) of this section apply, but not if subsection (4) or (5) of this section apply.

(d) For an SSI-related client, excess resources are reduced:

(i) In an amount equal to incurred medical expenses such as:

(A) Premiums, deductibles, and coinsurance/copayment charges for health insurance and medicare;

(B) Medically necessary (~~medical~~) care recognized under state law, but not covered under the state's medicaid plan;

(C) Medically necessary (~~medical~~) care covered under the state's medicaid plan incurred prior to medicaid eligibility. Expenses for nursing facility care are reduced at the state rate for the facility that the client owes the expense to.

(ii) As long as the incurred medical expenses:

(A) Were not incurred more than three months before the month of the medicaid application;

(B) Are not subject to third-party payment or reimbursement;

(C) Have not been used to satisfy a previous spend down liability;

(D) Have not previously been used to reduce excess resources;

(E) Have not been used to reduce client responsibility toward cost of care;

(F) Were not incurred during a transfer of asset penalty described in WAC (~~388-513-1363, 388-513-1364, and 388-513-1365~~) 182-513-1363, 182-513-1364, and 182-513-1365; and

(G) Are amounts for which the client remains liable.

(e) Expenses not allowed to reduce excess resources or participation in personal care:

(i) Unpaid expense(s) prior to waiver eligibility to an adult family home (AFH) or assisted living facility is not a medical expense.

(ii) Personal care cost in excess of approved hours determined by the CARE assessment described in chapter 388-106 WAC is not a medical expense.

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

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

(A) Gross income must be at or below the special income level (SIL), 300% of the federal benefit rate (FBR).

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

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

(ii) For LTC services provided under the medically needy (MN) program when excess resources are added to countable income, the combined total is less than the:

(A) State medical institution rate based on the number of days in the medical institution in the month, plus the amount of recurring medical expenses; or

(B) State hospice rate based on the number of days in the medical institution in the month plus the amount of recurring medical expenses, in a medical institution.

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

(g) For a client not related to SSI, the department applies the resource rules of the program used to relate the client to medical eligibility.

(9) For legally married clients when only one spouse meets institutional status, the following rules apply. If the client's current period of institutional status began:

(a) Before October 1, 1989, the department adds together one-half the total amount of countable resources held in the name of:

(i) The institutionalized spouse; or

(ii) Both spouses.

(b) On or after October 1, 1989, the department adds together the total amount of nonexcluded resources held in the name of:

(i) Either spouse; or

(ii) Both spouses.

(10) If subsection (9)(b) of this section applies, the department determines the amount of resources that are allocated to the community spouse before determining countable resources used to establish eligibility for the institutionalized spouse, as follows:

(a) If the client's current period of institutional status began on or after October 1, 1989, and before August 1, 2003, the department allocates the maximum amount of resources ordinarily allowed by law. Effective January 1, 2009, the maximum allocation is one hundred and nine thousand five hundred and sixty dollars. This standard may change annually on January 1st based on the consumer price index. (For the current standard starting January 2009 and each year thereafter, see long-term care standards at <http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>); or

(b) If the client's current period of institutional status began on or after August 1, 2003, the department allocates the greater of:

(i) A spousal share equal to one-half of the couple's combined countable resources as of the first day of the month of the current period of institutional status, up to the amount described in subsection (10)(a) of this section; or

(ii) The state spousal resource standard of forty-eight thousand six hundred thirty-nine dollars (this standard may change every odd year on July 1st). This standard is based on the consumer price index published by the federal bureau of labor statistics. For the current standard starting July 2009 and each year thereafter, see long-term care standards at <http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

(c) Resources are verified on the first moment of the first day of the month institutionalization began as described in WAC 182-512-0300(1).

(11) The amount of the spousal share described in subsection (10)(b)(i) of this section can be determined anytime between the date that the current period of institutional status began and the date that eligibility for LTC services is determined. The following rules apply to the determination of the spousal share:

(a) Prior to an application for LTC services, the couple's combined countable resources are evaluated from the date of the current period of institutional status at the request of either member of the couple. The determination of the spousal share is completed when necessary documentation and/or verification is provided; or

(b) The determination of the spousal share is completed as part of the application for LTC services if the client was institutionalized prior to the month of application, and declares the spousal share exceeds the state spousal resource standard. The client is required to provide verification of the couple's combined countable resources held at the beginning of the current period of institutional status.

(12) The amount of allocated resources described in subsection (10) of this section can be increased, only if:

(a) A court transfers additional resources to the community spouse; or

(b) An administrative law judge establishes in a fair hearing described in chapter ~~((388-02))~~ 182-501 WAC, that the amount is inadequate to provide a minimum monthly maintenance needs amount for the community spouse.

(13) The department considers resources of the community spouse unavailable to the institutionalized spouse the month after eligibility for LTC services is established, unless subsection (6) or (14)(a), (b), or (c) of this section applies.

(14) A redetermination of the couple's resources as described in subsection (8) of this section is required, if:

(a) The institutionalized spouse has a break of at least thirty consecutive days in a period of institutional status; or

(b) The institutionalized spouse's countable resources exceed the standard described in subsection (1)(a) of this section, if subsection (9)(b) of this section applies; or

(c) The institutionalized spouse does not transfer the amount described in subsection ~~((s))~~ (10) or (12) of this section to the community spouse by either:

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

(ii) The reasonable amount of additional time necessary to obtain a court order for the support of the community spouse.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1363 Evaluating the transfer of assets on or after May 1, 2006 for persons applying for or receiving long-term care (LTC) services. This section describes how the department evaluates asset transfers made on or after May 1, 2006, and their affect on LTC services. This applies to transfers by the client, spouse, a guardian or through an attorney in fact. Clients subject to asset transfer penalty periods are not eligible for LTC services. LTC services for the purpose of this rule include nursing facility services, services offered in any medical institution equivalent to nursing facil-

ity services, and home and community-based services furnished under a waiver program. Program of all-inclusive care of the elderly (PACE) and hospice services are not subject to transfer of asset rules. The department must consider whether a transfer made within a specified time before the month of application, or while the client is receiving LTC services, requires a penalty period.

- Refer to WAC ~~((388-513-1364))~~ 182-513-1364 for rules used to evaluate asset transfers made on or after April 1, 2003, and before May 1, 2006.

- Refer to WAC ~~((388-513-1365))~~ 182-513-1365 for rules used to evaluate asset transfer made prior to April 1, 2003.

(1) When evaluating the effect of the transfer of asset made on or after May 1, 2006, on the client's eligibility for LTC services the department counts sixty months before the month of application to establish what is referred to as the "look-back" period.

(2) The department does not apply a penalty period to transfers meeting the following conditions:

(a) The total of all gifts or donations transferred do not exceed the average daily private nursing facility rate in any month;

(b) The transfer is an excluded resource described in WAC ~~((388-513-1350))~~ 182-513-1350 with the exception of the client's home, unless the transfer of the home meets the conditions described in ~~((subsection (2))~~ (d) of this subsection;

(c) The asset is transferred for less than fair market value (FMV), if the client can provide evidence to the department of one of the following:

(i) An intent to transfer the asset at FMV or other adequate compensation. To establish such an intent, the department must be provided with written evidence of attempts to dispose of the asset for fair market value as well as evidence to support the value (if any) of the disposed asset.

(ii) The transfer is not made to qualify for LTC services, continue to qualify, or avoid Estate Recovery. Convincing evidence must be presented regarding the specific purpose of the transfer.

(iii) All assets transferred for less than fair market value have been returned to the client.

(iv) The denial of eligibility would result in an undue hardship as described in WAC ~~((388-513-1367))~~ 182-513-1367.

(d) The transfer of ownership of the client's home, if it is transferred to the client's:

(i) Spouse; or

(ii) Child, who:

(A) Meets the disability criteria described in WAC 182-512-0050 (1)(b) or (c); or

(B) Is less than twenty-one years old; or

(C) Lived in the home for at least two years immediately before the client's current period of institutional status, and provided verifiable care that enabled the individual to remain in the home. A physician's statement of needed care is required; or

(iii) Brother or sister, who has:

(A) Equity in the home~~((:))~~; and

(B) Lived in the home for at least one year immediately before the client's current period of institutional status.

(e) The asset is transferred to the client's spouse or to the client's child, if the child meets the disability criteria described in WAC 182-512-0050 (1)(b) or (c);

(f) The transfer meets the conditions described in subsection (3), and the asset is transferred:

(i) To another person for the sole benefit of the spouse;

(ii) From the client's spouse to another person for the sole benefit of the spouse;

(iii) To trust established for the sole benefit of the individual's child who meets the disability criteria described in WAC 182-512-0050 (1)(b) or (c);

(iv) To a trust established for the sole benefit of a person who is sixty-four years old or younger and meets the disability criteria described in WAC 182-512-0050 (1)(b) or (c); or

(3) The department considers the transfer of an asset or the establishment of a trust to be for the sole benefit of a person described in subsection (2)(f) of this section, if the transfer or trust:

(a) Is established by a legal document that makes the transfer irrevocable;

(b) Provides that no individual or entity except the spouse, blind or disabled child, or disabled individual can benefit from the assets transferred in any way, whether at the time of the transfer or at any time during the life of the primary beneficiary; and

(c) Provides for spending all assets involved for the sole benefit of the individual on a basis that is actuarially sound based on the life expectancy of that individual or the term of the trust, whichever is less; and

(d) The requirements in subsection (2)(c) of this section do not apply to trusts described in WAC 388-561-0100 (6)(a) and (b) and (7)(a) and (b).

(4) The department does not establish a period of ineligibility for the transfer of an asset to a family member prior to the current period of long-term care service if:

(a) The transfer is in exchange for care services the family member provided the client;

(b) The client has a documented need for the care services provided by the family member;

(c) The care services provided by the family member are allowed under the medicaid state plan or the department's waiver services;

(d) The care services provided by the family member do not duplicate those that another party is being paid to provide;

(e) The FMV of the asset transferred is comparable to the FMV of the care services provided;

(f) The time for which care services are claimed is reasonable based on the kind of services provided; and

(g) Compensation has been paid as the care services were performed or with no more time delay than one month between the provision of the service and payment.

(5) The department considers the transfer of an asset in exchange for care services given by a family member that does not meet the criteria as described under subsection (4) of this section as the transfer of an asset without adequate consideration.

(6) If a client or the client's spouse transfers an asset within the look-back period without receiving adequate com-

pensation, the result is a penalty period in which the individual is not eligible for LTC services.

(7) If a client or the client's spouse transfers an asset on or after May 1, 2006, the department must establish a penalty period by adding together the total uncompensated value of all transfers made on or after May 1, 2006. The penalty period:

(a) For a LTC services applicant, begins on the date the client would be otherwise eligible for LTC services based on an approved application for LTC services or the first day after any previous penalty period has ended; or

(b) For a LTC services recipient, begins the first of the month following ten-day advance notice of the penalty period, but no later than the first day of the month that follows three full calendar months from the date of the report or discovery of the transfer; or the first day after any previous penalty period has ended; and

(c) Ends on the last day of the number of whole days found by dividing the total uncompensated value of the assets by the statewide average daily private cost for nursing facilities at the time of application or the date of transfer, whichever is later.

(8) If an asset is sold, transferred, or exchanged, the portion of the proceeds:

(a) That is used within the same month to acquire an excluded resource described in WAC ((~~388-513-1350~~) 182-513-1350) does not affect the client's eligibility;

(b) That remain after an acquisition described in ((~~subsection (8)~~) (a) of this subsection) becomes an available resource as of the first day of the following month.

(9) If the transfer of an asset to the client's spouse includes the right to receive a stream of income not generated by a transferred resource, the department must apply rules described in WAC ((~~388-513-1330~~) 182-513-1330) (5) through (7).

(10) If the transfer of an asset for which adequate compensation is not received is made to a person other than the client's spouse and includes the right to receive a stream of income not generated by a transferred resource, the length of the penalty period is determined and applied in the following way:

(a) The total amount of income that reflects a time frame based on the actuarial life expectancy of the client who transfers the income is added together;

(b) The amount described in ((~~subsection (10)~~) (a) of this subsection) is divided by the statewide average daily private cost for nursing facilities at the time of application; and

(c) A penalty period equal to the number of whole days found by following subsection((s)) (7)(a), (b), and (c) of this section.

(11) A penalty period for the transfer of an asset that is applied to one spouse is not applied to the other spouse, unless both spouses are receiving LTC services. When both spouses are receiving LTC services;

(a) We divide the penalty between the two spouses.

(b) If one spouse is no longer subject to a penalty (e.g., the spouse is no longer receiving institutional services or is deceased) any remaining penalty that applies to both spouses must be served by the remaining spouse.

(12) If a client or the client's spouse disagrees with the determination or application of a penalty period, that person may request a hearing as described in chapter ((388-02)) 182-501 WAC.

(13) Additional statutes which apply to transfer of asset penalties, real property transfer for inadequate consideration, disposal of realty penalties, and transfers to qualify for assistance can be found at:

- (a) RCW 74.08.331 Unlawful practices—Obtaining assistance—Disposal of realty;
- (b) RCW 74.08.338 Real property transfers for inadequate consideration;
- (c) RCW 74.08.335 Transfers of property to qualify for assistance; and
- (d) RCW 74.39A.160 Transfer of assets—Penalties.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1364 Evaluating the transfer of an asset made on or after April 1, 2003 for long-term care (LTC) services. This section describes how the department evaluates the transfer of an asset made on or after April 1, 2003, by a client who is applying or approved for LTC services. The department must consider whether a transfer made within a specified time before the month of application requires a penalty period in which the client is not eligible for these services. Refer to WAC ((388-513-1365)) 182-513-1365 for rules used to evaluate the transfer of an asset made before April 1, 2003. Refer to WAC ((388-513-1363)) 182-513-1363 for rules used to evaluate the transfer of an asset made on or after May 1, 2006.

(1) The department does not apply a penalty period to the following transfers by the client, if they meet the conditions described:

(a) Gifts or donations totaling one thousand dollars or less in any month;

(b) The transfer of an excluded resource described in WAC ((388-513-1350)) 182-513-1350 with the exception of the client's home, unless the transfer of the client's home meets the conditions described in ((subsection (1))) (d) of this subsection;

(c) The transfer of an asset for less than fair market value (FMV), if the client can provide evidence to the department of one of the following:

(i) An intent to transfer the asset at FMV or other adequate compensation;

(ii) The transfer is not made to qualify for LTC services;

(iii) The client is given back ownership of the asset;

(iv) The denial of eligibility would result in an undue hardship.

(d) The transfer of ownership of the client's home, if it is transferred to the client's:

(i) Spouse; or

(ii) Child, who:

(A) Meets the disability criteria described in WAC 182-512-0050 (1)(b) or (c); or

(B) Is less than twenty-one years old; or

(C) Lived in the home for at least two years immediately before the client's current period of institutional status, and

provided care that enabled the client to remain in the home; or

(iii) Brother or sister, who has:

(A) Equity in the home; and

(B) Lived in the home for at least one year immediately before the client's current period of institutional status.

(e) The transfer of an asset, if the transfer meets the conditions described in subsection (4) of this section, and the asset is transferred:

(i) To another person for the sole benefit of the spouse;

(ii) From the client's spouse to another person for the sole benefit of the spouse;

(iii) To trust established for the sole benefit of the client's child who meets the disability criteria described in WAC 182-512-0050 (1)(b) or (c);

(iv) To a trust established for the sole benefit of a person who is sixty-four years old or younger and meets the disability criteria described in WAC 182-512-0050 (1)(b) or (c); or

(f) The asset is transferred to the client's spouse or to the client's child, if the child meets the disability criteria described in WAC 182-512-0050 (1)(b) or (c).

(2) The department does not establish a period of ineligibility for the transfer of an asset to a family member prior to the current period of institutional status, if:

(a) The transfer is in exchange for care services the family member provided the client;

(b) The client has a documented need for the care services provided by the family member;

(c) The care services provided by the family member are allowed under the medicaid state plan or the department's waived services;

(d) The care services provided by the family member do not duplicate those that another party is being paid to provide;

(e) The FMV of the asset transferred is comparable to the FMV of the care services provided;

(f) The time for which care services are claimed is reasonable based on the kind of services provided; and

(g) Compensation has been paid as the care services were performed or with no more time delay than one month between the provision of the service and payment.

(3) The department considers the transfer of an asset in exchange for care services given by a family member that does not meet the criteria as described under subsection (2) of this section as the transfer of an asset without adequate consideration.

(4) The department considers the transfer of an asset or the establishment of a trust to be for the sole benefit of a person described in subsection (1)(e) of this section, if the transfer or trust:

(a) Is established by a legal document that makes the transfer irrevocable;

(b) Provides that no individual or entity except the spouse, blind or disabled child, or disabled individual can benefit from the assets transferred in any way, whether at the time of the transfer or at any time during the life of the primary beneficiary; and

(c) Provides for spending all assets involved for the sole benefit of the individual on a basis that is actuarially sound based on the life expectancy of that individual or the term of the trust, whichever is less; and

(d) The requirements in ~~((subsection (4)))~~ (c) of this ~~(section)~~ subsection do not apply to trusts described in WAC ~~((388-561-0100))~~ 182-516-0100 (6)(a) and (b).

(5) If a client or the client's spouse transfers an asset within the look-back period described in WAC ~~((388-513-1365))~~ 182-513-1365 without receiving adequate compensation, the result is a penalty period in which the client is not eligible for LTC services. If a client or the client's spouse transfers an asset on or after April 1, 2003, the department must establish a penalty period as follows:

(a) If a single or multiple transfers are made within a single month, then the penalty period:

(i) Begins on the first day of the month in which the transfer is made; and

(ii) Ends on the last day of the number of whole days found by dividing the total uncompensated value of the assets by the statewide average daily private cost for nursing facilities at the time of application.

(b) If multiple transfers are made during multiple months, then the transfers are treated as separate events and multiple penalty periods are established that begin on the latter of:

(i) The first day of the month in which the transfer is made; or

(ii) The first day after any previous penalty period has ended and end on the last day of the whole number of days as described in ~~((subsection (5)))~~ (a)(ii) of this subsection.

(6) If an asset is sold, transferred, or exchanged, the portion of the proceeds:

(a) That is used within the same month to acquire an excluded resource described in WAC ~~((388-513-1350))~~ 182-513-1350 does not affect the client's eligibility;

(b) That remain after an acquisition described in subsection (6)(a) becomes an available resource as of the first day of the following month.

(7) If the transfer of an asset to the client's spouse includes the right to receive a stream of income not generated by a transferred resource, the department must apply rules described in WAC ~~((388-513-1330))~~ 182-513-1330 (5) through (7).

(8) If the transfer of an asset for which adequate compensation is not received is made to a person other than the client's spouse and includes the right to receive a stream of income not generated by a transferred resource, the length of the penalty period is determined and applied in the following way:

(a) The total amount of income that reflects a time frame based on the actuarial life expectancy of the client who transfers the income is added together;

(b) The amount described in ~~((subsection (8)))~~ (a) of this subsection is divided by the statewide average daily private cost for nursing facilities at the time of application; and

(c) A penalty period equal to the number of whole days found by following subsection ~~((s))~~ (5)(a) and (b) and ~~((8))~~ (a) and (b) of this subsection is applied that begins on the latter of:

(i) The first day of the month in which the client transfers the income; or

(ii) The first day of the month after any previous penalty period has ended.

(9) A penalty period for the transfer of an asset that is applied to one spouse is not applied to the other spouse, unless:

(a) Both spouses are receiving LTC services; and

(b) A division of the penalty period between the spouses is requested.

(10) If a client or the client's spouse disagrees with the determination or application of a penalty period, that person may request a hearing as described in chapter ~~((388-02))~~ 182-501 WAC.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1365 Evaluating the transfer of an asset made on or after March 1, 1997, and before April 1, 2003, for long-term care (LTC) services. This section describes how the department evaluates the transfer of an asset made on or after March 1, 1997, and before April 1, 2003, by a client who is applying or approved for LTC services. The department must consider whether a transfer made within a specified time before the month of application requires a penalty period in which the client is not eligible for these services. Refer to WAC ~~((388-513-1364))~~ 182-513-1364 for rules used to evaluate the transfer of an asset made on or after March 31, 2003. Refer to WAC ~~((388-513-1363))~~ 182-513-1363 for rules used to evaluate the transfer of an asset made on or after May 1, 2006.

(1) The department disregards the following transfers by the client, if they meet the conditions described:

(a) Gifts or donations totaling one thousand dollars or less in any month;

(b) The transfer of an excluded resource described in WAC ~~((388-513-1350))~~ 182-513-1350 with the exception of the client's home, unless the transfer meets the conditions described in ~~((subsection (1)))~~ (d) of this subsection;

(c) The transfer of an asset for less than fair market value (FMV), if the client can provide evidence to the department that satisfies one of the following:

(i) An intent to transfer the asset at FMV or other adequate compensation;

(ii) The transfer is not made to qualify for LTC services;

(iii) The client is given back ownership of the asset;

(iv) The denial of eligibility would result in an undue hardship.

(d) The transfer of ownership of the client's home, if it is transferred to the client's:

(i) Spouse; or

(ii) Child, who:

(A) Meets the disability criteria described in WAC 182-512-0050 (1)(b) or (c); or

(B) Is less than twenty-one years old; or

(iii) A son or daughter, who:

(A) Lived in the home for at least two years immediately before the client's current period of institutional status; and

(B) Provided care that enabled the client to remain in the home; or

(iv) A brother or sister, who has:

(A) Equity in the home, and

(B) Lived in the home for at least one year immediately before the client's current period of institutional status.

(e) The transfer of an asset other than the home, if the transfer meets the conditions described in subsection (4) of this section, and the asset is transferred:

(i) To the client's spouse or to another person for the sole benefit of the spouse;

(ii) From the client's spouse to another person for the sole benefit of the spouse;

(iii) To the client's child who meets the disability criteria described in WAC 182-512-0050 (1)(b) or (c) or to a trust established for the sole benefit of this child; or

(iv) To a trust established for the sole benefit of a person who is sixty-four years old or younger and meets the disability criteria described in WAC 182-512-0050 (1)(b) or (c).

(f) The transfer of an asset to a member of the client's family in exchange for care the family member provided the client before the current period of institutional status, if a written agreement that describes the terms of the exchange:

(i) Was established at the time the care began;

(ii) Defines a reasonable FMV for the care provided that reflects a time frame based on the actuarial life expectancy of the client who transfers the asset; and

(iii) States that the transferred asset is considered payment for the care provided.

(2) When the fair market value of the care described in subsection (1)(f) of this section is less than the value of the transferred asset, the department considers the difference the transfer of an asset without adequate consideration.

(3) The department considers the transfer of an asset in exchange for care given by a family member without a written agreement as described under subsection (1)(f) of this section as the transfer of an asset without adequate consideration.

(4) The transfer of an asset or the establishment of a trust is considered to be for the sole benefit of a person described in subsection (1)(e) of this section, if the transfer or trust:

(a) Is established by a legal document that makes the transfer irrevocable; and

(b) Provides for spending all funds involved for the benefit of the person for whom the transfer is made within a time frame based on the actuarial life expectancy of that person.

(5) When evaluating the effect of the transfer of an asset on a client's eligibility for LTC services received on or after October 1, 1993, the department counts the number of months before the month of application to establish what is referred to as the "look-back" period. The following number of months apply as described:

(a) Thirty-six months, if all or part of the assets were transferred on or after August 11, 1993; and

(b) Sixty months, if all or part of the assets were transferred into a trust as described in WAC ~~((388-561-0100))~~ 182-516-0100.

(6) If a client or the client's spouse transfers an asset within the look-back period without receiving adequate compensation, the result is a penalty period in which the client is not eligible for LTC services. If a client or the client's spouse transfers an asset on or after March 1, 1997, and before April 1, 2003, the department must establish a penalty period as follows:

(a) If a single or multiple transfers are made within a single month, then the penalty period:

(i) Begins on the first day of the month in which the transfer is made; and

(ii) Ends on the last day of the number of whole months found by dividing the total uncompensated value of the assets by the statewide average monthly private cost for nursing facilities at the time of application.

(b) If multiple transfers are made during multiple months, then the transfers are treated as separate events and multiple penalty periods are established that:

(i) Begin on the latter of:

(A) The first day of the month in which the transfer is made; or

(B) The first day after any previous penalty period has ended; and

(ii) End on the last day of the whole number of months as described in ~~((subsection (6)))~~ (a)(ii) of this subsection.

(7) If an asset is sold, transferred, or exchanged, the portion of the proceeds:

(a) That is used within the same month to acquire an excluded resource described in WAC ~~((388-513-1350))~~ 182-513-1350 does not affect the client's eligibility;

(b) That remains after an acquisition described in ~~((subsection (7)))~~ (a) of this subsection becomes an available resource as of the first day of the following month.

(8) If the transfer of an asset to the client's spouse includes the right to receive a stream of income not generated by a transferred resource, the department must apply rules described in WAC ~~((388-513-1330))~~ 182-513-1330 (5) through (7).

(9) If the transfer of an asset for which adequate compensation is not received is made to a person other than the client's spouse and includes the right to receive a stream not generated by a transferred resource, the length of the penalty period is determined and applied in the following way:

(a) The total amount of income that reflects a time frame based on the actuarial life expectancy of the client who transfers the income is added together;

(b) The amount described in ~~((9))~~ (a) of this subsection is divided by the statewide average monthly private cost for nursing facilities at the time of application; and

(c) A penalty period equal to the number of whole months found by following ~~((subsections (9)))~~ (a) and (b) of this subsection is applied that begins on the latter of:

(i) The first day of the month in which the client transfers the income; or

(ii) The first day of the month after any previous penalty period has ended.

(10) A penalty period for the transfer of an asset that is applied to one spouse is not applied to the other spouse, unless:

(a) Both spouses are receiving LTC services; and

(b) A division of the penalty period between the spouses is requested.

(11) If a client or the client's spouse disagrees with the determination or application of a penalty period, that person may request a hearing as described in chapter 388-02 WAC.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1366 Evaluating the transfer of an asset made before March 1, 1997, for long-term care (LTC) services. This section describes how the department evaluates the transfer of an asset made before March 1, 1997, by a client who is applying or approved for LTC services. The department must consider whether a transfer made within a specified time before the month of application requires a penalty period in which the client is not eligible for these services. Refer to WAC ((~~388-513-1365~~) 182-513-1365) for rules used to evaluate the transfer of an asset on or after March 1, 1997.

(1) When evaluating the transfer of an asset made before March 1, 1997, the department must apply rules described in WAC ((~~388-513-1365~~) 182-513-1365) (1) through (4) and (7) through (11) in addition to the rules described in this section.

(2) When evaluating the effect of the transfer of an asset on a client's eligibility for LTC services received before October 1, 1993, the department counts the number of months before the month of application to establish what is referred to as the "look-back" period. The following number of months apply as described:

(a) Thirty months, if the asset was transferred before August 11, 1993; or

(b) Thirty-six months, if the asset was transferred on or after August 11, 1993.

(3) If a client or the client's spouse transferred an asset without receiving adequate compensation before August 11, 1993, the department must establish a penalty period that:

(a) Runs concurrently for transfers made in more than one month in the look-back period; and

(b) Begins on the first day of the month in which the asset is transferred and ends on the last day of the month which is the lesser of:

(i) Thirty months after the month of transfer; or

(ii) The number of whole months found by dividing the total uncompensated value of the assets by the statewide average monthly private cost for nursing facilities at the time of application.

(4) If a client or the client's spouse transferred an asset without receiving adequate compensation on or after August 11, 1993, and before March 1, 1997, the department must establish a penalty period as follows:

(a) If the transfer is made during the look-back period, then the penalty period:

(i) Begins on the first day of the month in which the transfer is made; and

(ii) Ends on the last day of the number of whole months described in ((~~subsection (3)~~) (b)(ii) of this subsection).

(b) If the transfer is made while the client is receiving LTC services or during a period of ineligibility, then the penalty period:

(i) Begins on the latter of the first day of the month:

(A) In which the transfer is made; or

(B) After a previous penalty period has ended; and

(ii) Ends on the last day of the number of whole months described in ((~~subsection (3)~~) (b)(ii) of this subsection).

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1367 Hardship waivers for long-term care (LTC) services. Clients who are denied or terminated from LTC services due to a transfer of asset penalty (described in WAC ((~~388-513-1363, 388-513-1364 and 388-513-1365~~) 182-513-1363, 182-513-1364, and 182-513-1365), or having excess home equity (described in WAC ((~~388-513-1350~~) 182-513-1350)) may apply for an undue hardship waiver. Notice of the right to apply for an undue hardship waiver will be given whenever there is a denial or termination based on an asset transfer or excess home equity. This section:

- Defines undue hardship;

- Specifies the approval criteria for an undue hardship request;

- Establishes the process the department follows for determining undue hardship; and

- Establishes the appeal process for a client whose request for an undue hardship is denied.

(1) When does undue hardship exist?

(a) Undue hardship may exist:

(i) When a transfer of an asset occurs between:

(A) Registered domestic partners as described in chapter 26.60 RCW; or

(B) Same-sex couples who were married in states and the District of Columbia where same-sex marriages are legal; and

(C) The transfer would not have caused a period of ineligibility if made between an opposite sex married couple under WAC ((~~388-513-1363~~) 182-513-1363).

(ii) When a client who transferred the assets or income, or on whose behalf the assets or income were transferred, either personally or through a spouse, guardian or attorney-in-fact, has exhausted all reasonable means including legal remedies to recover the assets or income or the value of the transferred assets or income that have caused a penalty period; and

(iii) The client provides sufficient documentation to support their efforts to recover the assets or income; or

(iv) The client is unable to access home equity in excess of the standard described in WAC ((~~388-513-1350~~) 182-513-1350); and

(v) When, without LTC benefits, the client is unable to obtain:

(A) Medical care to the extent that his or her health or life is endangered; or

(B) Food, clothing, shelter or other basic necessities of life.

(b) Undue hardship can be approved for an interim period while the client is pursuing recovery of the assets or income.

(2) Undue hardship does not exist:

(a) When the transfer of asset penalty period or excess home equity provision inconveniences a client or restricts their lifestyle but does not seriously deprive him or her as defined in subsection (1)(a)(iii) of this section;

(b) When the resource is transferred to a person who is handling the financial affairs of the client; or

(c) When the resource is transferred to another person by the individual that handles the financial affairs of the client.

~~((a))~~ Undue hardship may exist under (b) and (c) of this subsection if DSHS has found evidence of financial exploitation.

(3) How is an undue hardship waiver requested?

(a) An undue hardship waiver may be requested by:

- (i) The client;
- (ii) The client's spouse;
- (iii) The client's authorized representative;
- (iv) The client's power of attorney; or

(v) With the consent of the client or their guardian, a medical institution, as defined in WAC 182-500-0005, in which an institutionalized client resides.

(b) Request must:

(i) Be in writing;

(ii) State the reason for requesting the hardship waiver;

(iii) Be signed by the requestor and include the requestor's name, address and telephone number. If the request is being made on behalf of a client, then the client's name, address and telephone number must be included;

(iv) Be made within thirty days of the date of denial or termination of LTC services; and

(v) Returned to the originating address on the denial/termination letter.

(4) What if additional information is needed to determine a hardship waiver? ~~((a))~~ A written notice to the client is sent requesting additional information within fifteen days of the request for an undue hardship waiver. Additional time to provide the information can be requested by the client.

(5) What happens if my hardship waiver is approved?

(a) The department sends a notice within fifteen days of receiving all information needed to determine a hardship waiver. The approval notice specifies a time period the undue hardship waiver is approved.

(b) Any changes in a client's situation that led to the approval of a hardship must be reported to the department ~~((by the tenth of the month following))~~ within thirty days of the change per WAC ((388-418-0007)) 182-504-0110.

(6) What happens if my hardship waiver is denied?

(a) The department sends a denial notice within fifteen days of receiving the requested information. The letter will state the reason it was not approved.

(b) The denial notice will have instructions on how to request an administrative hearing. The department must receive an administrative hearing request within ninety days of the date of the adverse action or denial.

(7) What statute or rules govern administrative hearings?

~~((a))~~ An administrative hearing held under this section is governed by chapters 34.05 RCW and ~~((chapter 388-02))~~ 182-501 WAC and this section. If a provision in this section conflicts with a provision in chapter ~~((388-02))~~ 182-501 WAC, the provision in this section governs.

(8) Can the department revoke an approved undue hardship waiver? ~~((a))~~ The department may revoke approval of an undue hardship waiver if any of the following occur:

~~((i))~~ (a) A client, or his or her authorized representative, fails to provide timely information and/or resource verifications as it applies to the hardship waiver when requested

by the department per WAC ~~((388-490-0005 and 388-418-0007))~~ 182-503-0050 and 182-504-0120 or 182-504-0125;

~~((ii))~~ (b) The lien or legal impediment that restricted access to home equity in excess of five hundred thousand dollars is removed; or

~~((iii))~~ (c) Circumstances for which the undue hardship was approved have changed.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1380 Determining a client's financial participation in the cost of care for long-term care (LTC) services. This rule describes how the department allocates income and excess resources when determining participation in the cost of care (the post-eligibility process). The department applies rules described in WAC ~~((388-513-1315))~~ 182-513-1315 to define which income and resources must be used in this process.

(1) For a client receiving institutional or hospice services in a medical institution, the department applies all subsections of this rule.

(2) For a client receiving waiver services at home or in an alternate living facility, the department applies only those subsections of this rule that are cited in the rules for those programs.

(3) For a client receiving hospice services at home, or in an alternate living facility, the department applies rules used for the community options program entry system (COPES) for hospice applicants with gross income under the medicaid special income level (SIL) (300% of the federal benefit rate (FBR)), if the client is not otherwise eligible for another non-institutional categorically needy medicaid program. (Note: For hospice applicants with income over the medicaid SIL, medically needy medicaid rules apply.)

(4) The department allocates nonexcluded income in the following order and the combined total of ~~((4))~~ (a), (b), (c), and (d) of this subsection cannot exceed the effective one-person medically needy income level (MNIL):

(a) A personal needs allowance (PNA) of:

(i) Seventy dollars for the following clients who live in a state veteran's home and receive a needs based veteran's pension in excess of ninety dollars:

(A) A veteran without a spouse or dependent child.

(B) A veteran's surviving spouse with no dependent children.

(ii) The difference between one hundred sixty dollars and the needs based veteran's pension amount for persons specified in ~~((subsection (4)))~~ (a)(i) of this ~~((section))~~ subsection who receive a veteran's pension less than ninety dollars.

(iii) One hundred sixty dollars for a client living in a state veterans' home who does not receive a needs based veteran's pension;

(iv) Forty-one dollars and sixty-two cents for all clients in a medical institution receiving ABD cash assistance.

(v) For all other clients in a medical institution the PNA is fifty-seven dollars and twenty-eight cents.

(vi) Current PNA and long-term care standards can be found at <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

(b) Mandatory federal, state, or local income taxes owed by the client.

(c) Wages for a client who:

(i) Is related to the supplemental security income (SSI) program as described in WAC 182-512-0050(1); and

(ii) Receives the wages as part of a department-approved training or rehabilitative program designed to prepare the client for a less restrictive placement. When determining this deduction employment expenses are not deducted.

(d) Guardianship fees and administrative costs including any attorney fees paid by the guardian, after June 15, 1998, only as allowed by chapter 388-79 WAC.

(5) The department allocates nonexcluded income after deducting amounts described in subsection (4) of this section in the following order:

(a) Current or back child support garnished or withheld from income according to a child support order in the month of the garnishment if it is for the current month:

(i) For the time period covered by the PNA; and

(ii) Is not counted as the dependent member's income when determining the family allocation amount.

(b) A monthly maintenance needs allowance for the community spouse not to exceed, effective January 1, 2008, two thousand six hundred ten dollars, unless a greater amount is allocated as described in subsection (7) of this section. The community spouse maintenance allowance may change each January based on the consumer price index. Starting January 1, 2008, and each year thereafter the community spouse maintenance allocation can be found in the long-term care standards chart at <http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>. The monthly maintenance needs allowance:

(i) Consists of a combined total of both:

(A) One hundred fifty percent of the two person federal poverty level. This standard may change annually on July 1st; and

(B) Excess shelter expenses as described under subsection (6) of this section.

(ii) Is reduced by the community spouse's gross countable income; and

(iii) Is allowed only to the extent the client's income is made available to the community spouse.

(c) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of the community spouse or institutionalized person who:

(i) Resides with the community spouse: ~~((A))~~ For each child, one hundred and fifty percent of the two-person FPL minus that child's income and divided by three (child support received from a noncustodial parent is considered the child's income). This standard is called the community spouse (CS) and family maintenance standard and can be found at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

(ii) Does not reside with the community spouse or institutionalized person, in an amount equal to the effective one-person MNIL for the number of dependent family members in the home less the dependent family member's income.

(iii) Child support received from a noncustodial parent is the child's income.

(d) Medical expenses incurred by the institutional client and not used to reduce excess resources. Allowable medical expenses and reducing excess resources are described in WAC ~~((388-513-1350))~~ 182-513-1350.

(e) Maintenance of the home of a single institutionalized client or institutionalized couple:

(i) Up to one hundred percent of the one-person federal poverty level per month;

(ii) Limited to a six-month period;

(iii) When a physician has certified that the client is likely to return to the home within the six-month period; and

(iv) When social services staff documents the need for the income exemption.

(6) For the purposes of this section, "excess shelter expenses" means the actual expenses under ~~((subsection (6)))~~

(b) of this subsection less the standard shelter allocation under ~~((subsection (6)))~~ (a) of this subsection. For the purposes of this rule:

(a) The standard shelter allocation is based on thirty percent of one hundred fifty percent of the two person federal poverty level. This standard may change annually on July 1st and is found at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>; and

(b) Shelter expenses are the actual required maintenance expenses for the community spouse's principal residence for:

(i) Rent;

(ii) Mortgage;

(iii) Taxes and insurance;

(iv) Any maintenance care for a condominium or cooperative; and

(v) The food stamp standard utility allowance described in WAC 388-450-0195, provided the utilities are not included in the maintenance charges for a condominium or cooperative.

(7) The amount allocated to the community spouse may be greater than the amount in subsection (6)(b) of this section only when:

(a) A court enters an order against the client for the support of the community spouse; or

(b) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(8) A client who is admitted to a medical facility for ninety days or less and continues to receive full SSI benefits is not required to use the SSI income in the cost of care for medical services. Income allocations are allowed as described in this section from non-SSI income.

(9) Standards described in this section for long-term care can be found at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1395 Determining eligibility for institutional or hospice services for individuals living in a medical institution under the medically needy (MN) program. This section describes how the department determines a client's eligibility for institutional or hospice services in a medical institution and for facility care only under the MN

program. In addition, this section describes rules used by the department to determine whether a client approved for these benefits is also eligible for noninstitutional medical assistance in a medical institution under the MN program.

(1) To be eligible for institutional or hospice services under the MN program for individuals living in a medical institution, a client must meet the financial requirements described in subsection (5) of this section. In addition, a client must meet program requirements described in WAC ((388-513-1315)) 182-513-1315; and

(a) Be an SSI-related client with countable income as described in subsection (4)(a) of this section that is more than the special income level (SIL); or

(b) Be a child not described in ((subsection (1))) (a) of this subsection with countable income as described in subsection (4)(b) of this section that exceeds the categorically needy (CN) standard for the children's medical program.

(2) For an SSI-related client, excess resources are reduced by medical expenses as described in WAC ((388-513-1350)) 182-513-1350 to the resource standard for a single or married individual.

(3) The department determines a client's countable resources for institutional and hospice services under the MN programs as follows:

(a) For an SSI-related client, the department determines countable resources per WAC ((388-513-1350)) 182-513-1350.

(b) For a child not described in ((subsection (3))) (a) of this subsection, no determination of resource eligibility is required.

(4) The department determines a client's countable income for institutional and hospice services under the MN program as follows:

(a) For an SSI-related client, the department reduces available income as described in WAC ((388-513-1325 and 388-513-1330)) 182-513-1325 and 182-513-1330 by:

(i) Excluding income described in WAC ((388-513-1340)) 182-513-1340;

(ii) Disregarding income described in WAC ((388-513-1345)) 182-513-1345; and

(iii) Subtracting previously incurred medical expenses incurred by the client and not used to reduce excess resources. Allowable medical expenses and reducing excess resources are described in WAC ((388-513-1350)) 182-513-1350.

(b) For a child not described in ((subsection (4))) (a) of this subsection, the department:

(i) Follows the income rules described in WAC 182-505-0210 for the children's medical program; and

(ii) Subtracts the medical expenses described in this subsection ((4)).

(5) If the income remaining after the allowed deductions described in WAC ((388-513-1380)) 182-513-1380, plus countable resources in excess of the standard described in WAC ((388-513-1350)) 182-513-1350(1), is less than the department-contracted rate times the number of days residing in the facility the client:

(a) Is eligible for institutional or hospice services in a medical institution, and medical assistance;

(b) Is approved for twelve months; and

(c) Participates income and excess resources toward the cost of care as described in WAC ((388-513-1380)) 182-513-1380.

(6) If the income remaining after the allowed deductions described in WAC ((388-513-1380)) 182-513-1380 plus countable resources in excess of the standard described in WAC ((388-513-1350)) 182-513-1350(1) is more than the department-contracted rate times the number of days residing in the facility the client:

(a) Is not eligible for payment of institutional services; and

(b) Eligibility is determined for medical assistance only as described in chapter 182-519 WAC.

(7) If the income remaining after the allowed deductions described in WAC ((388-513-1380)) 182-513-1380 is more than the department contracted nursing facility rate based on the number of days the client is in the facility, but less than the private nursing rate plus the amount of medical expenses not used to reduce excess resources the client:

(a) Is eligible for nursing facility care only and is approved for a three or six month based period as described in chapter 182-519 WAC. This does not include hospice in a nursing facility; and

(i) Pays the nursing home at the current state rate;

(ii) Participates in the cost of care as described in WAC ((388-513-1380)) 182-513-1380; and

(iii) Is not eligible for medical assistance or hospice services unless the requirements in subsection (6)(b) of this section is met.

(b) Is approved for medical assistance for a three or six month base period as described in chapter 182-519 WAC, if:

(i) No income and resources remain after the post eligibility treatment of income process described in WAC ((388-513-1380)) 182-513-1380.

(ii) Medicaid certification is approved beginning with the first day of the base period.

(c) Is approved for medical assistance for up to three or six months when they incur additional medical expenses that are equal to or more than excess income remaining after the post eligibility treatment of income process described in WAC ((388-513-1380)) 182-513-1380.

(i) This process is known as spenddown and is described in WAC 182-519-0100.

(ii) Medicaid certification is approved on the day the spenddown is met.

(8) If the income remaining after the allowed deductions described in WAC ((388-513-1380)) 182-513-1380, plus countable resources in excess of the standard described in WAC ((388-513-1350)) 182-513-1350 is more than the private nursing facility rate times the number of days in a month residing in the facility, the client:

(a) Is not eligible for payment of institutional services.

(b) Eligibility is determined for medical assistance only as described in chapter 182-519 WAC.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1400 Long-term care (LTC) partnership program (index). Under the long term care (LTC) part-

nership program, individuals who purchase qualified long-term care partnership insurance policies can apply for long-term care medicaid under special rules for determining financial eligibility. These special rules generally allow the individual to protect assets up to the insurance benefits received from a partnership policy so that such assets will not be taken into account in determining financial eligibility for long-term care medicaid and will not subsequently be subject to estate recovery for medicaid and long-term care services paid. The Washington long term care partnership program is effective on December 1, 2011.

The following rules govern long-term care eligibility under the long-term care partnership program:

- (1) WAC ((~~388-513-1405~~)) 182-513-1405 Definitions.
- (2) WAC ((~~388-513-1410~~)) 182-513-1410 What qualifies as a LTC partnership policy?
- (3) WAC ((~~388-513-1415~~)) 182-513-1415 What assets can't be protected under the LTC partnership provisions?
- (4) WAC ((~~388-513-1420~~)) 182-513-1420 Who is eligible for asset protection under a LTC partnership policy?
- (5) WAC ((~~388-513-1425~~)) 182-513-1425 When would I not qualify for LTC medicaid if I have a LTC partnership policy that does not have exhausted benefits?
- (6) WAC ((~~388-513-1430~~)) 182-513-1430 What change of circumstances must I report when I have a LTC partnership policy paying a portion of my care?
- (7) WAC ((~~388-513-1435~~)) 182-513-1435 Will Washington recognize a LTC partnership policy purchased in another state?
- (8) WAC ((~~388-513-1440~~)) 182-513-1440 How many of my assets can be protected?
- (9) WAC ((~~388-513-1445~~)) 182-513-1445 How do I designate a protected asset and what proof is required?
- (10) WAC ((~~388-513-1450~~)) 182-513-1450 How does transfer of assets affect LTC partnership and medicaid eligibility?
- (11) WAC ((~~388-513-1455~~)) 182-513-1455 If I have protected assets under a LTC partnership policy, what happens after my death?

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1405 Definitions. For purposes of this section, the following terms have the meanings given them. Additional definitions can be found at chapter ((~~388-500~~)) 182-500 WAC and WAC ((~~388-513-1304~~)) 182-513-1301.

"Issuer" means any entity that delivers, issues for delivery, or provides coverage to, a resident of Washington, any policy that claims to provide asset protection under the Washington long-term care partnership act, chapter 48.85 RCW. Issuer as used in this chapter specifically includes insurance companies, fraternal benefit societies, health care service contractors, and health maintenance organizations.

"Long-term care (LTC) insurance" means a policy described in Chapter 284-83 WAC.

"Long-term care services" means services received in a medical institution, or under a home and community based waiver authorized by home and community services (HCS) or ((~~division of~~)) developmental disabilities administration

(DDA). Hospice services are considered long-term care services for the purposes of the long-term care partnership when medicaid eligibility is determined under chapter ((~~388-513 or 388-515~~)) 182-513 or 182-515 WAC.

"Protected assets" means assets that are designated as excluded or not taken into account upon determination of long-term care medicaid eligibility described in WAC ((~~388-513-1315~~)) 182-513-1315. The protected or excluded amount is up to the dollar amount of benefits that have been paid for long-term care services by the qualifying long-term care partnership policy on the medicaid applicant's or client's behalf. The assets are also protected or excluded for the purposes of estate recovery described in chapter ((~~388-527~~)) 182-527 WAC, in up to the amount of benefits paid by the qualifying policy for medical and long-term care services.

"Qualified long-term care insurance partnership" means an agreement between the Centers for Medicare and Medicaid Services (CMS), and the health care authority (HCA) which allows for the disregard of any assets or resources in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary under a long-term care insurance policy that has been determined by the Washington state insurance commission to meet the requirements of section 1917 (b)(1)(c)(iii) of the act. These policies are described in chapter 284-83 WAC.

"Reciprocity Agreement" means an agreement between states approved under section 6021(b) of the Deficit Reduction Act of 2005, Public Law 109-171 (DRA) under which the states agree to provide the same asset protections for qualified partnership policies purchased by an individual while residing in another state and that state has a reciprocity agreement with the state of Washington.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1415 What assets can't be protected under the LTC partnership provisions? The following assets cannot be protected under a LTC partnership policy.

- (1) Resources in a trust described in WAC ((~~388-561-0100~~)) 182-516-0100 (6) and (7).
- (2) Annuity interests in which Washington must be named as a preferred remainder beneficiary as described in WAC ((~~388-561-0204~~)) 182-516-0201.
- (3) Home equity in excess of the standard described in WAC ((~~388-513-1350~~)) 182-513-1350. Individuals who have excess home equity interest are not eligible for long-term care medicaid services.
- (4) Any portion of the value of an asset that exceeds the dollar amount paid out by the LTC partnership policy.
- (5) The unprotected value of any partially protected asset (an example would be the home) is subject to estate recovery described in chapter ((~~388-527~~)) 182-527 WAC.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1425 When would I not qualify for LTC medicaid if I have a LTC partnership policy in pay status? You are not eligible for LTC medicaid when the following applies:

(1) The income you have available to pay toward your cost of care described in WAC (~~(388-513-1380)~~) 182-513-1380, combined with the amount paid under the qualifying LTC partnership policy, exceeds the monthly private rate at the institution.

(2) The income you have available to pay toward your cost of care on a home and community based (HCB) waiver described in chapter (~~(388-515)~~) 182-515 WAC, combined with the amount paid under the qualifying LTC partnership policy, exceeds the monthly private rate in a home or residential setting.

(3) You fail to meet another applicable eligibility requirement for LTC medicaid.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1430 What change of circumstances must I report when I have a LTC partnership policy paying a portion of my care? You must report changes described in WAC (~~(388-418-0005)~~) 182-418-0005 plus the following:

(1) You must report and verify the value of the benefits that your issuer has paid on your behalf under the LTC partnership policy upon request by the department, and at each annual eligibility review.

(2) You must provide proof when you have exhausted the benefits under your LTC partnership policy.

(3) You must provide proof if you have given away or transferred assets that you have previously designated as protected. Although, there is no penalty for the transfer of protected assets once you have been approved for LTC medicaid, the value of transferred assets reduces the total dollar amount that is designated as protected and must be verified.

(4) You must provide proof if you have sold an asset or converted a protected asset into cash or another type of asset. You will need to make changes in the asset designation and verify the type of transaction and new value of the asset.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1450 How does transfer of assets affect LTC partnership and medicaid eligibility? (1) If you transfer an asset within the sixty months prior to the medicaid application or after medicaid eligibility has been established, we will evaluate the transfer based on WAC (~~(388-513-1363)~~) 182-513-1363 and determine if a penalty period applies unless:

(a) You have already been receiving institutional services;

(b) Your LTC partnership policy has paid toward institutional services for you; and

(c) The value of the transferred assets has been protected under the LTC partnership policy.

(2) The value of the transferred assets that exceed your LTC partnership protection will be evaluated for a transfer penalty.

(3) If you transfer assets whose values are protected, you lose that value as future protection unless all the transferred assets are returned.

(4) The value of your protected assets less the value of transferred assets equals the adjusted value of the assets you are able to protect.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1455 If I have protected assets under a LTC partnership policy, what happens after my death? Assets designated as protected prior to death are not subject to estate recovery for medical or LTC services paid on your behalf as described in chapter (~~(388-527)~~) 182-527 WAC as long as the following requirements are met:

(1) A personal representative who asserts an asset is protected under this section has the initial burden of providing proof as described in chapter (~~(388-527)~~) 182-527 WAC.

(2) A personal representative must provide verification from the LTC insurance company of the dollar amount paid out by the LTC partnership policy.

(3) If the LTC partnership policy paid out more than was previously designated, the personal representative has the right to assert that additional assets should be protected based on the increased protection. The personal representative must use the DSHS LTCP asset designation form and send it to the office of financial recovery.

(4) The amount of protection available to you at death through the estate recovery process is decreased by the FMV of any protected assets that were transferred prior to death.

AMENDATORY SECTION (Amending WSR 13-03-096, filed 1/15/13, effective 1/15/13)

WAC 182-515-1500 Payment standard for persons in certain group living facilities. (1) A monthly grant payment of thirty-eight dollars and eighty-four cents will be made to eligible persons in (~~the following facilities:~~ alternative living facilities (ALF) described in WAC 182-513-1301.

- ~~(a) Congregate care facilities (CCF);~~
- ~~(b) Adult residential rehabilitation centers/adult residential treatment facilities (AARC/ARTF); and~~
- ~~(c) Division of developmental disabilities (DDD) group home facilities))~~

(2) The payment covers the person's need for clothing, personal maintenance, and necessary incidentals (CPI).

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-515-1506 What are the general eligibility requirements for home and community based (HCB) services authorized by home and community services (HCS) and hospice? (1) To be eligible for home and community based (HCB) services and hospice you must:

(a) Meet the program and age requirements for the specific program:

(i) COPES, per WAC 388-106-0310;

(ii) PACE, per WAC 388-106-0705;

(iii) WMIP waiver services, per WAC 388-106-0750;

(iv) New Freedom, per WAC 388-106-1410;

(v) Hospice, per chapter 182-551 WAC; or

(vi) Roads to community living (RCL), per WAC 388-106-0250, 388-106-0255 and 388-106-0260.

(b) Meet the disability criteria for the supplemental security income (SSI) program as described in WAC 182-512-0050;

(c) Require the level of care provided in a nursing facility described in WAC 388-106-0355;

(d) Be residing in a medical institution as defined in WAC 182-500-0050, or likely to be placed in one within the next thirty days without HCB services provided under one of the programs listed in ~~((subsection (4)))~~ (a) of this subsection;

(e) Have attained institutional status as described in WAC ~~((388-513-1320))~~ 182-513-1320;

(f) Be determined in need of services and be approved for a plan of care as described in ~~((subsection (4)))~~ (a) of this subsection;

(g) Be able to live at home with community support services and choose to remain at home, or live in a department-contracted:

(i) Enhanced adult residential care (EARC) facility;

(ii) Licensed adult family home (AFH); or

(iii) Assisted living (AL) facility.

(h) Not be subject to a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1363 through 388-513-1365;

(i) Not have a home with equity in excess of the requirements described in WAC 388-513-1350.

(2) Refer to WAC 388-513-1315 for rules used to determine countable resources, income, and eligibility standards for long-term care services.

(3) Current income and resource standard charts are located at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.html>.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-515-1507 What are the financial requirements for home and community based (HCB) services authorized by home and community services (HCS) when you are eligible for a noninstitutional categorically needy (CN) medicaid program? (1) You are eligible for medicaid under one of the following programs:

(a) Supplemental security income (SSI) eligibility described in WAC 388-474-0001 and chapter 182-510 WAC. This includes SSI clients under 1619B status;

(b) SSI-related CN medicaid described in WAC 182-512-0100 (2)(a) and (b);

(c) SSI-related health care for workers with disabilities program (HWD) described in WAC 182-511-1000. If you are receiving HWD, you are responsible to pay your HWD premium as described in WAC 182-511-1250;

(d) Aged, blind, or disabled (ABD) cash assistance described in WAC 388-400-0060 and are receiving CN medicaid based on ABD criteria.

(2) You do not have a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1363 through 388-513-1365. This does not apply to PACE or hospice services.

(3) You do not have a home with equity in excess of the requirements described in WAC 388-513-1350.

(4) You do not have to meet the initial eligibility income test of having gross income at or below the special income level (SIL).

(5) You do not pay (participate) toward the cost of your personal care services.

(6) If you live in a department contracted facility listed in WAC 388-515-1506 (1)(g), you pay room and board up to the ~~((ADSA))~~ aging and disability services (ADS) room and board standard. The ~~((ADSA))~~ ADS room and board standard is based on the federal benefit rate (FBR) minus the current personal needs allowance (PNA) for HCS CN waivers in an alternate living facility.

(a) If you live in an assisted living (AL) facility, enhanced adult residential center (EARC), or adult family home (AFH) you keep a PNA of sixty-two dollars and seventy-nine cents and use your income to pay up to the room and board standard.

(b) If ~~((subsection (6)))~~ (a) of this subsection applies and you are receiving HWD described in WAC 182-511-1000, you are responsible to pay your HWD premium as described in WAC 182-511-1250, in addition to the ~~((ADSA))~~ ADS room and board standard.

(7) If you are eligible for aged, blind or disabled (ABD) cash assistance program described in WAC 388-400-0060 and receiving SSI-related CN medicaid, you do not participate in the cost of personal care and you may keep the following:

(a) When you live at home, you keep the cash grant amount authorized under WAC 388-478-0033;

(b) When you live in an AFH, you keep a PNA of thirty-eight dollars and eighty-four cents, and pay any remaining income and ABD cash grant to the facility for the cost of room and board up to the ~~((ADSA))~~ ADS room and board standard; or

(c) When you live in an assisted living facility or enhanced adult residential center, you are only eligible to receive an ABD cash grant of thirty-eight dollars and eighty-four cents as described in WAC ~~((388-478-0045))~~ 182-515-1500, which you keep for your PNA.

(8) Current resource and income standards are located at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

(9) Current PNA and ~~((ADSA))~~ ADS room and board standards are located at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/ltcstandardsPNAchartssubfile.shtml>.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-515-1508 How does the department determine if you are financially eligible for home and community based (HCB) services authorized by home and community services (HCS) and hospice if you are not eligible for medicaid under a categorically needy (CN) program listed in WAC 388-515-1507(1)? (1) If you are not eligible for medicaid under a categorically needy (CN) program listed in WAC 388-515-1507(1), the department must determine

your eligibility using institutional medicaid rules. This section explains how you may qualify using institutional medicaid rules.

(2) You must meet the general eligibility requirements described in WAC 388-513-1315 and 388-515-1506.

(3) You must meet the following resource requirements:

(a) Resource limits described in WAC 388-513-1350.

(b) If you have resources over the standard allowed in WAC 388-513-1350, the department reduces resources over the standard by your unpaid medical expenses described in WAC 388-513-1350 if you verify these expenses.

(4) You must meet the following income requirements:

(a) Your gross nonexcluded income must be at or below the special income level (SIL) which is three hundred percent of the federal benefit rate (FBR); or

(b) For home and community based (HCB) service programs authorized by HCS your gross nonexcluded income is:

(i) Above the special income level (SIL) which is three hundred percent of the federal benefit rate (FBR); and

(ii) Net income is no greater than the effective one-person medically needy income level (MNIL). Net income is calculated by reducing gross nonexcluded income by:

(A) Medically needy (MN) disregards found in WAC 388-513-1345; and

(B) The average monthly nursing facility state rate is five thousand six hundred and twenty six dollars. This rate will be updated annually starting October 1, 2012, and each year thereafter on October 1st. This standard will be updated annually in the long-term care standard section of the EAZ manual described at <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

(5) The department follows the rules in WAC (~~388-515-1325~~) 182-513-1325, 388-513-1330, and 388-513-1340 to determine available income and income exclusions.

(6) Current resource and income standards (including the SIL, MNIL and FBR) for long-term care are found at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-515-1509 How does the department determine how much of my income I must pay towards the cost of my care if I am only eligible for home and community based (HCB) services under WAC 388-515-1508? If you are only eligible for medicaid under WAC 388-515-1508, the department determines how much you must pay based upon the following:

(1) If you are single and living at home as defined in WAC 388-106-0010, you keep all your income up to the federal poverty level (FPL) for your personal needs allowance (PNA).

(2) If you are married living at home as defined in WAC 388-106-0010, you keep all your income up to the effective one-person medically needy income level (MNIL) for your PNA if your spouse lives at home with you. If you are married and living apart from your spouse, you're allowed to keep your income up to the FPL for your PNA.

(3) If you live in an assisted living (AL) facility, enhanced adult residential center (EARC), or adult family home (AFH), you:

(a) Keep a PNA from your gross nonexcluded income. The PNA is sixty-two dollars and seventy-nine cents effective July 1, 2008; and

(b) Pay for your room and board up to the (~~(ADSA)~~) ADS room and board standard.

(4) In addition to paying room and board, you may also have to pay toward the cost of personal care. This is called your participation. Income that remains after the PNA and (~~(any)~~) room and board (~~(deduction)~~) liability if residing in an alternate living facility is reduced by allowable deductions in the following order:

(a) If you are working, the department allows an earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income(~~(-)~~);

(b) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed by chapter 388-79 WAC;

(c) Current or back child support garnished or withheld from your income according to a child support order in the month of the garnishment if it is for the current month. If the department allows this as deduction from your income, the department will not count it as your child's income when determining the family allocation amount;

(d) A monthly maintenance needs allowance for your community spouse not to exceed that in WAC 388-513-1380 (5)(b) unless a greater amount is allocated as described in (~~(subsection)~~) (e) of this (~~(section)~~) subsection. This amount:

(i) Is allowed only to the extent that your income is made available to your community spouse; and

(ii) Consists of a combined total of both:

(A) One hundred fifty percent of the two person federal poverty level. This standard may change annually on July 1st and can be found at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>; and

(B) Excess shelter expenses. For the purposes of this section, excess shelter expenses are the actual required maintenance expenses for your community spouse's principal residence. These expenses are determined in the following manner:

(I) Rent, including space rent for mobile homes, plus;

(II) Mortgage, plus;

(III) Taxes and insurance, plus;

(IV) Any required payments for maintenance care for a condominium or cooperative, plus;

(V) The food assistance standard utility allowance (SUA) described in WAC 388-450-0195 provided the utilities are not included in the maintenance charges for a condominium or cooperative, minus;

(VI) The standard shelter allocation. This standard is based on thirty percent of one hundred fifty percent of the two person federal poverty level. This standard may change annually on July 1st and can be found at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>; and

(VII) Is reduced by your community spouse's gross countable income.

(iii) The amount allocated to the community spouse may be greater than the amount in ~~((subsection))~~ (d)(ii) of this subsection only when:

(A) There is a court order approving a higher amount for the support of your community spouse; or

(B) A hearing officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(e) A monthly maintenance needs amount for each minor or dependent child, dependent parent, or dependent sibling of your community or institutionalized spouse. The amount the department allows is based on the living arrangement of the dependent. If the dependent:

(i) Resides with your community spouse, for each child, one hundred fifty percent of the two-person FPL minus that child's income and divided by three (child support received from a noncustodial parent is considered the child's income);

(ii) Does not reside with the community spouse, the amount is equal to the effective one-person MNIL based on the number of dependent family members in the home less their separate income (child support received from a noncustodial parent is considered the child's income).

(f) Your unpaid medical expenses which have not been used to reduce excess resources. Allowable medical expenses are described in WAC 388-513-1350.

(g) The total of the following deductions cannot exceed the SIL (three hundred percent of the FBR):

(i) Personal needs allowance in subsections (1), (2), and (3)(a) and (b) of this section; and

(ii) Earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income in ~~((subsection (4)))~~ (a) of this subsection; and

(iii) Guardianship fees and administrative costs in ~~((subsection (4)))~~ (b) of this subsection.

(5) You must pay your provider the combination of the room and board amount and the cost of personal care services after all allowable deductions.

(6) You may have to pay third party resources described in WAC 182-501-0200 in addition to the room and board and participation. The combination of room and board, participation, and third party resources is the total amount you must pay.

(7) Current income and resource standards for long-term care (including SIL, MNIL, FPL, FBR) are located at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

(8) If you are in multiple living arrangements in a month (an example is a move from an adult family home to a home setting on HCB services), the department allows you the highest PNA available based on all the living arrangements and services you have in a month.

(9) Current PNA and ~~((ADSA))~~ ADS room and board standards are located at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/lcstandardsPNAchartsufile.shtml>.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-515-1510 Division of developmental disabilities ~~((DDD))~~ administration (DDA) home and community based ~~((services))~~ (HCB) waivers. The four sections that follow describe the general and financial eligibility requirements for home and community based (HCB) waivers authorized by the ~~((division of))~~ developmental disabilities ~~((DDD) home and community based services (HCBS) waivers)~~ administration (DDA).

(1) WAC 388-515-1511 describes the general eligibility requirements under the ~~((DDD-HCBS))~~ DDA HCB waivers.

(2) WAC 388-515-1512 describes the financial requirements for the ~~((DDD))~~ DDA waivers if you are eligible for medicaid under the noninstitutional categorically needy program (CN).

(3) WAC 388-515-1513 describes the initial financial requirements for the ~~((DDD))~~ DDA HCB waivers if you are not eligible for medicaid under a categorically needy program (CN) listed in WAC 388-515-1512(1).

(4) WAC 388-515-1514 describes the post eligibility financial requirements for the ~~((DDD))~~ DDA waivers if you are not eligible for medicaid under a categorically needy program CN listed in WAC 388-515-1512(1).

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-515-1511 What are the general eligibility requirements for waiver services under the ~~((division of))~~ developmental disabilities ~~((DDD))~~ administration (DDA) home and community based ~~((services (HCBS)))~~ (HCB) waivers? (1) This section describes the general eligibility requirements for waiver services under the ~~((DDD))~~ DDA home and community based ~~((services (HCBS)))~~ (HCB) waivers.

(2) The requirements for services for ~~((DDD-HCBS))~~ DDA HCB waivers are described in chapter 388-845 WAC. The department establishes eligibility for ~~((DDD-HCBS))~~ DDA HCB waivers. To be eligible, you must:

(a) Be an eligible client of the ~~((division of))~~ developmental disabilities ~~((DDD))~~ administration (DDA);

(b) Meet the disability criteria for the supplemental security income (SSI) program as described in WAC 182-512-0050;

(c) Require the level of care provided in an intermediate care facility for the intellectually disabled (ICF/ID);

(d) Have attained institutional status as described in WAC 388-513-1320;

(e) Be able to reside in the community and choose to do so as an alternative to living in an ICF/ID;

(f) Need waiver services as determined by your plan of care or individual support plan, and:

(i) Be able to live at home with waiver services; or

(ii) Live in a department contracted facility, which includes:

(A) A group home;

(B) Group training home;

(C) Child foster home, group home or staffed residential facility;

- (D) Adult family home (AFH); or
- (E) Adult residential care (ARC) facility.
- (iii) Live in your own home with supported living services from a certified residential provider; or
- (iv) Live in the home of a contracted companion home provider; and
- (g) Be both medicaid eligible under the ~~((categorically needy program (CN)))~~ HCB waiver eligibility described in WAC 182-515-1510 and be approved for services by ~~((the division of developmental disabilities))~~ DDA.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-515-1512 What are the financial requirements for the ~~((DDD))~~ DDA waiver services if I am eligible for medicaid under the noninstitutional categorically needy program (CN)? (1) You ~~((automatically))~~ meet income and resource eligibility for ~~((DDD))~~ DDA waiver services if you are eligible for medicaid under a categorically needy program (CN) under one of the following programs:

(a) Supplemental security income (SSI) eligibility described in WAC 388-474-0001 and chapter 182-510 WAC. This includes SSI clients under 1619B status ~~((These clients have medicaid eligibility determined and maintained by the Social Security Administration))~~;

(b) Health care for workers with disabilities (HWD) described in WAC 182-511-1000 through 182-511-1250;

(c) SSI-related (CN) medicaid described in WAC 182-512-0100 (2)(a) and (b) or meets the requirements in WAC 182-512-0880 and is (CN) eligible after the income disregards have been applied;

(d) ~~((CN medicaid for a child as described in WAC 182-505-0210 (1), (2), (7) or (8); or~~

~~((e)))~~ Aged, blind or disabled (ABD) cash assistance described in WAC 388-400-0060 and CN medicaid based on ABD criteria.

(2) If you are eligible for a CN medicaid program listed in subsection (1) ~~((above))~~ of this section, you do not have to pay (participate) toward the cost of your personal care and/or habilitation services. You are responsible to pay room and board if residing in a residential setting.

(3) If you are eligible for a CN medicaid program listed in subsection (1) ~~((above))~~ of this section, you do not need to meet the initial eligibility income test of gross income at or below the special income level (SIL), which is three hundred percent of the federal benefit rate (FBR).

(4) If you are eligible for a CN medicaid program listed in subsection (1) of this section, you pay up to the ~~((ADSA))~~ aging and disability services (ADS) room and board standard ~~((described in WAC 388-515-1507))~~ based on the medically needy income level (MNIL) minus the sixty-two dollars and seventy-nine cents personal needs allowance (PNA). Room and board and long-term care standards are located at <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

~~((a)))~~ If you live in an ARC, AFH or ~~((DDD))~~ DDA group home, you keep a personal needs allowance (PNA) and use your income to pay up to the ~~((ADSA))~~ ADS room and

board standard. Effective January 1, 2009, the PNA is sixty-two dollars and seventy-nine cents.

(5) If you are eligible for ~~((a))~~ the premium based medicaid program ~~((such as))~~, health care for workers with disabilities (HWD), you must continue to pay the medicaid premium to remain eligible for that ~~((CN-P))~~ CN program and pay the ADS room and board rate if residing in a residential ALF setting.

~~((6))~~ If you are eligible for a CN medicaid program listed in subsection (1) of this section you are subject to equity interest in primary residence, annuity disclosure requirements and are not subject to a penalty period of ineligibility described in WAC 182-513-1315.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-515-1513 How does the department determine if I am financially eligible for ~~((DDD))~~ DDA waiver service medical coverage if I am not eligible for medicaid under a categorically needy program (CN) listed in WAC 388-515-1512(1)? If you are not eligible for medicaid under a categorically needy program (CN) listed in WAC 388-515-1512(1), we must determine your eligibility using institutional medicaid rules. This section explains how you may qualify under this program. You may be required to pay towards the cost of your care if you are eligible under this program. The rules explaining how much you have to pay are listed in WAC 388-515-1514. To qualify, you must meet both the resource and income requirements.

(1) Resource limits are described in WAC 388-513-1350. If you have resources which are higher than the standard allowed, we may be able to reduce resources by your unpaid medical expenses described in WAC 388-513-1350.

(2) You are not subject to a transfer of asset penalty described in WAC 388-513-1363 through 388-513-1365.

~~((4))~~ (3) Not have a home with equity in excess of the requirements described in WAC 388-513-1350.

~~((3))~~ (4) Must disclose to the state any interest the applicant or spouse has in an annuity and meeting annuity requirements described in chapter 182-516 WAC.

(5) Your gross nonexcluded income must be at or below the special income level (SIL) which is three hundred percent of the federal benefit level. The department follows the rules in WAC ~~((388-515-1325))~~ 388-513-1325, 388-513-1330 and 388-513-1340 to determine available income and income exclusions.

~~((4))~~ (6) Refer to WAC 388-513-1315 for rules used to determine countable resources, income and eligibility standards for long-term care services.

~~((5))~~ (7) Current income and resources standards are located at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-515-1514 How does the department determine how much of my income I must pay towards the cost of my ~~((DDD))~~ DDA waiver services if I am not eligible for medicaid under a categorically needy program (CN)

listed in WAC 388-515-1512(1)? If you are not eligible for medicaid under a categorically needy program (CN) listed in WAC 388-515-1512(1), the department determines how much you must pay based upon the following:

(1) If you are an SSI-related client living at home as defined in WAC 388-106-0010, you keep all your income up to the SIL (three hundred percent of the FBR) for your personal needs allowance (PNA).

(2) If you are an SSI-related client and you live in an ARC, AFH or (~~(DD)~~) DDA group home, you:

(a) Keep a personal needs allowance (PNA) from your gross nonexcluded income. Effective January 1, 2009, the PNA is sixty-two dollars and seventy-nine cents; and

(b) Pay for your room and board up to the (~~(ADSA)~~) ADS room and board rate described in <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandard-spna.shtml>.

(3) In addition to paying room and board, you may also have to pay toward the cost of personal care. This is called your participation. Income that remains after the PNA and any room and board deduction described in subsection (2) (above) of this section, is reduced by allowable deductions in the following order:

(a) If you are working, we allow an earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income;

(b) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed by chapter 388-79 WAC;

(c) Current or back child support garnished or withheld from your income according to a child support order in the month of the garnishment if it is for the current month. If we allow this as deduction from your income, we will not count it as your child's income when determining the family allocation amount;

(d) A monthly maintenance needs allowance for your community spouse not to exceed that in WAC 388-513-1380 (5)(b) unless a greater amount is allocated as described in (~~subsection~~) (e) of this (~~section~~) subsection. This amount:

(i) Is allowed only to the extent that your income is made available to your community spouse; and

(ii) Consists of a combined total of both:

(A) One hundred fifty percent of the two person federal poverty level. This standard may change annually on July 1st and can be found at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>; and

(B) Excess shelter expenses. For the purposes of this section, excess shelter expenses are the actual required maintenance expenses for your community spouse's principal residence. These expenses are determined in the following manner:

(I) Rent, including space rent for mobile homes, plus;

(II) Mortgage, plus;

(III) Taxes and insurance, plus;

(IV) Any required payments for maintenance care for a condominium or cooperative plus;

(V) The food assistance standard utility allowance (SUA) provided the utilities are not included in the maintenance charges for a condominium or cooperative, minus;

(VI) The standard shelter allocation. This standard is based on thirty percent of one hundred fifty percent of the two person federal poverty level. This standard may change annually on July 1st and can be found at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>; and

(VII) Is reduced by your community spouse's gross countable income.

(ii) May be greater than the amount in (~~subsection~~) (d)(ii) of this subsection only when:

(A) There is a court order approving a higher amount for the support of your community spouse; or

(B) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(e) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of your community or institutionalized spouse. The amount we allow is based on the living arrangement of the dependent. If the dependent:

(i) Resides with your community spouse, for each child, one hundred fifty percent of the two-person FPL minus that child's income and divided by three (child support received from a noncustodial parent is considered the child's income);

(ii) Does not reside with the community spouse, the amount is equal to the effective one-person MNIL based on the number of dependent family members in the home less their separate income (child support received from a noncustodial parent is considered the child's income).

(f) Your unpaid medical expenses which have not been used to reduce excess resources. Allowable medical expenses are described in WAC 388-513-1350.

(g) The total of the following deductions cannot exceed the SIL (three hundred percent of the FBR):

(i) Personal needs allowances in subsection (1) of this section for in home or subsection (2)(a) of this section in a residential setting; and

(ii) Earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income in (~~subsection (3))~~ (a) of this subsection; and

(iii) Guardianship fees and administrative costs in (~~subsection (3))~~ (b) of this subsection.

(4) If you are eligible for aged, blind or disabled (ABD) cash assistance described in WAC 388-400-0060 and CN medicaid based on ABD criteria, you do not participate in the cost of personal care and you may keep the following:

(a) When you live at home, you keep the cash grant amount authorized under the ABD cash program;

(b) When you live in an AFH, you keep a PNA of thirty-eight dollars and eighty-four cents, and pay any remaining income and ABD cash grant to the facility for the cost of room and board up to the (~~(ADSA)~~) ADS room and board standard described in <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>; or

(c) When you live in an ARC or (~~(DD)~~) DDA group home, you are only eligible to receive a cash grant of thirty-eight dollars and eighty-four cents which you keep for your PNA.

(5) You may have to pay third party resources (TPR) described in WAC 182-501-0200 in addition to room and

board and the cost of personal care and/or habilitation services (participation) after all allowable deductions have been considered is called your total responsibility. You pay this amount to the ARC, AFH or (~~DDA~~) DDA group home provider.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-516-0001 Definitions. "Annuitant" means a person or entity that receives the income from an annuity.

"Annuity" means a policy, certificate or contract that is an agreement between two parties in which one party pays a lump sum to the other, and the other party agrees to guarantee payment of a set amount of money over a set amount of time. The annuity may be purchased at one time or over a set period of time and may be bought individually or with a group. It may be revocable or irrevocable. The party guaranteeing payment can be an:

- (1) Individual; or
- (2) Insurer or similar body licensed and approved to do business in the jurisdiction in which the annuity is established.

"Beneficiary" means an individual(s) designated in the trust who benefits from the trust. The beneficiary can also be called the grantee. The beneficiary and the grantor may be the same person.

"Designated for medical expenses" means the trustee may use the trust to pay the medical expenses of the beneficiary. The amount of the trust that is designated for medical expenses is considered an available resource to the beneficiary. Payments are a third party resource.

"Disbursement" or "distribution" means any payment from the principal or proceeds of a trust, annuity, or life estate to the beneficiary or to someone on their behalf.

"Discretion of the trustee" means the trustee may decide what portion (up to the entire amount) of the principal of the trust will be made available to the beneficiary.

"Exculpatory clause" means there is some language in the trust that legally limits the authority of the trustee to distribute funds from a trust if the distribution would jeopardize eligibility for government programs including medicaid.

"For the sole benefit of" means that for a transfer to a spouse, blind or disabled child, or disabled individual, the transfer is arranged in such a way that no individual or entity except the spouse, blind or disabled child, or disabled individual can benefit from the assets transferred in any way, whether at the time of the transfer or at any time during the life of the primary beneficiary.

"Grantor" means an individual who uses his assets or funds to create a trust. The grantor may also be the beneficiary.

"Income beneficiary" means the person receiving the payments may only get the proceeds of the trust. The principal is not available for disbursements. If this term is used, the principal of the trust is an unavailable resource.

"Irrevocable" means the legal instrument cannot be changed or terminated in any way by anyone.

"Life estate" means an ownership interest in a property only during the lifetime of the person(s) owning the life

estate. In some cases, the ownership interest lasts only until the occurrence of some specific event, such as remarriage of the life estate owner. A life estate owner may not have the legal title or deed to the property, but may have rights to possession, use, income and/or selling their life estate interest in the property.

"Principal" means the assets that make up the entity. The principal includes income earned on the principal that has not been distributed. The principal is also called the corpus.

"Proceeds" means the income earned on the principal. It is usually interest, dividends, or rent. When the proceeds are not distributed, they become part of the principal.

"Pooled trust" means a trust meeting all of the following conditions:

- (1) It contains funds of more than one disabled individual, combined for investment and management purposes;
- (2) It is for the sole benefit of disabled individuals (as determined by SSA criteria);
- (3) It was created by the disabled individuals, their parents, grandparents, legal guardians, or by a court;
- (4) It is managed by a nonprofit association with a separate account maintained for each beneficiary; and
- (5) It contains a provision that upon the death of the individual, for any funds not retained by the trust, the state will receive all amounts remaining in the individual's separate account up to the total amount of medicaid paid on behalf of that individual.

"Revocable" means the legal instrument can be changed or terminated by the grantor, or by petitioning the court. A legal instrument that is called irrevocable, but that can be terminated if some action is taken, is revocable for the purposes of this section.

"Sole-benefit trust" means an irrevocable trust established for the sole-benefit of a spouse, blind or disabled child, or disabled individual. In a sole-benefit trust no one but the individual named in the trust receives benefit from the trust in any way either at the time the trust is established or at any time during the life of the primary beneficiary. A sole-benefit trust may allow for reasonable costs to trustees for management of the trust and reasonable costs for investment of trust funds.

"Special needs trust" means an irrevocable trust meeting all of the following conditions:

- (1) It is for the sole benefit of a disabled individual (as determined by SSA criteria) under sixty-five years old;
- (2) It was created by the individual's parent, grandparent, legal guardian, or by a court; and
- (3) It contains a provision that upon the death of the individual, the state will receive the amounts remaining in the trust up to the total amount of medicaid paid on behalf of the individual.

"Testamentary trust" means a trust created by a will from the estate of a deceased person. The trust is paid out according to the will.

"Trust" means property (such as a home, cash, stocks, or other assets) is transferred to a trustee for the benefit of the grantor or another party. The department includes in this definition any other legal instrument similar to a trust. For annu-

ities, refer to WAC (~~(388-561-0200)~~) 182-516-0200 and 182-516-0201.

"**Trustee**" means an individual, bank, insurance company or any other entity that manages and administers the trust for the beneficiary.

"**Undue hardship**" means the client would be unable to meet shelter, food, clothing, and health care needs if the department applied the transfer of assets penalty.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-516-0100 Trusts. (1) The department determines how trusts affect eligibility for medical programs.

(2) The department disregards trusts established, on or before April 6, 1986, for the sole benefit of a client who lives in an intermediate care facility for the (~~(mentally-retarded (ICMR))~~) intellectually disabled (ICF-ID).

(3) For trusts established on or before August 10, 1993 the department counts the following:

(a) If the trust was established by the client, client's spouse, or the legal guardian, the maximum amount of money (payments) allowed to be distributed under the terms of the trust is considered available income to the client if all of the following conditions apply:

(i) The client could be the beneficiary of all or part of the payments from the trust;

(ii) The distribution of payments is determined by one or more of the trustees; and

(iii) The trustees are allowed discretion in distributing payments to the client.

(b) If an irrevocable trust doesn't meet the conditions under subsection (3)(a) then it is considered either:

(i) An **unavailable** resource, if the client established the trust for a beneficiary other than the client or the client's spouse; or

(ii) An **available** resource in the amount of the trust's assets that:

(A) The client could access; or

(B) The trustee distributes as actual payments to the client and the department applies the transfer of assets rules of WAC (~~(388-513-1363, 388-513-1364 or 388-513-1365)~~) 182-513-1363, 182-513-1364 or 182-513-1365.

(c) If a revocable trust doesn't meet the description under subsection (3)(a):

(i) The full amount of the trust is an available resource of the client if the trust was established by:

(A) The client;

(B) The client's spouse, and the client lived with the spouse; or

(C) A person other than the client or the client's spouse only to the extent the client had access to the assets of the trust.

(ii) Only the amount of money actually paid to the client from the trust is an available resource when the trust was established by:

(A) The client's spouse, and the client did not live with the spouse; or

(B) A person other than the client or the client's spouse; and

(C) Payments were distributed by a trustee of the trust.

(iii) The department considers the funds a resource, not income.

(4) For trusts established on or after August 11, 1993:

(a) The department considers a trust as if it were established by the client when:

(i) The assets of the trust, as defined under WAC 388-470-0005, are at least partially from the client;

(ii) The trust is not established by will; and

(iii) The trust was established by:

(A) The client or the client's spouse;

(B) A person, including a court or administrative body, with legal authority to act in place of, or on behalf of, the client or the client's spouse; or

(C) A person, including a court or administrative body, acting at the direction of or upon the request of the client or the client's spouse.

(b) Only the assets contributed to the trust by the client are available to the client when part of the trust assets were contributed by any other person.

(c) The department does not consider:

(i) The purpose for establishing a trust;

(ii) Whether the trustees have, or exercise, any discretion under the terms of the trust;

(iii) Restrictions on when or whether distributions may be made from the trust; or

(iv) Restrictions on the use of distributions from the trust.

(d) For a revocable trust established as described under subsection (4)(a) of this section:

(i) The full amount of the trust is an available resource of the client;

(ii) Payments from the trust to or for the benefit of the client are income of the client; and

(iii) Any payments from the trust, other than payments described under subsection (4)(d)(ii), are considered a transfer of client assets.

(e) For an irrevocable trust established as described under subsection (4)(a) of this section:

(i) Any part of the trust from which payment can be made to or for the benefit of the client is an available resource. When payment is made from such irrevocable trusts, we will consider the payments as:

(A) Income to the client when payment is to or for the client's benefit; or

(B) The transfer of an asset when payment is made to any person for any purpose other than the client's benefit;

(ii) A trust from which a payment cannot be made to or for the client's benefit is a transfer of assets. For such a trust, the transfer of assets is effective the date:

(A) The trust is established; or

(B) The client is prevented from receiving benefit, if this is after the trust is established.

(iii) The value of the trust includes any payments made from the trust after the effective date of the transfer.

(5) For trusts established on or after August 1, 2003:

(a) The department considers a trust as if it were established by the client when:

(i) The assets of the trust, as defined under WAC 388-470-0005, are at least partially from the client or the client's spouse;

(ii) The trust is not established by will; and

(iii) The trust was established by:

(A) The client or the client's spouse;

(B) A person, including a court or administrative body, with legal authority to act in place of, or on behalf of, the client or the client's spouse; or

(C) A person, including a court or administrative body, acting at the direction of or upon the request of the client or the client's spouse.

(b) Only the assets contributed other than by will to the trust by either the client or the client's spouse are available to the client or the client's spouse when part of the trust assets were contributed by persons other than the client or the client's spouse.

(c) The department does not consider:

(i) The purpose for establishing a trust;

(ii) Whether the trustees have, or exercise, any discretion under the terms of the trust;

(iii) Restrictions on when or whether distributions may be made from the trust; or

(iv) Restrictions on the use of the distributions from the trust.

(d) For a revocable trust established as described under subsection (5)(a) of this section:

(i) The full amount of the trust is an available resource of the client;

(ii) Payments from the trust to or for the benefit of the client are income of the client; and

(iii) Any payments from the trust, other than payments described under subsection (5)(d)(ii), are considered a transfer of client assets.

(e) For an irrevocable trust established as described under subsection (5)(a) of this section:

(i) Any part of the trust from which payment can be made to or for the benefit of the client or the client's spouse is an available resource. When payment is made from such irrevocable trusts, the department will consider the payment as:

(A) Income to the client or the client's spouse when payment is to or for the benefit of either the client or the client's spouse; or

(B) The transfer of an asset when payment is made to any person for any purpose other than the benefit of the client or the client's spouse;

(ii) A trust from which a payment cannot be made to or for the benefit of the client or client's spouse is a transfer of assets. For such a trust, the transfer of assets is effective the date:

(A) The trust is established; or

(B) The client or client's spouse is prevented from receiving benefit, if this is after the trust is established.

(iii) The value of the trust includes any payments made from the trust after the effective date of the transfer.

(6) Trusts established on or after August 11, 1993 are not considered available resources if they contain the assets of either:

(a) A person sixty-four years of age or younger who is disabled as defined by SSI criteria (as described in WAC ((~~388-475-0050~~)) 182-512-0050) and the trust:

(i) Is established for the sole benefit of this person by their parent, grandparent, legal guardian, or a court; and

(ii) Stipulates that the state will receive all amounts remaining in the trust upon the death of the client, up to the amount of medicaid spent on the client's behalf; or

(b) A person regardless of age, who is disabled as defined by SSI criteria (as described in WAC ((~~388-475-0050~~)) 182-512-0050), and the trust meets the following criteria:

(i) It is irrevocable;

(ii) It is established and managed by a nonprofit association;

(iii) A separate account is maintained for each beneficiary of the trust but for purposes of investment and management of funds the trust pools the funds in these accounts;

(iv) Accounts in the trust are established solely for the benefit of the disabled individual as defined by the SSI program;

(v) Accounts in the trust are established by:

(A) The individual;

(B) The individual's spouse, where the spouse is acting in the place of or on behalf of the individual;

(C) The individual's parent, grandparent, legal guardian;

(D) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or

(E) A person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

(vi) It stipulates that either:

(A) The state will receive all amounts remaining in the client's separate account upon the death of the client, up to the amount of medicaid spent on the client's behalf; or

(B) The funds will remain in the trust to benefit other disabled beneficiaries of the trust.

(7) Trusts established on or after August 1, 2003 are not considered available resources if they contain the assets of either:

(a) A person sixty-four years of age or younger who is disabled as defined by SSI criteria (as described in WAC ((~~388-475-0050~~)) 182-512-0050) and the trust:

(i) Is irrevocable;

(ii) Is established for the sole benefit of this person by their parent, grandparent, legal guardian, or a court; and

(iii) Stipulates that the state will receive all amounts remaining in the trust upon the death of the client, the end of the disability, or the termination of the trust, whichever comes first, up to the amount of medicaid spent on the client's behalf; or

(b) A person regardless of age, who is disabled as defined by SSI criteria (as described in WAC ((~~388-475-0050~~)) 182-512-0050), and the trust meets the following criteria:

(i) It is irrevocable;

(ii) It is established and managed by a nonprofit association;

(iii) A separate account is maintained for each beneficiary of the trust but for purposes of investment and management of funds the trust pools the funds in these accounts;

(iv) Accounts in the trust are established solely for the benefit of the disabled individual as defined by the SSI program;

(v) Accounts in the trust are established by:

(A) The individual;

(B) The individual's spouse, where the spouse is acting in the place of or on behalf of the individual;

(C) The individual's parent, grandparent, legal guardian;

(D) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or

(E) A person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

(vi) It stipulates that either:

(A) The state will receive all amounts remaining in the client's separate account upon the death of the client, the end of the disability, or the termination of the trust, whichever comes first, up to the amount of medicaid spent on the client's behalf; or

(B) The funds will remain in the trust to benefit other disabled beneficiaries of the trust.

(8) Trusts described in subsection (6)(a) and (7)(a) continue to be considered an unavailable resource even after the individual becomes age sixty-five. However, additional transfers made to the trust after the individual reaches age sixty-five would be considered an available resource and would be subject to a transfer penalty.

(9) The department does not apply a penalty period to transfers into a trust described in subsections (6)(b) and (7)(b) if the trust is established for the benefit of a disabled individual under age sixty-five as described in WAC (~~388-513-1363 and 388-513-1364~~) 182-513-1363 and 182-513-1364 and the transfer is made to the trust before the individual reaches age sixty-five.

(10) The department considers any payment from a trust to the client to be unearned income. Except for trusts described in subsection (6), the department considers any payment to or for the benefit of either the client or client's spouse as described in subsections (4)(e) and (5)(e) to be unearned income.

(11) The department will only count income received by the client from trusts and not the principal, if:

(a) The beneficiary has no control over the trust; and

(b) It was established with funds of someone other than the client, spouse or legally responsible person.

(12) This section does not apply when a client establishes that undue hardship exists.

(13) WAC (~~388-513-1363, 388-513-1364, 388-513-1365, and 388-513-1366~~) 182-513-1363, 182-513-1364, and 182-513-1365 apply under this section when the department determines that a trust or a portion of a trust is a transfer of assets.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-516-0200 Annuities established prior to April 1, 2009. (1) The department determines how annuities affect eligibility for medical programs.

(2) A revocable annuity is considered an available resource.

(3) An irrevocable annuity established prior to May 1, 2001 is not an available resource when issued by an individual, insurer, or other body licensed and approved to do business in the jurisdiction in which the annuity is established.

(4) The income from an irrevocable annuity, meeting the requirements of this section, is considered in determining eligibility and the amount of participation in the total cost of care. The annuity itself is not considered a resource or income.

(5) An annuity established on or after May 1, 2001 and before April 1, 2009 will be considered an available resource unless it:

(a) Is irrevocable;

(b) Is paid out in equal monthly amounts within the actuarial life expectancy of the annuitant;

(c) Is issued by an individual, insurer or other body licensed and approved to do business in the jurisdiction in which the annuity is established; and

(d) Names the department as the beneficiary of the remaining funds up to the total of medicaid funds spent on the client during the client's lifetime. This subsection only applies if the annuity is in the client's name.

(6) An irrevocable annuity established on or after May 1, 2001 and before April 1, 2009 that is not scheduled to be paid out in equal monthly amounts, can still be considered an unavailable resource if:

(a) The full pay out is within the actuarial life expectancy of the client; and

(b) The client:

(i) Changes the scheduled pay out into equal monthly payments within the actuarial life expectancy of the annuitant; or

(ii) Requests that the department calculate and budget the payments as equal monthly payments within the actuarial life expectancy of the annuitant. The income from the annuity remains unearned income to the annuitant.

(7) An irrevocable annuity, established prior to May 1, 2001 that is scheduled to pay out beyond the actuarial life expectancy of the annuitant, will be considered a resource transferred without adequate consideration at the time it was purchased. A penalty period of ineligibility, determined according to WAC 388-513-1365, may be imposed equal to the amount of the annuity to be paid out in excess of the annuitant's actuarial life expectancy.

(8) An irrevocable annuity, established on or after May 1, 2001 and before April 1, 2009 that is scheduled to pay out beyond the actuarial life expectancy of the annuitant, will be considered a resource transferred without adequate consideration at the time it was purchased. A penalty may be imposed equal to the amount of the annuity to be paid out in excess of the annuitant's actuarial life expectancy. The penalty for a client receiving:

(a) Long-term care benefits will be a period of ineligibility (see WAC 388-513-1365).

(b) Other medical benefits will be ineligible in the month of application.

(9) An irrevocable annuity is considered unearned income when the annuitant is:

(a) The client;

(b) The spouse of the client;

(c) The blind or disabled child, as defined in WAC 388-475-0050 (b) and (c), of the client;

(d) A person designated to use the annuity for the sole benefit of the client, client's spouse, or a blind or disabled child, as defined in WAC ((~~388-475-0050~~) 182-512-0050) (b) and (c), of the client.

(10) An annuity is not considered an available resource when there is a joint owner, co-annuitant or an irrevocable beneficiary who will not agree to allow the annuity to be cashed, UNLESS the joint owner or irrevocable beneficiary is the community spouse. In the case of a community spouse, the cash surrender value of the annuity is considered an available resource and counts toward the maximum community spouse resource allowance.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-516-0201 Annuities established on or after April 1, 2009. (1) The department determines how annuities affect eligibility for medical programs. Applicants and recipients of medicaid must disclose to the state any interest the applicant or spouse has in an annuity.

(2) A revocable annuity is considered an available resource.

(3) The following annuities are not considered an available resource or a transfer of a resource as described in WAC 388-513-1363, if the annuity meets the requirements described in (4)(d), (e) and (f) of this subsection:

(a) An annuity described in subsection (b) or (q) of section 408 of the Internal Revenue Code of 1986;

(b) Purchased with proceeds from an account or trust described in subsection (a), (c), or (p) of section 408 of the Internal Revenue Code of 1986;

(c) Purchased with proceeds from a simplified employee pension (within the meaning of section 408 of the Internal Revenue Code of 1986); or

(d) Purchased with proceeds from a Roth IRA described in section 408A of the Internal Revenue Code of 1986.

(4) The purchase of an annuity not described in subsection (3) established on or after April 1, 2009, will be considered as an available resource unless it:

(a) Is immediate, irrevocable, nonassignable; and

(b) Is paid out in equal monthly amounts with no deferral and no balloon payments:

(i) Over a term equal to the actuarial life expectancy of the annuitant; or

(ii) Over a term that is not less than five years if the actuarial life expectancy of the annuitant is at least five years; or

(iii) Over a term not less than the actuarial life expectancy of the annuitant, if the actuarial life expectancy of the annuitant is less than five years.

(iv) Actuarial life expectancy shall be determined by tables that are published by the office of the chief actuary of the social security administration (<http://www.ssa.gov/OACT/STATS/table4c6.html>).

(c) Is issued by an individual, insurer or other body licensed and approved to do business in the jurisdiction in which the annuity is established;

(d) Names the state as the remainder beneficiary when the purchaser of the annuity is the annuitant and is an applicant for or recipient of medicaid, or a community spouse of an applicant for or recipient of long-term care or waiver services:

(i) In the first position for the total amount of medical assistance paid for the individual, including both long-term care services and waiver services; or

(ii) In the second position for the total amount of medical assistance paid for the individual, including both long-term care services and waiver services, if there is a community spouse, or a minor or disabled child as defined in WAC ((~~388-475-0050~~) 182-512-0050) (b) and (c) who is named as the beneficiary in the first position.

(e) Names the state as the beneficiary upon the death of the community spouse for the total amount of medical assistance paid on behalf of the individual at any time of any payment from the annuity if a community spouse is the annuitant;

(f) Names the state as the beneficiary in the first position for the total amount of medical assistance paid on behalf of the individual at the time of any payment from the annuity, including both long-term care services and waiver services, unless the annuitant has a community spouse or minor or disabled child, as defined in WAC ((~~388-475-0050~~) 182-512-0050) (b) and (c). If the annuitant has a community spouse or minor or disabled child, such spouse or child may be named as beneficiary in the first position, and the state shall be named as beneficiary in the second position:

(i) If the community spouse, minor or disabled child, or representative for a child named as beneficiary is in the first position as described in (f) and transfers his or her right to receive payments from the annuity for less than fair market value, then the state shall become the beneficiary in the first position.

(5) If the annuity is not considered a resource, the stream of income produced by the annuity is considered available income.

(6) An irrevocable annuity established on or after April 1, 2009 that meets all of the requirements of subsection (4) except that it is not immediate or scheduled to be paid out in equal monthly amounts will not be treated as a resource if:

(a) The full pay out is within the actuarial life expectancy of the annuitant; and

(b) The annuitant:

(i) Changes the scheduled pay out into equal monthly payments within the actuarial life expectancy of the annuitant; or

(ii) Requests that the department calculate and budget the payments as equal monthly payments within the actuarial life expectancy of the annuitant beginning with the month of eligibility. The income from the annuity remains unearned income to the annuitant.

(7) An irrevocable annuity, established on or after April 1, 2009 that is scheduled to pay out beyond the actuarial life expectancy of the annuitant, will be considered a resource.

(8) An irrevocable annuity established on or after April 1, 2009 that meets all of the requirements of subsection (4) or (5) is considered unearned income when the annuitant is:

- (a) The client;
- (b) The spouse of the client;
- (c) The blind or disabled child, as defined in WAC ((388-475-0050)) 182-512-0050 (b) and (c), of the client; or
- (d) A person designated to use the annuity for the sole benefit of the client, client's spouse, or a blind or disabled child of the client.

(9) An annuity is not considered an available resource when there is a joint owner, co-annuitant or an irrevocable beneficiary who will not agree to allow the annuity to be cashed, unless the joint owner or irrevocable beneficiary is the community spouse. In the case of a community spouse, the cash surrender value of the annuity is considered an available resource and counts toward the maximum community spouse resource allowance.

(10) Nothing in this section shall be construed as preventing the department from denying eligibility for medical assistance for an individual based on the income or resources derived from an annuity other than an annuity described in subsections (3), (4), and (5).

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-516-0300 Life estates. (1) The department determines how life estates affect eligibility for medical programs.

(2) A life estate is an excluded resource when either of the following conditions apply:

- (a) It is property other than the home, which is essential to self-support or part of an approved plan for self-support; or
- (b) It cannot be sold due to the refusal of joint life estate owner(s) to sell.

(3) Remaining interests of excluded resources in subsection (2) may be subject to transfer of asset penalties under WAC ((388-513-1363, 388-513-1364 and 388-513-1365)) 182-513-1363, 182-513-1364 and 182-513-1365.

(4) Only the client's proportionate interest in the life estate is considered when there is more than one owner of the life estate.

(5) A client or a client's spouse, who transfers legal ownership of a property to create a life estate, may be subject to transfer-of-resource penalties under WAC ((388-513-1363, 388-513-1364 and 388-513-1365)) 182-513-1363, 182-513-1364 and 182-513-1365.

(6) When the property of a life estate is transferred for less than fair market value (FMV), the department treats the transfer in one of two ways:

- (a) For noninstitutional medical, the value of the uncompensated portion of the resource is combined with other non-excluded resources; or
- (b) For institutional medical, a period of ineligibility will be established according to WAC ((388-513-1363, 388-513-

~~1364 and 388-513-1365))~~ 182-513-1363, 182-513-1364 and 182-513-1365.

WSR 13-20-093

EMERGENCY RULES

HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed September 30, 2013, 3:54 p.m., effective October 1, 2013]

Effective Date of Rule: October 1, 2013.

Purpose: **Medicaid expansion rules - Phase 2**, the health care authority (HCA) is implementing new regulations under the federal Patient Protection and Affordable Care Act in preparation for healthcare reform in Washington state. This includes the establishment of standalone rules for medical assistance programs, which are required under 2E2SHB 1738, Laws of 2011, which creates HCA as the single state agency responsible for the administrations and supervision of Washington's medicaid program (Washington apple health).

Citation of Existing Rules Affected by this Order: Repealing WAC 182-505-0220, 182-505-0230, 182-505-0245 and 182-505-0515; and amending WAC 182-500-0020, 182-500-0030, 182-503-0505, 182-503-0520, 182-503-0540, 182-504-0015 182-504-0125, 182-505-0100, 182-505-0115, 182-505-0210, 182-505-0215, 182-505-0225, 182-505-0235, 182-505-0237, and 182-505-0240.

Statutory Authority for Adoption: RCW 41.05.021.

Other Authority: Patient Protection and Affordable Care Act (Public Law 111-148); 42 C.F.R. § 431, 435, and 457; and 45 C.F.R. § 155.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Over the last year the agency has been working diligently with client advocates and other stakeholders in crafting the new rules to implement the provisions of the Affordable Care Act, including the expansion of medicaid. Although the permanent rule-making process is nearing completion, the permanent rules could not be adopted by the October 1, 2013, deadline due in part to not receiving final federal rules governing this process until this month. Hence the need for the emergency adoption of these rules, while the permanent rule-making process is completed.

Number of Sections Adopted in Order to Comply with Federal Statute: New 21, Amended 15, Repealed 4; 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 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 21, Amended 15, Repealed 4.

Date Adopted: September 30, 2013.

Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-500-0020 Medical assistance definitions—
C. "Caretaker relative" means a relative of a dependent child by blood, adoption, or marriage with whom the child is living, who assumes primary responsibility for the child's care, and who is one of the following:

(1) The child's father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece.

(2) The spouse of such parent or relative (including same sex marriage or domestic partner), even after the marriage is terminated by death or divorce.

(3) Other relatives including relatives of half-blood, first cousins once removed, persons of earlier generations (as shown by the prefixes of great, great-great, or great-great-great), and natural parents whose parental rights were terminated by a court order.

"Carrier" means an organization that contracts with the federal government to process claims under medicare Part B.

"Categorically needy (CN) or categorically needy program (CNP)" is the state and federally funded health care program established under Title XIX of the Social Security Act for persons within medicaid-eligible categories, whose income and/or resources are at or below set standards.

"Categorically needy income level (CNIL)" is the standard used by the agency to determine eligibility under a categorically needy program.

"Categorically needy (CN) scope of care" is the range of health care services included within the scope of service categories described in WAC ((388-501-0060)) 182-501-0060 available to individuals eligible to receive benefits under a CN program. Some state-funded health care programs provide CN scope of care.

"Centers for Medicare and Medicaid Services (CMS)" means the agency within the federal department of health and human services (DHHS) with oversight responsibility for the medicare and medicaid programs.

"Children's health program or children's health care programs" See "Apple health for kids."

"Community spouse," See "spouse" in WAC ((388-500-0100)) 182-500-100.

"Cost-sharing" means any expenditure required by or on behalf of an enrollee with respect to essential health benefits; such term includes deductibles, coinsurance, copayments, or similar charges, but excludes premiums, balance billing amounts for nonnetwork providers, and spending for noncovered services.

"Cost-sharing reductions" means reductions in cost-sharing for an eligible individual enrolled in a silver level plan in the health benefit exchange or for an individual who is an American Indian or Alaska native enrolled in a qualified health plan (QHP) in the exchange.

"Couple," See "spouse" in WAC ((388-500-0100)) 182-500-0100.

"Covered service" is a health care service contained within a "service category" that is included in a medical assistance benefits package described in WAC ((388-501-0060)) 182-501-0060. For conditions of payment, see WAC ((388-501-0050)) 182-501-0050(5). A noncovered service is a specific health care service (for example, cosmetic surgery), contained within a service category that is included in a medical assistance benefits package, for which the agency or the agency's designee requires an approved exception to rule (ETR) (see WAC ((388-501-0160)) 182-501-0160). A noncovered service is not an excluded service (see WAC ((388-501-0060)) 182-501-0060).

"Creditable coverage" means most types of public and private health coverage, except Indian health services, that provide access to physicians, hospitals, laboratory services, and radiology services. This term applies to the coverage whether or not the coverage is equivalent to that offered under premium-based programs included in Washington apple health (WAH). Creditable coverage is described in 42 U.S.C. 300gg-3 (c)(1).

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-500-0030 Medical assistance definitions—
E. "Early and periodic screening, diagnosis and treatment (EPSDT)" is a comprehensive child health program that entitles infants, children, and youth to preventive care and treatment services. EPSDT is available to persons twenty years of age and younger who are eligible for any agency health care program. Access and services for EPSDT are governed by federal rules at 42 C.F.R., Part 441, Subpart B. See also chapter ((388-534)) 182-534 WAC.

"Emergency medical condition" means the sudden onset of a medical condition (including labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

- (1) Placing the patient's health in serious jeopardy;
- (2) Serious impairment to bodily functions; or
- (3) Serious dysfunction of any bodily organ or part.

"Emergency medical expense requirement (EMER)," See WAC 388-865-0217(3).

"Employer-sponsored dependent coverage" means creditable health coverage for dependents offered by a family member's employer or union, for which the employer or union may contribute in whole or in part towards the premium. Extensions of such coverage (e.g., COBRA extensions) also qualify as employer-sponsored dependent coverage as long as there remains a contribution toward the premiums by the employer or union.

"Evidence-based medicine (EBM)" means the application of a set of principles and a method for the review of

well-designed studies and objective clinical data to determine the level of evidence that proves to the greatest extent possible, that a health care service is safe, effective, and beneficial when making:

(1) Population-based health care coverage policies (WAC ((~~388-501-0055~~)) 182-501-0055 describes how the agency or ((~~the agency's~~)) its designee determines coverage of services for its health care programs by using evidence and criteria based on health technology assessments); and

(2) Individual medical necessity decisions (WAC ((~~388-501-0165~~)) 182-501-0165 describes how the agency or ((~~the agency's~~)) its designee uses the best evidence available to determine if a service is medically necessary as defined in WAC ((~~388-500-0030~~)) 182-500-0030).

"Exception to rule." See WAC ((~~388-501-0160~~)) 182-501-0160 for exceptions to noncovered health care services, supplies, and equipment. See WAC 182-503-0090 for exceptions to program eligibility.

"Expedited prior authorization (EPA)" means the process for obtaining authorization for selected health care services in which providers use a set of numeric codes to indicate to the agency or the agency's designee which acceptable indications, conditions, or agency or agency's designee-defined criteria are applicable to a particular request for authorization. EPA is a form of "prior authorization."

"Extended care services" means nursing and rehabilitative care in a skilled nursing facility provided to a recently hospitalized medicare patient.

NEW SECTION

WAC 182-503-0001 Insurance affordability programs—Overview. (1) A person may apply for all of the insurance affordability programs offered through the health care authority (HCA) or the Washington Healthplanfinder (as defined in WAC 182-500-0015):

(a) Washington apple health (WAH) programs (defined in WAC 182-500-0120). WAH includes medicaid programs (defined in WAC 182-500-0070), the children's health insurance program (CHIP) (defined in WAC 182-500-0020), and state-only funded health care programs. These programs are provided free or at low cost on a sliding scale to eligible persons based on their income. WAH program regulations for the application process and eligibility determination are found in chapters 182-503 through 182-527 WAC.

(b) Health insurance premium tax credits (defined in WAC 182-500-0045). This federal refundable tax credit partially offsets the cost of monthly premiums for qualified health plan (QHP) (defined in WAC 182-500-0090) insurance that an eligible person purchases through the Washington Healthplanfinder. These advance payments are reconciled annually by the Internal Revenue Service (IRS) at the time the person files his or her federal tax return.

(c) Cost-sharing reductions. Cost-sharing reductions (defined in WAC 182-500-0020) are available to eligible persons enrolled in a silver-level QHP and to American Indians/Alaska natives enrolled in any QHP.

(2) A person may also apply for and enroll in unsubsidized insurance with a QHP. This unsubsidized insurance is not an insurance affordability program.

(3) Persons choose whether or not to apply for insurance affordability programs. All persons who apply for an insurance affordability program are treated as an applicant for WAH coverage and receive an approval or denial of WAH. Applicants who are denied are reviewed for other insurance affordability programs.

NEW SECTION

WAC 182-503-0005 Washington apple health—How to apply. (1) You may apply for Washington apple health (WAH) by giving us (the medicaid agency or its designee) an application:

- (a) Online;
- (b) By calling the Healthplanfinder customer support center number;
- (c) By mail;
- (d) By fax; or
- (e) At a local department of social and health services (DSHS) office.

(2) You may need to complete a supplemental form for WAH if you are:

- (a) Age sixty-five or older;
- (b) On medicare;
- (c) Applying for health care based on blindness or disability; or
- (d) Applying for long-term care services.

- (3) If you need help filing an application, you can:
- (a) Contact the Healthplanfinder customer support center number listed on the application form;
 - (b) Contact an application assistor, certified application counselor or navigator; or
 - (c) Have an authorized representative apply on your behalf as described in WAC 182-503-0010.

(4) We will help you with the application or renewal process according to the equal access provisions described in WAC 182-503-0120 and the limited-English proficient provisions described in WAC 182-503-0110.

NEW SECTION

WAC 182-503-0010 Washington apple health—Who can apply. (1) You may apply for Washington apple health (WAH) for yourself.

(2) You can apply for WAH for another person if you are:

- (a) A legal guardian;
- (b) An authorized representative;
- (c) A parent or caretaker relative of a child less than nineteen years of age;
- (d) A tax filer applying for a tax dependent less than nineteen years of age;
- (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 one of the following public institutions, you may turn in an application up to forty-five days before you are released:

- (a) Washington state department of corrections;
- (b) City or county jails; or

(c) An institution for mental disease (IMD).

(4) You are automatically enrolled in WAH and do not need to turn in 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 must turn in a signed application when applying for long-term care services per WAC 182-513-1315.

NEW SECTION

WAC 182-503-0060 Washington apple health (WAH)—Application processing times. (1) We (the agency or its designee) process applications for Washington apple health (WAH) within forty-five calendar days, except when you are:

(a) Pregnant. We process these applications within fifteen calendar days; or

(b) Applying for a program that requires a disability decision. We process these applications within sixty calendar days.

(2) For calculating time limits, "day one" is the day we get a completed application from you, including at least your name, address, and signature.

(3) If we need more information to decide if you can get WAH benefits, you will be given:

(a) A letter asking for the additional information within twenty calendar days of your initial application; and

(b) At least ten calendar days to provide the requested information.

(4) Good cause for a delay in processing the application exists when we acted as promptly as possible but:

(a) The delay was the result of an emergency beyond our control;

(b) The delay was the result of needing more information or documents that could not be readily obtained;

(c) You did not give us the information within the time frame specified in subsection (1) of this section.

(5) Good cause for a delay in processing the application does NOT exist when:

(a) We caused the delay in processing by:

(i) Failing to ask you for information timely; or

(ii) Failing to act on requested information when you provided it timely; or

(b) We did not document the good cause reason when processing the application outside of the time frames specified in subsection (1) of this section.

NEW SECTION

WAC 182-503-0070 Washington apple health (WAH)—When coverage begins. (1) Your Washington apple health (WAH) coverage starts on the first day of the month you applied for and we (the agency) decided you are

eligible to receive coverage, unless one of the exceptions in subsection (4) of this section applies to you.

(2) Sometimes we can start your coverage up to three months before the month you applied (see WAC 182-504-0005).

(3) If you are confined or incarcerated as described in WAC 182-503-0010, your coverage cannot start before the day you are discharged, except when:

(a) You are hospitalized during your confinement; and

(b) The hospital requires you to stay overnight.

(4) Your WAH coverage may not begin on the first day of the month if:

(a) Subsection (3) of this section applies to you. In that case, your coverage would start on the first day of your hospital stay;

(b) You must meet a medically needy spenddown liability (see WAC 182-519-0110). In that case, your coverage would start on the day your spenddown is met; or

(c) You are eligible under the WAH alien emergency medical program (see WAC 182-507-0115). In that case, your coverage would start on the day your emergent hospital stay begins.

(5) For long-term care, the date your services start is described in WAC 388-106-0045.

NEW SECTION

WAC 182-503-0080 Washington apple health—Application denials and withdrawals. (1) We (the agency or its designee) follow the rules about notices and letters in chapter 182-518 WAC. We follow the rules about timelines in WAC 182-503-0060.

(2) We deny your application for Washington apple health (WAH) coverage when:

(a) You tell us either verbally or in writing to withdraw your request for coverage;

(b) You do not give us the information we ask for within the time frames stated in WAC 182-503-0060, including any extra time we allow based on your request, to accommodate a disability, or limited-English proficiency, and we need the information to decide whether you can receive coverage;

(c) The information you provide shows you are not eligible.

(3) We send you a written notice explaining why we denied your application (per chapter 182-518 WAC).

(4) We reconsider our decision to deny your WAH coverage without a new application from you when you:

(a) Give us the information we need to decide if you are eligible within thirty days of the date on the denial notice; or

(b) Request a hearing within ninety days of the date on the denial letter and an administrative law judge (ALJ) decides our denial was wrong (per chapter 182-526 WAC).

(5) If you disagree with our decision, you can ask for a hearing. If we denied your application because we don't 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.

NEW SECTION

WAC 182-503-0515 Washington apple health—Social Security number requirements. (1) To be eligible for Washington apple health (WAH), you must provide your valid Social Security number (SSN) or proof of application for an SSN, except as provided in subsections (5) and (6) of this section.

(2) If you are not able to provide your SSN, either because you do not know it or it has not been issued, you must provide:

(a) Proof from the Social Security Administration (SSA) that you turned in an application for an SSN; and

(b) The SSN when you receive it.

(3) Your WAH coverage will not be delayed, denied or terminated while waiting for SSA to send you your SSN.

(4) If you do not provide your SSN, then you will not receive WAH coverage except if you:

(a) Refused to apply for or provide your SSN for religious reasons;

(b) Claim good cause for not providing your SSN because of domestic violence;

(c) Have a newborn as described in WAC 182-505-0210(1). A newborn is eligible for WAH coverage until the baby's first birthday.

(5) There is no SSN requirement for the following:

(a) WAH refugee medical;

(b) WAH alien emergency medical;

(c) WAH programs for children and pregnant women who do not meet citizenship criteria described in WAC 182-503-0535;

(d) A household member who is not applying for WAH coverage.

(6) If you are a "qualified" or "nonqualified" alien as defined in WAC 182-503-0530 who is not authorized to work in the U.S., you do not have to apply for a nonwork SSN.

NEW SECTION

WAC 182-503-0525 Washington apple health—Residency requirements for an institutionalized individual.

(1) An institutionalized individual is a person who resides in an institution as defined in WAC 182-500-0050. The term "individual" used in this section means an "institutionalized individual" unless otherwise indicated. It does not include individuals who receive services under a home and community-based waiver program. When a state is making a placement for an individual in another state, the term institution also includes foster care homes, licensed as described in 45 C.F.R. 1355.20.

(2) The agency must determine whether an individual is capable of indicating their intent to reside in Washington state when deciding whether that individual is a resident of the state. The agency determines that individuals who meet the following criteria are deemed incapable of indicating intent to reside in the state:

(a) The individual is judged legally incompetent by a court of law;

(b) A physician, psychologist or licensed medical professional in the field of intellectual disabilities has determined that the individual is incapable of indicating intent; or

(c) The individual is incapable of declaring intent due to a documented medical condition.

(3) When an individual is placed in an out-of-state institution by the agency, its designee or by a department of social and health services-contracted agency, the state arranging the placement is considered the individual's state of residence, unless the individual is capable of expressing intent and:

(a) Indicates a desire to change his or her state of residence; or

(b) Asks the current state of residence for help in relocating. This may include assistance in locating an institutional placement in the new state of residence.

(4) If another state has not authorized the placement in the institution, as described in subsection (3) of this section, the agency or its designee uses one of the following criteria to determine the state of residence for an individual who is age twenty or younger:

(a) The state of residence is the state where the parent or legal guardian is a resident at the time of the placement in the institution. To determine a parent's or legal guardian's place of residence, follow rules described in WAC 182-503-0520 for a noninstitutionalized individual.

(b) The state of residence is the state where the parent or legal guardian currently is a resident if the individual resides in an institution in that state.

(c) If the parents of the individual are separated and live in different states, the state of residence is that of the parent filing the application.

(d) If the parental rights are terminated and the individual has a legal guardian, the state of residence is where the legal guardian is a resident.

(e) If the individual has both a guardian of the estate and a guardian of the person, the state of residence is where the guardian of the person is a resident, unless the state has laws which delegate guardianship to a state official or agency for individuals who are admitted to state institutions. In that case, the state of residence for the individual is the state where the institution is located (unless another state has authorized the placement).

(f) If the individual has been abandoned by the parents or legal guardian, and an application is filed on their behalf by another party, the state of residence is the state where the individual is institutionalized. The term abandoned also includes situations where the parents or legal guardian are deceased.

(5) An individual age twenty-one or older that is capable of indicating intent is considered a resident of the state where he or she is living and intends to reside.

(6) An individual age twenty-one or older who became incapable of indicating intent at age twenty-one or older is considered a resident of the state where the individual is physically residing, unless the individual has been placed in the institution by another state.

(7) An individual age twenty-one or older who became incapable of indicating intent before the age of twenty-one is considered a resident of the state where the parents or legal guardian were residents at the time of the placement in the institution.

(8) If a noninstitutionalized individual moves directly from another state to an institution in Washington state, it is

not necessary for the individual to establish residency in Washington state prior to entering the facility. The person is considered a resident if he or she intends to reside in the state unless the placement was made by the other state.

(9) An individual of any age who receives a state supplemental payment (SSP) is considered a resident of the state that is making the payment.

(10) In a dispute between states, the state of residence is the state in which the individual is physically located.

NEW SECTION

WAC 182-503-0535 Washington apple health—Citizenship and alien status. (1) To receive Washington apple health (WAH) coverage, you must meet all other eligibility requirements and be one of the following as defined in WAC 182-503-0530:

- (a) A United States (U.S.) citizen;
- (b) A U.S. national;
- (c) A qualified alien; or
- (d) A nonqualified alien and you are a:
 - (i) Pregnant woman;
 - (ii) Child under age nineteen; or
 - (iii) Child under age twenty-one who resides in an institution.

(2) If you are a nonqualified alien approved under deferred action childhood arrivals (DACA), then you are not eligible for WAH under subsection (1)(d) of this section. However, you may qualify under subsection (6) of this section.

(3) If you are a qualified alien as defined in WAC 182-503-0530, you may receive WAH for nonpregnant adults if you:

- (a) Physically entered the U.S. before August 22, 1996;
 - (b) Have continuously resided in the U.S. before becoming a qualified alien; and
 - (c) Are not subject to the five-year bar.
- (4) If you physically entered the U.S. on or after August 22, 1996, you are subject to the five-year bar for WAH for nonpregnant adults, unless you meet one of the exemptions in subsection (5) of this section. The five-year bar starts on the day you obtain qualified status.

(5) You are exempt from the five-year bar if you are one of the following qualified aliens as defined in WAC 182-503-0530:

- (a) Amerasian lawful permanent residents;
- (b) Asylees;
- (c) Cuban/Haitian entrants;
- (d) Persons granted withholding of deportation or removal;
- (e) Refugees;
- (f) Special immigrants from Iraq and Afghanistan;
- (g) Victims of trafficking who have been certified or had their eligibility approved by the Office of Refugee Resettlement (ORR); and
- (h) Lawful permanent residents, parolees, or battered aliens, who are also an armed services member or veteran as described below:
 - (i) On active duty in the U.S. military, other than active duty for training;

- (ii) An honorably discharged U.S. veteran;
- (iii) A veteran of the military forces of the Philippines who served prior to July 1st, 1946, as described in Title 38, Section 107 of the U.S. Code; or

- (iv) The spouse, unremarried widow or widower, or unmarried dependent child of a veteran or active duty service member.

(6) If you are ineligible for WAH because of the five-year bar or because of your immigration status, including if you are approved under DACA, you may be eligible for:

- (a) The WAH alien emergency medical program as described in WAC 182-507-0110 through 182-507-0125;
- (b) WAH pregnancy medical for noncitizen women as described in WAC 182-505-0115;
- (c) State-funded WAH for kids as described in WAC 182-505-0210; or
- (d) The medical care services (MCS) program as described in chapter 182-508 WAC.

NEW SECTION

WAC 182-503-0565 Washington apple health—Age requirements for medical programs based on modified adjusted gross income (MAGI). The following age requirements apply to individuals whose eligibility for Washington apple health (WAH) is based on modified adjusted gross income (MAGI) methodology per WAC 182-509-0305.

(1) You must be age sixty-four or younger to be eligible for WAH MAGI-based adult coverage as described in WAC 182-505-0250.

(2) Your household must include an eligible dependent child age seventeen or younger to be eligible for WAH parent or caretaker relative coverage as described in WAC 182-505-0240. The child must be related to you in one of the ways described in WAC 182-500-0020 to be considered an eligible dependent child.

(3) A child must be age eighteen or younger to be eligible for WAH for kids as described in WAC 182-505-0210 with the following exceptions:

- (a) An institutionalized child may still qualify under a children's health care program through the age of twenty-one (see WAC 182-514-0230);

- (b) A foster care child may qualify for WAH foster care coverage through the age of twenty-six (see WAC 182-505-0211).

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

WAC 182-503-0505 Washington apple health—General eligibility requirements ((for medical programs)). (1) ((Persons)) Individuals applying for ((benefits under the medical coverage)) Washington apple health (WAH) programs established under chapter 74.09 RCW must meet the eligibility criteria ((established by the department)) in chapters ((388-400)) 182-500 through ((388-555)) 182-527 WAC.

(2) ((Persons)) Individuals applying for ((medical coverage)) WAH are considered first for federally funded or federally matched programs. State-funded programs are considered after the individual is determined ineligible for federally funded and federally matched programs ((are not available to

the client except for brief periods when the state-funded programs offer a broad scope of care which meet a specific client need).

(3) Unless otherwise specified in program specific WAC, the eligibility criteria for each ~~((medical))~~ WAH program is as follows:

(a) Verification of age and identity ~~((chapters 388-404, 388-406, and 388-490))~~ WAC 182-503-0050; ~~((and))~~

(b) Residence in Washington state ~~((chapter 388-468))~~ WAC 182-503-0520 and 182-503-0525; ~~((and))~~

(c) Citizenship or immigration status in the United States ~~((chapter 388-424))~~ WAC 182-503-0535; ~~((and))~~

(d) Possession of a valid Social Security account number ~~((chapter 388-476))~~ WAC 182-503-0515; ~~((and))~~

(e) Assignment of medical support rights to the state of Washington (WAC ~~((388-505-0540))~~ 182-503-0540); ~~((and))~~

(f) ~~((Cooperation in securing medical support (chapter 388-422 WAC); and~~

~~((g))~~ Application for medicare and enrollment into medicare's prescription drug program if:

(i) It is likely that the individual is entitled to medicare; and

(ii) The state has authority to pay medicare cost sharing as described in chapter ~~((388-517))~~ 182-517 WAC.

~~((h))~~ (g) For individuals whose eligibility is not on the basis of modified adjusted gross income (MAGI) methodology, countable resources must be within specific program limits (chapters ~~((388-470 and 388-478))~~ 182-512, 182-513, 182-515, 182-517, and 182-519 WAC); and

~~((i))~~ (h) Countable income within program limits ~~((chapters 388-450 and 388-478 WAC))~~:

(i) For MAGI-based WAH programs, see WAC 182-505-0100;

(ii) For the WAH refugee program, see WAC 182-507-0110;

(iii) For the WAH medical care services program, see WAC 182-508-0150;

(iv) For WAH for workers with disabilities (HWD), see WAC 182-511-0060;

(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;

(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 living))~~ Individuals in a public institution, including a correctional facility, are not eligible for ~~((the department's medical coverage))~~ WAH programs ~~((For a person))~~, except in the following situations:

(a) The individual is under age twenty or over age sixty-five ~~((who))~~ and is a patient in an institution for mental disease (see WAC ~~((388-513-1315(13) for exception.))~~ 182-513-1315(13)); or

(b) The individual receives inpatient hospital services outside of the public institution or correctional facility.

~~((6))~~ ~~((Persons))~~ Individuals terminated from SSI or ~~((TANF cash grants and those))~~ who lose eligibility for categorically needy (CN) ~~((medical))~~ coverage have their CN coverage continued while their eligibility for other ~~((medical))~~ health care programs is redetermined. ~~((This continuation of medical coverage is described in chapter 388-434 WAC))~~ See WAC 182-504-0125.

AMENDATORY SECTION (Amending WSR 12-19-051, filed 9/13/12, effective 10/14/12)

WAC 182-503-0520 Washington apple health—Residency requirements ~~((for medical care services (MCS)))~~—Individuals who are not residing in an institution. ~~((This section applies to medical care services (MCS).))~~

(1) A resident is an individual who ~~((:~~

~~((a))~~ currently living in Washington and:

(a) Intends to ~~((continue living here permanently or for an indefinite period of time))~~ reside here, including individuals without a fixed address; or

(b) Entered the state looking for a job; or

(c) Entered the state with a job commitment.

(2) An individual does not need to live in the state for a specific period of time prior to ~~((be))~~ meeting the requirements in subsection (1) of this section before being considered a resident.

(3) ~~((An individual receiving MCS))~~ A child under age eighteen is a resident of the state where the child's primary custodian lives.

(4) A resident applying for or receiving health care benefits can temporarily be out of the state for more than one month ~~((If so, the individual must provide the agency or the agency's designee with adequate information to demonstrate the intent to continue to reside in the state of Washington.~~

~~((4))~~ An individual may not receive comparable benefits from another state for the MCS program.

(5) ~~((A former resident of the state can apply for MCS while living in another state if:~~

~~((a))~~ The individual:

~~((i))~~ Plans to return to this state;

~~((ii))~~ Intends to maintain a residence in this state; and

~~((iii))~~ Lives in the United States at the time of the application.

~~((b))~~ In addition to the conditions in (a)(i), (ii), and (iii) of this subsection being met, the absence must be:

~~((i))~~ Enforced and beyond the individual's control; or

~~((ii))~~ Essential to the individual's welfare and is due to physical or social needs.

~~((e))~~ See WAC ~~388-406-0035, 388-406-0040, and 388-406-0045~~ for time limits on processing applications.

~~((6))~~ Residency is not a requirement for detoxification services.

~~((7))~~ An individual is not a resident when the individual enters Washington state only for medical care. This individual is not eligible for any medical program. The only exception is described in subsection (8) of this section.

~~((8))~~ It is not necessary for an individual moving from another state directly to a nursing facility in Washington state

to establish residency before entering the facility. The individual is considered a resident if they intend to remain permanently or for an indefinite period unless placed in the nursing facility by another state.

(9) An individual's residence is the state:

(a) Where the parent or legal guardian resides, if appointed, for an institutionalized individual twenty-one years of age or older, who became incapable of determining residential intent before reaching age twenty-one;

(b) Where an individual is residing if the individual becomes incapable of determining residential intent after reaching twenty-one years of age;

(c) Making a placement in an out-of-state institution; or

(d) For any other institutionalized individual, the state of residence is the state where the individual is living with the intent to remain there permanently or for an indefinite period.

(10) In a dispute between states as to which is an individual's state of residence, the state of residence is the state in which the individual is physically located) without their health care benefits being denied or terminated, if the individual:

(a) Provides the agency or its designee with adequate information to determine that the individual intends to return to the state once the purpose of his or her absence has been accomplished; and

(b) Has not been determined eligible for medicaid or state-funded health care benefits in another state.

(5) An individual who enters Washington state only for health care is not a resident and is not eligible for any medical program. The only exception is for an individual who moves from another state directly into an institution in Washington state. Residency rules for institutionalized individuals are described in WAC 182-503-0525.

(6) An individual of any age who receives a state supplemental payment (SSP) is considered a resident of the state that is making the payment.

(7) An individual who receives federal payments for foster or adoption assistance is considered a resident of the state where the person physically resides even if:

(a) The individual does not live in the state that is making the foster or adoption assistance payment; or

(b) The individual does not live in the state where the adoption agreement was entered.

(8) In a dispute between states, the state of residence is the state in which the individual is physically located.

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

WAC 182-503-0540 Assignment of rights and cooperation. (1) When ~~((a person))~~ you become ~~((s))~~ eligible for any of the ~~((department's medical))~~ agency's health care programs, ~~((they make assignment of))~~ you assign certain rights to the state of Washington. ~~((This assignment includes))~~ You assign all rights to any type of coverage or payment for ~~((medical))~~ health care ~~((which results))~~ that comes from:

(a) A court order;

(b) An administrative agency order; or

(c) Any third-party benefits or payment obligations for medical care which are the result of **subrogation** or contract (see WAC 388-501-0100).

(2) ~~((Subrogation is a legal term which describes the method by which the state acquires the rights of a client for whom or to whom the state has paid benefits. The subrogation rights of the state are limited to the recovery of its own costs:~~

~~((3) The person who))~~ When you sign ~~((s))~~ the application ~~((makes the assignment of))~~ you assign the rights described in subsection (1) of this section to the state ~~((Assignment is made on their own behalf and on behalf of any eligible person for whom they can legally make such assignment:~~

~~((4) A person))~~ for:

(a) Yourself; and

(b) Any eligible person for whom you can legally make such assignment.

(3) You must cooperate with ~~((the department))~~ us ~~((the agency))~~ in ~~((the identification, use or collection of))~~ identifying, using or collecting third-party benefits. ~~((Failure to))~~ If you do not cooperate ~~((results in a termination of eligibility for the responsible person. Other obligations for cooperation are located in chapters 388-14A and 388-422 WAC. The following clients are exempt from termination of eligibility for medical coverage as a result of noncooperation:~~

~~((a) A pregnant woman, and~~

~~((b) Minor children, and~~

~~((c) A person who has been determined to have "good cause" for noncooperation (see WAC 388-422-0015))~~, your health care benefits may end.

~~((5) A person will not lose eligibility for medical assistance programs))~~ (4) Your WAH coverage will not end due solely to the noncooperation of any third party.

~~((6) A person))~~ (5) You will ~~((be responsible for the costs of otherwise covered medical))~~ have to pay for your health care services if you:

(a) ~~((The person))~~ Received and kept the third-party payment for those services; or

(b) ~~((The person))~~ Refused to ~~((provide))~~ give to the provider of care ~~((their))~~ your legal signature on insurance forms.

(6) The state is limited to the recovery of its own costs for health care costs paid on behalf of a recipient of health care coverage. The legal term which describes the method by which the state acquires the rights of a person for whom the state has paid costs is called subrogation.

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

WAC 182-504-0015 Washington apple health—Certification periods for categorically needy ~~((CN))~~ scope of care medical assistance)) programs. (1) A certification period is the period of time a person is determined eligible for a categorically needy (CN) ~~((scope of care medical))~~ 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 to the last day of the last month of the certification period.

(2) For a ~~((child))~~ newborn eligible for ~~((the newborn medical program))~~ WAH, 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 eligible for ~~((a medical program))~~ WAH 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 eligible for the WAH refugee program, the certification period ends at the end of the eighth month following the client's date of entry to the United States.

~~((For families the certification period is twelve months with a six-month report required as a condition of eligibility as described in WAC 388-418-0011))~~ all other WAH-CN coverage, the certification period is twelve months.

~~((5))~~ (6) For children, ~~((the certification period is twelve months.))~~ eligibility is continuous ((without regard to changes in circumstances other than aging out of the program, moving out of state, failing to pay a required premium(s), incarceration or death.))

~~((6))~~ 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:

- (a) Turns age nineteen;
- (b) Moves out of state;
- (c) Is incarcerated; or
- (d) Dies.

~~((7))~~ (7) When the child turns 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:

(a) The child is receiving inpatient services ~~((see))~~ described in WAC ((388-505-0230)) 182-514-0230 on the last day of the month the child turns nineteen;

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

(c) The child remains eligible except for ~~((exceeding))~~ turning age nineteen.

~~((7))~~ For an SSI-related person the certification period is twelve months.

~~((8))~~ (8) When the medical assistance unit is also receiving benefits under a cash or food assistance program, the medical certification period is updated to begin anew at each:

- (a) Approved application for cash or food assistance; or
- (b) Completed eligibility review.

~~((9))~~ (8) A retroactive certification period ~~((can begin up to three months immediately before the month of application when:~~

(a) The client would have been eligible for medical assistance if the client had applied; and

(b) The client received covered medical services as described in WAC 388-501-0060 and 388-501-0065.

~~((10))~~ (8) If the client is eligible only during the three-month retroactive period, that period is the only period of certification, except when:

(a) A pregnant woman is eligible in one of the three months preceding the month of application, but no earlier

than the month of conception. Eligibility continues as described in subsection (3);

~~((b))~~ (b) A child is eligible for a CN medical program as described in WAC 388-505-0210 (1) through (5) and (7) in one of the three months preceding the month of application. Eligibility continues for twelve months from the earliest month that the child is determined eligible.

~~((11))~~ Any months of a retroactive certification period are added to the designated certification periods described in this section)) is described in WAC 182-504-0005.

~~((12))~~ (9) Coverage under premium-based programs included in apple health for kids as described in ~~((WAC 388-505-0210 and))~~ chapter ~~((388-542))~~ 182-505 WAC begins no sooner than the month after creditable coverage ends.

NEW SECTION

WAC 182-504-0120 Washington apple health—Effective dates of changes. (1) We (the agency or its designee) determine the date a change affects your Washington apple health (WAH) coverage based on:

- (a) The date you report the change to us;
- (b) The date you give us the requested verification; and
- (c) The type of WAH you or your family is receiving.

(2) When you report a change after you submit your application, but before your application is processed, the change is considered when processing your application.

(3) If another person, agency, or data source reports a change in circumstances, the information may be used in determining your eligibility. We will not rely on information received from a data source to terminate your WAH coverage without requesting additional information from you.

(4) A change in income affects your ongoing eligibility only if it is expected to continue beyond the month when the change is reported, and only if it is expected to last more than two months.

(5) A change that results in termination of your WAH coverage takes effect the first of the month following the advance notice period.

(6) The advance notice period:

(a) Begins on the day we send the letter about the change to you; and

(b) Is determined according to the rules in WAC 182-518-0025.

(7) A change that results in a decreased scope of care takes effect on the first of the month following the advance notice period. Examples of a decreased scope of care are:

(a) Termination of WAH categorically needy (CN) medical and approval for other WAH coverage with a lesser scope of care such as WAH medically needy (MN) medical;

(b) WAH-MN recipient with a change that increases the spenddown liability amount;

(c) WAH-MN recipient with no spenddown liability with a change that results in WAH-MN with a spenddown liability.

(8) A change that results in an increased scope of care takes effect on the first of the month following the date the change was reported, when you provide the required verification:

(a) Within ten days of the date we requested the verification; or

(b) By the end of the month of report, whichever is later.

(9) If you do not provide the required verification timely under subsection (8) of this section, we make the change effective the first of the month following the month in which you provide the verification. We may terminate your WAH coverage if you do not provide the required verification.

(10) When a law or regulation requires a change in WAH, the date specified by the law or regulation is the effective date of the change.

(11) When a change in income or allowable expenses changes the amount you pay towards the cost of your care for institutional programs, we calculate your new participation amount beginning with the month your income or allowable expenses changed.

(12) We use the following rules to determine the effective date of change for the health care for workers with disabilities (HWD) program:

(a) HWD coverage begins the month after coverage in another medical program ends and the premium amount has been approved by the eligible person; and

(b) If a change in income increases or decreases the monthly premium, the change is effective the first of the month after the change is reported. For more information on premium requirements for this program, see WAC 182-511-1250.

AMENDATORY SECTION (Amending WSR 12-19-051, filed 9/13/12, effective 10/14/12)

WAC 182-504-0125 Washington apple health—
Effect of changes ~~((on medical program eligibility))~~. (1)
~~((An individual))~~ If a person reports a change during a certification period, the person continues to be eligible for ~~((medical assistance))~~ Washington apple health (WAH) categorically needy (CN) or alternative benefit plan (ABP) coverage until ~~((the agency or the agency's designee completes a review of the individual's case record and determines the individual is ineligible for medical assistance or is eligible for another medical program. This applies to all individuals who, during a certification period, become ineligible for, or are terminated from, or request termination from:~~

(a) A categorically needy (CN) medicaid program;

(b) A program included in apple health for kids; or

(c) Any of the following cash grants:

(i) Temporary assistance for needy families (TANF);

(ii) Supplemental security income (SSI); or

(iii) Aged, blind, disabled (ABD) cash assistance. See WAC 388-434-0005 for changes reported during eligibility review) a determination of eligibility or ineligibility for other WAH programs is completed.

(2) If a person is no longer eligible for WAH due to a change, then the agency or its designee is responsible to ensure eligibility for other insurance affordability programs (as described in WAC 182-503-0001) is coordinated and that information necessary to determine eligibility is securely provided to the health benefits exchange making the determination.

(3) If WAH-CN ~~((medical))~~ or ABP coverage ends under one program and the ~~((individual))~~ person meets all the eligibility requirements to be eligible under a different ~~((CN medical))~~ WAH program, ~~((coverage))~~ WAH is approved under the new program. If the ~~((individual's))~~ person's income exceeds the standard for WAH-CN ~~((medical))~~ coverage, the agency or ~~((the agency's))~~ its designee ~~((considers))~~ determines eligibility under:

(a) The medically needy (MN) program described in chapter 182-519 WAC where appropriate; and

(b) The person is referred for an eligibility determination under another insurance affordability program, if not excluded from coverage under these programs on the basis of age, immigration status, medicare, or other minimum essential coverage.

~~((3))~~ (4) If WAH-CN ~~((medical))~~ or ABP coverage ends and the ~~((individual))~~ person does not meet the eligibility requirements to be eligible under a different ~~((medical))~~ WAH program, the redetermination process for WAH is complete and ~~((medical assistance))~~ WAH coverage is terminated giving advance and adequate notice, with the following exception:

(a) ~~((An individual))~~ A person who claims to have a disability is referred to the division of disability determination services for a disability determination if that is the only basis under which the ~~((individual))~~ person is potentially eligible for ~~((medical assistance))~~ WAH. Pending the outcome of the disability determination, ~~((medical eligibility is considered))~~ coverage is continued under the SSI-related medical program described in chapter ~~((388-475))~~ 182-512 WAC if countable income is below the SSI categorically needy income level (CNIL).

(b) ~~((An individual))~~ A person with countable income in excess of the SSI-related ~~((CN medical standard is considered for medically needy (MN) coverage or medically needy~~ (c) CNIL, is eligible for WAH or WAH-MN) with spend-down as described in chapter 182-519 WAC pending the final outcome of the disability determination.

~~((4))~~ An individual who becomes ineligible for refugee cash assistance is eligible for continued refugee medical assistance through the eight-month limit, as described in WAC 182-507-0130.

(5) An individual who receives a TANF cash grant or family medical is eligible for a medical extension, as described under WAC 182-523-0100, when the cash grant or family medical program is terminated as a result of:

(a) An increase in earned income; or

(b) Collection of child or spousal support.

~~((6))~~ (5) A person who receives coverage under the WAH parent and caretaker relative program described in WAC 182-505-0240 is eligible for the WAH health care extension program, as described under WAC 182-523-0100, when the coverage ends as a result of an increase in earned income.

(6) Changes in income during a certification period do not affect(s) eligibility for ~~((all medical programs except))~~ the following programs:

(a) WAH for pregnant ~~((women's CN medical programs))~~ women;

~~(b) ((A program included in apple health for kids)) WAH for children, except as specified in subsection ((5)) (7) of this section; ((or))~~

~~(c) ((The first six months of the medical extension benefits described under chapter 182-523 WAC.~~

~~(7) A child who receives)) WAH for SSI recipients;~~

~~(d) WAH refugee program; and~~

~~(e) WAH health care extension.~~

~~(7) The agency or its designee redetermines eligibility for children receiving WAH for kids premium-based coverage ((under a program included in apple health for kids)) described in WAC 182-505-0210 ((and chapter 182-505 WAC must be redetermined for a nonpremium-based coverage)) when the ((family reports)):~~

~~(a) ((Family)) Household's income ((has decreased)) decreases to less than two hundred percent federal poverty level (FPL);~~

~~(b) ((The)) Child becomes pregnant;~~

~~(c) ((A change in)) Family size changes; or~~

~~(d) ((The)) Child receives SSI.~~

~~(8) ((An individual)) A person who receives SSI-related CN ((medical)) coverage ((and reports)) who has a change in earned income which exceeds the substantial gainful activity (SGA) limit set by the Social Security Administration, no longer meets the definition of a disabled ((individual)) person as described in WAC 182-512-0050, unless the ((individual)) person continues to receive a Title 2 cash benefit, ((e.g.,)) such as Social Security disability income (SSDI), disabled adult child (DAC), or disabled widow's benefits (DWB). This does not apply to SSI cash recipients, SSI-deemed eligible clients, as described in WAC 182-512-0880, or persons who meet the medicaid eligibility criteria in section 1619(b) of the Social Security Act.~~

~~(9) The agency or ((the agency's)) its designee redetermines eligibility for ((such an individual)) a person described in subsection (8) of this section under the ((health care)) WAH for workers with disabilities (HWD) program which waives the SGA income test. The HWD program is a premium-based program and the ((individual)) person must approve the premium amount before the agency or ((the agency's)) its designee can authorize ongoing CN ((medical benefits)) coverage under this program.~~

~~(10) Prior to a scheduled renewal or March 31, 2014, whichever is later, eligibility determinations using modified adjusted gross income (MAGI) methodologies will not cause a person to become ineligible for WAH, to receive less benefits, or to pay a premium when:~~

~~(a) The person is enrolled in WAH coverage at the time of the eligibility decision;~~

~~(b) The person was enrolled prior to October 1, 2013; and~~

~~(c) At the time of the eligibility determination, the person's enrollment in WAH is not already based on MAGI methodologies.~~

NEW SECTION

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 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 inpatient 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 months.

(b) You may complete renewals online, by phone, or mailed or faxed 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 letter letting you know.

(ii) You are sent a notice of renewal with the information used and you are required to inform us if any of the information we used is wrong.

(iii) 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.

(iv) 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 didn't renew, you have ninety 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 the end of the certification period.

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

NEW SECTION

WAC 182-504-0105 Washington apple health—Changes that must be reported. (1) You must report changes in your household and family circumstances to us (the agency or its designee) timely according to WAC 182-504-0110.

(2) We tell you what you are required to report at the time you are approved for WAH coverage. We also will tell you if the reporting requirements change.

(3) You must report the following:

- (a) Change in residential address;
- (b) Change in mailing address;
- (c) Change in marital status;
- (d) When family members or dependents move in or out of the residence;
- (e) Pregnancy;
- (f) Incarceration;
- (g) Change in institutional status;
- (h) Change in health insurance coverage including medicare eligibility; and
- (i) Change in immigration or citizenship status.

(4) If you are eligible for a WAH long-term care program described in chapter 182-513 or 182-515 WAC, you must also report changes to the following:

- (a) Income;
- (b) Resources;
- (c) Medical expenses; and
- (d) Spouse or dependent changes in income or shelter cost when expenses are allowed for either.

(5) If you get WAH parent or caretaker or WAH modified adjusted gross income (MAGI)-based adult coverage, you must also report changes to the following:

- (a) When income increases by one hundred fifty dollars or more a month and the change will continue for at least two months;
- (b) Anticipated federal income tax filing status; and
- (c) The number of tax dependents you intend to claim on your federal income taxes.

(6) If you get WAH based on age, blindness, or disability (SSI-related medical), then you must also report changes to the following:

- (a) Income; and
- (b) Resources.

NEW SECTION

WAC 182-504-0110 Washington apple health—When to report changes. (1) All changes you report to us (the agency or its designee) are used to decide if you can receive or keep receiving Washington apple health (WAH) coverage.

(2) You must report changes during your certification period within thirty days of when the change happened.

(3) You must report all changes during application, renewal, or redetermination of your WAH eligibility, regardless of when the change happened.

(4) For a change in income, the date a change happened is the first date you received income based on the change. For example, the date you receive your first paycheck for a new

job or the date you got a paycheck with a wage increase is the date the change happened.

(5) If you don't report a change or you report a change late, we will decide if you can receive or keep receiving WAH coverage based on the date the change was required to be reported.

(6) If you don't report a change or you report a change late, it may result in us overpaying you and you having to pay us back for the health care costs we overpaid. See chapter 182-520 WAC.

AMENDATORY SECTION (Amending WSR 11-23-091, filed 11/17/11, effective 11/21/11)

WAC 182-505-0100 (~~Medical programs~~) Washington apple health—Monthly income standards based on the federal poverty level (FPL). (1) Each year, the federal government publishes new federal poverty level (FPL) income standards in the Federal Register found at <http://aspe.hhs.gov/poverty/index.shtml>. The income standards for the following (~~medical~~) Washington apple health (WAH) programs change on the first day of April every year based on the new FPL:

(a) (~~Pregnant women's program up to one hundred eighty-five~~) WAH for parents and caretaker relatives up to fifty-four percent of FPL (see WAC 182-505-0240). Parents and caretaker relatives whose earned income exceeds this limit may be eligible for the WAH transitional medical program as described in WAC 182-523-0100;

(b) (~~A program included in apple health for kids up to two hundred~~) Modified adjusted gross income (MAGI)-based WAH for adults up to one hundred thirty-three percent of FPL;

(c) (~~Health care for workers with disabilities (HWD) up to two hundred twenty~~) WAH for pregnant women up to one hundred ninety-three percent of FPL; (~~and~~)

(d) (~~Premium-based coverage under a program included in apple health for kids over two hundred percent of FPL, but not over three hundred~~) WAH for children up to two hundred ten percent of FPL; and

(e) Premium-based coverage under WAH for children over two hundred ten percent of FPL, but not over three hundred twelve percent of FPL.

(2) The (~~department~~) agency uses the FPL income standards to determine(~~:~~

(a) ~~The mandatory or optional medicaid status of an individual; and~~

(b) ~~Premium amount, if any, for a child.~~

(3) ~~There are no resource limits for the programs under this section~~) the premium amount, if any, for a child.

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

WAC 182-505-0115 (~~Medical~~) Washington apple health—Eligibility for pregnant women. (~~Eligibility requirements for pregnancy medical are described below.~~) (1) A pregnant woman is eligible for (~~categorically needy (CN) scope of care~~) the Washington apple health (WAH) for pregnant women program if she (~~meets the following requirements~~):

(a) Meets citizenship or immigration status ((chapter 388-424 WAC)) under WAC 182-503-0535; ((and))

(b) Meets Social Security ((account)) number ((chapter 388-474 WAC)) requirements under WAC 182-503-0115; ((and))

(c) ((Is a)) Meets Washington state ((resident (chapter 388-468 WAC)) residency requirements under WAC 182-503-0520 and 182-503-0525; and

(d) Has countable income ((as described in)) at or below the limit described in:

(i) WAC ((388-478-0075)) 182-505-0100 to be eligible for categorically needy (CN) coverage; or

(ii) WAC 182-505-0100 to be eligible for medically needy (MN) coverage. MN coverage begins when the pregnant woman meets any required spenddown liability as described in WAC 182-519-0110.

(2) ~~((A pregnant woman is considered for medically needy (MN) scope of care if she meets the requirements in subsection (1)(a) through (c) of this section and:~~

~~(a) Has countable income that exceeds the standard in subsection (1)(d) of this section; and~~

~~(b) Has countable resources that do not exceed the standard in WAC 388-478-0070.~~

~~(3) A pregnant woman may be eligible for noncitizen pregnancy medical if she is not eligible for medical described in subsections (1) and (2) of this section due to citizenship, immigrant status, or social security number requirements.~~

~~(4) A pregnant woman meeting the eligibility criteria in subsection (3) is eligible for:~~

~~(a) CN scope of care when the countable income is at or below the income standard described in subsection (1)(d); or~~

~~(b) MN scope of care when:~~

~~(i) The countable income exceeds the standard in subsection (1)(d); and~~

~~(ii) The resources do not exceed the standard described in WAC 388-478-0070.~~

~~(5) Consider as income to the pregnant woman the amount that is actually contributed to her by the father of her unborn child when the pregnant woman is not married to the father.~~

~~((6)) A noncitizen pregnant woman who does not need to meet the requirements in subsection (1)(a) or (b) of this section to be eligible for WAH and receives either CN or MN coverage based upon her countable income as described in subsection (1)(d) of this section.~~

~~(3) The assignment of child support and medical support rights as described in ((chapter 388-422)) WAC ((do)) 182-503-0540 and 182-503-0545 does not apply to pregnant women.~~

~~((7)) (4) A woman who was eligible for and received ((medical)) coverage under any WAH program on the last day of pregnancy is eligible for extended medical ((benefits)) coverage for postpartum care for a minimum of sixty days from the end of her pregnancy. This includes women who meet an MN spenddown liability with expenses incurred no later than the date the pregnancy ends. This extension continues through the end of the month in which the sixtieth day falls.~~

~~((8) A woman who was eligible for medical coverage on the last day of pregnancy is) (5) All women approved for~~

WAH pregnancy coverage at any time are eligible for family planning services for twelve months ((from the end of)) after the pregnancy ((even when eligibility for pregnancy was determined after the pregnancy ended)) ends.

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

WAC 182-505-0210 ~~Washington apple health ((for kids and other children's medical assistance programs))—Eligibility for children.~~ ((Funding for coverage under the apple health for kids programs may come through Title XIX (medicaid), Title XXI (CHIP), or through state-funded programs. There are no resource limits for the apple health for kids programs. Apple health for kids coverage is free to children in households with incomes of no more than two hundred percent of the federal poverty level (FPL), and available on a premium basis to children in households with incomes of no more than three hundred percent FPL.

(1) Newborns are eligible for federally matched categorically needy (CN) coverage through their first birthday when:

(a) The newborn is a resident of the state of Washington;

(b) The newborn's mother is eligible for medical assistance;

(i) On the date of the newborn's birth, including a retroactive eligibility determination; or

(ii) Based on meeting a medically needy (MN) spenddown liability with expenses incurred on, or prior to, the date of the newborn's birth.

(2) Children under the age of nineteen who are U.S. citizens, U.S. nationals, or lawfully present qualified or nonqualified aliens as described in WAC 388-424-0001, 388-424-0010(4), and 388-424-0006 (1), (4), and (5) are eligible for free federally matched CN coverage when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC;

(b) A Social Security number or application as described in chapter 388-476 WAC;

(c) Proof of citizenship or immigrant status and identity as required by WAC 388-490-0005(11);

(d) Family income is at or below two hundred percent of federal poverty level (FPL), as described in WAC 388-478-0075 at each application or review; or

(e) They received supplemental security income (SSI) cash payments in August 1996 and would continue to be eligible for those payments except for the August 1996 passage of amendments to federal disability definitions; or

(f) They are currently eligible for SSI.

(3) Noncitizen children under the age of nineteen, who are not lawfully present qualified or nonqualified aliens as described in WAC 388-424-0001, 388-424-0010(4), and 388-424-0006 (1), (4), and (5), are eligible for free state-funded coverage when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC; and

(b) Family income is at or below two hundred percent FPL at each application or review.

(4) Children under the age of nineteen who are U.S. citizens, U.S. nationals, or lawfully present qualified or nonqual-

ified aliens as described in WAC 388-424-0001, 388-424-0010(4), and 388-424-0006 (1), (4), and (5) are eligible for premium-based federally matched CN coverage as described in chapter 388-542 WAC when they meet the following criteria:

~~(a) State residence as described in chapter 388-468 WAC;~~

~~(b) Proof of citizenship or immigrant status and identity as required by WAC 388-490-0005(11);~~

~~(c) Family income is over two hundred percent FPL, as described in WAC 388-478-0075, but not over three hundred percent FPL at each application or review;~~

~~(d) They do not have other creditable health insurance as described in WAC 388-542-0050; and~~

~~(e) They pay the required monthly premiums as described in WAC 388-505-0211.~~

(5) Noncitizen children under the age of nineteen, who are not lawfully present qualified or nonqualified aliens as described in WAC 388-424-0001, 388-424-0010(4), and 388-424-0006 (1), (4), and (5), are eligible for premium-based state-funded CN coverage when they meet the following criteria:

~~(a) State residence as described in chapter 388-468 WAC;~~

~~(b) Family income is over two hundred percent FPL, as described in WAC 388-478-0075, but not over three hundred percent FPL at each application or review;~~

~~(c) They do not have other creditable health insurance as described in WAC 388-542-0050; and~~

~~(d) They pay the required monthly premium as described in WAC 388-505-0211.~~

(6) Children under age nineteen are eligible for the medically needy (MN) medicaid program when they meet the following criteria:

(a) Citizenship or immigrant status, state residence, and Social Security number requirements as described in subsection (2)(a), (b), and (c) of this section;

(b) Are ineligible for other federally matched CN programs;

(c) Have income that exceeds three hundred percent FPL; or

(d) Have income less than three hundred percent FPL, but do not qualify for premium-based coverage as described in subsection (4) of this section because of creditable coverage; and

(e) Meet their spenddown liability as described in WAC 388-519-0100 and 388-519-0110.

(7) Children under the age of nineteen who reside or are expected to reside in a medical institution, intermediate care facility for the mentally retarded (ICF/MR), hospice care center, nursing home, institution for mental diseases (IMD) or inpatient psychiatric facility may be eligible for apple health for kids health care coverage based upon institutional rules described in WAC 388-505-0260. Individuals between the age of nineteen and twenty-one may still be eligible for health care coverage but not under the apple health for kids programs. See WAC 388-505-0230 "Family-related institutional medical" and WAC 388-513-1320 "Determining institutional status for long-term care" for more information.

~~(8) Children who are in foster care under the legal responsibility of the state, or a federally recognized tribe located within the state, and who meet eligibility requirements for residency, Social Security number, and citizenship as described in subsection (2)(a), (b) and (c) of this section are eligible for federally matched CN medicaid coverage through the month of their:~~

~~(a) Eighteenth birthday;~~

~~(b) Twenty-first birthday if the children's administration determines they remain eligible for continued foster care services; or~~

~~(c) Twenty-first birthday if they were in foster care on their eighteenth birthday and that birthday was on or after July 22, 2007.~~

(9) Children are eligible for state-funded CN coverage through the month of their eighteenth birthday if they:

(a) Are in foster care under the legal responsibility of the state or a federally recognized tribe located within the state; and

(b) Do not meet social security number and citizenship requirements in subsection (2)(b) and (c) of this section.

(10) Children who receive subsidized adoption services are eligible for federally matched CN coverage.

(11) Children under the age of nineteen not eligible for apple health for kids programs listed above may be eligible for one of the following medical assistance programs not included in apple health for kids:

(a) Family medical as described in WAC 388-505-0220;

(b) Medical extensions as described in WAC 388-523-0100;

(c) SSI related MN if they:

(i) Meet the blind and/or disability criteria of the federal SSI program, or the condition of subsection (2)(c) of this section; and

(ii) Have countable income above the level described in WAC 388-478-0070(1).

(d) Home and community based waiver programs as described in chapter 388-515 WAC; or

(e) Alien medical as described in WAC 388-438-0110, if they:

(i) Have a documented emergency medical condition as defined in WAC 388-500-0005;

(ii) Have income more than three hundred percent FPL;

or

(iii) Have income less than three hundred percent FPL, but do not qualify for premium-based coverage as described in subsection (5) of this section because of creditable coverage.

(12) Except for a child described in subsection (7) of this section, an inmate of a public institution, as defined in WAC 388-500-0005, is not eligible for any apple health for kids program.) (1) Unless otherwise stated in this section, a child is a person who is under nineteen years of age (including the month the person turns nineteen). To be eligible for one of the Washington apple health (WAH) for kids programs described below, a child must:

(a) Be a resident of Washington state, as described in WAC 182-503-0520 and 182-503-0525;

(b) Provide a Social Security number (SSN) as described in WAC 182-503-0515 unless exempt; and

(c) Meet any additional requirements listed for the specific program.

(2) Children under one year of age are eligible for WAH categorically needy (CN) coverage when they are born to a mother who is eligible for WAH:

(a) On the date of the newborn's birth, including a retro-active eligibility determination; or

(b) Based on meeting a medically needy (MN) spend-down liability with expenses incurred no later than the date of the newborn's birth.

(3) Children are eligible for WAH at no cost when they:

(a) Have countable family income that is no more than two hundred ten percent of the federal poverty level (FPL) as described in WAC 182-505-0100;

(b) Are currently eligible for supplemental security income (SSI); or

(c) Received SSI payments in August 1996 and would continue to be eligible for those payments except for the August 1996 passage of amendments to federal disability definitions.

(4) Children are eligible for premium-based WAH as described in WAC 182-505-0215 when they:

(a) Have countable family income that is not more than three hundred twelve percent of FPL as described in WAC 182-505-0100;

(b) Do not have other creditable health insurance as described in WAC 182-505-0220; and

(c) Pay the required monthly premiums as described in WAC 182-505-0225.

(5) Children are eligible for WAH home and community based waiver programs as described in chapter 182-515 WAC when they:

(a) Meet citizenship or immigration status as described in WAC 182-503-0525;

(b) Meet SSI-related eligibility requirements as described in chapter 182-512 WAC; and

(c) Meet program specific age requirements.

(6) Children are eligible for the WAH long-term care program when they meet the institutional program rules as described in chapter 182-513 or 182-514 WAC, and either:

(a) Reside or are expected to reside in a medical institution, intermediate care facility for the intellectually disabled (ICF/ID), hospice care center, or nursing home for thirty days or longer; or

(b) Reside or are expected to reside in an institution for mental diseases (IMD) or inpatient psychiatric facility:

(i) For ninety days or longer and are age seventeen or younger; or

(ii) For thirty days or longer and are age eighteen through twenty-one.

(7) Children are eligible for the WAH medically needy (MN) program as described in WAC 182-519-0100 when they:

(a) Meet citizenship or immigrant status as described in WAC 182-503-0535;

(b) Have countable family income that exceeds three hundred twelve percent of FPL as described in WAC 182-505-0100; or

(c) Have countable family income that is more than two hundred ten percent of FPL, but are not eligible for premium-

based WAH as described in subsection (4) of this section because of creditable coverage; and

(d) Meet a spenddown liability as described in WAC 182-515-0110, if required.

(8) Children are eligible for WAH SSI-related programs as described in chapter 182-512 WAC when they:

(a) Meet citizenship or immigration status as described in WAC 182-503-0535;

(b) Meet SSI-related eligibility as described in chapter 182-512 WAC; and

(c) Meet an MN spenddown liability as described in WAC 182-519-0110, if required.

(9) Children who are not eligible for WAH under subsections (5) through (8) of this section because of their immigration status, may be eligible for the WAH alien emergency medical program if they:

(a) Meet the eligibility requirements of WAC 182-507-0110;

(b) Have countable family income:

(i) That exceeds three hundred twelve percent of FPL as described in WAC 182-505-0100; or

(ii) That is more than two hundred ten percent of FPL, but they are not eligible for premium-based WAH, as described in subsection (4) of this section because of creditable coverage; and

(c) Meet a spenddown liability as described in WAC 182-519-0110, if required.

(10) Children who are in foster care or receive subsidized adoption services are eligible for coverage under the WAH foster care program described in WAC 182-505-0211.

(11) Children who are incarcerated in a public institution (as defined in WAC 182-500-0050), or a city or county jail, are not eligible for any WAH program, with the following exceptions:

(a) Children who reside in an IMD as described in subsection (6) of this section; or

(b) Children who are released from a public institution or city or county jail to a hospital for inpatient treatment. Children who are released from an IMD to a hospital setting must be unconditionally discharged from the IMD to qualify for coverage under this provision.

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

WAC 182-505-0215 Washington apple health—Premium-based children's program—Purpose and scope (~~of premium-based health care coverage under programs included in apple health for kids~~). The ((department)) ~~medicaid agency~~ administers the programs included in Washington apple health (WAH) for kids that provide premium-based coverage through a combination of state and federal funding sources as described below:

(1) Federally matched health care coverage as authorized by Title XXI of the Social Security Act state children's health insurance program (~~(SCHIP)~~) (CHIP) and RCW 74.09.450 for citizen and federally qualified immigrant children whose family income is above two hundred ten percent of the federal poverty level (FPL) but is not above three hundred twelve percent FPL.

(2) State funded health care coverage for children with family income above two hundred ~~ten~~ percent FPL, but not above three hundred ~~twelve~~ percent FPL, who are ineligible for ~~((Title XXI))~~ federally matched health care coverage due to immigration ~~((issues))~~ status.

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

WAC 182-505-0225 Premium-based Washington apple health for kids—Premium requirements ~~((for premium-based health care coverage under programs included in apple health for kids))~~. (1) For the purposes of this chapter, "**premium**" means an amount paid for ~~((health care))~~ Washington apple health (WAH) coverage ~~((under programs included in apple health))~~ for kids as described in WAC ~~((388-505-0210 (4) and (5)))~~ 182-505-0210(4).

(2) Payment of a premium is required as a condition of eligibility for premium-based WAH coverage ~~((under programs included in apple health))~~ for kids, as described in WAC ~~((388-505-0210 (4) and (5)))~~ 182-505-0210(4), unless the child is:

- (a) Pregnant; or
- (b) An American Indian or Alaska native.

(3) The premium requirement begins the first of the month following the determination of eligibility. There is no premium requirement for ~~((medical))~~ WAH coverage received in a month or months before the determination of eligibility.

(4) ~~((The premium amount for the assistance unit (AU) is based on the net countable income as described in WAC 388-450-0210 and the number of children in the AU. If the household includes more than one AU, the premium amount billed for the AUs may be different amounts.~~

~~((5))~~ The premium amount is limited to a monthly maximum of two premiums for ~~((households))~~ families with two or more children.

~~((6))~~ (5) The premium amount ~~((for each U.S. citizen or lawfully present alien child described in WAC 388-505-0210(4)))~~ is:

(a) Twenty dollars per month per child for ~~((households))~~ families with countable income above two hundred ~~ten~~ percent FPL, but not above two hundred ~~((and fifty))~~ sixty percent FPL; or

(b) Thirty dollars per month per child for ~~((households))~~ families with countable income above two hundred ~~((and fifty))~~ sixty percent FPL, but not above three hundred ~~twelve~~ percent FPL.

~~((7))~~ ~~The premium amount for each noncitizen child described in WAC 388-505-0210(5) who is not a lawfully present qualified or nonqualified alien is no greater than the average of the state share of the per capita cost for state-funded children's health coverage. The premium amount is set every two years, based on the forecasted per capita costs for that period.~~

~~((8))~~ (6) All children in an assistance unit (AU) are ineligible for ~~((health care))~~ WAH coverage when the ~~((head of household))~~ family fails to pay required premium payments for three consecutive months.

~~((9))~~ (7) When the agency or ~~((the agency's))~~ its designee terminates the ~~((medical))~~ WAH coverage ~~((of a child))~~ due to nonpayment of premiums, the child's eligibility is restored ~~((only))~~ when the:

(a) Past due premiums are paid in full prior to the end of the certification period; or

(b) The child becomes eligible for coverage under ~~((a nonpremium-based CN health care program))~~ WAH without a premium.

~~((10))~~ (8) The agency or ~~((the agency's))~~ its designee writes off past-due premiums after twelve months.

~~((11))~~ (9) If all past due premiums are paid after the certification period is over:

(a) Eligibility for prior months is not restored; and

(b) Children are not eligible for premium-based ~~((coverage under apple health))~~ WAH for kids until:

(i) The month the premiums are paid or the agency writes off the debt; and

(ii) The family reapplies and is found eligible.

~~((12))~~ (10) A family cannot designate partial payment of the billed premium amount as payment for a specific child in the AU. The full premium amount is the obligation of the head of household of the AU. A family can decide to request health care coverage only for certain children in the AU, if they want to reduce premium obligation.

~~((13))~~ (11) A change that affects the premium amount is effective the month after the change is reported and processed.

~~((14))~~ (12) A sponsor or other third party may pay the premium on behalf of the child or children in the AU. The premium payment requirement remains the obligation of head of household of the AU. The failure of a sponsor or other third party to pay the premium does not eliminate the obligation of the head of household to pay past due premiums.

AMENDATORY SECTION (Amending WSR 11-23-077, filed 11/15/11, effective 12/16/11)

WAC 182-505-0235 Washington apple health—Premium-based children's program—Order of payments ~~((under the premium-based apple health for kids program as funded by Title XXI of the Social Security Act))~~. The agency administers ~~((the programs included in))~~ premium-based Washington apple health (WAH) for kids ~~((that provide premium-based))~~ coverage through a combination of state and federal funding sources. For expenditures funded by Title XXI of the Social Security Act ~~((SSA))~~, also known as the children's health insurance program (CHIP), federal financial participation will be sought in compliance with section 2105 ~~((of the act))~~ in the following order:

(1) For ~~((medical assistance))~~ health care coverage for targeted low-income children from birth through age eighteen, as described in section 4 of the Title XXI state plan.

(2) For ~~((medical assistance))~~ health care coverage for unborn children, as described in section 4.1.2.1 of the Title XXI state plan.

(3) For ~~((medical assistance))~~ health care coverage for medicaid-eligible children, as described in CHIPRA, section 214.

(4) For ~~((medical assistance))~~ health care coverage for medicaid-eligible children, as described in section 2105 (g)(4)(A) and (B) of the ~~((act))~~ SSA.

(5) For allowable administrative expenditures under the ten percent cap, as defined in section 2105 (a)(1)(D) of the act in the following order:

(a) First, for reasonable expenditures necessary to administer the plan, including staffing for eligibility determinations, plan administration, quality assurance, and similar costs.

(b) Second, for a toll-free 800 telephone number providing information regarding the Washington apple health for kids program.

(c) Third, for health services initiatives, such as the funding of the Washington poison center, to the extent that state funds are appropriated by the legislature.

(d) Fourth, for translation or interpretation services in connection with the enrollment, retention, or use of services under this title by individuals for whom English is not their primary language, but only to the extent that state-matching funds are made available.

(e) Fifth, for outreach services for the Washington apple health for kids program, to the extent that appropriated state-matching funds are available.

(f) Sixth, for other CMS-approved activities to the extent that federal matching funds are available, and where such activities do not duplicate efforts conducted under this subsection.

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

WAC 182-505-0237 Premium-based Washington apple health for kids—Other rules that apply ((to premium-based health care coverage under programs included in apple health for kids)). In addition to the rules of this chapter, children receiving premium-based ~~((coverage under))~~ Washington apple health (WAH) for kids are subject to the following rules:

(1) Chapter ~~((388-538))~~ 182-538 WAC, Managed care (except WAC ~~((388-538-061))~~ 182-538-061, ~~((388-538-063))~~ 182-538-063, and ~~((388-538-065))~~ 182-538-065) if the child is covered under federally matched CN coverage;

(2) WAC ~~((388-505-0210 (4) and (5))~~, apple health for kids program eligibility;

~~(3) WAC 388-505-0211, Premium requirements for premium-based coverage under programs included in apple health for kids;~~

~~(4) WAC 388-416-0015(12))~~ 182-504-0015(8), Certification periods for categorically needy (CN) scope of care medical assistance programs; and

~~((5))~~ (3) WAC ((388-418-0025)) 182-504-0125, Effect of changes on medical program eligibility.

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

WAC 182-505-0240 ~~((Family medical eligibility))~~ Washington apple health—Parents and caretaker relatives. (1) A person is eligible for Washington apple health

(WAH) categorically needy (CN) ~~((medical assistance))~~ coverage when ~~((they are))~~ he or she:

~~(a) ((Receiving temporary assistance for needy families (TANF) cash benefits;~~

~~(b) Receiving Tribal TANF;~~

~~(c) Receiving cash diversion assistance, except SFA relocatable families, described in WAC 388-400-0010(2);~~

~~(d) Eligible for TANF cash benefits but choose not to receive;~~

~~(e) Over the TANF cash payment standard but under the family medical payment standard as described in WAC 388-478-0065; or~~

~~(f) Not eligible for or receiving TANF cash assistance, but meet the eligibility criteria for aid to families with dependent children (AFDC) in effect on July 16, 1996 except that:~~

~~(i) Earned income is treated as described in WAC 388-450-0210; and~~

~~(ii) Resources are treated as described in WAC 388-470-0005 for applicants and 388-470-0026 for recipients.~~

~~(2) An adult cannot receive a family medicaid program unless the household includes a child who is eligible for:~~

~~(a) Family medicaid;~~

~~(b) SSI; or~~

~~(c) Children's medicaid.~~

~~(3) A person is eligible for CN family medical coverage when the person is not eligible for or receiving cash benefits solely because the person:~~

~~(a) Received sixty months of TANF cash benefits or is a member of an assistance unit which has received sixty months of TANF cash benefits;~~

~~(b) Failed to meet the school attendance requirement in chapter 388-400 WAC;~~

~~(c) Is an unmarried minor parent who is not in a department-approved living situation;~~

~~(d) Is a parent or caretaker relative who fails to notify the department within five days of the date the child leaves the home and the child's absence will exceed one hundred eighty days;~~

~~(e) Is a fleeing felon or fleeing to avoid prosecution for a felony charge, or is a probation and parole violator;~~

~~(f) Was convicted of a drug related felony;~~

~~(g) Was convicted of receiving benefits unlawfully;~~

~~(h) Was convicted of misrepresenting residence to obtain assistance in two or more states;~~

~~(i) Has gross earnings exceeding the TANF gross income level; or~~

~~(j) Is not cooperating with WorkFirst requirements.~~

~~(4) An adult must cooperate with the division of child support in the identification, use, and collection of medical support from responsible third parties, unless the person meets the medical exemption criteria described in WAC 388-505-0540 or the medical good cause criteria described in chapter 388-422 WAC.~~

~~(5) Except for a client described in WAC 388-505-0210(6), a person who is an inmate of a public institution, as defined in WAC 388-500-0005, is not eligible for CN or MN medical coverage.)~~ Is a parent or caretaker relative of a dependent child who meets the criteria described in WAC 182-503-0565(2);

(b) Meets citizenship and immigration status requirements described in WAC 182-503-0535;

(c) Meets general eligibility requirements described in WAC 182-503-0535; and

(d) Has countable income below fifty-four percent of the federal poverty level (FPL).

(2) To be eligible for WAH coverage as a caretaker relative, a person must be related to a dependent child who meets the criteria described in WAC 182-503-0565(2).

(3) A person must cooperate with the state of Washington in the identification, use and collection of medical support from responsible third parties as described in WAC 182-503-0540.

(4) A person who does not cooperate with the requirements in subsection (3) of this section is not eligible for WAH coverage.

NEW SECTION

WAC 182-505-0250 Washington apple health—MAGI-based adult medical. (1) A person is eligible for Washington apple health (WAH) modified adjusted gross income (MAGI)-based adult coverage when he or she meets the following requirements:

(a) Is age nineteen or older and under the age of sixty-five;

(b) Is not entitled to, or enrolled in, medicare benefits under Part A or B of Title XVIII of the Social Security Act;

(c) Is not otherwise eligible for and enrolled in mandatory coverage under one of the following programs:

(i) WAH SSI-related categorically needy (CN);

(ii) WAH foster care program; or

(iii) WAH adoption support program;

(d) Meets citizenship and immigration status requirements described in WAC 182-503-0535;

(e) Meets general eligibility requirements described in WAC 182-503-0505; and

(f) Has net countable income that is at or below one hundred thirty-three percent of the federal poverty level for a household of the applicable size.

(2) Parents or caretaker relatives of an eligible dependent child as described in WAC 182-503-0565 are first considered for WAH for families as described in WAC 182-505-0240. An individual whose countable income exceeds the standard to qualify for family coverage is considered for coverage under this section.

(3) Persons who are eligible under this section are eligible for WAH alternative benefit plan as defined in WAC 182-500-0010 coverage. A person described in this section is not eligible for medically needy WAH.

(4) Other coverage options for adults not eligible under this section are described in WAC 182-508-0001.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 182-505-0220 Definitions for premium-based health care coverage under programs included in apple health for kids.

WAC 182-505-0230 Waiting period for premium-based health care coverage under programs included in apple health for kids following employer coverage.

WAC 182-505-0245 Income and resource standards for family medical programs.

WAC 182-505-0515 Medical coverage resulting from a cash grant.

Chapter 182-518 WAC

WASHINGTON APPLE HEALTH—LETTERS AND NOTICES

NEW SECTION

WAC 182-518-0005 Washington apple health—Notice requirements—General. (1) This section applies only to notices and letters that we (the agency) send about eligibility for Washington apple health (WAH) programs. WAC 182-501-0165 applies to notices and letters regarding prior authorization or other action on requests to cover specific fee-for-service health care services.

(2) We send you written notices (letters) when we:

(a) Approve you for health care coverage for any program;

(b) Reconsider your application for other types of health care coverage based on new information;

(c) Deny you health care coverage, including if you withdrew your application, for any program (according to rules in WAC 182-503-0080);

(d) Ask you for more information to decide if you can start or renew getting health care coverage;

(e) Renew your health care coverage; or

(f) Change or terminate your health care coverage, even if we approve you for another kind of coverage.

(3) We send notices to you in your primary language if you don't read or understand English, according to the rules in WAC 182-503-0110 and follow equal access rules described in WAC 182-503-0120.

(4) All WAH notices we send you include the following information:

(a) The date of the notice;

(b) Specific contact information for you if you have questions or need help with the notice;

(c) Your appeal rights, if an appeal is available, and the availability of potentially free legal assistance; and

(d) Other information required by state or federal law.

NEW SECTION

WAC 182-518-0010 Washington apple health—Notice requirements approval and denial notices. (1) We (the agency or its designee) send written notice when you are approved, reopened, reinstated or denied for Washington apple health (WAH). In addition to the specific information described in this section, the notice includes the information described in WAC 182-518-0005(4).

(2) Approval notices include:

(a) The eligibility status for each person approved, reopened or reinstated;

(b) The certification period for the WAH program that is approved; and

(c) The eligibility effective date.

(3) Denial and withdrawal notices include:

(a) The date of denial;

(b) Specific reason(s) supporting the decision; and

(c) Specific rules or statutes that support or require the decision.

(4) If your request for health care coverage is denied or withdrawn for failure to provide requested information to us, the notice includes:

(a) A list of the information you did not provide;

(b) The date we asked you for the information and the day it was due;

(c) Notice that your eligibility will be reconsidered if we receive all information needed to determine your eligibility, including any changes to information we have, within thirty days of the date of the denial letter; and

(d) Information described in subsection (2) of this section.

NEW SECTION

WAC 182-518-0015 Washington apple health—Notice requirements verification requests. (1) We (the agency or its designee) send written notice to you when we need more information as described in WAC 182-503-0050 to decide if you can receive or continue to receive Washington apple health (WAH) coverage. The notice includes:

(a) The information that we need;

(b) When we must have the information (see WAC 182-503-0060 for applications and WAC 182-504-0035 for renewals);

(c) What action we will take and on what date, if we do not receive the information; and

(d) Information described in WAC 182-518-0005(4).

(2) We allow you at least ten days to return the information. If you ask, we may allow you more time to get us the information. If the tenth day falls on a weekend or holiday, the due date is the next business day.

(3) If the information we ask for costs money, we will pay for it or help you get the information in another way.

NEW SECTION

WAC 182-518-0020 Washington apple health—Notice requirements—Renewals. (1) We (the agency or its designee) send you advance written notice when the certification period ends for your Washington apple health (WAH) coverage as described in WAC 182-504-0035.

(2) When we can administratively renew your coverage (as defined in WAC 182-500-0010) we send you written notice that includes:

(a) Your new certification period;

(b) The information we used to recertify your coverage; and

(c) A request for you to give us updated information, if any of the information we used is inaccurate.

(3) When we cannot administratively renew your coverage, we send you written notice that includes:

(a) Information we currently have on record;

(b) How to complete the renewal using any of the methods described in WAC 182-504-0035 (1)(b); and

(c) If we need more information to renew your WAH coverage, we follow the rules in WAC 182-518-0015.

(4) We send your renewal notice following the timeline in:

(a) WAC 182-504-0035(2) for programs based on modified adjusted gross income (MAGI); or

(b) WAC 182-504-0035(3) for non-MAGI based programs.

NEW SECTION

WAC 182-518-0025 Washington apple health—Notice requirements—Changes in and terminations of coverage. (1) We (the agency or its designee) send you written notice if your Washington apple health (WAH) coverage changes or terminates. The notice includes:

(a) The change in coverage;

(b) The date your coverage is changing or terminating;

(c) Specific reason(s) for the decision;

(d) Specific rules the decision is based on; and

(e) Information found in WAC 182-518-0005(4).

(2) When we terminate your WAH coverage because your income is more than the modified adjusted gross income (MAGI) standard, we redetermine your eligibility for other health care coverage as described in WAC 182-504-0125, before sending you the notice telling you your WAH coverage is terminating.

(3) We notify you at least ten days before we change or terminate your health care coverage unless:

(a) You asked us to change or terminate your coverage;

(b) We are changing or terminating your coverage due to a change in law that affects many people;

(c) We are terminating your coverage because everyone in your household is dead or they have been accepted to get medicaid coverage somewhere else (another local jurisdiction, state, territory, or commonwealth);

(d) We are terminating your coverage because mail we have sent to you has been returned to us with no forwarding address; or

(e) You are incarcerated and it is expected to last more than thirty days.

(4) The ten-day advance notice period starts on the day we send the notice to you and ends on the tenth day. If we do not have to give ten days' advance notice, we send the notice right away after getting the information that caused the change, but no later than the date we took the action the notice is about.

(5) You may request an appeal if you disagree with our decision to change or terminate your health care coverage and you may request continued coverage as described in WAC 182-504-0130.

NEW SECTION

WAC 182-518-0030 Washington apple health—Notice requirements—Electronic notices. (1) We (the

agency or its designee) send you notices (letters) to inform you about your eligibility for Washington apple health (WAH) programs as described in WAC 182-518-0005 through 182-518-0025.

(2) For programs based on modified adjusted gross income (MAGI), you have the right to choose to get WAH eligibility notices by regular mail or in an electronic format.

(3) The primary applicant on an application may receive WAH notices electronically. To receive electronic notices you must:

(a) Have an account with Washington Healthplanfinder. (There is no charge to create an account); and

(b) Provide us with sufficient information to set up the electronic notices, such as a valid e-mail address, name and application identification number.

(4) You may ask to receive WAH notices electronically by:

(a) Mailing or giving us a written letter;

(b) Logging on to your Healthplanfinder account online and selecting the "I would prefer to receive written communications by e-mail" check box on the contact information page;

(c) Calling the Healthplanfinder customer support center.

(5) When you have asked for electronic notification, we:

(a) Send the notice to your Healthplanfinder account no later than one business day after creating the notice.

(b) Send you an e-mail message to notify you when a new WAH notice has been sent electronically to your Healthplanfinder account.

(i) The e-mail notice will not include the notice, information about the content of the notice, or other confidential information; and

(ii) You must log on to your Healthplanfinder account to get the notice.

(6) We will stop sending WAH notices electronically to you if you ask us. You must notify us if your e-mail address changes.

0070, 182-500-0095, 182-500-0100, 182-506-0010, and 182-509-0001.

Statutory Authority for Adoption: RCW 41.05.021.

Other Authority: Patient Protection and Affordable Care Act (Public Law 111-148); 42 C.F.R. § 431, 435 and 457; and 45 C.F.R. § 155.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Over the last year the agency has been working diligently with client advocates and other stakeholders in crafting the new rules to implement the provisions of the Affordable Care Act, including the expansion of medicaid. Although the permanent rule-making process is nearing completion, the permanent rules could not be adopted by the October 1, 2013, deadline due in part to not receiving final federal rules governing this process until this month. Hence the need for the emergency adoption of these rules, while the permanent rule-making process is completed.

Number of Sections Adopted in Order to Comply with Federal Statute: New 22, Amended 7, 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 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 22, Amended 7, Repealed 0.

Date Adopted: September 30, 2013.

Kevin M. Sullivan
Rules Coordinator

WSR 13-20-094

EMERGENCY RULES

HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed September 30, 2013, 4:38 p.m., effective October 1, 2013]

Effective Date of Rule: October 1, 2013.

Purpose: **Medicaid expansion rules - Phase 3**, the health care authority (HCA) is implementing new regulations under the federal Patient Protection and Affordable Care Act in preparation for healthcare reform in Washington state. This includes the establishment of standalone rules for medical assistance programs, which are required under 2E2SHB 1738, Laws of 2011, which creates HCA as the single state agency responsible for the administrations and supervision of Washington's medicaid program (Washington apple health).

Citation of Existing Rules Affected by this Order: Amending WAC 182-500-0010, 182-500-0045, 182-500-

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-500-0010 Medical assistance definition—
A. "Administrative renewal" means the agency uses verification from electronically available income data sources to verify and recertify a person's Washington apple health benefits for a subsequent certification period. A case is administratively renewed when the person's self-attested income is reasonably compatible (as defined in WAC 182-500-0095) with the information available to the agency from the electronic data sources and the person meets citizenship, immigration, Social Security number, and age requirements.

"Agency" means the Washington state health care authority (HCA), created pursuant to chapter 41.05 RCW.

"Agency's designee" means the Washington state department of social and health services (DSHS), created pursuant to chapter 43.20A RCW.

"Allowable costs" are the documented costs as reported after any cost adjustment, cost disallowances, reclassifications, or reclassifications to nonallowable costs which are necessary, ordinary and related to the outpatient care of medical care clients are not expressly declared nonallowable by applicable statutes or regulations. Costs are ordinary if they are of the nature and magnitude which prudent and cost-conscious management would pay.

"Alternative benefits plan" means the range of health care services included within the scope of service categories described in WAC 182-501-0060 available to persons eligible to receive health care coverage under the Washington apple health modified adjusted gross income (MAGI)-based adult coverage described in WAC 182-505-0250.

"Ancillary services" means additional services ordered by the provider to support the core treatment provided to the patient. These services may include, but are not limited to, laboratory services, radiology services, drugs, physical therapy, occupational therapy, and speech therapy.

"Apple health for kids" is the umbrella term for health care coverage for certain groups of children that is funded by the state and federal governments under Title XIX medicaid programs or Title XXI Children's Health Insurance Program, or solely through state funds (including the program formerly known as the children's health program). Funding for any given child depends on the program for which the child is determined to be eligible. ~~((Children who may be eligible for medical assistance but who are not included under the apple health for kids umbrella are described in WAC 388-505-0210-))~~ Apple health for kids programs are included in the array of health care programs available through Washington apple health (WAH).

"Attested income" means a self-declared statement of a person's income made under penalty of perjury to be true. (See also "self-attested income.")

"Authorization" means the agency's or the agency's designee's determination that criteria are met, as one of the preconditions to the agency's or the agency's designee's decision to provide payment for a specific service or device. (See also "expedited prior authorization" and "prior authorization.")

"Authorized representative" means a family member, friend, organization or someone acting responsibly on behalf of a person who is designated by the person to act on his or her behalf in all matters relating to an application or renewal of Washington apple health or other ongoing communications with agency or its designee. The authorization must be made in writing and signed by the person unless the person's medical condition prevents such written authorization. Authority to act on behalf of an applicant or beneficiary under state law can substitute for the person's authorization. The power to act as an authorized representative ends when the person or a court-appointed guardian of the person informs the agency or its designee that the representative is no longer authorized to act on his or her behalf, or when the agency learns of a change in the legal authority upon which the authorization is based.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-500-0045 Medical assistance definitions—
H. "Health benefit exchange" means the public-private partnership created pursuant to chapter 43.71 RCW.

"Health insurance premium tax credit (HIPTC)" is a premium tax credit that is refundable and can also be paid in advance from the Internal Revenue Service to a taxpayer's insurance company to help cover the cost of premiums for a taxpayer enrolled in a qualified health plan (QHP) through the health benefit exchange. This tax credit is specified in Section 36B of the Internal Revenue Code of 1986.

"Health maintenance organization (HMO)" means an entity licensed by the office of the insurance commissioner to provide comprehensive medical services directly to an eligible enrolled client in exchange for a premium paid by the agency on a prepaid capitation risk basis.

"Health care professional" means a provider of health care services licensed or certified by the state in which they practice.

"Health care service category" means a grouping of health care services listed in the table in WAC ((388-501-0060)) 182-501-0060. A health care service category is included or excluded depending on the client's medical assistance benefits package.

"Home health agency" means an agency or organization certified under medicare to provide comprehensive health care on a part-time or intermittent basis to a patient in the patient's place of residence.

"Hospital" means an entity that is licensed as an acute care hospital in accordance with applicable state laws and rules, or the applicable state laws and rules of the state in which the entity is located when the entity is out-of-state, and is certified under Title XVIII of the federal Social Security Act. The term "hospital" includes a medicare or state-certified distinct rehabilitation unit or a psychiatric hospital.

AMENDATORY SECTION (Amending WSR 12-19-051, filed 9/13/12, effective 10/14/12)

WAC 182-500-0070 Medical assistance definitions—
M. "Medicaid" is the federal aid ((Title XIX)) program under Title XIX of the Social Security Act under which ((medical)) health care is provided to eligible persons.

"Medical assistance" ((for the purposes of chapters 388-500 through 388-561 WAC, means the various)) is the term the agency and its predecessors used prior to the implementation of the Affordable Care Act in Washington state to mean all federal and/or state-funded health care programs administered by the agency or ((the agency's)) its designee that ((provide federally funded and/or state-funded health care benefits to eligible clients)) are now known as Washington apple health.

"Medical assistance administration (MAA)" is the former organization within the department of social and health services authorized to administer the federally funded and/or state-funded health care programs that are now administered by the agency, formerly the medicaid purchasing administration (MPA), of the health and recovery services administration (HRSA).

"Medical care services (MCS)" means the limited scope ~~((of))~~ health care ((medical)) program financed by state funds for clients who meet the incapacity criteria defined in chapter 182-508 WAC or who are eligible for the Alcohol and Drug Addiction Treatment and Support Act (ADATSA) program.

"Medical consultant" means a physician employed or contracted by the agency or the agency's designee.

"Medical facility" means a medical institution or clinic that provides health care services.

"Medical institution" See "institution" in WAC 182-500-0050.

"Medical services card" means the card issued by the agency at the initial approval of a person's Washington apple health (WAH) benefit. The card identifies the person's name and medical services identification number, but is not proof of eligibility for WAH. The card may be replaced upon request if it is lost or stolen, but is not required to access health care through WAH.

"Medically necessary" is a term for describing requested service which is reasonably calculated to prevent, diagnose, correct, cure, alleviate or prevent worsening of conditions in the client that endanger life, or cause suffering or pain, or result in an illness or infirmity, or threaten to cause or aggravate a handicap, or cause physical deformity or mal-function. There is no other equally effective, more conservative or substantially less costly course of treatment available or suitable for the client requesting the service. For the purposes of this section, "course of treatment" may include mere observation or, where appropriate, no medical treatment at all.

"Medically needy (MN) or medically needy program (MNP)" is the state- and federally funded health care program available to specific groups of persons who would be eligible as categorically needy (CN), except their monthly income is above the CN standard. Some long-term care clients with income and/or resources above the CN standard may also qualify for MN.

"Medicare" is the federal government health insurance program for certain aged or disabled persons under Titles II and XVIII of the Social Security Act. Medicare has four parts:

(1) **"Part A"** - Covers medicare inpatient hospital services, post-hospital skilled nursing facility care, home health services, and hospice care.

(2) **"Part B"** - The supplementary medical insurance benefit (SMIB) that covers medicare doctors' services, outpatient hospital care, outpatient physical therapy and speech pathology services, home health care, and other health services and supplies not covered under Part A of medicare.

(3) **"Part C"** - Covers medicare benefits for clients enrolled in a medicare advantage plan.

(4) **"Part D"** - The medicare prescription drug insurance benefit.

"Medicare assignment" means the process by which a provider agrees to provide services to a medicare beneficiary and accept medicare's payment for the services.

"Medicare cost-sharing" means out-of-pocket medical expenses related to services provided by medicare. For medical assistance clients who are enrolled in medicare, cost-

sharing may include Part A and Part B premiums, co-insurance, deductibles, and copayments for medicare services. See chapter 182-517 WAC for more information.

"Minimum essential coverage" means coverage defined in Section 5000A(f) of Subtitle D of the Internal Revenue Code of 1986, as added by Section 1401 of the Affordable Care Act.

"Modified adjusted gross income (MAGI)" means the adjusted gross income (as determined by the Internal Revenue Service under the Internal Revenue Code of 1986 (IRC)) increased by:

(1) Any amount excluded from gross income under Section 911 of the IRC;

(2) Any amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax; and

(3) Any amount of Title II Social Security income or Tier 1 railroad retirement income which is excluded from gross income under Section 86 of the IRC. See WAC 182-509-0300 through 182-509-0375 for additional rules regarding MAGI.

NEW SECTION

WAC 182-500-0090 Medical assistance definitions—
Q. "Qualified health plan (QHP)" means a health insurance plan that has been certified by the Washington health benefit exchange to meet at minimum the standards described in 45 C.F.R. Part 156, Subpart C and RCW 43.71.065 and offered in accordance with the process described in 45 C.F.R. Part 155, Subpart K and RCW 43.71.065.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-500-0095 Medical assistance definitions—
R. "Reasonably compatible" means the amount of a person's self-attested income (as defined in WAC 182-500-0100) and the amount of a person's income verified via electronic data sources are either both above or both below the applicable income standard for Washington apple health (WAH). When self-attested income is less than the standard for WAH, but income from available data sources is more than the WAH standard, or when the self-attested income cannot be verified via electronic data sources, the self-attested income is considered not reasonably compatible.

"Regional support network (RSN)" means a single or multiple-county authority or other entity operating as a pre-paid health plan through which the agency or the agency's designee contracts for the delivery of community outpatient and inpatient mental health services system in a defined geographic area.

"Retroactive period" means approval of medical coverage for any or all of the retroactive period. A client may be eligible only in the retroactive period or may have both current eligibility and a separate retroactive period of eligibility approved.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-500-0100 Medical assistance definitions—
S. "Self-attestation" means a person's written, verbal, or electronic declaration of his or her income and/or circumstances made under penalty of perjury, confirming a statement to be true. (See also "attested income.")

"**Spenddown**" is a term used in the medically needy (MN) program and means the process by which a person uses incurred medical expenses to offset income and/or resources to meet the financial standards established by the agency. See WAC ((388-519-0110)) 182-519-0110.

"**Spouse**" means (~~for the purposes of medicaid,~~) a person who is (~~a husband or wife~~) legally married to (~~a~~) another person (~~of the opposite sex~~). Washington state recognizes other states' determinations of legal and common-law marriages between two persons (~~of the opposite gender~~).

(1) "**Community spouse**" means a person who:

(a) Does not reside in a medical institution; and

(b) Is legally married to a client who resides in a medical institution or receives services from a home and community-based waiver program. A person is considered married if not divorced, even when physically or legally separated from his or her spouse.

(2) "**Eligible spouse**" means an aged, blind or disabled husband or wife of an SSI-eligible person, who lives with the SSI-eligible person, and is also eligible for SSI.

(3) "**Essential spouse**" means a husband or wife whose needs were taken into account in determining old age assistance (OAA), aid to the blind (AB), or disability assistance (DA) for a client in December 1973, who continues to live in the home and remains married to the client.

(4) "**Ineligible spouse**" means the husband or wife of an SSI-eligible person, who lives with the SSI-eligible person, and who has not applied or is not eligible to receive SSI.

(5) "**Institutionalized spouse**" means a legally married person who has attained institutional status as described in chapter ((388-513)) 182-513 WAC, and receives services in a medical institution or from a home or community-based waiver program described in chapter ((388-515)) 182-515 WAC. A person is considered married if not divorced, even when physically or legally separated from his or her spouse.

(6) "**Nonapplying spouse**" means an SSI-related person's husband or wife, who has not applied for medical assistance.

"**SSI-related**" means an aged, blind or disabled person not receiving an SSI cash grant.

"**State supplemental payment (SSP)**" is a state-funded cash benefit for certain individuals who are either recipients of the Title XVI supplemental security income (SSI) program or who are clients of the division of developmental disabilities. The SSP allotment for Washington state is a fixed amount of twenty-eight million nine hundred thousand dollars and must be shared between all individuals who fall into one of the groups listed below. The amount of the SSP may vary each year depending on the number of individuals who qualify. The following groups are eligible for an SSP:

(1) Mandatory SSP group—SSP made to a mandatory income level client (MIL) who was grandfathered into the

SSI program. To be eligible in this group, an individual must have been receiving cash assistance in December 1973 under the department of social and health services former old age assistance program or aid to the blind and disability assistance. Individuals in this group receive an SSP to bring their income to the level they received prior to the implementation of the SSI program in 1973.

(2) Optional SSP group—SSP made to any of the following:

(a) An individual who receives SSI and has an ineligible spouse.

(b) An individual who receives SSI based on meeting the age criteria of sixty-five or older.

(c) An individual who receives SSI based on blindness.

(d) An individual who has been determined eligible for SSP by the division of developmental disabilities.

(e) An individual who is eligible for SSI as a foster child as described in WAC 388-474-0012.

"**Supplemental security income (SSI) program (Title XVI)**" is the federal grant program for aged, blind, and disabled persons, established by section 301 of the Social Security amendments of 1972, and subsequent amendments, and administered by the Social Security Administration (SSA).

NEW SECTION

WAC 182-505-0211 Washington apple health (WAH)—Foster care. (1) A child under the age of nineteen is eligible for Washington apple health (WAH) when he or she:

(a) Is in foster care under the legal responsibility of the state, or a federally recognized tribe located within the state; and

(b) Meets Washington residency requirements as described in WAC 182-503-0520 or 182-503-0525.

(2) A child under the age of twenty-one is eligible for WAH when he or she 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 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 when he or she:

(a) Was in foster care under the legal responsibility of the state or a federally recognized tribe located within the state:

(i) On his or her eighteenth birthday, on or after July 22, 2007; 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 if he or she is confined to a public institution as defined in WAC 182-500-0050, except:

(a) If he or she 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.

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

WAC 182-506-0010 Medical assistance units (MAU) for MAGI-based Washington apple health programs.

~~((1) One or more medical assistance units (MAU) is established for individuals living in the same household based on the type of medical program, each individual's relationship to other family members, and the individual's financial responsibility for the other family members.~~

~~(2) Financial responsibility applies only to spouses and to parents, as follows:~~

~~(a) Married persons, living together are financially responsible for each other; and~~

~~(b) Persons who meet the definition of a natural, adoptive, or step parent described in WAC 388-454-0010 are financially responsible for their unmarried, minor children living in the same household.~~

~~(3) Minor children are not financially responsible for their parents or for their siblings.~~

~~(4) When determining eligibility for family, pregnancy, or children's medical programs, follow the income rules as described in WAC 388-450-0106 (1) through (7). Only one MAU is required when all family members are eligible for categorically needy (CN) medical coverage.~~

~~(5) If a family is not eligible as one MAU for a CN program, separate MAUs are required for family members living in the same household in the following situations:~~

~~(a) A pregnant minor, regardless of whether she lives with her parent(s);~~

~~(b) A child with earned or unearned income;~~

~~(c) A child with resources which make another family member ineligible for medical assistance;~~

~~(d) A child of unmarried parents when both parents reside with the child;~~

~~(e) Each unmarried parent of a child in common, plus any of their children who are not in separate MAUs;~~

~~(f) A caretaker relative that is not financially responsible for the support of the child;~~

~~(6) For a family with multiple MAUs established based on the criteria described in subsection (5) of this section, a parent's:~~

~~(a) Income up to one hundred percent of the federal poverty level (FPL) is allocated to the parent and other members of the parent's MAU. The excess is allocated to their children in separate MAUs.~~

~~(b) Resources are allocated equally to the parent and all persons in the parent's household for whom the parent is financially responsible. This includes family members in separate MAUs.~~

~~(7) The exceptions to the income allocations described in subsection (6) of this section are as follows:~~

~~(a) Only the parent's income actually contributed to a pregnant minor is considered income to the minor.~~

~~(b) A parent's financial responsibility is limited when the minor child is receiving inpatient chemical dependency or mental health treatment. Only the income a parent chooses to contribute to the child is considered available when:~~

~~(i) The treatment is expected to last ninety days or more;~~

~~(ii) The child is in court ordered, out of home care in accordance with chapter 13.34 RCW; or~~

~~(iii) The department determines the parents are not exercising responsibility for the care and control of the child.~~

~~(8) When determining eligibility for an SSI-related medical program, a separate MAU is required for:~~

~~(a) SSI recipients;~~

~~(b) An SSI-related person who has not been found eligible for family medical under this chapter; or~~

~~(c) The purpose of applying medical income standards for an:~~

~~(i) SSI-related applicant whose spouse is not related to SSI or is not applying for SSI-related medical; and~~

~~(ii) Ineligible spouse of an SSI recipient.~~

~~(9) For a person in a separate MAU, based on the criteria described in subsection (8) of this section, the income and resource allocations described in subsection (6) of this section are not used. The SSI-related individual's eligibility is determined using the allocations or deeming rules in chapter 388-475 WAC.~~

~~(10) Countable income for medical programs:~~

~~(a) For SSI individuals is described in chapter 388-475 WAC; or~~

~~(b) For family medical, pregnancy medical, and children's medical is described in WAC 388-450-0210.) (1) A person's financial eligibility for programs that use modified adjusted gross income (MAGI) methodology, as described in WAC 182-509-0300, is based on multiple factors including relationship to other household members, age, tax status and pregnancy. The rules in this section describe which household members' income is counted in determining a person's eligibility. These household members comprise the person's "medical assistance unit" (MAU). Members of a single household may have different MAUs.~~

~~(2) The determination of countable income for MAGI-based programs is described in chapter 182-509 WAC.~~

~~(3) A person's MAGI-based countable income equals the total countable income of the members of the person's MAU (see WAC 182-509-0001). This income is compared to the~~

income standard for the MAU size when determining eligibility for programs based on a federal poverty limit standard.

(4) The number of persons in the MAU is increased by one for each unborn child for each pregnant woman already included in the MAU under this section.

(5) For any given tax year in which an initial eligibility determination, renewal of eligibility, post-eligibility review or change of circumstance is made, MAUs are determined as follows:

(a) The MAU for a person who expects to file a federal tax return and does not expect to be claimed as a tax dependent by another tax filer includes the following:

(i) The person (tax filer) and all persons the tax filer expects to claim as a tax dependent; and

(ii) The following additional persons, but only if they live in the same residence:

(A) The person's spouse;

(B) The person's natural, adopted and step-children less than nineteen years of age;

(C) If the person is less than nineteen years of age, the person's natural, adopted and step-parents; and

(D) If the person is less than nineteen years of age, the natural, adoptive and step-siblings who are less than nineteen years of age.

(b) The MAU for a person who expects to be claimed as a tax dependent by a tax filer includes:

(i) The person (tax dependent), the tax filer, and any other persons in the tax filer's MAU (as determined according to (a) of this subsection), except if:

(A) The person is not the spouse or biological, adopted, or natural child of the tax filer;

(B) The person is under age nineteen and living in the same residence as both parents, but is expected to be claimed as a tax dependent by only one parent, either because the parents are unmarried or do not expect to file taxes jointly; or

(C) The person is under age nineteen and expects to be claimed by a noncustodial parent.

(ii) If (b)(i)(A), (B) or (C) of this section applies, the person's MAU is determined according to the nonfiler rules described in (c) of this subsection.

(c) The MAU for a person who does not expect to file a federal tax return and who either does not expect to be claimed as a tax dependent or meets one of the tax dependent exceptions in (b) of this subsection includes the following persons, but only if they live in the same residence:

(i) The person (self);

(ii) The person's spouse;

(iii) The person's natural, adopted and step-children less than nineteen years of age;

(iv) If the person is less than nineteen years of age, the person's natural, adopted and step-parents; and

(v) If the person is less than nineteen years of age, the natural, adoptive and step-siblings who are less than nineteen years of age.

NEW SECTION

WAC 182-506-0015 Medical assistance units for non-MAGI-based Washington apple health programs. This section explains how medical assistance units (MAUs) are

constructed for programs not based on modified adjusted gross income (MAGI) methodologies. (MAGI-based programs are described in WAC 182-503-0510.)

(1) An MAU is a person or group of people who must be included together when determining eligibility. MAUs are established based on each person's relationship to other family members and the person's financial responsibility for the other family members.

(2) Financial responsibility applies only to spouses and to parents, as follows:

(a) Married persons, living together are financially responsible for each other;

(b) Natural, adoptive, or step-parents are financially responsible for their unmarried, minor children living in the same household;

(c) Minor children are not financially responsible for their parents or for their siblings;

(d) Married persons' financial responsibility for each other when not living together because one or both are residing in a medical institution is described in chapter 182-513 WAC.

(3) The number of persons in the MAU is increased by one for each verified unborn child for each pregnant woman already included in the MAU under this section.

(4) A separate SSI-related MAU is required for:

(a) SSI recipients;

(b) SSI-related persons;

(c) Institutionalized persons;

(d) The purpose of applying medical income standards for an:

(i) SSI-related applicant whose spouse is not related to SSI or is not applying for SSI-related medical; and

(ii) Ineligible spouse of an SSI recipient.

(5) When determining eligibility for an SSI-related medical program, the agency determines how household income is allocated and deemed to the SSI-related person according to the rules described in WAC 182-512-0820 and 182-512-0900 through 182-512-0960.

AMENDATORY SECTION (Amending WSR 11-23-091, filed 11/17/11, effective 11/21/11)

WAC 182-509-0001 Countable income for ((~~medical~~)) Washington apple health programs. (1) For purposes of ((~~medical~~)) Washington apple health (WAH) program eligibility, a ((~~client's~~)) person's countable income is income which remains when:

(a) The income cannot be specifically excluded; and

(b) All appropriate deductions and disregards allowed by a specific program((s)) have been applied.

(2) A ((~~client's~~)) person's countable income ((~~cannot~~)) may not exceed the income standard for the specific ((~~medical~~)) WAH program((s) described in WAC 388-478-0065, 388-478-0070, 388-478-0075, 388-478-0080, or 388-513-1305, 388-513-1315, or 388-513-1395)), unless the program allows for those limits to be exceeded. Specific program standards are described below:

(a) For modified adjusted gross income (MAGI)-based programs described in WAC 182-503-0510, see WAC 182-

505-0100 for the applicable program standard based on a percentage of the federal poverty level (FPL);

(b) For WAH SSI-related CN coverage, see WAC 182-512-0010;

(c) For WAH MN coverage, see WAC 182-519-0050;

(d) For WAH for workers with disabilities, see WAC 182-511-1060;

(e) For WAH medicare savings programs, see WAC 182-517-0100;

(f) For WAH noninstitutional medical in an alternative living facility, see WAC 182-513-1305; and

(g) For WAH long-term care programs, see WAC 182-513-1315 and 182-513-1395.

(3) ((Unless modified by subsection (4) or (6) of this section, the TANF/SFA income rules, as described in this chapter, are used to determine a client's countable income for the following programs:

(a) Family medical program as described in WAC 388-505-0220;

(b) Medical extensions as described in chapter 388-523 WAC;

(c) Pregnant women's program as described in WAC 388-462-0015;

(d) Children's health care programs as described in WAC 388-505-0210; and

(e) Psychiatric indigent inpatient (PI) program as described in WAC 388-865-0217.

(4) Exceptions to the TANF/SFA cash assistance methodology apply as follows:

(a) The financial responsibility of relatives when a client is applying for medical for families, children, pregnant women or for the psychiatric indigent inpatient program is specified in WAC 388-408-0055;

(b) Actual work-related child and dependent care expenses, which are the client's responsibility, are income deductions (the limits on this deduction in WAC 388-450-0170 (3) and (4) do not apply);

(c) Court or administratively ordered current or back support paid to meet the needs of legal dependents, are income deductions;

(d) Only income actually contributed to an alien client from the alien's sponsor is countable unless the sponsor signed the affidavit of support I-864 or I-864A. See subsection (5) of this section;

(e) TANF/SFA gross earned income limits as described in WAC 388-450-0165 do not apply;

(f) The fifty percent earned income deduction is not used to calculate countable income for CN scope of care programs with income levels based upon the federal poverty level (FPL). These programs are listed in subsections (3)(e) and (d). The only work related income deductions for these programs are:

(i) Ninety dollars; and

(ii) Actual work-related child and dependent care expenses, as described in (b) of this subsection; and

(iii) Child support as described in (e) of this subsection.

(g) When determining medically needy (MN) or MN scope of care coverage for children or pregnant women for the programs described in subsections (3)(e) and (d), the

exception described in subsection (4)(f) is not used as the MN income standards are not based on the FPL;

(h) For nonrecurring lump sum payments, see chapter 388-455 WAC and WAC 388-475-0300(4);

(i) Diversion cash assistance (DCA), is not countable income;

(j) Effective April 1, 2002, the department will disregard an increase in earned income when:

(i) A family is receiving benefits under the family medical program; and

(ii) The increase occurs during the second or third month of eligibility. The disregard stops the last day of the third month of eligibility for a family medical program.

(5) When an alien's sponsor has signed the affidavit of support I-864 or I-864A, the sponsor's income and resources are counted as described in WAC 388-450-0155, 388-450-0156, 388-450-0160, and 388-470-0060.

(6) Except when this state has adopted more liberal rules, SSI income rules are used to determine a client's countable income for the following programs:

(a) SSI-related CN or MN; and

(b) Medicare savings programs. Refer to chapter 388-475 WAC.) For the MAGI-based programs listed below, the agency or its designee determines eligibility based on the countable MAGI income of the members of the person's medical assistance unit as determined per WAC 182-506-0010:

(a) WAH for parents and caretaker relatives program as described in WAC 182-505-0240;

(b) WAH pregnancy program as described in WAC 182-505-0115;

(c) WAH for kids programs as described in WAC 182-505-0210 with the following exceptions:

(i) Newborn children born to a woman who is eligible for WAH on the date of the newborn's birth, including a retroactive eligibility determination;

(ii) Children who are receiving SSI;

(iii) Children who are in foster care or receiving subsidized adoption services.

(d) WAH MAGI-based adult medical as described in WAC 182-505-0250; and

(e) WAH MAGI-based alien emergency medical as described in WAC 182-507-0110.

(4) For the following SSI-related WAH programs, unless the state has adopted more liberal rules, income rules for the SSI program are used to determine a person's countable income:

(a) WAH noninstitutional SSI-related CN or medically needy (MN) coverage described in chapters 182-511 and 182-512 WAC;

(b) WAH institutional SSI-related CN or MN long-term care or hospice coverage described in chapters 182-513 and 182-515 WAC;

(c) WAH alien emergency medical programs based on age sixty-five or older or disability described in chapter 182-507 WAC; and

(d) WAH medicare savings programs described in chapter 182-517 WAC.

(5) Anticipated nonrecurring lump sum payments received by an applicant or recipient of a WAH SSI-related

medical program are counted as income in the month of receipt, with the exception of retroactive supplemental security income (SSI)/Social Security disability lump sum payments. See WAC 182-512-0300(4) and 182-512-0700 for more information.

(6) Countable income for the WAH refugee medical (RMA) program and WAH MN program for pregnant women and children is determined as follows:

(a) The agency or its designee allows the following deductions from a person's gross earnings:

(i) Fifty percent of gross earned income;

(ii) Actual work-related child and dependent care expenses, which are the person's responsibility; and

(iii) Court or administratively ordered current or back support paid to meet the needs of legal dependents.

(b) Only income actually contributed to an alien client from the alien's sponsor is countable unless the sponsor signs the affidavit of support I-864 or I-864A.

(c) Nonrecurring lump sum payments are counted as income in the month of receipt and as a resource if the person retains the payment after the month of receipt (resource limits do not apply to MN coverage for pregnant women and children). For RMA, nonrecurring lump sum payments are counted as income if received in the month of application and not considered if received thereafter per WAC 182-507-0130.

(7) Countable income rules for other WAH programs that are not MAGI-based or SSI-related are described in the specific program rules listed in WAC 182-503-0510 (3)(c).

(8) Some WAH programs are not based on a person's or household's countable income but are based on a specific status or entitlement in federal rule. The rules for these deemed eligible WAH programs are described in WAC 182-503-0510(4).

NEW SECTION

WAC 182-509-0220 Washington apple health—How resources are considered. (1) A resource is any cash, other personal property, or real property that a person:

(a) Owns;

(b) Has the right, authority, or power to convert to cash (if not already cash); and

(c) Has the legal right to use for his or her support and maintenance.

(2) There is no resource limit for an applicant or recipient of the following Washington apple health (WAH) programs:

(a) WAH for workers with disabilities (HWD) program, as described in chapter 182-511 WAC;

(b) WAH foster care program (see WAC 182-505-0211);

(c) All programs that are based on modified adjusted gross income (MAGI) methodologies, as described in WAC 182-503-0510. This includes the following:

(i) WAH for parents and caretaker relatives (see WAC 182-505-0240);

(ii) WAH for pregnant women (see WAC 182-505-0115);

(iii) WAH for kids (see WAC 182-505-0210);

(iv) Premium-based WAH for kids (see WAC 182-505-0215);

(v) WAH long-term care for children and adults (see WAC 182-514-0230);

(vi) WAH for MAGI-based adult coverage (see WAC 182-505-0250); and

(vii) WAH MAGI-based adult alien emergency medical (see WAC 182-507-0110).

(3) For all other WAH programs, the resource limits and exclusions can be found in the following chapters:

(a) WAH SSI-related medical (see chapter 182-512 WAC);

(b) WAH long-term care (see chapters 182-513 and 182-515 WAC);

(c) SSI-related WAH alien medical program (see chapter 182-507 WAC);

(d) Medicare savings program (see WAC 182-517-0310);

(e) WAH for refugees (see WAC 182-507-0130); and

(f) Medical care services (see WAC 182-509-0200).

(4) The agency or its designee determines how trusts, annuities and life estates affect eligibility for WAH coverage for the programs listed in subsections (3)(a) through (f) of this section by following the rules described in chapter 182-516 WAC.

(5) Receipt of money by a member of a federally recognized tribe from exercising federally protected rights or extraction of protected resources, such as fishing, shell-fishing, or selling timber, is considered conversion of an exempt resource during the month of receipt. Any amounts remaining from the conversion of this exempt resource on the first of the month after the month of receipt will remain exempt if the funds were used to purchase another exempt resource. Any amounts remaining in the form of countable resources (such as in checking or savings accounts) on the first of the month after receipt, will be added to other countable resources for eligibility determinations when a resource determination is required by the specific WAH program. If no resource determination is required by the specific WAH program, eligibility is not affected.

NEW SECTION

WAC 182-509-0300 Modified adjusted gross income (MAGI). (1) The agency uses the modified adjusted gross income (MAGI) methodology to determine eligibility for MAGI-based Washington apple health (WAH) programs described in WAC 182-509-0305.

(2) MAGI methodology is described in WAC 182-509-0300 through 182-509-0375. Generally, MAGI includes adjusted gross income (as determined by the Internal Revenue Code (IRC)) increased by:

(a) Any amount excluded from gross income under Section 911 of the IRC;

(b) Any amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax; and

(c) Any amount of Title II Social Security income or Tier 1 Railroad Retirement income which is excluded from gross income under Section 86 of the IRC.

(3) When calculating a person's eligibility for the programs listed in WAC 182-509-0305, the agency uses the person's MAGI income with the following exceptions:

(a) Scholarships or fellowship grants described in WAC 182-509-0335 used for education purposes are excluded from income;

(b) Income received by American Indian/Alaskan Native individuals described in WAC 182-509-0340 is excluded from income; and

(c) Any income received as a lump sum as described in WAC 182-509-0375 is counted as income only in the month in which it is received.

(4) Countable MAGI income is reduced by an amount equal to five percentage points of the federal poverty level (FPL) based on household size to determine net income except that there is no such reduction of countable MAGI income for parents or caretaker relatives with an eligible dependent child whose net countable income is below thirty-five percent of the federal poverty level (as described in WAC 182-509-0305(1)). Net income is compared to the applicable standard described in WAC 182-505-0100.

(5) When calculating a person's eligibility for MAGI-based programs listed in WAC 182-509-0305, the agency determines the medical assistance unit for each person according to WAC 182-506-0010.

NEW SECTION

WAC 182-509-0305 MAGI income—Persons subject to the modified adjusted gross income (MAGI) methodology. Eligibility for Washington apple health (WAH) for the following persons is determined using the modified adjusted gross income (MAGI) methodology described in WAC 182-509-0300.

(1) Parents or caretaker relatives with an eligible dependent child (described in WAC 182-503-0565) whose net countable income is below thirty-five percent of the federal poverty level (FPL) as described in WAC 182-505-0240.

(2) Parents or caretaker relatives with an eligible dependent child whose net countable income exceeds the standard described in subsection (1) of this section but is at or below one hundred thirty-three percent FPL as described in WAC 182-505-0250 and 182-507-0110.

(3) Adults with no eligible dependent child with net countable income at or below one hundred thirty-three percent FPL as described in WAC 182-505-0250 and 182-507-0110.

(4) Pregnant women or women within a two-month postpartum period whose net countable income, based on a household size that includes any unborn children, is below one hundred eighty-five percent FPL at the time of application, as described in WAC 182-505-0115.

(5) Children age eighteen or younger in households with net countable income which is below two hundred percent FPL as described in WAC 182-505-0210 (3)(a).

(6) Children age eighteen or younger in households with net countable income which is between two hundred percent and three hundred percent FPL as described in WAC 182-505-0215. Children who are eligible under this section are subject to premiums as described in WAC 182-505-0225.

(7) Household size for a person who is subject to MAGI income methodologies is determined according to WAC 182-506-0010.

NEW SECTION

WAC 182-509-0310 MAGI income—Timing of income. For purposes of determining eligibility for modified adjusted gross income (MAGI)-based Washington apple health (WAH) (see WAC 182-509-0300):

(1) The agency uses a point-in-time estimate to determine a person's countable income.

(2) Point-in-time means that the income is received, or is likely to be received, in the month in which the person submits an application or renewal for WAH, or the month in which the agency completes a redetermination of coverage, with the following provisions:

(a) When a person is paid less frequently than on a monthly basis, (for example, they are self-employed), the agency uses an average to calculate the monthly amount. The average is calculated by:

(i) Adding the total income for representative period of time;

(ii) Dividing by the number of months in the time frame; and

(iii) Using the result as a monthly average.

(b) When a person is paid more frequently than on a monthly basis, the agency uses the following budgeting method to calculate a monthly amount:

(i) If the person is paid weekly, the agency multiplies weekly expected income by 4.3;

(ii) If the person is paid every other week, the agency multiplies expected income by 2.15.

(c) If the person's current income does not represent his or her projected income as evidenced by clear indications of future changes in income, the agency permits the person to estimate a monthly amount by averaging income over a representative period of time.

(3) If the person normally gets the income:

(a) On a specific day, the agency counts it as available on that date.

(b) Monthly or twice monthly and pay dates change due to a reason beyond the person's control, such as a weekend or holiday, it is counted in the month it would normally be received.

(c) Weekly or every other week and pay dates change due to a reason beyond the person's control, it is counted in the month it would normally be received.

(4) For information about how income is verified, see WAC 182-503-0050.

(5) If the person reports a change in income as required under WAC 182-504-0105 and the change is expected to last for two months or longer, the agency updates the estimate of income based on this change, unless the person receives categorically needy WAH coverage as a pregnant woman or child.

NEW SECTION

WAC 182-509-0315 MAGI income—Ownership of income. For purposes of determining eligibility for modified

adjusted gross income (MAGI)–based Washington apple health (WAH) (see WAC 182-509-0300):

(1) Income is considered available to a person if:

(a) An individual in the person's medical assistance unit receives or can reasonably predict that he or she will receive the income.

(b) The income must be counted based on rules under chapter 182-509 WAC.

(c) The person has control over the income, which means the income is available to them. If the person has a representative payee, protective payee, or other individual who manages the income on the person's behalf, it is considered as if the person has control over this income.

(d) The person can use the income to meet current needs.

(2) Income that is included in the person's taxable gross income which is required to be reported to the Internal Revenue Service (IRS) is considered as available even if it is paid to someone else or withheld to pay a garnishment, lien or other obligation. (For example, a person manages a block of apartments and lives in one of the apartments. The employer withholds a portion of the person's monthly wages as rent due for the apartment in which he resides. The income that is counted is the gross amount prior to the deduction for rent.)

(3) The agency may conduct post-eligibility reviews of health care applications as described in WAC 182-503-0050. Upon request by the agency, a person must provide proof about a type of income, including submitting clarification on:

- (a) Who owns the income;
- (b) Who has legal control of the income;
- (c) The amount of the income; or
- (d) If the income is available.

NEW SECTION

WAC 182-509-0320 MAGI income—Noncountable income. For purposes of determining eligibility for modified adjusted gross income (MAGI)–based Washington apple health (WAH) (see WAC 182-509-0300):

(1) Some types of income are not counted when determining eligibility for MAGI-based WAH. Under the MAGI income methodology described in WAC 182-509-0300, income is not counted if the Internal Revenue Service (IRS) permits it to be excluded or deducted for purposes of determining the tax liability of a person. (See 26 U.S.C. Sections 62(a) and 101-140.)

(2) Examples of income that are not counted include, but are not limited to:

(a) Bona fide loans, except certain student loans as specified under WAC 182-509-0335;

(b) Federal income tax refunds and earned income tax credit (EITC) payments for up to twelve months from the date received;

(c) Child support payments received by any person included in household size under WAC 182-506-0010;

(d) Time loss benefits or other compensation received for sickness or injury, such as benefits from the department of labor and industries (L&I) or a private insurance company;

(e) Title IV-E and state foster care maintenance payments;

(f) Veteran's benefits including, but not limited to, disability compensation and pension payments for disabilities paid to the veteran or family members; education, training and subsistence; benefits under a dependent-care assistance program for veterans, housebound allowance and aid and attendance benefits;

(g) Educational assistance that is not counted under WAC 182-509-0335;

(h) Native American benefits and payments that are not counted under WAC 182-509-0340;

(i) Income from employment and training programs that is not counted under WAC 182-509-0345;

(j) Needs-based assistance from other agencies or organizations that is not counted under WAC 182-509-0350;

(k) Money withheld from a benefit to repay an overpayment from the same income source;

(l) One-time payments issued under the Department of State or Department of Justice reception and replacement programs, such as Voluntary Agency (VOLAG) payments;

(m) Any portion of income used to repay the cost of obtaining that income source;

(n) Insurance proceeds or other income received as a result of being a Holocaust survivor;

(o) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;

(p) Federal twenty-five dollar supplement weekly unemployment compensation payment authorized by the American Recovery and Reinvestment Act of 2009;

(q) Income from a sponsor given to a sponsored immigrant;

(r) Energy assistance payments;

(s) Fringe benefits provided on a pretax basis by an employer, such as transportation benefits or moving expenses;

(t) Employer contributions to certain pretax benefits funded by an employee's elective salary reduction, such as amounts for a flexible spending account;

(u) Distribution of pension payments paid by the employee (such as premiums or contributions) that were previously subject to tax;

(v) Gifts or inheritances to the person that are not counted under WAC 182-509-0355;

(w) Death benefits from life insurance and certain benefits paid for deaths that occur in the line of duty; and

(x) Other payments that are excluded from income under state or federal law.

(3) Income received from the following cash programs is not countable income for MAGI-based WAH programs:

(a) Diversion cash assistance (DCA);

(b) Temporary assistance for needy families (TANF);

(c) State family assistance (SFA);

(d) Pregnant women's assistance (PWA);

(e) Refugee cash assistance (RCA);

(f) Aged, blind, disabled cash assistance (ABD); and

(g) Supplemental security income (SSI).

NEW SECTION

WAC 182-509-0325 MAGI income—Unearned income. For purposes of determining eligibility for modified

adjusted gross income (MAGI)–based Washington apple health (WAH) (see WAC 182-509-0300):

(1) Unearned income is income received from a source other than employment or self-employment. Examples of unearned income include, but are not limited to:

- (a) Tier 1 Railroad Retirement;
- (b) Unemployment compensation, except as described in WAC 182-509-0320;
- (c) Title II Social Security benefits (including retirement benefits, disability benefits, and benefits for survivors);
- (d) Rental income;
- (e) Pensions, IRAs, military retirement and annuity payments, except as described in WAC 182-509-0320;
- (f) Dividend payments from stocks or shares held in companies; and
- (g) Per capita distributions from gaming made by a tribe (see WAC 182-509-0340).

(2) When the unearned income must be counted, the agency counts the gross amount before any taxes or premiums are taken out.

(3) See WAC 182-509-0320 for examples of unearned income that are not counted.

NEW SECTION

WAC 182-509-0330 MAGI income—Earned income.

For purposes of determining eligibility for modified adjusted gross income (MAGI)–based Washington apple health (WAH) (see WAC 182-509-0300):

(1) Earned income is income received from working. This includes, but is not limited to:

- (a) Wages;
- (b) Salaries;
- (c) Tips;
- (d) Commissions;
- (e) Profits from self-employment activities as described in WAC 182-509-0365; and
- (f) One-time payments for work done over a period of time, if the income is received in the month of application.

(2) When earned income must be counted, the agency computes the countable amount based on deductions from income allowed by the Internal Revenue Service when determining a person's tax liability.

(3) See WAC 182-509-0370 for information on how self-employment income is counted.

NEW SECTION

WAC 182-509-0335 MAGI income—Educational benefits. For purposes of determining eligibility for modified adjusted gross income (MAGI)–based Washington apple health (WAH) (see WAC 182-509-0300), the agency or its designee does not count educational assistance as income. Examples include, but are not limited to:

(1) Educational assistance in the form of grants or loans issued under Title IV of the Higher Education Amendments (Title IV - HEA) or through a program administered by the Department of Education (DOE), such as:

- (a) Pell grants (Title IV);
- (b) Stafford loans (Title IV);
- (c) Perkins loan program (Title IV);

- (d) State need grant program (Title IV);
- (e) Christa McAuliffe fellowship program (DOE);
- (f) Jacob K. Javits fellowship program (DOE); and
- (g) Library career training program (DOE).

(2) Payments received for education, training, or subsistence under any law administered by the department of Veteran's Affairs (VA).

(3) Student financial assistance provided under the Bureau of Indian Affairs education programs.

(4) Educational assistance in the form of grants or loans under the Carl D. Perkins Vocational and Applied Technology Education Act, P.L. 101-392.

(5) Work study income including:

- (a) Federal or state work study income; and
- (b) WorkFirst work study income.

(6) Payments to service academy cadets at a military academy.

(7) Payments for the purposes of tuition made on behalf of the individual to an educational organization for the education or training of such individual.

NEW SECTION

WAC 182-509-0340 MAGI income—American Indian/Alaska Native excluded income. For the purposes of determining eligibility of American Indians/Alaska Natives for modified adjusted gross income (MAGI)–based Washington apple health (WAH) (see WAC 182-509-0300), the agency excludes from MAGI the following:

(1) Distributions from Alaska Native corporations and settlement trusts;

(2) Distributions from any property held in trust, subject to federal restrictions, located within the most recent boundaries of a prior federal reservation, or otherwise under the supervision of the Secretary of the Interior;

(3) Distributions and payments from rents, leases, rights of way, royalties, usage rights, or natural resource extraction and harvest from:

- (a) Rights of ownership or possession in any lands described in (b) of this subsection; or
- (b) Federally protected rights regarding off-reservation hunting, fishing, gathering, or usage of natural resources.

(4) Distributions resulting from real property ownership interests related to natural resources and improvements that are:

(a) Located on or near a reservation or within the most recent boundaries of a prior federal reservation; or

(b) Resulting from the exercise of federally protected rights relating to such real property ownership interests.

(5) Payments resulting from ownership interests in or usage rights to items that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional lifestyle according to applicable tribal law or custom;

(6) Student financial assistance provided under the Bureau of Indian Affairs education programs; and

(7) Any other applicable income exclusion as provided by federal law, regulation, or rule, including the Internal Revenue Code, treasury regulations, and Internal Revenue Ser-

vice revenue rulings, revenue procedures, notices, and other official tax guidance.

NEW SECTION

WAC 182-509-0345 MAGI income—Income from employment and training programs. For purposes of determining eligibility for modified adjusted gross income (MAGI)-based Washington apple health (WAH) (see WAC 182-509-0300):

(1) The agency excludes income received from the following programs:

(a) Payments issued under the Workforce Investment Act (WIA);

(b) Payments issued under the National and Community Service Trust Act of 1993. This includes payments made through the AmeriCorps program;

(c) Payments issued under Title I of the Domestic Volunteer Act of 1973, such as VISTA, AmeriCorps VISTA, University Year for Action, and Urban Crime Prevention Program; and

(d) All payments issued under Title II of the Domestic Volunteer Act of 1973. These include:

(i) Retired senior volunteer program (RSVP);

(ii) Foster grandparents program; and

(iii) Senior companion program.

(2) The agency counts training allowances from vocational and rehabilitative programs as earned income when:

(a) The program is recognized by federal, state, or local governments;

(b) The allowance is not a reimbursement; and

(c) The person is required to file a U.S. tax return and the IRS considers the income to be taxable.

NEW SECTION

WAC 182-509-0350 MAGI income—Needs-based assistance from other agencies or organizations. For purposes of determining eligibility for modified adjusted gross income (MAGI)-based Washington apple health (WAH) (see WAC 182-509-0300):

(1) The agency does not count needs-based assistance given to a person by other agencies or organizations if the assistance given is not treated as taxable income by the IRS. Examples of needs-based assistance are:

(a) Clothing;

(b) Food;

(c) Household supplies;

(d) Medical supplies (nonprescription);

(e) Personal care items;

(f) Shelter;

(g) Transportation; and

(h) Utilities (e.g., lights, cooking fuel, the cost of heating or heating fuel).

(2) "**Needs-based**" means eligibility for the program is based on having limited income and/or resources. This definition excludes such incomes as retirement benefits or unemployment compensation which are not needs-based.

NEW SECTION

WAC 182-509-0355 MAGI income—Gifts and inheritances. For purposes of determining eligibility for modified adjusted gross income (MAGI)-based Washington apple health (WAH) (see WAC 182-509-0300):

(1) A gift is property received by a person without work or cost on his or her part. An inheritance is property received by a person from the estate of a deceased person.

(2) The agency does not count as income to a person any gifts or inheritances, whether cash or noncash, received by the person, except that the agency does count as income to a person any income from any gift or inheritance.

(3) The agency does not count as income to a person any amounts paid on behalf of that person to any person who provides medical care (as defined in Internal Revenue Code Section 213(d)) to that person.

NEW SECTION

WAC 182-509-0360 MAGI income—How a child's income is counted. For purposes of determining eligibility for modified adjusted gross income (MAGI)-based Washington apple health (WAH) (see WAC 182-509-0300):

(1) Income received by a child claimed as a tax dependent by someone else is not counted when determining the eligibility of the tax filers who claim the tax dependent.

(2) Income received by a child in a nonfiling medical assistance unit (as described in WAC 182-506-0010) is not counted when determining the eligibility of the child or the other household members in the nonfiling household.

(3) Income received by a child age eighteen or younger who is required to file his or her own tax return but who is also claimed as a tax dependent by another person is counted when determining eligibility for WAH for the child, but not the person that claims them.

(4) Income of a sibling is not counted when determining the eligibility of any other sibling in the household.

NEW SECTION

WAC 182-509-0365 MAGI income—Self-employment income. For purposes of determining eligibility for modified adjusted gross income (MAGI)-based Washington apple health (WAH) (see WAC 182-509-0300):

(1) Self-employment income is income earned by a person from running a business, performing a service, selling items that are made, or reselling items with the intent to make a profit. This income can be earned if the person is carrying on a trade or business as a sole proprietor or an independent contractor; a member of a partnership that carries on a trade or business; or otherwise in business for themselves (including a part-time business).

(2) A person is considered to be self-employed if they earn income without having an employer/employee relationship with the individual who pays the income. Factors to consider are:

(a) The person has primary control or has the right to control what they do and how they do their job;

(b) The business aspects of the person's job are controlled by the person and not the payer (this includes things

like how the person is paid, whether expenses are reimbursed, or who provides tools/supplies);

(c) The person has a written contract stating that he or she is an independent contractor; or

(d) The person reports his or her income using IRS Schedule C, Schedule C-EZ, Schedule K-1, or Schedule SE.

(3) A person is considered to have an employer/employee relationship when:

(a) The individual the person provides services for has primary control of how the work is done; or

(b) The person receives an IRS Form W-2 to report the income that is earned.

(4) Self-employment does not have to be a licensed business for a person's business or activity to qualify as self-employment. Some examples of self-employment are:

(a) Child care that requires a license under chapter 74.15 RCW;

(b) Driving a taxi cab;

(c) Farming/fishing;

(d) Odd jobs such as mowing lawns, house painting, gutter cleaning, or car care;

(e) Running lodging for roomers or boarders. Roomer income includes money paid to a person for shelter costs by someone not included in the person's household who resides in the same home when:

(i) The person owns or is buying his or her residence; or

(ii) The person rents all or a part of the residence and the total rent charged to all others in the home is more than the total rent obligation of the person.

(f) Running an adult family home;

(g) Providing services such as a massage therapist or a professional escort;

(h) Retainer fees to reserve a bed for a foster child;

(i) Selling home-made items or items that are supplied to the individual;

(j) Selling or donating biological products such as providing blood or reproductive material for profit;

(k) Working as an independent contractor; and

(l) Running a business or trade either as a sole proprietorship or in a partnership.

(5) A person must keep records of his or her self-employment income and deductions and provide this information to the agency upon request.

(6) The agency does not count receipt of money by a member of a federally recognized tribe from exercising federally protected rights or extraction of exempt resources as self-employment income (such as fishing, shell-fishing, or selling timber from protected tribal land). This is considered conversion of a resource. See WAC 182-509-0340.

(7) A person who is an employee of a company or other individual who does the activities listed in subsection (4) of this section as a part of his or her job duties is not considered to be self-employed.

(8) Self-employment income is counted as earned income as described in WAC 182-509-0330.

NEW SECTION

WAC 182-509-0370 MAGI income—How self-employment income is counted. For purposes of determin-

ing eligibility for modified adjusted gross income (MAGI)-based Washington apple health (WAH) (see WAC 182-509-0300):

(1) If the person has worked long enough at the business to file a federal tax return for the previous year and it represents his or her current income, the agency determines self-employment income by using the income and deductions claimed on the previous year's tax return.

(2) If the person has not worked long enough at the business to file a federal tax return in the previous year, the agency permits a determination of monthly self-employment income by:

(a) Adding together gross self-employment income and any profit made from selling business property or equipment over the period of time the business has been in operation within the last year;

(b) Subtracting business expenses and income deduction expenses allowed by the Internal Revenue Service that the person would be entitled to if they were filing a full year return; and

(c) Averaging the income to come up with a monthly amount based on the period of time the business has been in operation within the last year.

(3) If the person's current income does not represent his or her projected income as evidenced by clear indications of future changes in income, the agency permits the person to estimate a monthly amount by averaging income over a representative period of time.

NEW SECTION

WAC 182-509-0375 MAGI income—Lump sums. For purposes of determining eligibility for modified adjusted gross income (MAGI)-based Washington apple health (WAH) (see WAC 182-509-0300):

(1) A lump sum payment is money that a person receives but does not expect to receive on a continuing basis, such as an insurance settlement.

(2) Any portion of a lump sum payment that is awarded for wrongful death, personal injury, damage, or loss of property is excluded from income.

(3) Any remaining portion of a lump sum payment is counted as income if it is received in the month of application, unless it qualifies as noncounted income under another rule, and with the exception of subsections (4) and (5) of this section.

(4) Receipt of a lump sum by a member of a federally recognized tribe from exercising federally protected rights or extraction of exempt resources is considered an exempt resource in the month of receipt and is not budgeted as income.

(5) Federal, state and local tax refunds (including any interest and penalties) and earned income tax lump sums are not counted as income.

NEW SECTION

WAC 182-520-0005 Washington apple health fraud referrals and overpayments. (1) The agency or its designee may refer a case to the office of fraud and accountability for a fraud investigation when it has reliable information that the

person purposely misrepresented their circumstances in order to qualify for Washington apple health (WAH).

(2) When a fraud investigation reveals substantial evidence to support a finding of fraud, the case is referred for prosecution. The prosecuting attorney's office decides which cases will be prosecuted.

(3) When a referral results in a conviction, an overpayment amount for the cost of the WAH coverage is established.

(4) The person is responsible to pay the agency for the amount of overpayment established as a result of a fraud conviction.

NEW SECTION

WAC 182-520-0010 Washington apple health overpayments resulting from an administrative hearing. (1) If a person asks for Washington apple health (WAH) coverage to continue during an appeal, he or she must pay the agency for the cost of that coverage if both (a) and (b) of this subsection occur:

(a) The administrative law judge, or review judge if applicable, enters an order:

(i) That the person was not eligible for WAH coverage during the appeal;

(ii) Dismissing the hearing under WAC 182-526-0285(3) because the person defaulted (did not attend or refused to participate) and the agency's action that was appealed included a finding that the person was not eligible for WAH coverage; or

(iii) Dismissing the hearing under WAC 182-526-0285(4) due to a written agreement between all the parties that the person will pay for an overpayment of the cost of WAH coverage.

(b) The agency decides to collect the overpayment.

(2) The overpayment amount is limited to payments for WAH coverage that were spent:

(a) During the sixty days following receipt of the hearing request; and

(b) For a person who was not eligible for WAH coverage.

WSR 13-20-095

EMERGENCY RULES

HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed September 30, 2013, 4:56 p.m., effective October 1, 2013]

Effective Date of Rule: October 1, 2013.

Purpose: **Medicaid expansion rules - Phase 4**, the health care authority (HCA) is implementing new regulations under the federal Patient Protection and Affordable Care Act in preparation for healthcare reform in Washington state. This includes the establishment of standalone rules for medical assistance programs, which are required under 2E2SHB 1738, Laws of 2011, which creates HCA as the single state agency responsible for the administrations and supervision of Washington's medicaid program (Washington apple health).

Citation of Existing Rules Affected by this Order: Amending WAC 182-500-0105, 182-503-0510, 182-507-0110, 182-514-0230, 182-514-0235, 182-514-0240, 182-514-0245, 182-514-0250, 182-514-0255, 182-514-0260, 182-514-0265, and 182-514-0270.

Statutory Authority for Adoption: RCW 41.05.021.

Other Authority: Patient Protection and Affordable Care Act (Public Law 111-148); 42 C.F.R. § 431, 435, and 457; and 45 C.F.R. § 155.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Over the last year the agency has been working diligently with client advocates and other stakeholders in crafting the new rules to implement the provisions of the Affordable Care Act, including the expansion of medicaid. Although the permanent rule-making process is nearing completion, the permanent rules could not be adopted by the October 1, 2013, deadline due in part to not receiving final federal rules governing this process until this month. Hence the need for the emergency adoption of these rules, while the permanent rule-making process is completed.

Number of Sections Adopted in Order to Comply with Federal Statute: New 4, Amended 12, 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 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 4, Amended 12, Repealed 0.

Date Adopted: September 30, 2013.

Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-500-0105 Medical assistance definitions—
T. "Tax filing terms":

(1) "Tax filer" means a person who is required to file a tax return.

(2) "Tax dependent" means a person for whom another person claims a deduction for a personal exemption under Section 151 of the Internal Revenue Code of 1986 for a taxable year. A tax dependent may be either a qualified child or a qualified relative as defined below:

(a) "Qualified child" means a child who meets the criteria to be claimed as a tax dependent based on one of the following relationships to the tax filer: Natural, adoptive, step, or foster child; natural, adoptive, step or half-sibling; or a descendant of any of the above; and meets the following criteria:

(i) The child is:

(A) Under the age of nineteen;

(B) Under the age of twenty-four and a full-time student;

or

(C) Any age and permanently or totally disabled.

(ii) The child lived in the tax filer's household for more than one-half of the year;

(iii) The child provided for less than one-half of his/her own support for the year; and

(iv) The child is not filing a joint tax return for the year unless the return is filed only as a claim for a refund of taxes.

(b) "Qualified relative" means a person who:

(i) Cannot be claimed as a qualifying child or the qualifying child of another tax filer;

(ii) Has lived in the tax filer's household for the full year or is related to the tax filer in one of the ways listed below and the relationship has not been ended by death or divorce:

(A) The tax filer's child, stepchild, foster child, or a descendant of any of them;

(B) A sibling, half-sibling or step-sibling;

(C) A parent, grandparent, or other direct ancestor, but not a foster parent;

(D) A niece, nephew, aunt, or uncle;

(E) In-law relationships (son, daughter, father, mother, brother or sister-in-law).

(iii) Has gross income below an annual threshold set by the Internal Revenue Service (IRS) (three thousand nine hundred dollars for tax year 2013 with some exceptions). See IRS publication 501 for more information; and

(iv) Relies on the tax filer to pay over one-half of their total support for the year.

(3) "Nonfiler" means a person who is not required to file a tax return and also includes those who are not required to file but choose to file for another purpose, such as to claim a reimbursement of taxes paid.

"Third party" means an entity other than the agency or the agency's designee that is or may be liable to pay all or part of the cost of health care for a ~~((medical assistance))~~ Washington apple health client.

"Third party liability (TPL)" means the legal responsibility of an identified third party or parties to pay all or part of the cost of health care for a ~~((medical assistance))~~ Washington apple health (WAH) client. A ~~((medical assistance))~~ WAH client's obligation to help establish TPL is described in WAC ~~((388-505-0540))~~ 182-503-0540.

"Title XIX" is the portion of the federal Social Security Act, 42 U.S.C. 1396, that authorizes funding to states for ~~((medical assistance))~~ health care programs. Title XIX is also called medicaid.

"Title XXI" is the portion of the federal Social Security Act, 42 U.S.C. 1397 et seq, that authorizes funding to states for the children's health insurance program(~~(Title XXI is also called))~~ (CHIP).

"Transfer of assets" means changing ownership or title of an asset such as income, real property, or personal property by one of the following:

(1) An intentional act that changes ownership or title; or

(2) A failure to act that results in a change of ownership or title.

NEW SECTION

WAC 182-503-0100 Washington apple health—Rights and responsibilities. For the purposes of this section, "we" refers to the agency or its designee and "you" refers to the applicant for, or recipient of, health care coverage.

(1) If you are applying for or receiving health care coverage, you have the right to:

(a) Have your rights and responsibilities explained to you and given in writing;

(b) Be treated politely and fairly no matter what your race, color, political beliefs, national origin, religion, age, gender (gender identity and sex stereotyping), sexual orientation, disability, honorably discharged veteran or military status, or birthplace;

(c) Request health care coverage using any method listed under WAC 182-503-0010 (if you ask us for a receipt or confirmation, we will provide one to you);

(d) Get help completing your application if you ask for it;

(e) Have an application processed promptly and no later than the timelines described in WAC 182-503-0060;

(f) Have at least ten calendar days to give the agency or its designee information needed to determine eligibility and be given more time if requested;

(g) Have personal information kept confidential; we may share information with other state and federal agencies for purposes of verification and enrollment;

(h) Receive written notice, in most cases, at least ten calendar days before the agency or its designee denies, terminates, or changes coverage;

(i) Ask for an appeal if you disagree with a decision we make. You can also ask a supervisor or administrator to review our decision or action without affecting your right to a fair hearing;

(j) Request and receive interpreter or translator services at no cost and without delay;

(k) Request voter registration assistance;

(l) Refuse to speak to an investigator if we audit your case. You do not have to let an investigator into your home. You may ask the investigator to come back at another time. Such a request will not affect your eligibility for health care coverage; and

(m) Receive equal access services under WAC 182-503-0120 if you are eligible, in order to comply with the requirements of subsection (2) of this section.

(2) You are responsible to:

(a) Report changes in your household or family circumstances as required under WAC 182-504-0105 and 182-504-0110;

(b) Give us any information or proof needed to determine eligibility. If you have trouble getting proof, we help you get the proof or contact other persons or agencies for it;

(c) Assign the right to medical support as described in WAC 182-505-0540;

(d) Complete renewals when asked;

(e) Apply for and make a reasonable effort to get potential income from other sources when available;

(f) Give medical providers information needed to bill us for health care services; and

(g) Cooperate with quality assurance or post enrollment review staff when asked.

NEW SECTION

WAC 182-503-0110 Washington apple health—Limited-English proficient (LEP) services. (1) The agency or its designee provides limited-English proficient (LEP) services free of charge to persons with limited ability to read, write, and/or speak English.

(2) The agency provides LEP services in the person's primary languages.

(a) The primary languages are the languages the person has indicated to the agency or its designee that they wish to use when communicating with the agency. A person may designate at least one primary language for oral communications and at least one primary language for written communications, and may designate a different primary language for oral and written communications.

(b) The agency or its designee notes the person's primary languages in a record available to the agency, its designee, and health benefit exchange employees.

(3) The agency or its designee can provide LEP services through bilingual workers and/or contracted interpreters and translators.

(4) The agency or its designee provides notice of the availability of LEP services. LEP services include:

(a) Interpreter (oral) services in person, over the telephone, or through other simultaneous audio or visual transmission (if available); and

(b) Translation of agency forms, letters, and other text-based materials, whether printed in hard-copy or stored and presented by computer. These include, but are not limited to:

(i) Agency pamphlets, brochures, and other informational material that describe agency services and health care rights and responsibilities;

(ii) Agency applications and other forms a person needs to complete and/or sign; and

(iii) Notices of agency actions affecting a person's eligibility for health care coverage.

(c) Direct provision of services by bilingual employees.

(5) The agency or its designee provides interpreter services and translated documents in a prompt manner that allows the timely processing of a person's eligibility for health care coverage within time frames defined in WAC 182-503-0060, 182-503-0035, and 182-504-0125.

NEW SECTION

WAC 182-503-0120 Washington apple health—Equal access services. (1) The agency or its designee provides services to help a person apply for, maintain, and understand the health care coverage options available and eligibility decisions made by the agency or its designee when a

person has a mental, neurological, physical or sensory impairment, or limitation that prevents a person from receiving health care coverage in the same way as an unimpaired or unlimited person. These services are called equal access (EA) services.

(2) The agency or its designee provides EA services on an ongoing basis to ensure that the person is able to maintain health care coverage and access to services provided by the agency. Accommodations include, but are not limited to:

(a) Arranging for or providing help to:

(i) Apply for or renew coverage;

(ii) Complete and submit forms;

(iii) Obtain information to determine or continue eligibility;

(iv) Request continued coverage; and

(v) Request a hearing.

(b) Allowing additional time, when needed, to provide information before health care coverage is reduced or stopped;

(c) Explaining the decision to stop or deny health care coverage; and

(d) Providing copies of notices and letters to the person's authorized representative.

(3) The agency or its designee informs a person of their right to EA services listed in subsection (2) of this section:

(a) On written notices;

(b) In the Rights and Responsibilities form; and

(c) During contact with the agency or its designee.

(4) The agency or its designee provides the services listed in subsection (2) of this section to persons who request EA services, persons who are receiving services through the aging and long-term support administration, or persons whom the agency determines would benefit from EA services. The agency or its designee identifies a person as benefiting from EA services if the person:

(a) Has or claims to have a mental impairment;

(b) Has a developmental disability;

(c) Is disabled by alcohol or drug addiction;

(d) Is unable to read or write in any language; or

(e) Is a minor not residing with his or her parents.

(5) For every person receiving EA services, the agency or its designee develops and documents an EA plan appropriate to the person's needs. The plan may be updated or changed at any time based on the person's request or a change in the person's needs.

(6) Even if the agency or its designee determines a person may benefit from EA services, the person may refuse the services offered.

(7) The agency provides a grace period to continue a person's coverage when:

(a) The agency stops coverage because it is unable to determine if a person continues to qualify; and

(b) The person provides proof he or she still qualifies for coverage within twenty calendar days from when the coverage stopped. We restore the coverage retroactive to the first of the month so there is no break in coverage.

(8) If a person believes that the agency or its designee has discriminated against them on the basis of a disability, the person may file a complaint with the United States Department of Health and Human Services (HHS) by:

(a) Writing to: HHS, Director, Office for Civil Rights, 200 Independence Ave. S.W., Room 509F HHH Bldg., Washington, D.C., 20201; or

(b) Calling HHS at 202-619-0403 (voice) or 202-619-3257 (TDD).

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

WAC 182-503-0510 (~~(How a client is determined "related to" a categorical program.)~~) Washington apple health—Program summary. ~~((1) A person is related to the supplemental security income (SSI) program if they are:~~

~~(a) Aged, blind, or disabled as defined in chapter 388-475 WAC; or~~

~~(b) Considered as eligible for SSI under chapter 388-475 WAC; or~~

~~(c) Children meeting the requirements of WAC 388-505-0210(5).~~

~~(2) A person or family is considered to be related to the temporary assistance for needy families (TANF) program if they:~~

~~(a) Meet the program requirements for the TANF cash assistance programs or the requirements of WAC 388-505-0220; or~~

~~(b) Would meet such requirements except that the assistance unit's countable income exceeds the TANF program standards in WAC 388-478-0065.~~

~~(3) Persons related to SSI or to TANF are eligible for categorically needy (CN) or medically needy (MN) medical coverage if they meet the other eligibility criteria for these medical programs. See chapters 388-475, 388-505 and 388-519 WAC for these eligibility criteria.~~

~~(4) Persons related to SSI or to TANF and who receive the related CN medical coverage have redetermination rights as described in WAC 388-503-0505(6).)) (1) The agency categorizes Washington apple health (WAH) programs into three groups based on the income methodology used to determine eligibility:~~

~~(a) Those that use a modified adjusted gross income (MAGI)-based methodology described in WAC 182-509-0300, called MAGI-based WAH programs;~~

~~(b) Those that use an income methodology other than MAGI, called non-MAGI-based WAH programs, which include:~~

~~(i) Supplemental security income (SSI)-related WAH programs;~~

~~(ii) Temporary assistance for needy families (TANF)-related WAH programs; and~~

~~(iii) Other WAH programs not based on MAGI, SSI, or TANF methodologies.~~

~~(c) Those that provide coverage based on a specific status or entitlement in federal rule and not on countable income, called deemed eligible WAH programs.~~

~~(2) MAGI-based WAH programs include the following:~~

~~(a) WAH parent and caretaker relative program described in WAC 182-505-0240;~~

~~(b) MAGI-based WAH adult medical program described in WAC 182-505-0250, for which the scope of coverage is~~

~~called the alternative benefits plan (ABP) described in WAC 182-500-0010;~~

~~(c) WAH for pregnant women program described in WAC 182-505-0115;~~

~~(d) WAH for kids program described in WAC 182-505-0210 (3)(a);~~

~~(e) Premium-based WAH for kids described in WAC 182-505-0215;~~

~~(f) WAH long-term care for children and adults described in chapter 182-514 WAC; and~~

~~(g) WAH alien emergency medical program described in WAC 182-507-0110 through 182-507-0125 when the person is eligible based on criteria for a MAGI-based WAH program.~~

~~(3) Non-MAGI-based WAH programs include the following:~~

~~(a) SSI-related programs which use the income methodologies of the SSI program (except where the agency has adopted more liberal rules than SSI) described in chapter 182-512 WAC to determine eligibility;~~

~~(i) WAH for workers with disabilities (HWD) described in chapter 182-511 WAC;~~

~~(ii) WAH SSI-related programs described in chapters 182-512 and 182-519 WAC;~~

~~(iii) WAH long-term care and hospice programs described in chapters 182-513 and 182-515 WAC;~~

~~(iv) WAH medicare savings programs described in chapter 182-517 WAC; and~~

~~(v) WAH alien emergency medical (AEM) programs described in WAC 182-507-0110 and 182-507-0125 when the person meets the age, blindness or disability criteria specified in WAC 182-512-0050.~~

~~(b) TANF-related programs which use the income methodologies based on the TANF cash program described in WAC 388-450-0170 to determine eligibility, with variations as specified in WAC 182-509-0001(5) and program specific rules:~~

~~(i) WAH refugee medical assistance (RMA) program described in WAC 182-507-0130; and~~

~~(ii) WAH medically needy (MN) coverage for pregnant women and children who do not meet SSI-related criteria.~~

~~(c) Other programs:~~

~~(i) WAH breast and cervical cancer program described in WAC 182-505-0120;~~

~~(ii) WAH TAKE CHARGE program described in WAC 182-532-0720; and~~

~~(iii) WAH medical care services described in WAC 182-508-0005.~~

~~(4) Deemed eligible WAH programs include:~~

~~(a) WAH SSI medical program described in chapter 182-510 WAC, or a person who meets the medicaid eligibility criteria in 1619b of the Social Security Act;~~

~~(b) WAH newborn medical program described in WAC 182-505-0210(2);~~

~~(c) WAH foster care program described in WAC 182-505-0211;~~

~~(d) WAH medical extension program described in WAC 182-523-0100; and~~

~~(e) WAH family planning extension described in WAC 182-505-0115(5).~~

(5) A person is eligible for categorically needy (CN) health care coverage when the household's countable income is at or below the categorically needy income level (CNIL) for the specific program.

(6) If income is above the CNIL, a person is eligible for the MN program if the person is:

(a) A child;

(b) A pregnant woman; or

(c) SSI-related (aged sixty-five, blind or disabled).

(7) MN health care coverage is not available to parents, caretaker relatives, or adults unless they are eligible under subsection (6) of this section.

(8) A person who is eligible for the WAH MAGI-based adult program listed in subsection (2)(b) of this section is eligible for ABP health care coverage as defined in WAC 182-500-0010. Such a person may apply for more comprehensive coverage through another WAH program at any time.

(9) For the other specific program requirements a person must meet to qualify for WAH, see chapters 182-503 through 182-527 WAC.

NEW SECTION

WAC 182-504-0130 Washington apple health—Continued coverage pending an appeal. (1) A person who does not agree with a Washington apple health (WAH) decision made by the agency or its designee has the right to appeal under RCW 74.09.741. The hearing rules are found in chapter 182-526 WAC.

(2) If a person appeals a WAH decision within the time limits described in WAC 182-518-0005, WAH coverage will continue or be reinstated until the appeals process ends, unless otherwise specified in this section. This is called continued coverage.

(3) If the tenth day falls on a weekend or holiday, a person has until the next business day to appeal and still be able to receive continued coverage.

(4) Persons receive continued coverage through the end of the month an administrative hearing decision is sent to them unless:

(a) An administrative law judge or the agency's presiding officer serves an order ending continued coverage; or

(b) The person:

(i) Tells the agency or its designee in writing that he or she does not want continued coverage;

(ii) Withdraws the appeal in writing or at an administrative proceeding; or

(iii) Does not follow through with the appeals process.

(5) A person is not eligible for continued coverage when a change in WAH is the result of a mass change. A mass change is when rules change that impact coverage for a class of applicants and recipients or due to a legislative or statutory change.

(6) A person receiving WAH medically needy is not eligible for continued coverage beyond the end of the original certification period described in WAC 182-504-0020.

AMENDATORY SECTION (Amending WSR 12-24-038, filed 11/29/12, effective 12/30/12)

WAC 182-507-0110 Washington apple health—Alien medical programs. (1) To qualify for an alien medical program (AMP) a person must:

(a) Be ineligible for ~~((medicaid or other medicaid agency medical))~~ federally funded Washington apple health (WAH) programs due to the citizenship/alien status requirements described in WAC ~~((388-424-0010))~~ 182-503-0535;

(b) Meet the requirements described in WAC 182-507-0115, 182-507-0120, or 182-507-0125; and

(c) Meet all categorical and financial eligibility criteria for one of the following programs, except for the Social Security number or citizenship/alien status requirements:

(i) ~~((WAC 388-475-0050, for))~~ An SSI-related ((person)) medical program described in chapters 182-511 and 182-512 WAC;

(ii) ~~((WAC 182-505-0240, for family medical programs;))~~ A MAGI-based program referred to in WAC 182-503-0510; or

(iii) ~~((WAC 182-505-0210, for a child under the age of nineteen;~~

~~iv) WAC 182-505-0115, for a pregnant woman;~~

~~v) WAC 388-462-0020, for))~~ The breast and cervical cancer treatment program for women described in WAC 182-505-0120; or

~~((vi) WAC 182-523-0100, for))~~ (iv) A medical extension(s) described in WAC 182-523-0100.

(2) AMP medically needy (MN) health care coverage is available only for children, ~~((adults age sixty-five or over, or))~~ pregnant women and persons who meet ((SSI disability)) SSI-related criteria. See WAC ~~((388-519-0100))~~ 182-519-0100 for MN eligibility and ~~((388-519-0110))~~ WAC 182-519-0110 for spending down excess income under the MN program.

(3) The agency or its designee does not consider a person's date of arrival in the United States when determining eligibility for AMP.

(4) For non-MAGI-based programs, the agency or its designee does not consider a sponsor's income and resources when determining eligibility for AMP, unless the sponsor makes the income or resources available. Sponsor deeming does not apply to MAGI-based programs.

(5) A person is not eligible for AMP if that person entered the state specifically to obtain medical care.

(6) A person who the agency or its designee determines is eligible for AMP may be eligible for retroactive coverage as described in WAC ~~((388-416-0015))~~ 182-504-0005.

(7) Once the agency or its designee determines financial and categorical eligibility for AMP, the agency or its designee then determines whether a person meets the requirements described in WAC 182-507-0115, 182-507-0120, or 182-507-0125.

AMENDATORY SECTION (Amending WSR 12-02-034, filed 12/29/11, effective 1/1/12)

WAC 182-514-0230 Washington apple health—MAGI-based long-term care ((for families and children)) program. (1) The sections that follow describe the eligibility

requirements for ~~((institutional medical benefits for parents and))~~ the Washington apple health (WAH) modified adjusted gross income (MAGI)-based long-term care program for children ((who are not aged, blind or disabled,)) and adults who are admitted for a long-term stay to a medical institution, an inpatient psychiatric facility or an institution for mental diseases (IMD):

(a) WAC ~~((388-505-0235))~~ 182-514-0235 Definitions;

(b) WAC ~~((388-505-0240))~~ 182-514-0240 General eligibility ~~((for family institutional medical coverage))~~ requirements for the WAH MAGI-based long-term care program;

(c) WAC ~~((388-505-0245))~~ 182-514-0245 Resource eligibility for ~~((family institutional medical coverage))~~ WAH MAGI-based long-term care program;

(d) WAC ~~((388-505-0250 Eligibility for family institutional medical for individuals))~~ 182-514-0250 WAH MAGI-based long-term care programs for adults twenty-one years of age or older;

(e) WAC ~~((388-505-0255 Eligibility for family institutional medical for individuals))~~ 182-514-0255 WAH MAGI-based long-term care program for young adults nineteen and twenty years of age;

(f) WAC ~~((388-505-0260 Eligibility for family institutional medical))~~ 182-514-0260 WAH MAGI-based long-term care program for children eighteen years of age or younger;

(g) WAC ~~((388-505-0265))~~ 182-514-0265 How the ~~((department))~~ agency or its designee determines how much of an institutionalized ~~((individual's))~~ person's income must be paid towards the cost of care for the WAH MAGI-based long-term care program; and

(h) WAC ~~((388-505-0270))~~ 182-514-0270 When an involuntary commitment to Eastern or Western State Hospital is covered by ~~((medicaid))~~ Washington apple health.

(2) ~~((Individuals who are already eligible for))~~ Recipients of a noninstitutional ((family or)) WAH children's ((medical)) program ((when they are admitted for long-term care)) as described in WAC 182-505-0210 or 182-505-0211 do not need to submit a new application for ((institutional medical)) long-term care coverage when admitted to an institution. The ((department)) agency or its designee treats ((their)) the admittance to the ((facility)) institution as a change of circumstances and determines ((their)) eligibility based upon the anticipated length of stay ((at the facility)).

AMENDATORY SECTION (Amending WSR 12-02-034, filed 12/29/11, effective 1/1/12)

WAC 182-514-0235 Definitions. The following terms are used in WAC ~~((388-505-0230))~~ 182-514-0230 through ~~((388-505-0270))~~ 182-514-0270:

~~(("Categorically needy income level (CNIL)"))~~ The standard used by the department to determine eligibility under a categorically needy medicaid program.)

"Categorically needy (CN) medical" - Full scope of care medical benefits. CN medical may be either federally funded under Title XIX of the Social Security Act or state-funded.

~~(("Categorically needy (CN) medicaid" - Federally funded full scope of care medical benefits under Title XIX of the Social Security Act.))~~

"Federal benefit rate (FBR)" - The payment standard set by the Social Security administration for recipients of supplemental security income (SSI). This standard is adjusted annually in January. Institutional standards and effective date can be found at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

"Federal poverty level" - The income standards published annually by the federal government in the Federal Register found at <http://aspe.hhs.gov/poverty/index.shtml>. ~~((The income standards change on April first every year.~~

~~(("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 persons with mental diseases, including medical attention, nursing care, and related services. Inpatient chemical dependency facilities of more than sixteen beds which provide residential treatment for alcohol and substance abuse are also considered an IMD.

~~(("Institutional status"))~~ An individual meets institutional status when he or she is admitted to a medical institution, inpatient psychiatric facility, or IMD for a period of thirty days or longer. The time period is ninety days or longer for individuals seventeen years of age and younger who are admitted to an inpatient psychiatric facility or institution for mental diseases. Institutional status is described in WAC 388-513-1320.) Institutional standards and effective date can be found at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

"Legal dependent" - A minor child, seventeen years of age and younger, and an individual eighteen years of age and older claimed as a dependent for income tax purposes; or a parent of either the applicant or the applicant's spouse claimed as a dependent for income tax purposes; or the brother or sister (including half and adoptive siblings) claimed by either the applicant or the applicant's spouse as a dependent for income tax purposes.

~~(("Medical institution" ((A medical facility that provides twenty-four hour supervision and skilled nursing care. Facilities which meet this definition include:~~

- ~~((1) Hospitals;~~
- ~~((2) Nursing homes or the nursing home section of a state veteran's facility;~~
- ~~((3) Hospice care centers;~~
- ~~((4) An intermediate care facility for the mentally retarded (ICF/MR); or~~
- ~~((5) A residential habilitation center (RHC))~~ see WAC 182-500-0050.

"Medically needy income level (MNIL)" - The standard used by the ~~((department))~~ agency to determine eligibility under the medically needy medicaid program. The effective MNIL standards are described in WAC ~~((388-478-0070))~~ 182-519-0050.

"Medically needy (MN) ((medicaid))" ~~((Federally funded medical coverage under Title XIX of the Social Security Act. MN coverage has a more limited scope of care than CN coverage))~~ see WAC 182-500-0070.

"Personal needs allowance (PNA)" - An amount designated to cover the expenses of an individual's clothing and personal incidentals while living in a medical institution, inpatient psychiatric facility, or institution for mental diseases. PNA standards are found at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/lcstandardsPNAchartsubfile.shtml>.

("Psychiatric facility" — Designated long-term inpatient psychiatric residential treatment facilities, state psychiatric hospitals, designated distinct psychiatric units, and medicare-certified distinct units in acute care hospitals.)

"Spendedown" (~~—The amount of medical expenses an individual is required to incur prior to medical benefits being authorized. Spendedown is described in WAC 388-519-0100 and 388-519-0110~~) see WAC 182-500-0100.

"Title XIX" (~~—The portion of the federal Social Security Act, 42 U.S.C. 1396, that authorizes grants to states for medical assistance programs. Title XIX is also called medicare~~) see WAC 182-500-0105.

AMENDATORY SECTION (Amending WSR 12-02-034, filed 12/29/11, effective 1/1/12)

WAC 182-514-0240 ~~Washington apple health—General eligibility requirements for ((family institutional medical coverage)) MAGI-based long-term care program.~~ (1) This section applies to ~~((all individuals applying)) applicants~~ for long-term care services under the ~~((family institutional medical)) Washington apple health (WAH) MAGI-based long-term care program.~~ Additional rules may apply based upon ~~((an individual's)) a person's~~ age at the time he or she applies for long-term care services and whether the facility the ~~((individual)) person~~ is admitted to is a medical institution, inpatient psychiatric facility, or an institution for mental diseases (IMD). Additional rules are described in WAC ~~((388-505-0245)) 182-514-0245~~ through ~~((388-505-0265)) 182-514-0265.~~

(2) ~~((Individuals must meet))~~ The following requirements apply to ((qualify)) be eligible for ~~((family institutional)) WAH MAGI-based long-term care coverage under this section:~~

(a) Institutional status described in WAC ~~((388-513-1320)) 182-513-1320.~~ ~~((An individual)) A person~~ meets institutional status if he or she is admitted to:

(i) A medical institution and resides, or is likely to reside, there for thirty days or longer, regardless of age;

(ii) An inpatient psychiatric facility or IMD and resides, or is likely to reside, there for thirty days or longer and is eighteen through twenty years of age; or

(iii) An inpatient psychiatric facility or IMD and resides, or is likely to reside, there for ninety days or longer and is seventeen years of age or younger.

(b) General eligibility requirements described in WAC ~~((388-503-0505)) 182-503-0505~~ (with the exception that subsections (3)(c) and (d) of that section do not apply to ~~((individuals)) noncitizen applicants~~ who are eligible under one of the WAH alien ((emergency)) medical ((AEM)) programs described in chapter 182-507 WAC) and the person meets one of the following:

(i) ~~((Be a parent of, or a relative caring for, an eligible dependent child and meet the program requirements under:~~

(A) ~~A family medical program described in WAC 388-505-0220;~~

(B) ~~A transitional family medical program described in WAC 388-523-0100; or~~

(C) ~~The temporary assistance for needy families (TANF) cash assistance program.~~

~~((ii))~~ Be a child and meet the program requirements under ~~((apple health)) WAH~~ for kids as described in WAC ~~((388-505-0210)) 182-505-0210~~. For the purposes of this section, a person is considered a child through the age of twenty-one;

(ii) Be an adult nineteen through sixty-four years of age who meets the criteria in WAC 182-505-0250;

(iii) Be ~~((a)) pregnant ((woman))~~ and meet the program requirements for ~~((a)) the WAH pregnancy ((medical))~~ program as described in WAC ~~((388-462-0015)) 182-505-0115;~~

(iv) Meet the WAH alien ((emergency)) medical ((AEM)) program requirements as described in WAC ~~((388-438-0110)) 182-507-0110~~ (with the exception that for ~~((family)) MAGI-based long-term care services, ((AEM)) alien medical~~ coverage may be authorized for children through twenty-one years of age) and:

(A) Have a qualifying emergency condition; and

(B) For payment for long-term care services and room and board costs in the institution, request prior authorization from the ~~((department's medical consultant)) aging and long-term support administration (AL TSA)~~ if the ~~((individual)) person~~ is admitted to a ~~((medical institution under hospice or is admitted to a)) nursing facility.~~

~~((v)) Be an individual nineteen through twenty years of age but not eligible under subsections (i) through (iv) of this section.~~

~~((e)) Resource requirements described in WAC 388-505-0245;~~

~~((d))~~ (c) Have countable income below the applicable standard described in WAC ~~((388-505-0250(4), 388-505-0255(3) or 388-505-0260(4)) 182-514-0250(4), 182-514-0255(3), or 182-514-0260(4);~~

~~((e))~~ (d) Contribute income remaining after the post eligibility process described in WAC ~~((388-505-0265)) 182-514-0265~~ towards the cost of care in the facility, if applicable; and

~~((f))~~ (e) Be assessed as needing nursing facility level of care as described in WAC 388-106-0355 if the admission is to a nursing facility. (This does not apply to nursing facility admissions under the hospice program.)

(3) Once the ~~((department)) agency or its designee~~ determines ~~((an individual)) a person~~ meets institutional status, it does not count the income of parent(s), a spouse, or dependent child(ren) when determining countable income. ~~((The department counts the following as the individual's income:~~

~~((a)) Income received by the individual in his or her own name;~~

~~((b)) Funds given to him or her by another individual towards meeting his or her needs; and~~

~~((c)) Current child support received on behalf of the individual by his or her parents.~~

(4) Individuals eligible for a cash grant under the temporary assistance for needy families (TANF) program can remain eligible for a cash payment and the categorically needy (CN) medicaid program while in the institution. The expected length of stay in the institution may impact the amount of the TANF payment.

(a) When the institutionalized individual is expected to return to the home within one hundred and eighty days, the department considers this to be a temporary absence from the home and the individual remains eligible for their full TANF grant. Rules defining a temporary absence are described in WAC 388-454-0015.

(b) When the department determines that the institutionalized individual's stay in the facility is likely to exceed one hundred and eighty days, the department reduces his or her share of the TANF grant to the personal needs allowance (PNA) described in WAC 388-478-0040. This is also referred to as the clothing, personal maintenance and necessary incidentals (CPI) amount.

(5) Individuals) Only income received by the person in his or her own name is counted for the initial eligibility determination.

(4) A person who ((are)) is not a United States citizen((s)) or a qualified alien((s-do)) does not need to provide or apply for a Social Security number or meet the citizenship requirements under WAC ((388-424-0010 (1) or (2))) 182-503-0535 as long as the requirements in subsection (2) of this section are met.

((6) Individuals who are)) (5) A person who meets the federal aged, blind or disabled ((under federal)) criteria may qualify for institutional benefits with income of up to three hundred percent of the federal benefit rate (FBR). Rules relating to institutional eligibility for an aged, blind or disabled ((individuals)) person are described in WAC ((388-513-1315)) 182-513-1315.

((7)) (6) If ((an individual)) a person does not meet institutional status, the ((department)) agency or its designee determines his or her eligibility for a noninstitutional WAH medical program. ((An individual)) A person who is determined eligible for CN or medically needy (MN) coverage under a noninstitutional program who is admitted to a nursing facility for less than thirty days is approved for coverage for the nursing facility room and board costs, as long as the ((individual)) person is assessed by ((the department)) ALISA as meeting nursing home level of care as described in WAC 388-106-0355.

(7) Parents and caretaker relatives who meet the criteria under WAC 182-505-0240 are not eligible for the WAH MAGI-based long-term care program and must have eligibility determined under SSI-related institutional rules described in chapter 182-513 WAC.

AMENDATORY SECTION (Amending WSR 12-02-034, filed 12/29/11, effective 1/1/12)

WAC 182-514-0245 Washington apple health—Resource eligibility for ((family institutional medical coverage)) MAGI-based long-term care program. ((1) The department does not restrict or limit resources available to individuals eighteen years of age or younger when determin-

ing eligibility for family institutional medical coverage. The department does not consider, or count towards eligibility, any resources owned by the individual in this age category, or any resources owned by the individual's parent(s), spouse, or child(ren), if applicable.

(2) For individuals nineteen years of age or older, there is a one thousand dollar countable resource limit for new applicants for family medical coverage not meeting the additional resource exclusion of WAC 388-470-0026, and all of the following apply:

(a) In order to determine which resources it must count, the department follows rules in WAC 388-470-0026, 388-470-0045 (with the exception of subsection (3) relating to primary residence), 388-470-0060, and 388-470-0070.

(b) Applicants and current categorically needy (CN) or medically needy (MN) medical assistance clients receiving long term care services under the family institutional medical program are subject to transfer of asset regulations as described in WAC 388-513-1363 through 388-513-1366.

(c) Individuals who apply for long term care services on or after May 1, 2006, who have an equity interest greater than five hundred thousand dollars in their primary residence are not eligible for long term care services. This does not apply if the individual's spouse or blind, disabled or dependent child under twenty-one years of age is lawfully residing in the primary residence. Individuals who are denied or terminated from long term care services due to excess home equity may apply for an undue hardship waiver as described in WAC 388-513-1367.

(d) Once an individual has been determined eligible for any family medical program, the department does not consider any subsequent increase in that individual's resources after the month of application, as described in WAC 388-470-0026. Subsequent increases in a family's resources are not applied towards the cost of care in any month in which the resources have exceeded the eligibility standard.

(e) When both spouses of a legally married couple are institutionalized, the department determines resource eligibility for each spouse separately, as if each were a single individual.

(f) When only one spouse in a legally married couple applies for family institutional coverage, the rules in WAC 388-513-1350 (8) through (13) apply.

(g) For countable resources over one thousand dollars that are not otherwise excluded by WAC 388-470-0026:

(i) The department reduces the excess resources in an amount equal to medical expenses incurred by the institutionalized individual, such as:

(A) Premiums, deductibles, coinsurance or copayments for health insurance and medicare;

(B) Necessary medical care recognized under state law, but not covered under the state's medical plan; and

(C) Necessary medical care recognized under state law, but incurred prior to medicaid eligibility.

(ii) Medical expenses that the department uses to reduce excess resources must not:

(A) Be the responsibility of a third party payer;

(B) Have been used to satisfy a previous spenddown liability;

~~(C) Have been previously used to reduce excess resources;~~

~~(D) Have been used to reduce client responsibility toward cost of care;~~

~~(E) Have been incurred during a transfer of asset penalty; or~~

~~(F) Have been written off by the medical provider (the individual must be financially liable for the expense).-~~

~~(h) If an individual has excess resources remaining, after using incurred medical expenses to reduce those resources, the department uses the following calculations to determine if an individual is eligible for family institutional medical coverage under the CN or MN program:-~~

~~(i) If countable income is below the CN income standard, and the combination of countable income plus excess resources is below the monthly cost of care at the state medicaid rate, the individual is eligible for family institutional medical coverage under the CN program.-~~

~~(ii) If countable income is below the CN income standard, but the combination of countable income plus excess resources is above the monthly cost of care at the state medicaid rate, the individual is not eligible for family institutional medical coverage.~~

~~(iii) If countable income is over the CN income standard, and the combination of countable income plus excess resources is below the monthly cost of care at the institution's private rate plus the amount of any recurring medical expenses for institutional services, the individual is eligible for family institutional coverage under the MN program. (MN coverage applies only to individuals twenty years of age or younger.)-~~

~~(iv) If countable income is over the CN income standard, but the combination of countable income plus excess resources is higher than the monthly cost of care at the institution's private rate plus the amount of any recurring medical expenses for institutional services, the individual is not eligible for family institutional coverage under the MN program. (MN coverage applies only to individuals twenty years of age or younger.))~~ (1) There is no resource test for applicants or recipients of the Washington apple health (WAH) modified adjusted gross income (MAGI)-based long-term care program.

(2) The transfer of asset evaluation described in WAC 182-513-1363 does not apply to applicants or recipients who are eligible under the WAH MAGI-based long-term care program.

AMENDATORY SECTION (Amending WSR 12-02-034, filed 12/29/11, effective 1/1/12)

WAC 182-514-0250 ((Eligibility for family institutional medical for individuals)) Washington apple health—MAGI-based long-term care program for adults age twenty-one ((years of age)) or older. (1) ((Individuals)) A person twenty-one years of age or older must meet the requirements in WAC ((388-505-0240)) 182-505-0250 to qualify for ((family institutional medical)) Washington apple health (WAH) modified adjusted gross income (MAGI)-based long-term coverage under this section.

~~(2) ((Individuals, twenty-one through sixty-four years of age who are admitted to an institution for mental diseases (IMD) are not eligible for coverage under this section. Individuals who are voluntarily admitted to a psychiatric hospital may be eligible for coverage under the psychiatric indigent inpatient program described in WAC 388-865-0217.-~~

~~(3) Rules governing resources are described in WAC 388-505-0245. However, if an applicant has countable resources over the standard described in WAC 388-505-0245, he or she may spend down any excess amount towards his or her cost of care as described in WAC 388-505-0265(6).~~

~~(4)) The categorically needy income level (CNIL) for ((individuals who qualify for family institutional medical)) health care coverage under this section is ((the temporary assistance for needy families (TANF) one person payment standard based on the requirement to pay shelter costs described in WAC 388-478-0020. An individual's)) one hundred thirty-three percent of federal poverty level. A person's countable income (after a standard five percentage point income disregard) must be at or below this amount to be eligible.~~

~~((5))~~ (3) Countable income for categorically needy (CN) coverage under this section is determined using the MAGI methodologies described in chapter 182-509 WAC.

(4) If the ((individual's)) person's income exceeds the standards to be eligible under ((a categorically needy (CN) medicaid family)) the WAH MAGI-based CN long-term care program, he or she is not eligible for ((coverage under the)) medically needy ((MN) medicaid program.

~~(6) Individuals eligible under the provisions of this section may be required to contribute a portion of their income towards the cost of care as described in WAC 388-505-0265)) coverage under this section.~~

(5) A person, age twenty-one through sixty-four years of age who is admitted to an institution for mental diseases (IMD) is not eligible for coverage under this section.

AMENDATORY SECTION (Amending WSR 12-02-034, filed 12/29/11, effective 1/1/12)

WAC 182-514-0255 ((Eligibility for family institutional medical for individuals)) Washington apple health—MAGI-based long-term care program for young adults nineteen and twenty years of age. (1) ((Individuals)) Persons nineteen and twenty years of age must meet the requirements in WAC ((388-505-0240)) 182-505-0210 to qualify for ((family institutional medical coverage)) the Washington apple health (WAH) modified adjusted gross income (MAGI)-based long-term care program.

~~(2) ((Rules governing resources are described in WAC 388-505-0245. However, if an applicant has countable resources over the standard described in WAC 388-505-0245, he or she may spend down any excess resources over the standard by applying the excess amount towards his or her cost of care as described in WAC 388-505-0265(6).~~

~~(3)) The categorically needy income level (CNIL) ((for individuals who qualify for family institutional medical coverage under this section is the temporary assistance for needy families (TANF) one person payment standard based on the requirement to pay shelter costs described in WAC 388-478-~~

~~0020. An individual's countable income must be at or below this amount to be eligible.~~

~~(4)) is two hundred ten percent of the federal poverty level. A person's countable income (after a standard five percentage point income disregard) must be at or below this amount to be eligible.~~

~~(3) Countable income for categorically needy (CN) coverage under this section is determined using the MAGI methodologies described in chapter 182-509 WAC.~~

~~(4) The agency or its designee approves CN health care coverage under this section for twelve calendar months.~~

~~(5) If ((an individual's)) a person's countable income exceeds the standard described in subsection (3) of this section, the ((department)) agency or its designee determines whether ((he or she)) the person is eligible for coverage under the WAH institutional medically needy (MN) ((medicaid)) program.~~

~~((a) Individuals with countable income below the state monthly cost of care in the facility are eligible for MN without spenddown.~~

~~(b) If the individual's countable income exceeds the state monthly cost of care but is under the private cost of care plus the amount of any recurring medical expenses for institutional services, he or she may be required to spend down their income as described in WAC 388-519-0110.~~

~~(c) If the individual's countable income exceeds the private monthly cost of care plus the amount of any recurring medical expenses for institutional services, he or she is not eligible for family institutional medical coverage.~~

~~(5)) (6) If ((an individual)) the person is a medicaid applicant or ((current medical assistance client)) recipient in the month of his or her twenty-first birthday and receives active inpatient psychiatric or inpatient chemical dependency treatment which extends beyond his or her twenty-first birthday, the ((department)) agency or its designee approves or continues WAH CN or MN ((medicaid)) health care coverage until the date the ((individual)) person is discharged from the facility or until his or her twenty-second birthday, whichever occurs first.~~

~~((6) Individuals)) (7) Young adults eligible under the provisions of this section may be required to contribute a portion of their income towards the cost of care as described in WAC ((388-505-0265)) 182-514-0265.~~

AMENDATORY SECTION (Amending WSR 12-02-034, filed 12/29/11, effective 1/1/12)

WAC 182-514-0260 ((Eligibility for family institutional medical)) Washington apple health—MAGI-based long-term care coverage for children eighteen years of age or younger. (1) ((Individuals)) Children eighteen years of age or younger must meet the requirements in WAC ((388-505-0240)) 182-514-0240 to qualify for ((family institutional medical coverage)) the Washington apple health (WAH) modified adjusted gross income (MAGI)-based long-term care program.

(2) When ((an individual)) a child eighteen years of age or younger is eligible for the premium-based ((categorically needy (CN) coverage under apple health)) WAH for kids program as described in WAC ((388-505-0210(4))) 182-505-

0210, the ((department)) agency or its designee redetermines his or her eligibility using the provisions of this section so that the ((individual)) child's family is not required to pay the premium.

~~(3) ((The department does not restrict or limit the resources available to individuals eighteen years of age or younger when determining eligibility for family institutional medical coverage. The department does not consider, or count towards eligibility any resources owned by the individual in this age category, or any resources owned by the individual's parent(s), spouse, or child(ren), if applicable.~~

~~(4)) The categorically needy income level (CNIL) for ((individuals who qualify for family institutional medical)) WAH long-term care coverage under this section is two hundred ten percent of the federal poverty level ((income standard. Once the department determines an individual meets institutional status, it does not count the income of a parent(s), spouse, or dependent children (if applicable) when determining the individual's countable income)) (after a standard five percentage point income disregard).~~

~~(4) Countable income for categorically needy (CN) coverage under this section is determined using the MAGI methodologies described in chapter 182-509 WAC.~~

~~(5) The ((department)) agency or its designee approves CN ((medical)) health care coverage under this section for twelve calendar months. If ((an individual)) the child is discharged from the facility before the end of his or her certification period, ((he or she)) the child remains continuously eligible for CN ((medical)) health care coverage through the end of the original certification date, unless he or she ages out of the program, moves out of state, is incarcerated, or dies.~~

~~(6) If ((an individual)) a child is not eligible for CN ((medical)) health care coverage under this section, the ((department)) agency or its designee determines ((his or her)) the child's eligibility for health care coverage under the WAH institutional medically needy (MN) program described in WAC 182-513-1395.~~

~~((a)) (7) MN coverage is only available for ((an individual)) a child who meets the citizenship requirements under WAC ((388-424-0010 (1) or (2))) 182-503-0535.~~

~~((b) Individuals with countable income below the state monthly cost of care in the facility are eligible for MN without spenddown.~~

~~(c) If the individual's countable income exceeds the state monthly cost of care, but is under the private monthly cost of care plus the amount of any recurring medical expenses for institutional services, the department may require the individual to spend down his or her income as described in WAC 388-519-0110.~~

~~(d) If the individual's countable income exceeds the private monthly cost of care plus the amount of any recurring medical expenses for institutional services, he or she is not eligible for family institutional medical coverage.~~

~~(7)) (8) The facility where the ((individual)) child resides may submit an application on the ((individual's)) child's behalf and may act as an authorized representative ((for the individual)) if the ((individual)) child is:~~

~~(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.

~~((8) Individuals))~~ (9) Children who are eligible for ((family institutional medical)) WAH MAGI-based long-term care coverage under the provisions of this section may be required to contribute a portion of their income towards the cost of care as described in WAC ((388-505-0265)) 182-514-0265.

AMENDATORY SECTION (Amending WSR 12-02-034, filed 12/29/11, effective 1/1/12)

WAC 182-514-0265 Washington apple health—How the ((department)) agency or its designee determines how much of an institutionalized ((individual's)) person's income must be paid towards the cost of care for the MAGI-based long-term care program. (1) ~~((Individuals))~~ A person who resides in a medical institution, inpatient psychiatric facility, or an institution for mental diseases (IMD) may be required to pay a portion of their income towards the cost of care. This section explains how the ((department)) agency or its designee calculates how much ((an individual is required to)) a person pays to the facility under the Washington apple health (WAH) modified adjusted gross income (MAGI)-based long-term care program. This process is known as the post-eligibility process. If ((an individual)) a person does not have income, he or she does not have to pay.

(2) The ~~((department))~~ agency or its designee determines available income by considering ((an individual's)) a person's total gross income before any mandatory deductions from earnings. Income that was not counted in the initial eligibility process under the MAGI methodology is counted for the post-eligibility process unless the income is excluded under ((federal or state law. See WAC 388-450-0015 for examples of excluded income types)) WAC 182-513-1340.

(3) The following income allocations and exemptions are deducted from ~~((an individual's))~~ the person's total gross income to determine his or her available income. The ((department)) agency or its designee uses the rules described in WAC ((388-513-1380)) 182-513-1380 to calculate the amount of these allocations and exemptions, with the exception that ((under the family institutional medical program, there is no deduction for earned income in the post-eligibility process)) the deduction of wages stated in WAC 182-513-1380 (4)(c) is not allowed.

(a) A personal needs allowance (PNA) and maintenance allocation. The combined totals of all of the following deductions cannot exceed the medically needy income level (MNIL):

(i) PNA as allowed under WAC ((388-478-0040)) 182-513-1300;

(ii) Mandatory federal, state, or local income taxes owed by the ((client)) person; and

(iii) Court ordered guardianship fees and administrative costs, including attorney fees, as described in chapter 388-79 WAC.

(b) Income garnished to comply with a court order for child support.

(c) Community spouse allocation.

(d) Family maintenance allocation if married with dependents.

(e) Legal dependent allocation for an unmarried ((client)) person with dependents. The maximum allocation is based upon the MNIL standard for the number of dependents minus the dependent's income.

(f) Medical expense allocation. The ((department)) agency or its designee allows a deduction for unpaid medical expenses for which the individual is still liable. Medical expenses allowed for this allocation are described in WAC ((388-513-1350)) 182-513-1350.

(g) Housing maintenance exemption:

(i) ~~((For an individual))~~ A person who is financially responsible for the costs of maintaining a home while he or she is in an institution((, the department allows)) is allowed a deduction, limited to a six-month period, of up to one hundred percent of the one-person poverty level per month, when a physician has certified that the ((individual)) person is likely to return to the home within the six-month period.

(ii) ~~((An individual))~~ A person eighteen years of age or younger is not eligible for the housing maintenance exemption unless the housing expense is the ((individual's)) person's financial responsibility. Children are not financially responsible for the housing expenses incurred by their parents.

(4) ~~((Individuals))~~ A person may keep a personal needs allowance of up to the ((one person temporary assistance for needy families (TANF) payment standard (based upon the requirement to pay shelter costs)) effective MNIL in the month ((they are)) he or she admitted and in the month ((they are)) the person discharged from the facility. See WAC 182-519-0050 for the effective MNIL standards.

(5) Any income ((which remains)) remaining is called the person's responsibility toward the cost of care and must be paid to the facility ((towards the cost of care).

~~((Individuals nineteen years of age or older who qualify for categorically needy (CN) or medically needy (MN) coverage but have countable resources in excess of the resource limits as described in WAC 388-505-0245 must pay an amount equal to the excess amount to the facility towards the cost of their care in the month of application. This amount is in addition to the amount calculated under subsections (2) through (4) of this section (if any)). This amount is also called the person's participation.~~

AMENDATORY SECTION (Amending WSR 12-19-051, filed 9/13/12, effective 10/14/12)

WAC 182-514-0270 When an involuntary commitment to Eastern or Western State Hospital is covered by medicaid. (1) ~~((Individuals))~~ A person who is admitted to Eastern or Western State Hospital for inpatient psychiatric treatment ((may qualify)) is eligible for categorically needy (CN) ((medicaid)) health care coverage ((and aged, blind, disabled (ABD) cash benefits to cover their personal needs allowance (PNA)) in limited circumstances.

(2) To be eligible under this program, ((individuals)) a person must:

(a) Be ((eighteen through)) twenty years of age or younger, or sixty-five years of age or older;

(b) Meet institutional status under WAC (~~388-513-1320~~) 182-513-1320;

(c) Be involuntarily committed to an inpatient treatment program by a court order under chapter 71.34 RCW;

(d) (~~Meet the general eligibility requirements for the ABD cash program as described in WAC 388-400-0060;~~

~~(e)) Have countable income below ((the payment standard described in WAC 388-478-0040; and~~

~~(f) Have countable resources below one thousand dollars. Individuals eligible under the provisions of this section may not apply excess resources towards the cost of care to become eligible. An individual with resources over the standard is not eligible for assistance under this section));~~

(i) Two hundred ten percent of the federal poverty level if age twenty years or younger; or

(ii) The SSI-related CN income level if age sixty-five years or older and have countable resources below the standard described in WAC 182-512-0010.

(3) (~~ABD clients~~) A person who receives active psychiatric treatment in Eastern or Western State Hospital at the time of (~~their~~) his or her twenty-first birthday continues to be eligible for (~~medicaid~~) CN health care coverage until the date (~~they are~~) he or she is discharged from the facility or until (~~their~~) the person's twenty-second birthday, whichever occurs first.

(4) A person between the age of twenty-one and sixty-five, with the exception of subsection (3) of this section, is not eligible for federally funded health care coverage through Washington apple health.

WSR 13-20-096

EMERGENCY RULES

HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed September 30, 2013, 5:27 p.m., effective September 30, 2013, 5:27 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: **Medicaid expansion rules - Phase 4.5**, the health care authority (HCA) is implementing new regulations under the federal Patient Protection and Affordable Care Act in preparation for healthcare reform in Washington state. This includes the establishment of standalone rules for medical assistance programs, which are required under 2E2SHB 1738, Laws of 2011, which creates HCA as the single state agency responsible for the administrations and supervision of Washington's medicaid program (Washington apple health).

Citation of Existing Rules Affected by this Order: Amending WAC 182-512-0050, 182-512-0100, 182-512-0150, 182-512-0250, 182-512-0350, 182-512-0400, 182-512-0450, 182-512-0500, 182-512-0550, 182-512-0600, 182-512-0650, 182-512-0700, 182-512-0750, 182-512-0800, 182-512-0820, 182-512-0840, 182-512-0860, 182-512-0880, 182-512-0900, 182-512-0920, 182-512-0940, and 182-512-0960.

Statutory Authority for Adoption: RCW 41.05.021.

Other Authority: Patient Protection and Affordable Care Act (Public Law 111-148); 42 C.F.R. § 431, 435, and 457; and 45 C.F.R. § 155.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Over the last year the agency has been working diligently with client advocates and other stakeholders in crafting the new rules to implement the provisions of the Affordable Care Act, including the expansion of medicaid. Although the permanent rule-making process is nearing completion, the permanent rules could not be adopted by the October 1, 2013, deadline due in part to not receiving final federal rules governing this process until this month. Hence the need for the emergency adoption of these rules, while the permanent rule-making process is completed.

Number of Sections Adopted in Order to Comply with Federal Statute: New 8, Amended 22, 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 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 8, Amended 22, Repealed 0.

Date Adopted: September 30, 2013.

Kevin M. Sullivan
Rules Coordinator

NEW SECTION

WAC 182-503-0050 Washington apple health—Verification requirements. For the purposes of this section, "we" refers to HCA or its designee and "you" refers to the applicant for, or recipient of, health care coverage. We have different eligibility verification processes and standards depending on whether the Washington apple health (WAH) program is a MAGI-based WAH program, a non-MAGI-based WAH program, or a deemed eligible program as described in WAC 182-503-0510.

(1) We may ask for verification of information at the time of application, renewal, or when you report a change in your household circumstances.

(2) The following provisions apply to all WAH programs.

(a) If the verification we require costs money, we will pay for it or get the information in another way.

(b) We use information from various data sources including, but not limited to, those listed below before asking you to provide information:

- (i) Washington state employment security department;
- (ii) The Internal Revenue Service;
- (iii) United States Department of Homeland Security;
- (iv) The Social Security Administration;
- (v) Other state and federal data bases;
- (vi) Other commercially available electronic data bases;

and

(vii) Third-party contacts such as employers, landlords, and insurance companies.

(c) Following data-matching, we will only ask you for more information if:

- (i) Information cannot be verified through a data-match;
- (ii) The data-match is not reasonably compatible (as defined in WAC 182-500-0095) with the information you self-attested to or other sources; or
- (iii) The information you self-attested to is contradictory, confusing, or outdated.

(d) When we need more information from you to determine your eligibility for WAH coverage, we send all notices according to the requirements of WAC 182-518-0015 and follow the rules below:

(i) If you are eligible for equal access services as described in WAC 182-503-0120 or limited-English proficiency services as described in WAC 182-503-0110, we help you comply with the requirements of this section.

(ii) We will not deny or delay your application because you fail to provide the information in a particular type or form. We must accept and consider alternative verification.

(iii) If you request more time to provide information, we allow you the time requested.

(iv) We will not deny you eligibility during any time period we have given you to provide more information unless we have conclusive evidence of your ineligibility.

(v) If we do not timely receive your information, we determine your eligibility based on the information we already received. If we cannot determine your eligibility, we deny or terminate your WAH coverage and send you a notice that states when we will reconsider the application as described in WAC 182-503-0080.

(vi) Once we verify an eligibility factor that is not subject to change, we will not require ongoing or additional verification of that factor. This includes, but is not limited to, family relationships; Social Security numbers; and dates of birth, death, marriage, dissolution of marriage, or legal separation.

(3) If you are applying for MAGI-based programs:

(a) Except as described in (b) of this subsection, we must accept your self-attestation (defined in WAC 182-500-0100) of eligibility factors (including your income and tax deductions). If your self-attestation indicates eligibility, we find you eligible for MAGI-based WAH.

(b) We follow the procedures in subsection (1) of this section and use data-matching to verify your citizenship or immigration status, and Social Security number. If we are unable to verify a required eligibility factor through data-matching, we ask you to provide the verification we need.

(c) After we have determined your eligibility, we may conduct a post-eligibility review to verify your self-attestation. We use various means to verify your circumstances including, but not limited to, information that is available

from the following sources. We may also contact you or other people to clarify the information you provided.

(i) The supplemental nutrition assistance program (SNAP).

(ii) Department of social and health services cash programs, including temporary assistance for needy families (TANF), diversion cash assistance (DCA), refugee cash assistance (RCA), aged, blind, and disabled cash assistance (ABD), and pregnant women's cash assistance (PWA).

(4) If you are applying for non-MAGI-based programs:

(a) We must first verify your eligibility factors according to MAGI-based standards described in subsection (2) of this section. If you are eligible for a MAGI-based WAH program, we must find you eligible for that program.

(b) Even if you are eligible for MAGI-based coverage, we may still consider you for non-MAGI-based programs if the programs offer you services or coverage options that are not available in MAGI-based programs.

(c) We may need additional verification to determine eligibility for non-MAGI-based programs including, but not limited to:

(i) Income and income deductions;

(ii) Medical expenses required to meet a spenddown liability (see WAC 182-519-0110);

(iii) Medical expenses and other post-eligibility deductions used to determine eligibility for long-term care programs (see WAC 182-513-1380);

(iv) Resources; and

(v) Any other questionable information.

(d) Additional eligibility factors and verification standards are described in:

(i) Chapter 182-507 WAC, refugee medical and alien medical programs;

(ii) Chapter 182-508 WAC, medical care services;

(iii) Chapter 182-511 WAC, WAH for workers with disabilities;

(iv) Chapter 182-512 WAC, SSI-related medical programs;

(v) Chapters 182-513 and 182-515 WAC, SSI-related long-term care programs;

(vi) Chapter 182-517 WAC, medicare savings programs; and

(vii) Chapter 182-519 WAC, medically needy and spenddown programs.

(5) If you are determined eligible for one of the programs described in WAC 182-503-0510(4), we do not require additional verification of information from you.

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

WAC 182-512-0050 SSI-related medical—General information. (1) The ~~((department))~~ agency (which includes its designee for purposes of this chapter) provides ~~((medical benefits))~~ health care coverage under the Washington apple health (WAH) categorically needy (CN) and medically needy (MN) SSI-related programs for SSI-related people, meaning those who meet at least one of the federal SSI program criteria as being:

(a) Age sixty-five or older;

- (b) Blind with:
 - (i) Central visual acuity of 20/200 or less in the better eye with the use of a correcting lens; or
 - (ii) A field of vision limitation so the widest diameter of the visual field subtends an angle no greater than twenty degrees.
- (c) Disabled:
 - (i) "Disabled" means unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, which:
 - (A) Can be expected to result in death; or
 - (B) Has lasted or can be expected to last for a continuous period of not less than twelve months; or
 - (C) In the case of a child seventeen years of age or younger, if the child suffers from any medically determinable physical or mental impairment of comparable severity.
 - (ii) Decisions on SSI-related disability are subject to the authority of:
 - (A) Federal statutes and regulations codified at 42 U.S.C. ((See)) Section 1382c and 20 C.F.R., parts 404 and 416, as amended; and
 - (B) Controlling federal court decisions, which define the OASDI and SSI disability standard and determination process.
- (2) A denial of Title II or Title XVI federal benefits by SSA solely due to failure to meet the blindness or disability criteria is binding on the ((department)) agency unless the applicant's:
 - (a) Denial is under appeal in the reconsideration stage in SSA's administrative hearing process, or SSA's appeals council; or
 - (b) Medical condition has changed since the SSA denial was issued.
- (3) The ((department)) agency considers a ((client)) person who meets the special requirements for SSI status under Sections 1619(a) or 1619(b) of the Social Security Act as an SSI recipient. Such a ((client)) person is eligible for WAH CN ((medical)) health care coverage under WAC ((388-474-0005)) 182-510-0001.
- (4) ((Individuals)) Persons referred to in subsection (1) must also meet appropriate eligibility criteria found in the following WAC and EA-Z Manual sections:
 - (a) For all programs:
 - (i) WAC ((388-408-0055)) 182-506-0015, Medical assistance units;
 - (ii) WAC ((388-416-0015)) 182-504-0015, Categorically needy and WAC ((388-416-0020)) 182-504-0020, Medically needy certification periods;
 - (iii) Program specific requirements in chapter ((388-475)) 182-512 WAC;
 - (iv) WAC ((388-490-0005)) 182-503-0050, Verification;
 - (v) WAC ((388-503-0505)) 182-503-0505, General eligibility requirements for medical programs;
 - (vi) WAC ((388-505-0540)) 182-503-0540, Assignment of rights and cooperation;
 - (vii) Chapter ((388-564)) 182-516 WAC, Trusts, annuities and life estates.
 - (b) For LTC programs:

- (i) Chapter ((388-513)) 182-513 WAC, Long-term care services;
- (ii) Chapter ((388-515)) 182-515 WAC, Waiver services.
- (c) For WAH MN, chapter ((388-519)) 182-519 WAC, Spenddown;
- (d) For WAH HWD, program specific requirements in chapter ((388-475)) 182-511 WAC.
- (5) Aliens who qualify for medicaid ((benefits)) coverage, but are determined ineligible because of alien status may be eligible for programs as specified in WAC ((388-438-0110)) 182-507-0110.
- (6) The ((department)) agency pays for a ((client's)) person's medical care outside of Washington according to WAC ((388-501-0180)) 182-501-0180.
- (7) The ((department)) agency follows income and resource methodologies of the supplemental security income (SSI) program defined in federal law when determining eligibility for SSI-related medical or medicare cost savings programs unless the ((department)) agency adopts rules that are less restrictive than those of the SSI program.
- (8) Refer to WAC ((388-418-0025)) 182-504-0125 for effects of changes on medical assistance for redetermination of eligibility.

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

- WAC 182-512-0100 SSI-related medical—Categorically needy (CN) medical eligibility.** (1) Washington apple health (WAH) categorically needy (CN) coverage is available for an SSI-related ((client)) person who ((-a)) meets the criteria in WAC ((388-475-0050)) 182-512-0050, SSI-related medical—General information((,-or
- (b) ~~Meets the criteria for the state funded general assistance—Expedited medicaid disability (GA-X) program by meeting the:~~
 - (i) Requirements of the cash program in WAC 388-400-0025 and 388-478-0030; or
 - (ii) SSI-related disability standards but who cannot get the SSI cash grant due solely to immigration status or sponsor deeming issues)).
- (2) To be eligible for SSI-related WAH CN medical programs, a person must also have:
- (a) Countable income and resources at or below the SSI-related WAH CN medical monthly standard (refer to WAC ((388-478-0080)) 182-512-0010) or be eligible for an SSI cash grant but choose not to receive it; or
 - (b) Countable resources at or below the SSI resource standard and income above the SSI-related WAH CN medical monthly standard, but the countable income falls below that standard after applying special income disregards as described in WAC ((388-475-880)) 182-512-0880; or
 - (c) Met requirements for long-term care (LTC) WAH CN income and resource requirements that are found in chapters ((388-513)) 182-513 and ((388-515)) 182-515 WAC if wanting LTC or waiver services.
- (3) An ineligible spouse of an SSI recipient is not eligible for noninstitutional SSI-related WAH CN ((medical benefits)) health care coverage. If an ineligible spouse of an SSI

recipient has dependent children in the home, eligibility may be determined for family medical programs.

AMENDATORY SECTION (Amending WSR 12-20-001, filed 9/19/12, effective 10/20/12)

WAC 182-512-0150 SSI-related medical—Medically needy (MN) medical eligibility. (1) Washington apple health (WAH) medically needy (MN) (~~(medical)~~) health care coverage is available for any of the following:

(a) ~~((An individual))~~ A person who is SSI-related and not eligible for WAH categorically needy (CN) medical coverage because the ~~((individual))~~ person has countable income that is above the WAH CN income ((standard)) level (CNIL) (or for long-term care (LTC) ~~((clients))~~ recipients, above the special income limit (SIL));

(i) The ~~((individual's))~~ person's countable income is at or below WAH MN standards, leaving no spenddown requirement; or

(ii) The ~~((individual's))~~ person's countable income is above WAH MN standards requiring the ~~((individual))~~ person to spenddown their excess income (see subsection (4) of this section). See WAC 182-512-0500 through 182-512-0800 for rules on determining countable income, and WAC 182-519-0050 for program standards or chapter ~~((388-513))~~ 182-513 WAC for institutional standards.

(b) An SSI-related ineligible spouse of an SSI recipient;

(c) ~~((An individual))~~ A person who meets SSI program criteria but is not eligible for the SSI cash grant due to immigration status or sponsor deeming. See WAC ~~((388-424-0010))~~ 182-503-0535 for limits on eligibility for aliens;

(d) ~~((An individual))~~ A person who meets the WAH MN LTC services requirements of chapter ~~((388-513))~~ 182-513 WAC;

(e) ~~((An individual))~~ A person who lives in an alternate living facility and meets the requirements of WAC ~~((388-513-1305))~~ 182-513-1305; or

(f) ~~((An individual))~~ A person who meets resource requirements as described in chapter 182-512 WAC, elects and is certified for hospice services per chapter 182-551 WAC.

(2) ~~((Individuals))~~ A person whose countable resources are above the SSI resource standards ~~((are))~~ is not eligible for WAH MN noninstitutional ((medical benefits)) health care coverage. See WAC 182-512-0200 through 182-512-0550 to determine countable resources.

(3) ~~((Individuals))~~ A person who ~~((qualify))~~ qualifies for services under WAH long-term care ((have)) programs has different criteria and may spend down excess resources to become eligible for WAH LTC institutional or waiver ((medical benefits)) health care coverage. Refer to WAC ~~((388-513-1315))~~ 182-513-1315 and ~~((388-513-1395))~~ 182-513-1395.

(4) ~~((An individual))~~ A person with income over the effective ~~((medically needy))~~ WAH MN income limit (MNIL) described in WAC 182-519-0050 may become eligible for WAH MN coverage when the ~~((individual))~~ person has incurred medical expenses that are equal to the excess income. This is the process of meeting spenddown. Refer to chapter 182-519 WAC for spenddown information.

~~((An individual))~~ A person may be eligible for ~~((medical))~~ health care coverage for up to three months immediately prior to the month of application, if the ~~((individual))~~ person has:

(a) Met all eligibility requirements for the months being considered; and

(b) Received medical services covered by medicaid during that time.

(6) ~~((An individual))~~ A person who is eligible for WAH MN without a spenddown is certified for up to twelve months. For ~~((an individual))~~ a person who must meet a spenddown, refer to WAC 182-519-0110. For a person who is eligible for a WAH long-term care MN ((individual)) program, refer to WAC ~~((388-513-1305))~~ 182-513-1305 and ~~((388-513-1315))~~ 182-513-1315.

(7) ~~((An individual))~~ A person must reapply for each certification period. There is no continuous eligibility for WAH MN. ~~((Although each additional certification period requires a new application, if the medical benefits have been closed less than thirty days, an eligibility review form may be used to reapply.))~~

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

WAC 182-512-0250 SSI-related medical—Ownership and availability of resources. (1) The agency considers personal or real property ((is)) to be available to ((the client if the client, client's)) a Washington apple health (WAH) applicant or recipient, their spouse or other financially responsible person if the applicant or recipient:

(a) Owns the property;

(b) Has the authority to convert the property into cash;

(c) Can expect to convert the property to cash within twenty working days; and

(d) May legally use the property for his/her support.

(2) The agency counts the resources of financially responsible persons (as defined in WAC 182-506-0010) who live in the home even if those persons do not receive WAH coverage.

(3) Cash or resources owned by a WAH applicant or recipient or their spouse but held or directed by another, such as, but not limited to, an authorized representative, guardian, or power of attorney, are considered an available resource to the applicant or recipient.

(4) For long-term care services, cash or resources transferred by a WAH applicant or recipient or their spouse to another person, persons, or entity for purposes of paying for the WAH applicant or recipient's long-term care services, whether on a current or a prepaid basis, is considered an available resource to the applicant or recipient.

(5) A resource is considered available on the first day of the month following the month of receipt unless a rule about a specific type of resource provides for a different time period.

~~((3))~~ (6) A resource, which ordinarily cannot be converted to cash within twenty working days, is considered unavailable as long as a reasonable effort is being made to convert the resource to cash.

~~((4))~~ (7) A ~~((client))~~ person may provide evidence showing that a resource is unavailable. A resource is not counted if ~~((a-client))~~ the person shows sufficient evidence that the resource is unavailable.

~~((5))~~ (8) We do not count the resources of victims of family violence, as defined in WAC 388-452-0010, when:

(a) The resource is owned jointly with members of the former household;

(b) Availability of the resource depends on an agreement of the joint owner; or

(c) Making the resource available would place the ~~((client))~~ person at risk of harm.

~~((6))~~ (9) The value of a resource is its fair market value minus encumbrances.

~~((7))~~ (10) Refer to WAC ~~((388-470-0060))~~ 182-512-0260 to consider additional resources when an alien has a sponsor.

NEW SECTION

WAC 182-512-0260 SSI-related medical—How to count a sponsor's resources. (1) The agency counts part of a sponsor's resources as available to an applicant or recipient of Washington apple health (WAH) SSI-related health care coverage if:

(a) The person is a sponsored immigrant as defined in WAC 182-512-0785; and

(b) The person is not exempt from deeming under WAC 182-512-0790.

(2) The agency determines the amount of the sponsor's resources to count by:

(a) Totaling the countable resources of the sponsor and the sponsor's spouse (if the spouse signed the affidavit of support);

(b) Subtracting fifteen hundred dollars; and

(c) Counting the remaining amount as a resource that is available to the person.

(3) When a sponsor has sponsored other people as well, the agency divides the result by the total number of people sponsored.

(4) A sponsor's resources are counted when determining eligibility for WAH coverage until the person becomes exempt from deeming under WAC 182-512-0790.

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

WAC 182-512-0350 SSI-related medical—Property and contracts excluded as resources. (1) The ~~((department))~~ agency does not count the following resources when determining eligibility for SSI-related medical assistance:

(a) A ~~((client's))~~ person's household goods and personal effects;

(b) One home (which can be any shelter), including the land on which the dwelling is located and all contiguous property and related out-buildings in which the ~~((client))~~ person has ownership interest (for WAH long-term care programs, see WAC 182-513-1350 for home equity limits), when:

(i) The ~~((client))~~ person uses the home as his or her primary residence; or

(ii) The ~~((client's))~~ person's spouse lives in the home; or

(iii) The ~~((client))~~ person does not currently live in the home but the ~~((client))~~ person or his/her representative has stated ~~((the-client))~~ he or she intends to return to the home; or

(iv) A relative, who is financially or medically dependent on the ~~((client))~~ person, lives in the home and the ~~((client-client's))~~ person, or his or her authorized representative~~((;))~~ or dependent relative has provided a written statement to that effect.

(c) The value of ownership interest in jointly owned real property is an excluded resource for as long as sale of the property would cause undue hardship to a co-owner due to loss of housing. Undue hardship would result if the co-owner:

(i) Uses the property as his or her principal place of residence;

(ii) Would have to move if the property were sold; and

(iii) Has no other readily available housing.

(2) Cash proceeds from the sale of the home described in subsection (1)(b) ~~((above))~~ of this section are not considered if the ~~((client))~~ person uses them to purchase another home by the end of the third month after receiving the proceeds from the sale.

(3) An installment contract from the sale of the home described in subsection (1)(b) above is not a resource as long as the person plans to use the entire down payment and the entire principal portion of a given installment payment to buy another excluded home, and does so within three full calendar months after the month of receiving such down payment or installment payment.

(4) The value of sales contracts is excluded when the:

(a) Current market value of the contract is zero,

(b) Contract cannot be sold, or

(c) Current market value of the sales contract combined with other resources does not exceed the resource limits.

(5) Sales contracts executed before December 1, 1993, are exempt resources as long as they are not transferred to someone other than a spouse.

(6) A sales contract for the sale of the ~~((client's))~~ person's principal place of residence executed between December 1, 1993 and May 31, 2004 is considered an exempt resource unless it has been transferred to someone other than a spouse and it:

(a) Provides interest income within the prevailing interest rate at the time of the sale;

(b) Requires the repayment of a principal amount equal to the fair market value of the property; and

(c) The term of the contract does not exceed thirty years.

(7) A sales contract executed on or after June 1, 2004 on a home that was the principal place of residence for the ~~((client))~~ person at the time of institutionalization is considered exempt as long as it is not transferred to someone other than a spouse and it:

(a) Provides interest income within the prevailing interest rate at the time of the sale;

(b) Requires the repayment of a principal amount equal to the fair market value of the property within the anticipated life expectancy of the ~~((client))~~ person; and

(c) The term of the contract does not exceed thirty years.

(8) Payments received on sales contracts of the home described in subsection (1)(b) ~~((above))~~ of this section are treated as follows:

(a) The interest portion of the payment is treated as unearned income in the month of receipt of the payment;

(b) The principal portion of the payment is treated as an excluded resource if reinvested in the purchase of a new home within three months after the month of receipt;

(c) If the principal portion of the payment is not reinvested in the purchase of a new home within three months after the month of receipt, that portion of the payment is considered a liquid resource as of the date of receipt.

(9) Payments received on sales contracts described in subsection (4) of this section are treated as follows:

(a) The principal portion of the payment on the contract is treated as a resource and counted toward the resource limit to the extent retained at the first moment of the month following the month of receipt of the payment; and

(b) The interest portion is treated as unearned income the month of receipt of the payment.

(10) For sales contracts that meet the criteria in subsections (5), (6), or (7) of this section but do not meet the criteria in subsections (3) or (4) of this section, both the principal and interest portions of the payment are treated as unearned income in the month of receipt.

(11) Property essential to self-support is not considered a resource within certain limits. The ~~((department))~~ agency places property essential to self-support in several categories:

(a) Real and personal property used in a trade or business (income-producing property), such as:

- (i) Land~~((;))~~;
- (ii) Buildings~~((;))~~;
- (iii) Equipment~~((;))~~;
- (iv) Supplies~~((;))~~;
- (v) Motor vehicles~~((;))~~; and
- (vi) Tools.

(b) Nonbusiness income-producing property, such as:

- (i) Houses or apartments for rent~~((; or))~~; and
- (ii) Land, other than home property.

(c) Property used to produce goods or services essential to ~~((an individual's))~~ a person's daily activities, such as land used to produce vegetables or livestock, which is only used for personal consumption in the ~~((individual's))~~ person's household. This includes personal property necessary to perform daily functions including vehicles such as boats for subsistence fishing and garden tractors for subsistence farming, but does not include other vehicles such as those that qualify as automobiles (cars, trucks).

(12) The ~~((department will))~~ agency excludes ~~((an individual's))~~ a person's equity in real and personal property used in a trade or business (income producing property listed in subsection (11)(a) ~~((above))~~ of this section) regardless of value as long as it is currently in use in the trade or business and remains used in the trade or business.

(13) The ~~((department))~~ agency excludes up to six thousand dollars of ~~((an individual's))~~ a person's equity in non-business income-producing property listed in subsection (11)(b) ~~((above))~~ of this section, if it produces a net annual income to the ~~((individual))~~ person of at least six percent of the excluded equity.

(a) If a person's equity in the property is over six thousand dollars, only the amount over six thousand dollars is counted toward the resource limit, as long as the net annual income requirement of six percent is met on the excluded equity.

(b) If the six percent requirement is not met due to circumstances beyond the person's control, and there is a reasonable expectation that the activities will again meet the six percent rule, the same exclusions as in subsection (13)(a) ~~((above))~~ of this section apply.

(c) If a person has more than one piece of property in this category, each is looked at to see if it meets the six percent return and the total equities of all those properties are added to see if the total is over six thousand dollars. If the total is over the six thousand dollars limit, the amount exceeding the limit is counted toward the resource limit.

(d) The equity in each property that does not meet the six percent annual net income limit is counted toward the resource limit, with the exception of property that represents the authority granted by a governmental agency to engage in an income-producing activity if it is:

(i) Used in a trade or business or nonbusiness income-producing activity; or

(ii) Not used due to circumstances beyond the ~~((individual's))~~ person's control, e.g., illness, and there is a reasonable expectation that the use will resume.

(14) Property used to produce goods or services essential to ~~((an individual's))~~ a person's daily activities is excluded if the ~~((individual's))~~ person's equity in the property does not exceed six thousand dollars.

(15) Personal property used by ~~((an individual))~~ a person for work is not counted, regardless of value, while in current use, or if the required use for work is reasonably expected to resume.

(16) Interests in trust or in restricted Indian land owned by ~~((an individual))~~ a person who is of Indian descent from a federally recognized Indian tribe or held by the spouse or widow/er of that ~~((individual))~~ person, is not counted if permission of the other ~~((individuals))~~ persons, the tribe, or an agency of the federal government must be received in order to dispose of the land.

(17) Receipt of money by a member of a federally recognized tribe from exercising federally protected rights or extraction of exempt resources, such as fishing, shell-fishing, or selling timber from protected land, is considered conversion of an exempt resource during the month of receipt. Any amount remaining from the conversion of this exempt resource on the first of the month after the month of receipt will remain exempt if it is used to purchase another exempt resource. Any amount remaining in the form of a countable resource (such as in a checking or savings account) on the first of the month after receipt, will be added to other countable resources for eligibility determinations.

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

WAC 182-512-0400 SSI-related medical—Vehicles excluded as resources. (1) For SSI-related medical programs, a vehicle is defined as anything used for transporta-

tion. In addition to cars and trucks, a vehicle can include boats, snowmobiles, and animal-drawn vehicles.

(2) One vehicle is excluded regardless of its value, if it is used to provide transportation for the disabled (~~((individual))~~) person or a member of the (~~((individual's))~~) person's household.

(3) For (~~((a))~~) a person receiving SSI-related institutional (~~((client with))~~) coverage who has a community spouse, one vehicle is excluded regardless of its value or its use. See WAC (~~((388-513-1350))~~) 182-513-1350 (7)(b).

(4) A vehicle used as the (~~((client's))~~) person's primary residence is excluded as the home, and does not count as the one excluded vehicle under subsection (2) or (3) of this section.

(5) All other vehicles, except those excluded under WAC (~~((388-475-0350))~~) 182-512-0350 (11) through (14), are treated as nonliquid resources and the equity value is counted toward the resource limit.

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

WAC 182-512-0450 SSI-related medical—Life insurance excluded as a resource. (1) The (~~((department))~~) agency excludes life insurance policies that do not have or cannot accrue a cash surrender value (CSV) in determining whether owned policies exceed the life insurance exclusion limits for resources and in determining burial fund exclusion limits.

(2) Policies owned by each spouse are evaluated and counted separately.

(3) If the total face value of all policies with a CSV potential that a person owns on the same insured is equal to or less than fifteen hundred dollars, the resource is excluded.

(4) If the total face value of all policies with a CSV potential that a person owns on the same insured is more than fifteen hundred dollars, the total CSV of the policies is counted toward the resource limit, unless the (~~((client))~~) person designates such policies as burial funds. If they are designated as burial funds, they must be evaluated under the burial fund exclusion described in WAC (~~((388-475-0500))~~) 182-512-0500.

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

WAC 182-512-0500 SSI-related medical—Burial funds, contracts and spaces excluded as resources. (1) For the purposes of this section, burial funds are funds set aside and clearly designated solely for burial and related expenses and kept separate from all other resources not intended for burial. These include:

- (a) Revocable burial contracts;
- (b) Revocable burial trusts;
- (c) Installment contracts for purchase of a burial space on which payments are still owing;
- (d) Other revocable burial arrangements. The designation is effective the first day of the month in which the person intended the funds to be set aside for burial.

(2) The following burial funds are excluded as resources for the (~~((client))~~) person and his or her spouse up to fifteen hundred dollars each when set aside solely for the expenses

of burial or cremation and expenses related to the burial or cremation, and the funds are either:

(a) An installment contract for purchase of a burial space that is not yet paid in full; or

(b) In a revocable burial contract, burial trust, cash accounts, or other financial instrument with a definite cash value.

(3) Interest earned in burial funds and appreciation in the value of excluded burial arrangements in subsection (2)(a) and (b) (~~((above))~~) of this section are excluded from resources and are not counted as income if left to accumulate and become part of the separate burial fund.

(4) The fifteen hundred dollar exclusion for burial funds described in subsection (2) (~~((above))~~) of this section is reduced by:

(a) The face value of life insurance with CSV excluded in WAC (~~((388-475-0450))~~) 182-512-0450; and

(b) Amounts in an irrevocable burial trust, or other irrevocable arrangement available to meet burial expenses, or burial space purchase agreement installment contracts on which money is still owing. If these reductions bring the balance of the available exclusion to zero, no additional funds can be excluded as burial funds.

(5) An irrevocable burial account, burial trust, or other irrevocable burial arrangement, set aside solely for burial and related expenses is not considered a resource. The amount set aside must be reasonably related to the anticipated death-related expenses in order to be excluded.

(6) A (~~((client's))~~) person's burial funds are no longer excluded when they are mixed with other resources that are not related to burial.

(7) When excluded burial funds are spent for other purposes, the spent amount is added to other countable resources and any amount exceeding the resource limit is considered available income on the first of the month it is used. The amount remaining in the burial fund remains excluded.

(8) Burial space and accessories for the (~~((client))~~) person and any member of the (~~((client's))~~) person's immediate family described in subsection (9) of this section are excluded. Burial space and accessories include:

- (a) Conventional gravesites;
- (b) Crypts, niches, and mausoleums;
- (c) Urns, caskets and other repositories customarily used for the remains of deceased persons;
- (d) Necessary and reasonable improvements to the burial space including, but not limited to:
 - (i) Vaults and burial containers;
 - (ii) Headstones, markers and plaques;
 - (iii) Arrangements for the opening and closing of the gravesite; and

(iv) Contracts for care and maintenance of the gravesite.

(e) A burial space purchase agreement that is currently paid for and owned by the (~~((client))~~) person is also defined as a burial space. The entire value of the purchase agreement is excluded; as well as any interest accrued, which is left to accumulate as part of the value of the agreement. The value of this agreement does not reduce the amount of burial fund exclusion available to the (~~((client))~~) person.

(9) Immediate family, for the purposes of subsection (8) of this section includes the (~~((client's))~~) person's:

- (a) Spouse;
- (b) Parents and adoptive parents;
- (c) Minor and adult children, including adoptive and stepchildren;
- (d) Siblings (brothers and sisters), including adoptive and stepsiblings;
- (e) Spouses of any of the above.

None of the family members listed above, need to be dependent on or living with the ((~~client~~)) person, to be considered immediate family members.

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

WAC 182-512-0550 SSI-related medical—All other excluded resources. All resources described in this section are excluded resources for SSI-related medical programs. Unless otherwise stated, interest earned on the resource amount is counted as unearned income.

(1) Resources necessary for a ((~~client~~)) person who is blind or disabled to fulfill a ((~~department approved~~)) self-sufficiency plan approved by the agency.

(2) Retroactive payments from SSI or RSDI, including benefits a ((~~client~~)) person receives under the interim assistance reimbursement agreement with the Social Security Administration, are excluded for nine months following the month of receipt. This exclusion applies to:

(a) Payments received by the ((~~client~~)) person, the person's spouse, or any other person financially responsible for the ((~~client~~)) person;

(b) SSI payments for benefits due for the month(s) before the month of continuing payment;

(c) RSDI payments for benefits due for a month that is two or more months before the month of continuing payment; and

(d) Proceeds from these payments as long as they are held as cash, or in a checking or savings account. The funds may be commingled with other funds, but must remain identifiable from the other funds for this exclusion to apply. This exclusion does not apply once the payments have been converted to any other type of resource.

(3) All resources specifically excluded by federal law, such as those described in subsections (4) through ((~~12~~)) (11) of this section as long as such funds are identifiable.

(4) Payments made under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(5) Payments made to ((~~Native~~)) American((s)) Indians/Alaska Natives as listed in 20 C.F.R. 416.1182, Appendix to subpart K, section IV, paragraphs (b) and (c), and in 20 C.F.R. 416.1236.

(6) The following ((~~Native~~)) American Indian/Alaska Native funds are excluded resources:

(a) Resources received from a native corporation under the Alaska Native Claims Settlement Act, including:

(i) Shares of stock held in a regional or village corporation;

(ii) Cash or dividends on stock received from the native corporation up to two thousand dollars per person per year;

(ii) Stock issued by a native corporation as a dividend or distribution on stock;

(iv) A partnership interest;

(v) Land or an interest in land; and

(vi) An interest in a settlement trust.

(b) All funds contained in a restricted individual Indian money (IIM) account.

(7) Exercise of federally protected rights, including extraction of exempt resources by a member of a federally recognized tribe during the month of receipt. Any funds from the conversion of the exempt resource which are retained on the first of the month after the month of receipt will be considered exempt if they are in the form of an exempt resource, and will be countable if retained in the form of a countable resource.

(8) Restitution payment and any interest earned from this payment to persons of Japanese or Aleut ancestry who were relocated and interned during war time under the Civil Liberties Act of 1988 and the Aleutian and Pribilof Islands Restitution Act.

(9) Funds received from the Agent Orange Settlement Fund or any other funds established to settle Agent Orange liability claims.

(10) Payments or interest accrued on payments received under the Radiation Exposure Compensation Act received by the injured person, the surviving spouse, children, grandchildren, or grandparents.

(11) Payments or interest accrued on payments received under the Energy Employees Occupational Illness Compensation Act of 2000 (EEOICA) received by the injured person, the surviving spouse, children, grandchildren, or grandparents.

(12) Payments from:

(a) The Dutch government under the Netherlands' Act on Benefits for Victims of Persecution (WUV).

(b) The Victims of Nazi Persecution Act of 1994 to survivors of the Holocaust.

(c) Susan Walker vs. Bayer Corporation, et al., 96-C-5024 (N.D. Ill.) (May 8, 1997) settlement funds.

(d) Ricky Ray Hemophilia Relief Fund Act of 1998 P.L. 105-369.

(13) The unspent social insurance payments received due to wage credits granted under sections 500 through 506 of the Austrian General Social Insurance Act.

(14) Tax refunds and earned income tax credit refunds and payments are excluded as resources for twelve months after the month of receipt.

(15) Payments from a state administered victim's compensation program for a period of nine calendar months after the month of receipt.

(16) Cash or in-kind items received as a settlement for the purpose of repairing or replacing a specific excluded resource are excluded:

(a) For nine months. This includes relocation assistance provided by state or local government.

(b) Up to a maximum of thirty months, when:

(i) The ((~~client~~)) person intends to repair or replace the excluded resource; and

(ii) Circumstances beyond the control of the settlement recipient prevented the repair or replacement of the excluded

resource within the first or second nine months of receipt of the settlement.

(c) For an indefinite period, if the settlement is from federal relocation assistance.

(d) Permanently, if the settlement is assistance received under the Disaster Relief and Emergency Assistance Act or other assistance provided under a federal statute because of a catastrophe which is declared to be a major disaster by the President of the United States, or is comparable assistance received from a state or local government or from a disaster assistance organization. Interest earned on this assistance is also excluded from resources. Any cash or in-kind items received as a settlement and excluded under this subsection are considered as available resources when not used within the allowable time periods.

(17) Insurance proceeds or other assets recovered by a Holocaust survivor (~~as defined in WAC 388-470-0026(4)~~).

(18) Pension funds owned by an ineligible spouse. Pension funds are defined as funds held in a(n):

(a) Individual retirement account (IRA) as described by the IRS code; or

(b) Work-related pension plan (including plans for self-employed (~~individuals~~) persons, known as Keogh plans).

(19) Cash payments received from a medical or social service agency to pay for medical or social services are excluded for one calendar month following the month of receipt.

(20) SSA- or DVR-approved plans for achieving self-support (PASS) accounts, allowing blind or disabled (~~individuals~~) persons to set aside resources necessary for the achievement of the plan's goals, are excluded.

(21) Food and nutrition programs with federal involvement. This includes Washington Basic Food, school reduced and free meals and milk programs and WIC.

(22) Gifts to, or for the benefit of, a person under eighteen years old who has a life-threatening condition, from an organization described in section 501 (c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of that code, as follows:

(a) In-kind gifts that are not converted to cash; or

(b) Cash gifts up to a total of two thousand dollars in a calendar year.

(23) Veteran's payments made to, or on behalf of, natural children of Vietnam veterans regardless of their age or marital status, for any disability resulting from spina bifida suffered by these children.

(24) The following are among assets that are not considered resources and as such are neither excluded nor counted:

(a) Home energy assistance/support and maintenance assistance;

(b) Retroactive in-home supportive services payments to ineligible spouses and parents; and

(c) Gifts of domestic travel tickets. For a more complete list please see POMS @ <http://policy.ssa.gov/poms.nsf/lnx/0501130050>.

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

WAC 182-512-0600 SSI-related medical—Definition of income. (1) Income is anything (~~(an individual)~~) a person receives in cash or in-kind that can be used to meet his/her needs for food(~~(-clothing-))~~ or shelter. Income can be earned or unearned.

(2) Some receipts are not income because they do not meet the definition of income above, including:

(a) Cash or in-kind assistance from federal, state, or local government programs whose purpose is to provide medical care or services;

(b) Some in-kind payments that are not food, clothing or shelter coming from nongovernmental programs whose purposes are to provide medical care or medical services;

(c) Payments for repair or replacement of an exempt resource;

(d) Refunds or rebates for money already paid;

(e) Receipts from sale of a resource;

(f) Replacement of income already received(~~(-))~~) (see 20 C.F.R. 416.1103 for a more complete list of receipts that are not income); and

(g) Receipts from extraction of exempt resources for a member of a federally recognized tribe.

(3) Earned income includes the following types of payments:

(a) Gross wages and salaries, including garnished amounts;

(b) Commissions and bonuses;

(c) Severance pay;

(d) Other special payments received because of employment;

(e) Net earnings from self-employment (WAC (~~388-475-0840~~) 182-512-0840 describes (~~net~~) earnings exclusions);

(f) Self-employment income of tribal members unless the income is specifically exempted by treaty;

(g) Payments for services performed in a sheltered workshop or work activities center;

(h) Royalties earned by (~~(an individual)~~) a person in connection with any publication of his/her work and any honoraria received for services rendered; (~~(or)~~) and

(i) In-kind payments made in lieu of cash wages, including the value of food, clothing or shelter.

(4) Unearned income is all income that is not earned income. Some types of unearned income are:

(a) Annuities, pensions, and other periodic payments;

(b) Alimony and support payments;

(c) Dividends and interest;

(d) Royalties (except for royalties earned by (~~(an individual)~~) a person in connection with any publication of his/her work and any honoraria received for services rendered which would be earned income);

(e) Capital gains;

(f) Rents;

(g) Benefits received as the result of another's death to the extent that the total amount exceeds the expenses of the deceased person's last illness and burial paid by the recipient;

(h) Gifts;

(i) Inheritances;

(j) Prizes and awards; ~~((or))~~ and
 (k) Amounts received by tribal members from gaming revenues.

(5) Some items which may be withheld from income, but which the ~~((department))~~ agency considers as received income are:

- (a) Federal, state, or local income taxes;
- (b) Health or life insurance premiums;
- (c) SMI premiums;
- (d) Union dues;
- (e) Penalty deductions for failure to report changes;
- (f) Loan payments;
- (g) Garnishments;
- (h) Child support payments, court ordered or voluntary (WAC ~~((388-475-0900))~~ 182-512-0900 has an exception for deemors);

(i) Service fees charged on interest-bearing checking accounts;

(j) Inheritance taxes; and
 (k) Guardianship fees if presence of a guardian is not a requirement for receiving the income.

(6) Countable income, for the purposes of this chapter, means all income that is available to the ~~((individual))~~ person:

- (a) If it cannot be excluded~~((;))~~; and
- (b) After deducting all allowable disregards and deductions.

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

WAC 182-512-0650 SSI-related medical—Available income. (1) Income is considered available to a ~~((client))~~ person at the earliest of when it is:

- (a) Received~~((;))~~; or
 - (b) Credited to ~~((an individual's))~~ a person's account~~((;))~~;
- or
- (c) Set aside for his or her use~~((;))~~; or
 - (d) Can be used to meet the ~~((client's))~~ person's needs for food~~((, clothing))~~ or shelter.

(2) Anticipated nonrecurring lump sum payments are treated as income in the month received, with the exception of those listed in WAC ~~((388-475-0700))~~ 182-512-0700(5), and any remainder is considered a resource in the following month.

(3) Reoccurring income is considered available in the month of normal receipt, even if the financial institution posts it before or after the month of normal receipt.

(4) In-kind income received from anyone other than a legally responsible relative is considered available income only if it is earned income.

AMENDATORY SECTION (Amending WSR 12-20-001, filed 9/19/12, effective 10/20/12)

WAC 182-512-0700 SSI-related medical—Income eligibility. (1) In order to be eligible, ~~((an individual))~~ a person is required to do everything necessary to obtain any income to which he or she is entitled including (but not limited to):

- (a) Annuities~~((;))~~;

(b) Pensions~~((;))~~;

(c) Unemployment compensation~~((;))~~;

(d) Retirement~~((;))~~; and

(e) Disability benefits; even if their receipt makes the ~~((individual))~~ person ineligible for agency services, unless the ~~((individual))~~ person can provide evidence showing good reason for not obtaining the benefits.

(2) The agency ~~((or its authorized representative))~~ does not count this income until the ~~((individual))~~ person begins to receive it. Income is budgeted prospectively for all ~~((medical))~~ Washington apple health (WAH) health care programs.

(3) Anticipated nonrecurring lump sum payments other than retroactive SSI/SSDI payments are considered income in the month received, subject to reporting requirements in WAC ~~((388-418-0007(4))~~ 182-504-0110. Any unspent portion is considered a resource the first of the following month.

(4) The agency ~~((or its authorized representative))~~ follows income and resource methodologies of the supplemental security income (SSI) program defined in federal law when determining eligibility for WAH SSI-related medical or medicare savings programs unless the agency adopts rules that are less restrictive than those of the SSI program.

(5) Exceptions to the SSI income methodology:

(a) Lump sum payments from a retroactive SSDI benefit, when reduced by the amount of SSI received during the period covered by the payment, are not counted as income;

(b) Unspent retroactive lump sum money from SSI or SSDI is excluded as a resource for nine months following receipt of the lump sum; and

(c) Both the principal and interest portions of payments from a sales contract, that meet the definition in WAC 182-512-0350(10), are unearned income.

(6) To be eligible for WAH categorically needy (CN) SSI-related ~~((medical))~~ health care coverage, ~~((an individual's))~~ a person's countable income cannot exceed the WAH CN program standard described in:

(a) WAC 182-512-0010 for noninstitutional ~~((medical))~~ WAH coverage unless living in an alternate living facility; or

(b) WAC ~~((388-513-1305))~~ 182-513-1305(2) for noninstitutional WAH CN ~~((benefits))~~ coverage while living in an alternate living facility; or

(c) WAC ~~((388-513-1315))~~ 182-513-1315 for institutional and waiver services ~~((medical benefits))~~ coverage.

(7) To be eligible for SSI-related ~~((medical))~~ health care coverage provided under the WAH medically needy (MN) program, ~~((an individual))~~ a person must:

(a) Have countable income at or below the effective WAH MN program standard as described in WAC 182-519-0050; ~~((or))~~

(b) Satisfy spenddown requirements described in WAC 182-519-0110;

(c) Meet the requirements for noninstitutional WAH MN ~~((benefits))~~ coverage while living in an alternate living facility (ALF). See WAC ~~((388-513-1305))~~ 182-513-1305(3); or

(d) Meet eligibility for institutional WAH MN ~~((benefits))~~ coverage described in WAC ~~((388-513-1315))~~ 182-513-1315.

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

WAC 182-512-0750 SSI-related medical—Countable unearned income. The ((department)) agency counts unearned income for Washington apple health (WAH) SSI-related medical programs as follows:

(1) The total amount of income benefits to which a ((client)) person is entitled is treated as available unearned income even when the benefits are:

(a) Reduced through the withholding of a portion of the benefit amount to repay a legal obligation;

(b) Garnished to repay a debt, other legal obligation, or make any other payment such as payment of medicare premiums.

(2) Payments received on a loan:

(a) Interest paid on the loan amount is considered unearned income; and

(b) Payments on the loan principal are not considered income. However, any amounts retained on the first of the following month are considered a resource.

(3) Money borrowed by a person, which must be repaid, is not considered income. It is considered a loan. If the money received does not need to be repaid, it is considered a gift.

(4) Rental income received for the use of real or personal property, such as land, housing or machinery is considered unearned income. The countable portion of rental income received is the amount left after deducting necessary expenses of managing and maintaining the property paid in that month or carried over from a previous month. Necessary expenses are those such as:

(a) Advertising for tenants;

(b) Property taxes;

(c) Property insurance;

(d) Repairs and maintenance on the property; and

(e) Interest and escrow portions of a mortgage.

NOTE: When a ((client)) person is in the business of renting properties and actively works the business (over twenty hours per week), the income is counted as earned income.

NEW SECTION

WAC 182-512-0760 SSI-related medical—Education assistance. (1) The agency does not count:

(a) Educational assistance in the form of grants, loans or work study, issued from Title IV of the Higher Education Amendments (Title IV – HEA) and Bureau of Indian Affairs (BIA) education assistance programs. Examples of Title IV – HEA and BIA educational assistance include, but are not limited to:

(i) College work study (federal and state);

(ii) Pell grants; and

(iii) BIA higher education grants.

(b) Educational assistance in the form of grants, loans or work study made available under any program administered by the department of education (DOE) to an undergraduate student. Examples of programs administered by DOE include, but are not limited to:

(i) Christa McAuliffe Fellowship Program;

(ii) Jacob K. Javits Fellowship Program; and

(iii) Library Career Training Program.

(2) For assistance in the form of grants, loans or work study under the Carl D. Perkins Vocational and Applied Technology Education Act, P.L. 101-391:

(a) If the person attends school half-time or more, the agency subtracts the following expenses:

(i) Tuition;

(ii) Fees;

(iii) Costs for purchase or rental of equipment, materials, or supplies required of all students in the same course of study;

(iv) Books;

(v) Supplies;

(vi) Transportation;

(vii) Dependent care; and

(viii) Miscellaneous personal expenses.

(b) If the person attends school less than half-time, the agency subtracts the following expenses:

(i) Tuition;

(ii) Fees; and

(iii) Costs for purchase or rental of equipment, materials, or supplies required of all students in the same course of study.

(3) WorkFirst work-study income is not counted.

(4) Income received from work study program that is not excluded under subsection (1) of this section is counted as earned income and is subject to earned income disregards as described in WAC 182-512-0840(2).

(5) If the person receives Veteran's Administration Educational Assistance:

(a) All applicable attendance costs are subtracted; and

(b) The remaining income is budgeted as unearned income.

NEW SECTION

WAC 182-512-0770 SSI-related medical—Native American benefits and payments. (1) The agency counts per capita distributions made to a tribal member from gaming moneys.

(2) Examples of income the agency does not count include, but are not limited to:

(a) Up to two thousand dollars per person per calendar year received under the Alaska Native Claims Settlement Act, P.L. 92-203 and 100-241;

(b) Income received from Indian trust funds or lands held in trust by the Secretary of the Interior for an Indian tribe or individual tribal member. Income includes:

(i) Interest; and

(ii) Investment income accrued while such funds are held in trust.

(c) Income received from Indian judgment funds or funds held in trust by the Secretary of the Interior distributed per capita under P.L. 93-134 as amended by P.L. 97-458 and 98-64. Income includes:

(i) Interest; and

(ii) Investment income accrued while such funds are held in trust.

(d) Up to two thousand dollars per person per calendar year received from leases or other uses of individually owned trust or restricted lands, P.L. 103-66;

(e) Payments from an annuity fund established by the Puyallup Tribe of Indians Settlement Act of 1989, P.L. 101-41, made to a Puyallup tribe member upon reaching twenty-one years of age; and

(f) Payments from the trust fund established by P.L. 101-41 made to a Puyallup tribe member.

(3) The agency excludes other Native American payments and benefits that are excluded by federal law (see 20 C.F.R. 416, Appendix to Subpart K at http://www.socialsecurity.gov/OP_Home/cfr20/416/416-app-k.htm). Examples include, but are not limited to:

(a) White Earth Reservation Land Settlement Act of 1985, P.L. 99-264, Section 16;

(b) Payments made from submarginal land held in trust for certain Indian tribes as designated by P.L. 94-114 and P.L. 94-450;

(c) Payments under the Seneca Nation Settlement Act, P.L. 101-503; and

(d) The receipt of money by a member of a federally recognized tribe from exercising Native American treaty rights or extraction of protected resources, such as fishing, shell-fishing, or selling timber, is considered conversion of an exempt resource during the month of receipt and is not counted as income. Any amounts remaining from the conversion of this exempt resource on the first of the month after the month of receipt will remain exempt if the funds were used to purchase another exempt resource. Any remaining in the form of countable resources (such as in checking or savings accounts) on the first of the month after receipt, will be added to other countable resources for eligibility determinations.

NEW SECTION

WAC 182-512-0780 SSI-related medical—Employment and training programs. (1) The agency excludes income received from the following programs:

(a) Payments issued under the Workforce Investment Act (WIA);

(b) Payments issued under the National and Community Service Trust Act of 1993. This includes payments made through the AmeriCorps program;

(c) Payments issued under Title I of the Domestic Volunteer Act of 1973, such as VISTA, AmeriCorps VISTA, University Year for Action, and Urban Crime Prevention Program; and

(d) All payments issued under Title II of the Domestic Volunteer Act of 1973. These include:

(i) Retired Senior Volunteer Program (RSVP);

(ii) Foster Grandparents Program; and

(iii) Senior Companion Program.

(2) The agency counts training allowances from vocational and rehabilitative programs as earned income when:

(a) The program is recognized by federal, state, or local governments; and

(b) The allowance is not a reimbursement.

(3) The agency excludes support service payments received by or made on behalf of WorkFirst recipients.

NEW SECTION

WAC 182-512-0785 SSI-related medical—Effect of a sponsor's income. (1) The following definitions apply to this section:

(a) **"Sponsor"** means a person who agreed to meet the needs of a sponsored immigrant by signing a United States Citizenship and Immigration Services Affidavit of Support form I-864 or I-864A. This includes a sponsor's spouse if the spouse signed the affidavit of support.

(b) **"Sponsored immigrant"** means a person who must have a sponsor under the Immigration and Nationality Act (INA) to be admitted into the United States for residence.

(c) **"Deeming"** means the agency counts a part of the sponsor's income and resources as available to the sponsored immigrant.

(d) **"Exempt"** means the person meets one of the conditions of WAC 182-512-0190.

(2) If the person is a sponsored immigrant and is not exempt from deeming, the person must provide the following information to be eligible for Washington apple health (WAH) SSI-related coverage even if the person is not receiving support from their sponsor:

(a) The name and address of the sponsor;

(b) The income and resources of the sponsor; and

(c) Any additional information needed for the agency to determine if:

(i) Income must be deemed to the person's medical assistance unit (MAU); and

(ii) The amount of income that must be deemed to the MAU.

(3) If the person is not eligible for coverage because the agency does not have the information needed regarding the sponsor, eligibility for other unsponsored household members applying for coverage is not delayed. Although the sponsored immigrant may not be eligible for coverage, the following is counted when determining the eligibility of other household members:

(a) All earned or unearned income of the sponsored immigrant that is not excluded under chapter 182-512 WAC; and

(b) All deductions the sponsored immigrant would be eligible for under chapter 182-512 WAC.

(4) If the person refuses to provide the agency with the information needed regarding the sponsor, the other adult members in the MAU must provide the information. If the same person sponsored everyone in the MAU, the entire MAU is not eligible for WAH coverage until someone provides the information that is needed.

NEW SECTION

WAC 182-512-0790 SSI-related medical—Exemption from sponsor deeming. (1) A person who meets any of the following conditions is permanently exempt from deeming and the agency does not count the sponsor's income or resources when determining eligibility for Washington apple health (WAH) SSI-related coverage:

(a) The Immigration and Nationality Act (INA) does not require the person to have a sponsor. Immigrants who are not required to have a sponsor include those with the following

status with U.S. Citizenship and Immigration Services (USCIS):

- (i) Refugee;
- (ii) Parolee admitted under Section 212(d)(5) of the Immigration and Nationality Act (INA);
- (iii) Asylee;
- (iv) Cuban/Haitian entrant under Section 202 of the Immigration Reform and Control Act of 1986 (IRCA);
- (v) Amerasians admitted with an I-551 admission code of AM1, AM2, AM3, AM6, AM7, or AM8; and
- (vi) Special immigrant from Iraq or Afghanistan.

(b) The person meets the blindness or disability requirements described in WAC 182-512-0050(1);

(c) The person was sponsored by an organization or group as opposed to another person;

(d) The person is a nonqualified or undocumented alien as defined in WAC 182-503-0530 (3) and (4);

(e) The person has worked or can get credit for forty qualifying quarters of work under Title II of the Social Security Act. The agency does not count a quarter of work toward this requirement if the person working received TANF, basic food, SSI, CHIP, or nonemergency medicaid coverage. A quarter of work earned by the following people is counted toward the forty qualifying quarters:

- (i) The person;
 - (ii) The person's parents for the time they worked before the person turned eighteen years old (including the time they worked before the person's birth); and
 - (iii) The person's spouse if still married or if the spouse is deceased.
- (f) The person has become a United States (U.S.) citizen;
- (g) The sponsor is dead; or
- (h) If USCIS or a court decides that the person, their child, or their parent was a victim of domestic violence from the person's sponsor and:

- (i) The person no longer lives with the sponsor; and
 - (ii) Leaving the sponsor caused the need for coverage.
- (2) A person is exempt from the deeming process while in the same assistance unit (AU) as the sponsor.

(3) If the person, their child, or their parent was a victim of domestic violence, the person is exempt from the deeming process for twelve months if:

- (a) They no longer live with the person who committed the violence; and
- (b) Leaving this person caused the need for health coverage.

(4) If the person's medical assistance unit (MAU) has income at or below one hundred thirty percent of the federal poverty level (FPL), the person is exempt from the deeming process for twelve months. This is called the "indigence exemption." A person may choose to use this exemption or not to use this exemption in full knowledge of the possible risks involved. See risks in subsection (5) of this section. For this rule, the agency counts the following as income:

- (a) Earned and unearned income received by any member of the MAU from any source; and
- (b) The value of any noncash items of value such as free rent, commodities, goods, or services received from another person or organization.

(5) A person who chooses not to use the indigence exemption must provide verification of the sponsor's income and resources and will be subject to the deeming rules described in WAC 182-512-0795.

(6) For federally funded programs, if the person uses the indigence exemption, the agency is required by law to give the U.S. Attorney General the following information:

- (a) The names of the sponsored people in the person's AU;
- (b) That the person is exempt from deeming due to income;
- (c) The sponsor's name; and
- (d) The effective date that the twelve-month exemption began.

NEW SECTION

WAC 182-512-0795 SSI-related medical—Budgeting a sponsor's income. (1) The agency counts some of the income of a person's sponsor as unearned income to the medical assistance unit (MAU) if:

(a) The sponsor signed the U.S. Citizenship and Immigration Services (USCIS) Affidavit of Support form I-864 or I-864A; and

(b) The person is not exempt from the deeming process in WAC 182-512-0190.

(2) The agency determines the amount of income that must be deemed from the sponsor by taking the following steps:

(a) Add together all of the sponsor's earned and unearned income that is not excluded under WAC 182-512-0860;

(b) Add all of the spouse's earned and unearned income that is not excluded under WAC 182-512-0860;

(c) Subtract an allocation for the sponsor equal to the one-person federal benefit rate (FBR);

(d) Subtract an allocation for the sponsor's spouse as follows:

(i) If the spouse is also a cosponsor of the noncitizen, allow an allocation equal to the one-person FBR; or

(ii) If the spouse is not a cosponsor but lived in the same household as the sponsor, allow an allocation equal to one-half of the FBR.

(e) Subtract an allocation equal to one-half FBR for each dependent of the sponsor. The dependent's income is not subtracted from the sponsor's dependent's allocation; and

(f) The income remaining is deemed as unearned income to the noncitizen and is added to the noncitizen's own income.

(3) If the sponsor has sponsored other noncitizens, all of the sponsor's income is deemed to each person that they sponsored and is not divided between them.

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

WAC 182-512-0800 SSI-related medical—General income exclusions. The ~~((department))~~ agency excludes, or does not consider, the following when determining a ~~((client's))~~ person's eligibility for Washington apple health (WAH) SSI-related medical programs:

(1) The first twenty dollars per month of unearned income. If there is less than twenty dollars of unearned

income in a month, the remainder is excluded from earned income in that month.

(a) The twenty-dollar limit is the same, whether applying it for a couple or for a single person.

(b) The disregard does not apply to income paid totally or partially by the federal government or a nongovernmental agency on the basis of an eligible person's needs.

(c) The twenty dollars disregard is applied after all exclusions have been taken from income.

(2) Income that is not reasonably anticipated or is received infrequently or irregularly, whether for a single person or each person in a couple when it is:

(a) Earned and does not exceed a total of thirty dollars per calendar quarter; or

(b) Unearned and does not exceed a total of sixty dollars per calendar quarter;

(c) ~~An increase(s)~~ in a ~~((client's))~~ person's burial funds that were established on or after November 1, 1982, if the increase~~((s are))~~ is the result of:

(i) Interest earned on excluded burial funds; or

(ii) Appreciation in the value of an excluded burial arrangement that was left to accumulate and become part of separately identified burial funds.

(3) Essential expenses necessary for a ~~((client))~~ person to receive compensation (e.g., necessary legal fees in order to get a settlement)~~((s))~~.

(4) Receipts, which are not considered income, when they are for:

(a) Replacement or repair of an exempt resource;

(b) Prepayment or repayment of medical care paid by a health insurance policy or medical service program; or

(c) Payments made under a credit life or credit disability policy.

(5) The fee a guardian or representative payee charges as reimbursement for providing services, when such services are a requirement for the ~~((client))~~ person to receive payment of the income.

(6) Funds representing shared household costs.

(7) Crime victim's compensation.

(8) The value of a common transportation ticket, given as a gift, that is used for transportation and not converted to cash.

(9) Gifts that are not for food, clothing or shelter, and gifts of home produce used for personal consumption.

(10) The ~~((department))~~ agency does not consider in-kind income received from someone other than a person legally responsible for the ~~((individual))~~ person unless it is earned. Therefore, the following in-kind payments are not counted when determining eligibility for WAH SSI-related medical programs~~((s))~~:

(a) In-kind payments for services paid by a ~~((client's))~~ person's employer if:

(i) The service is not provided in the course of an employer's trade or business; or

(ii) ~~((H))~~ The service is in the form of food ~~((and/or shelter))~~ that is~~((s))~~

~~((A))~~ on the employer's business premises~~((s))~~

~~((B))~~ For the employer's convenience; and

~~((C))~~ If shelter, acceptance by the employee is a condition of employment ~~((s))~~ and for the employer's convenience; or

(iii) The service is in the form of shelter that is on the employer's business premises, for the employer's convenience, and required to be accepted by the employee as a condition of employment.

(b) In-kind payments made to people in the following categories:

(i) Agricultural employees;

(ii) Domestic employees;

(iii) Members of the uniformed services; and

(iv) Persons who work from home to produce specific products for the employer from materials supplied by the employer.

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

WAC 182-512-0820 SSI-related medical—Child-related income exclusions and allocations. (1) For the purposes of Washington apple health (WAH) SSI-related medical eligibility determinations under chapter ~~((388-475))~~ 182-512 WAC, a child is defined as ~~((an individual))~~ a person who is:

(a) Unmarried;

(b) Living in the household of the SSI-related applicant;

(c) The natural, adopted or stepchild of the SSI-related applicant or the applicant's spouse;

(d) Not receiving a needs-based cash payment such as TANF or SSI; and

(e) ~~((H))~~ Either:

(i) Age seventeen or younger; or

(ii) Age twenty-one or younger and meets the SSI-related definition of a student described in subsection (6) of this section.

(2) The ~~((department))~~ agency allows an allocation for the support of a child when determining the countable income of an SSI-related applicant. The allocation is calculated as follows:

(a) For WAH categorically needy (CN) ~~((medical))~~ health care coverage, the allocation is deducted from the countable income of a nonapplying spouse before determining the amount of the nonapplying spouse's income to be deemed to the SSI-related applicant. Allocations to children are not deducted from the income of an unmarried SSI-related applicant.

(b) For WAH medically needy (MN) medical coverage, the allocation is first deducted from the income of the nonapplying spouse as described in subsection (2)(a) of this section when the SSI-related applicant is married, and from the income of the applicant when the applicant is not married.

(3) The child's countable income, if any, is subtracted from the maximum child's allowance before determining the amount of allocation.

(4) Foster care payments received for a child who is not SSI-eligible and who is living in the household, placed there by a licensed, nonprofit or public child placement or child-care agency are excluded from income regardless of whether the person requesting or receiving SSI-related medical is the adult foster parent or the child who was placed.

(5) Adoption support payments, received by an adult for a child in the household that are designated for the child's

needs, are excluded as income. Adoption support payments that are not specifically designated for the child's needs are not excluded and are considered unearned income to the adult.

(6) The ~~((department))~~ agency excludes the earned income of a person age twenty-one or younger if that person is a student. ~~((A student must meet one of the following criteria))~~ In order to allow the student earned income exclusion, a student must:

(a) Attend a school, college, or university a minimum of eight hours a week; or

(b) Pursue a vocational or technical training program designed to prepare the student for gainful employment a minimum of twelve hours per week; or

(c) Attend school or be home schooled in grades seven through twelve at least twelve hours per week.

(7) Any portion of a grant, scholarship, fellowship, or gift used for tuition, fees and/or other necessary educational expenses at any educational institution is excluded from income and not counted as a resource for nine months after the month of receipt.

(8) One-third of child support payments received for a child who is an applicant for WAH SSI-related medical is excluded from the child's income. Child support payments that are subject to the one-third deduction may be voluntary or court-ordered payments for current support or arrears.

(9) The one-third deduction described in subsection (8) of this section does not apply to child support payments received from an absent parent for a child living in the home when the parent(s) or their spouse is the applicant for SSI-related medical. Voluntary or court-ordered payments for current support or arrears are always considered the income of the child for whom they are intended and not income to the parent(s).

(10) The following gifts to, or for the benefit of, a person under eighteen years old who has a life-threatening condition, from an organization described in section 501 (c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of that code, ~~((is))~~ are excluded ~~((as follows))~~:

(a) In-kind gifts that are not converted to cash; ~~((or))~~ and

(b) Cash gifts up to a total of two thousand dollars in a calendar year.

(11) Veteran's payments made to, or on behalf of, natural children of Vietnam veterans regardless of their age or marital status, for any disability resulting from spina bifida suffered by these children are excluded from income. Any portion of a veteran's payment that is designed as the dependent's income is countable income to the dependent and not the applicant (assuming the applicant is not the dependent).

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

WAC 182-512-0840 SSI-related medical—Work- and agency-related income exclusions. The ~~((department))~~ agency excludes the following when determining eligibility for Washington apple health (WAH) SSI-related medical programs:

(1) Work related expenses:

(a) That enable an SSI-related ~~((client))~~ person to work; or

(b) That allows a blind or disabled ~~((client))~~ person to work and that are directly related to the person's impairment.

(2) First sixty-five dollars plus one-half of the remainder of earned income. This is considered a work allowance/incentive. This deduction does not apply to income already excluded.

(3) Any portion of self-employment income normally allowed as an income deduction by the Internal Revenue Service (IRS).

(4) Earned income of a person age twenty-one or younger if that person meets the definition of a student as defined in WAC ~~((388-475-0820))~~ 182-512-0820.

(5) Veteran's aid and attendance, housebound allowance, unusual/unreimbursed medical expenses (UME) paid by the VA to some disabled veterans, their spouses, widows or parents. For people receiving WAH long-term care services, see chapter ~~((388-513))~~ 182-513 WAC.

(6) Department of veterans affairs benefits designated for the veteran's dependent as long as the SSI-related applicant is not the dependent receiving the income. If an SSI-related applicant receives a dependent allowance based on the veteran's or veteran's survivor claim, the income is countable as long as it is not paid due to unusual medical expenses (UME).

(7) Payments provided in cash or in-kind, to an ineligible or nonapplying spouse, under any government program that provides social services provided to the ~~((client))~~ person, such as chore services or attendant care.

(8) SSA refunds for medicare buy-in premiums paid by the ~~((client))~~ person when the state also paid the premiums.

(9) Income that causes a ~~((client))~~ person to lose SSI eligibility, due solely to reduction in the SSP.

(10) Tax rebates or special payments excluded under other statutes.

(11) Any public agency refund of taxes paid on real property or on food.

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

WAC 182-512-0860 SSI-related medical—Income exclusions under federal statute or other state laws. The Social Security Act and other federal statutes or state laws list income that the ~~((department))~~ agency excludes when determining eligibility for Washington apple health (WAH) SSI-related medical programs. These exclusions include, but are not limited to:

(1) Income tax refunds;

(2) Federal earned income tax credit (EITC) payments for twelve months after the month of receipt;

(3) Compensation provided to volunteers in the Corporation for National and Community Service (CNCS), formerly known as ACTION programs established by the Domestic Volunteer Service Act of 1973. P.L. 93-113;

(4) Assistance to a person (other than wages or salaries) under the Older Americans Act of 1965, as amended by sec-

tion 102 (h)(1) of Pub. L. 95-478 (92 Stat. 1515, 42 U.S.C. 3020a);

(5) Federal, state and local government payments including assistance provided in cash or in-kind under any government program that provides medical or social services;

(6) Certain cash or in-kind payments a ~~((client))~~ person receives from a governmental or nongovernmental medical or social service agency to pay for medical or social services;

(7) Value of food provided through a federal or nonprofit food program such as WIC, donated food program, school lunch program;

(8) Assistance based on need, including:

(a) Any federal SSI income or state supplement payment (SSP) based on financial need;

(b) Basic food ~~((stamps))~~;

(c) ~~((GA-U))~~ State-funded cash assistance;

(d) CEAP;

(e) TANF; and

(f) Bureau of Indian Affairs (BIA) general assistance.

(9) Housing assistance from a federal program such as HUD if paid under:

(a) United States Housing Act of 1937 (section 1437 et seq. of 42 U.S.C.);

(b) National Housing Act (section 1701 et seq. of 12 U.S.C.);

(c) Section 101 of the Housing and Urban Development Act of 1965 (section 1701s of 12 U.S.C., section 1451 of 42 U.S.C.);

(d) Title V of the Housing Act of 1949 (section 1471 et seq. of 42 U.S.C.); ~~((or))~~

(e) Section 202(h) of the Housing Act of 1959; or

(f) Weatherization provided to low-income homeowners by programs that consider income in the eligibility determinations~~((;))~~.

(10) Energy assistance payments including:

(a) Those to prevent fuel cutoffs~~((;))~~; and

(b) Those to promote energy efficiency.

(11) Income from employment and training programs as specified in WAC ~~((388-450-0045))~~ 182-512-0780.

(12) Foster grandparents program;

(13) Title IV-E and state foster care maintenance payments if the foster child is not included in the assistance unit;

(14) The value of any childcare provided or arranged (or any payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act, as amended by section 8(b) of P.L. 102-586 (106 Stat. 5035).

(15) Educational assistance as specified in WAC ~~((388-450-0035))~~ 182-512-0760.

(16) Up to two thousand dollars per year derived from ~~((an individual's))~~ a person's interest in Indian trust or restricted land.

(17) Native American benefits and payments as specified in WAC ~~((388-450-0040))~~ 182-512-0770 and other Native American payments excluded by federal statute. ~~((For a complete list of these payments, see 20 C.F.R. 416, Subpart K, Appendix, IV-))~~

(18) Payments from Susan Walker v. Bayer Corporation, et al., 96-c-5024 (N.D. Ill) (May 8, 1997) settlement funds;

(19) Payments from Ricky Ray Hemophilia Relief Fund Act of 1998, P.L. 105-369;

(20) Disaster assistance paid under Federal Disaster Relief P.L. 100-387 and Emergency Assistance Act, P.L. 93-288 amended by P.L. 100-707 and for farmers P.L. 100-387;

(21) Payments to certain survivors of the Holocaust as victims of Nazi persecution; payments excluded pursuant to section 1(a) of the Victims of Nazi Persecution Act of 1994, P.L. 103-286 (108 Stat. 1450);

(22) Payments made under section 500 through 506 of the Austrian General Social Insurance Act;

(23) Payments made under the Netherlands' Act on Benefits for Victims of Persecution (WUV);

(24) Restitution payments and interest earned to Japanese Americans or their survivors, and Aleuts interned during World War II, established by P.L. 100-383;

(25) Payments made from the Agent Orange Settlement Funds or any other funds to settle Agent Orange liability claims established by P.L. 101-201;

(26) Payments made under section six of the Radiation Exposure Compensation Act established by P.L. 101-426; and

(27) Any interest or dividend is excluded as income, except for the community spouse of an institutionalized ~~((individual))~~ person.

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

WAC 182-512-0880 SSI-related medical—Special income disregards. Portions of ~~((your))~~ a person's income the ~~((department))~~ agency otherwise counts are disregarded when determining eligibility for Washington apple health (WAH) SSI-related medical programs.

(1) The ~~((department))~~ agency disregards ~~((the following for SSI related medical programs))~~ cost of living adjustments (COLAs) to Social Security benefits and provides categorically needy (CN) SSI-related medicaid benefits under the Pickle Amendment criteria of 42 C.F.R. 435.135(1)(a) to a person who:

(a) ~~((The cost of living adjustment(s) (COLA) for a client who:~~

~~((i))~~ Is currently receiving ((a)) Title II Social Security ((payment)) benefits;

~~((ii))~~ Was eligible for and received ((both SSA and SSI/State)) SSI or State Supplement payments (SSP) ((in the same month for at least one month since)) but became ineligible for those payments after April, 1977; and

~~((iii))~~ Would ((continue to receive SSI/SSP)) still be eligible for SSI or SSP payments ((but for the COLA increase(s) to their SSA)) if the amount of Social Security COLA increases paid under section 215(i) of the Social Security Act were deducted from his or her current Title II Social Security benefits. ((This is commonly known as the adjustment for "Pickle people."

~~((b))~~ (d) To satisfy this provision, a person must have been eligible for and received SSI or SSP payments and in the same month was entitled to, but did not necessarily receive, a Title II Social Security benefit for at least one month since April 1977. This includes a person who receives a Title II

Social Security benefit payment the month after the last SSI or SSP payment is made due to the fact that Social Security is paid the month after entitlement begins.

(e) For purposes of this section, the agency also disregards COLAs received by a person, his or her financially responsible spouse, and other financially responsible family members, such as a parent.

(2) In determining SSI-related CN-WAH coverage, the agency disregards:

(a) Widow(er)'s benefits for a ~~((client))~~ person who:

(i) Was entitled to SSA title II (widow/widower's) benefits in December 1983;

(ii) Was at least fifty years old, but not yet sixty at that time;

(iii) Received title II benefits and SSI in January 1984;

(iv) Would continue to be eligible for SSI/SSP payments if the title II benefits were disregarded; and

(v) Filed an application for medicaid with the state by July 1, 1988.

~~((e))~~ (b) Widow, Widower or Surviving Divorced Spouse (title II) benefits for a ~~((client))~~ person who:

(i) Received SSI/SSP benefits the month prior to receipt of title II benefits;

(ii) Would continue to be eligible for SSI/SSP benefits if the title II benefits or the COLA(s) to those benefits were disregarded; and

(iii) Is not eligible for medicare Part A. This ~~((client))~~ person is considered an SSI recipient until becoming entitled to medicare Part A.

~~((2))~~ (3) A disabled adult child (DAC) who is ineligible for SSI/SSP solely due to receipt of either Social Security benefits as a disabled adult child of a person with a Social Security account or due to receipt of a COLA to the DAC benefits, may be income eligible for WAH categorically needy (CN ~~((medical))~~ health care coverage if disregarding the SSA DAC benefits and COLA brings countable income below the CN standards, and the ~~((client))~~ person:

(a) Is eighteen years of age or older;

(b) Remains related to the SSI program through disability or blindness;

(c) Lost SSI eligibility on or after July 1, 1988, due solely to the receipt of DAC benefits from SSA or a COLA to those benefits; and

(d) Meets the other WAH SSI-related CN medical requirements.

~~((3) Clients)~~ (4) A person is eligible for WAH CN coverage if:

(a) In August 1972, the person received:

(i) Old age assistance (OAA);

(ii) Aid to blind (AB);

(iii) Aid to families with dependent children (AFDC); or

(iv) Aid to the permanently and totally disabled (APTD).

(b) The person was entitled to or received retirement, survivors, and disability insurance (RSDI) benefits; or

(c) The person was ineligible for OAA, AB, AFDC, SSI, or APTD solely because of the twenty percent increase in Social Security benefits under P.L. 92-336.

(5) Persons who stop receiving an SSI cash payment due to earnings, but still meet all of the other SSI eligibility rules and have income below the higher limit established by the

Social Security Act's Section 1619(b) are eligible for continued WAH CN medicaid.

~~((4))~~ (6) TANF income methodology is used to determine countable income for children and pregnant women applying for WAH medically needy (MN) coverage unless the SSI methodology would be more beneficial to the ~~((client-For cases using))~~ person. When using the TANF ~~((methodology, follow the family medical rules and allow the))~~ income methodologies, deduct:

(a) A fifty percent earned income disregard described in WAC 388-450-0170;

(b) Actual child care and dependent care expenses related to employment; and

(c) Child support actually paid.

AMENDATORY SECTION (Amending WSR 12-20-001, filed 9/19/12, effective 10/20/12)

WAC 182-512-0900 SSI-related medical—Deeming and allocation of income. The agency ~~((or its authorized representative))~~ considers income of financially responsible persons to determine if a portion of that income must be regarded as available to other household members.

(1) Deeming is the process of determining how much of another person's income is counted when determining Washington apple health (WAH) eligibility of an SSI-related applicant. When income is deemed to the SSI-related applicant from other household members, that income is considered the applicant's income. Income is deemed only:

(a) From a nonapplying spouse who lives with the SSI-related applicant; or

(b) From a parent(s) residing with an SSI-related applicant child.

(2) An allocation is an amount deducted from income counted in the eligibility determination and considered to be set aside for the support of a person other than the SSI-related applicant. When income is allocated to other household members from the SSI-related applicant(s) or from the applicant's spouse, that income is not counted as income of the SSI-related applicant.

(3) An SSI-related ~~((individual))~~ person applying for WAH categorically needy (CN) ~~((medical))~~ health care coverage must have countable income at or below the SSI categorically needy income level (CNIL) described in WAC 182-512-0010 unless the ~~((individual))~~ person is working and meets all requirements for the health care for workers with disabilities (HWD) program described in WAC 182-511-1000 through 182-511-1250.

(4) For WAH institutional or home and community based waiver programs, use rules described in WAC ~~((388-513-1315))~~ 182-513-1315.

(5) The agency ~~((or its authorized representative))~~ follows rules described in WAC 182-512-0600 through 182-512-0880 to determine the countable income of an SSI-related applicant or SSI-related couple.

(6) If countable income of the applicant exceeds the one-person SSI CNIL prior to considering the income of a nonapplying spouse or children, the applicant is not eligible for WAH CN ~~((medical))~~ health care coverage and the agency ~~((or its authorized representative))~~ determines eligibility for

the WAH medically needy (MN) program. If the countable income does not exceed the SSI CNIL, see WAC 182-512-0920 to determine if income is to be deemed to the applicant from the nonapplying spouse.

(7) If countable income (after allowable deductions) of an SSI-related couple both applying for medical coverage exceeds the two-person SSI CNIL, the couple is not eligible for WAH CN ~~((medical))~~ health care coverage and the agency ~~((or its authorized representative))~~ determines eligibility for the WAH medically needy (MN) program.

(8) For WAH CN ~~((medical))~~ health care coverage, allocations to children are deducted from the nonapplying spouse's unearned income, then from their earned income before income is deemed to the SSI-related applicant. See WAC 182-512-0820.

(9) For MN medical coverage, allocations to children are deducted from the income of the SSI-related applicant or SSI-related applicant couple. See subsection (10) of this section to determine the amount of the allocation.

(10) An SSI-related ~~((individual))~~ person or couple applying for WAH MN ~~((medical))~~ health care coverage is allowed an allocation to a nonapplying spouse, their SSI recipient spouse or their dependent child(ren) to reduce countable income before comparing income to the effective medically needy income level (MNIL) described in WAC 182-519-0050. The agency ~~((or its authorized representative))~~ allocates income:

(a) Up to the effective one-person MNIL to a nonapplying spouse or SSI recipient spouse minus the spouse's countable income; and

(b) Up to one-half of the federal benefit rate (FBR) to each dependent minus each dependent's countable income. See WAC 182-512-0820 for child exclusions.

(11) A portion of a nonapplying spouse's income may be deemed to the SSI-related applicant:

(a) See WAC 182-512-0920(5) to determine how much income is deemed from a nonapplying spouse to the SSI-related applicant when determining WAH CN eligibility; and

(b) See WAC 182-512-0920(10) to determine how much income is deemed from a nonapplying spouse to the SSI-related applicant when determining WAH MN eligibility.

(12) A portion of the income of an ineligible parent or parents is allocated to the needs of an SSI-related applicant child. See WAC 182-512-0940 (4) through (7) to determine how much income is allocated from ineligible parent(s).

(13) ~~((Only))~~ When income ~~((and resources actually contributed to an alien applicant))~~ must be deemed from ~~((their))~~ the sponsor ((are)) or sponsors of a noncitizen applicant or recipient, see WAC 182-512-0795 to determine the amount that must be counted as income((-For allocation of income from an alien sponsor, refer to WAC 388-450-0155)) of the noncitizen applicant or recipient.

AMENDATORY SECTION (Amending WSR 12-20-001, filed 9/19/12, effective 10/20/12)

WAC 182-512-0920 SSI-related medical—Deeming/allocation of income from nonapplying spouse. The agency ~~((or its authorized representative))~~ considers the income of financially responsible persons to determine if a

portion of that income is available to other household members.

(1) A portion of the income of a nonapplying spouse is considered available to meet the needs of ~~((an))~~ a Washington apple health (WAH) SSI-related applicant. A nonapplying spouse is defined as someone who is:

(a) Financially responsible for the SSI-related applicant as described in WAC 182-506-0010 and 182-512-0960. For WAH institutional and home and community based waiver programs, see WAC ~~((388-513-1315))~~ 182-513-1315;

(b) Living in the same household with the SSI-related applicant;

(c) Not receiving a needs based payment such as temporary assistance to needy families (TANF)~~((;))~~ or state-funded cash assistance (SFA); or

(d) Not related to SSI, or is not applying for ~~((medical assistance))~~ WAH coverage including spouses receiving SSI.

(2) An ineligible spouse is the spouse of an SSI cash recipient and is either not eligible for SSI for themselves or who has elected to not receive SSI cash so that their spouse may be eligible. An SSI-related applicant who is the ineligible spouse of an SSI cash recipient is not eligible for WAH categorically needy (CN) ~~((medical))~~ health care coverage and must be considered for ~~((medical))~~ health care coverage under the WAH medically needy (MN) program or for a modified adjusted gross income-based program if the person does not receive medicare.

(3) When determining whether a nonapplying spouse's income is countable, the agency ~~((or its authorized representative))~~:

(a) Follows the income rules described in WAC 182-512-0600 through ~~((182-512-0750))~~ 182-512-0780;

(b) Excludes income described in WAC 182-512-0800 (2) through (10), and all income excluded under federal statute or state law as described in WAC 182-512-0860.

(c) Excludes work-related expenses described in WAC 182-512-0840, with the exception that the sixty-five dollars plus one half earned income deduction described in WAC 182-512-0840(2) does not apply;

(d) Deducts any court ordered child support which the nonapplying spouse pays for a child outside of the home (current support or arrears); and

(e) Deducts any applicable child-related income exclusions described in WAC 182-512-0820.

(4) The agency ~~((or its authorized representative))~~ allocates income of the nonapplying spouse to nonapplying children who reside in the home as described in WAC ~~((388-475-0820))~~ 182-512-0820. Allocations to children are deducted first from the nonapplying spouse's unearned income, then from their earned income.

(a) For WAH CN medical determinations, allocations to children are not allowed out of the income of the SSI-related applicant, only from the income of the nonapplying spouse.

(b) For WAH MN medical determinations, allocations to children are allowed from the income of the SSI-related applicant if the applicant is unmarried.

(5) For WAH SSI-related CN medical determinations, a portion of the countable income of a nonapplying spouse remaining after the deductions and allocations described in subsections (3) and (4) of this section may be deemed to the

SSI-related applicant. If the nonapplying spouse's countable income is:

(a) Less than or equal to one-half of the federal benefit rate (FBR), no income is deemed to the applicant. Compare the applicant's countable income to the one-person SSI categorically needy income level (CNIL) described in WAC 182-512-0010. For health care for workers with disabilities (HWD) applicants, compare to the one-person HWD standard described in WAC 182-505-0100 (1)(c).

(b) Greater than one-half of the FBR, then the entire nonapplying spouse's countable income is deemed to the applicant. Compare the applicant's income to the two-person SSI CNIL. For HWD applicants, compare to the two-person HWD standard described in WAC 182-505-0100 (1)(c).

(6) When income is not deemed to the SSI-related applicant from the nonapplying spouse per subsection (5)(a):

(a) Allow all allowable income deductions and exclusions as described in chapter 182-512 WAC to the SSI-related applicant's income; and

(b) Compare the net remaining income to the one-person SSI CNIL or the one-person HWD standard.

(7) When income is deemed to the SSI-related applicant from the nonapplying spouse per subsection (5)(b) of this section:

(a) Combine the applicant's unearned income with any unearned income deemed from the nonapplying spouse and allow one twenty dollar general income exclusion to the combined amount.

(b) Combine the applicant's earned income with any earned income deemed from the nonapplying spouse and allow the sixty-five dollar plus one half of the remainder earned income deduction (described in WAC 182-512-0840(2)) to the combined amount.

(c) Add together the net unearned and net earned income amounts and compare the total to the two-person SSI CNIL described in WAC 182-512-0010 or the two-person HWD standard described in WAC 182-505-0100 (1)(c). If the income is equal to or below the applicable two-person standard, the applicant is eligible for WAH CN ((medical)) health care coverage.

(8) An SSI-related applicant under the age of sixty-five who is working at or below the substantial gainful activity (SGA) level but who is not eligible for WAH CN coverage under the regular WAH SSI-related program, may be considered for eligibility under the WAH MN program or under the HWD program. The SGA level is determined annually by the Social Security Administration and is posted at: <https://secure.ssa.gov/apps10/poms.nsf/lnx/0410501015>.

(9) If the SSI-related applicant's countable income is above the applicable SSI CNIL standard, the agency or its authorized representative considers eligibility under the WAH MN program or under the HWD program if the ~~((individual))~~ person is under the age of sixty-five and working. An SSI-related applicant who meets the following criteria is not eligible for WAH MN coverage and eligibility must be determined under HWD:

(a) ~~((A))~~ The applicant is blind or disabled ((individual who is)) and under the age of sixty-five;

(b) ~~((Who))~~ The applicant has earned income over the SGA level; and

(c) The applicant is not receiving a title II Social Security cash benefit based on blindness or disability.

(10) For SSI-related WAH MN medical determinations, a portion of the countable income of a nonapplying spouse remaining after the deductions and allocations described in subsections (3) and (4) of this section may be deemed to the SSI-related applicant. If the nonapplying spouse's countable income is:

(a) Less than or equal to the effective one-person MNIL described in WAC 182-519-0050, no income is deemed to the applicant and a portion of the applicant's countable income is allocated to the nonapplying spouse's income to raise it to the effective MNIL standard.

(b) Greater than the effective MNIL, then the amount in excess of the effective one-person MNIL is deemed to the applicant. Compare the applicant's income to the effective one-person MNIL.

(11) When income is not deemed to the SSI-related applicant from the nonapplying spouse per subsection (10)(a) of this section:

(a) Allocate income from the applicant to bring the income of the nonapplying spouse up to the effective one-person MNIL standard;

(b) Allow all allowable income deductions and exclusions as described in chapter 182-512 WAC to the SSI-related applicant's remaining income;

(c) Allow a deduction for medical insurance premium expenses (if applicable); and

(d) Compare the net countable income to the effective one-person MNIL.

(12) When income is deemed to the SSI-related applicant from the nonapplying spouse per subsection (10)(b) of this section:

(a) Combine the applicant's unearned income with any unearned income deemed from the nonapplying spouse and allow one twenty dollar general income exclusion to the combined amount;

(b) Combine the applicant's earned income with any earned income deemed from the nonapplying spouse and allow the sixty-five dollar plus one half of the remainder earned income deduction (described in WAC 182-512-0840(2)) to the combined amount;

(c) Add together the net unearned and net earned income amounts;

(d) Allow a deduction for medical insurance premium expenses (if applicable) per WAC 182-519-0100(5); and

(e) Compare the net countable income to the effective one-person MNIL described in WAC 182-519-0050. If the income is:

(i) Equal to or below the effective one-person MNIL, the applicant is eligible for WAH MN ((medical)) health care coverage with no spenddown.

(ii) Greater than the effective MNIL, the applicant is only eligible for WAH MN ((medical)) health care coverage after meeting a spenddown liability as described in WAC 182-519-0110.

(13) The ineligible spouse of an SSI-cash recipient applying for WAH MN coverage is eligible to receive the deductions and allocations described in subsection (10)(a) of this section.

AMENDATORY SECTION (Amending WSR 12-20-001, filed 9/19/12, effective 10/20/12)

WAC 182-512-0940 SSI-related medical—Deeming income from an ineligible parent(s) to a child applying for SSI-related medical. The agency (~~(or its authorized representative)~~) considers income of financially responsible persons to determine if a portion of that income must be regarded as available to other household members.

(1) A portion of the income of a parent(s) is considered available to the SSI-related applicant child when the child is age seventeen or younger and the parent(s) is:

(a) Financially responsible for the SSI-related child as described in WAC (~~(182-506-0010(2))~~) 182-506-0015;

(b) The natural, adoptive, or step-parent of the child;

(c) Living in the same household with the child;

(d) Not receiving a needs-based payment such as TANF, SFA or SSI; and

(e) Not related to SSI or not applying for medical assistance.

(2) If an SSI-related applicant between the ages of eighteen to twenty-one lives with their parents, only consider the parent's income available to the applicant if it is actually contributed to the applicant. If income is not contributed, count only the applicant's own separate income.

(3) Income that is deemed to the child is considered as that child's income.

(4) When determining whether a parent's income is countable, the agency (~~(or its authorized representative follows)~~):

(a) Follows the income rules described in WAC 182-512-0600 through (~~(182-512-0750))~~ 182-512-0780; and

(b) Excludes income described in WAC 182-512-0800 and 182-512-0840, and all income excluded under a federal statute or state law as described in WAC 182-512-0860.

(5) When determining the amount of income to be deemed from a parent(s) to an SSI-related minor child for Washington apple health (WAH) categorically needy (CN) and medically needy (MN) coverage, the agency (~~(or its authorized representative)~~) reduces the parent(s) countable income in the following order:

(a) Court ordered child support paid out for a child not in the home;

(b) An amount equal to one half of the federal benefit rate (FBR) for each SSI-eligible sibling living in the household, minus any countable income of that child. See WAC (~~(388-478-0055))~~ 182-512-0010 for FBR amount;

(c) A twenty dollar general income exclusion;

(d) A deduction equal to sixty-five dollars plus one-half of the remainder from any remaining earned income of the parent(s);

(e) An amount equal to the one-person SSI CNIL for a single parent or the two-person SSI CNIL for a two parent household;

(f) Any income remaining after these deductions is considered countable income to the SSI-related child and is added to the child's own income. If there is more than one child applying for SSI-related (~~(medical)~~) health care coverage, the deemed parental income is divided equally between the applicant children; and

(g) The deductions described in this section are deducted first from unearned income then from earned income unless they are specific to earned income.

(6) The SSI-related applicant child is also allowed all applicable income exclusions and disregards described in chapter (~~(182-475))~~ 182-512 WAC from their own income. After determining the child's nonexcluded income, the agency (~~(or its authorized representative)~~):

(a) Allows the twenty dollar general income exclusion from any unearned income;

(b) Deducts sixty-five dollars plus one half of the remainder from any earned income which has not already been excluded under the student earned income exclusion (see WAC 182-512-0820)(~~(-)~~); and

(c) Adds the child's countable income to the amount deemed from their parent(s). If the combination of the child's countable income plus deemed parental income is equal to or less than the SSI CNIL, the child is eligible for SSI-related WAH CN (~~(medical)~~) health care coverage.

(7) If the combination of the child's countable income plus deemed parental income is greater than the SSI CNIL, the agency (~~(or its authorized representative)~~) considers the child for SSI-related WAH medically needy (MN) coverage. Any amount exceeding the effective medically needy income level (MNIL) is used to calculate the amount of the child's spenddown liability as described in WAC 182-519-0110. See WAC 182-519-0050 for the current MNIL standards.

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

WAC 182-512-0960 SSI-related medical—Allocating income—How the (~~(department))~~ agency considers income and resources when determining eligibility for (~~(an individual))~~ a person applying for noninstitutional medicaid when another household member is receiving institutional medicaid. (1) The (~~(department))~~ agency follows rules described in WAC (~~(388-513-1315))~~ 182-513-1315 for (~~(an individual))~~ a person residing in a medical institution, approved for a home and community based waiver, or approved for the Washington apple health (WAH) institutional hospice program. The rules in this section describe how the (~~(department))~~ agency considers household income and resources when the household contains both institutional and noninstitutionalized household members.

(2) An institutionalized (~~(individual))~~ person (adult or child) who is not SSI-related may be considered under the long-term care for families and children programs described in WAC (~~(388-505-0230))~~ 182-514-0230 through (~~(388-505-0265))~~ 182-514-0265.

(3) The (~~(department))~~ agency considers the income and resources of spouses as available to each other through the end of the month in which the spouses stopped living together. See WAC (~~(388-513-1330))~~ 182-513-1330 and (~~(388-513-1350))~~ 182-513-1350 when a spouse is institutionalized.

(4) The (~~(department))~~ agency considers income and resources separately as of the first day of the month following the month of separation when spouses stop living together because of placement into a boarding home (assisted living,

enhanced adult residential center, adult residential center, adult family home (AFH), adult residential rehabilitation center/adult residential treatment facility (ARRC/ARTF), or division of developmental disabilities-group home (DDD-GH) facility when:

- (a) Only one spouse enters the facility;
 - (b) Both spouses enter the same facility but have separate rooms; or
 - (c) Both spouses enter separate facilities.
- (5) The ~~((department))~~ agency considers income and resources jointly when both spouses are placed in a boarding home, AFH, ARRC/ARTF, or DDD-GH facility and share a room.

(6) When determining SSI-related WAH categorically needy (CN) or medically needy (MN) eligibility for a community spouse applying for ~~((medical))~~ health care coverage, the ~~((department))~~ agency counts:

- (a) The separate income of the community spouse; plus
- (b) One half of any community income received by the community spouse and the institutionalized spouse; plus
- (c) Any amount allocated to the community spouse from the institutionalized spouse. The terms "community spouse" and "institutional spouse" are defined in WAC ~~((388-513-1301))~~ 182-513-1301.

(7) For the purposes of determining the countable income of a community spouse applying for ~~((medical))~~ health care coverage as described in subsection (6) ~~((above))~~ of this section, it does not matter whether the spouses reside together or not. Income that is allocated and actually available to a community spouse is considered that person's income.

(8) For the purposes of determining the countable income of a community spouse or children applying for ~~((medical))~~ health care coverage under modified adjusted gross income (MAGI)-based family, pregnancy or children's ~~((medical))~~ WAH programs, the ~~((department))~~ agency uses the following rules to determine if the income of the institutionalized person is considered in the eligibility calculation:

(a) When the institutionalized spouse or parent lives in the same home with the community spouse and/or children, their income is counted in the determination of household income following the rules for the medical program that is being considered.

(b) When the institutionalized spouse or parent does not live in the same home as the spouse and/or children, only income that is allocated and available to the household is counted.

(9) When determining the countable income of a community spouse applying for ~~((medical))~~ health care coverage under the WAH MN program, the ~~((department))~~ agency allocates income from the community spouse to the institutionalized spouse in an amount up to the one-person effective medically needy income level (MNIL) less the institutionalized spouse's income, when:

- (a) The community spouse is living in the same household as the institutionalized spouse; ~~((and))~~
- (b) The institutionalized spouse is receiving home and community-based waiver or institutional hospice services described in WAC ~~((388-515-1505))~~ 182-515-1505; and

(c) The institutionalized spouse has gross income of less than the MNIL.

(10) See WAC ~~((388-408-0055))~~ 182-506-0015 for rules on how to determine medical assistance units for households that include SSI-related persons. A separate medical assistance unit is always established for ~~((individuals))~~ persons who meet institutional status described in WAC ~~((388-513-1320))~~ 182-513-1320.

WSR 13-20-101
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-261—Filed October 1, 2013, 10:05 a.m., effective October 1, 2013, 10:05 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900Q; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Rescinds the white sturgeon retention season in the area upstream of the Wauna powerlines scheduled to begin October 19. Catch during the first half of the year was better than expected and the harvest guideline for the lower Columbia River has been reached. Catch and release will be allowed. This regulation essentially allows only sturgeon catch and release in the Columbia River and adjacent tributaries from the mouth upstream of McNary Dam, except The Dalles Pool remains open for retention. The regulation is consistent with Washington state action of July 25 and September 12, 2013. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, 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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

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 0, Amended 0, Repealed 0.

Date Adopted: October 1, 2013.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900B Exceptions to statewide rules—Columbia River sturgeon. Notwithstanding the provisions of WAC 232-28-619:

(1) Effective October 19 through December 31, 2013: it is unlawful to retain white sturgeon caught in those waters of the Columbia River and the adjacent tributaries from the Wauna powerline crossing at river mile 40 near Cathlamet upstream to the sturgeon deadline at Bonneville Dam. Catch and release is allowed.

(2) Effective immediately until further notice:

a. It is permissible to retain legal-size white sturgeon caught in those waters of the Columbia River and tributaries from The Dalles Dam upstream to John Day Dam.

b. Daily possession limit: one white sturgeon.

c. Allowable size limit: 43-54 inches in fork length.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900Q Exceptions to statewide rules—
Columbia River sturgeon. (13-166)

WSR 13-20-105**EMERGENCY RULES****HEALTH CARE AUTHORITY**

(Medicaid Program)

[Filed October 1, 2013, 11:00 a.m., effective October 1, 2013, 11:00 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: **Medicaid expansion rules - Phase 4.7**, the health care authority (HCA) is implementing new regulations under the federal Patient Protection and Affordable Care Act in preparation for healthcare reform in Washington state. This includes the establishment of standalone rules for medical assistance programs, which are required under 2E2SHB 1738, Laws of 2011, which creates HCA as the single state agency responsible for the administrations and supervision of Washington's medicaid program (Washington apple health).

Citation of Existing Rules Affected by this Order: Amending WAC 182-508-0001.

Statutory Authority for Adoption: RCW 41.05.021.

Other Authority: Patient Protection and Affordable Care Act (Public Law 111-148); 42 C.F.R. § 431, 435, and 457; and 45 C.F.R. § 155.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Over the last year the agency has been working diligently with client advocates and other

stakeholders in crafting the new rules to implement the provisions of the Affordable Care Act, including the expansion of medicaid. Although the permanent rule-making process is nearing completion, the permanent rules could not be adopted by the October 1, 2013, deadline due in part to not receiving final federal rules governing this process until this month. Hence the need for the emergency adoption of these rules, while the permanent rule-making process is completed.

Number of Sections Adopted in Order to Comply with Federal Statute: New 2, Amended 1, 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 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 2, Amended 1, Repealed 0.

Date Adopted: October 1, 2013.

Kevin M. Sullivan
Rules Coordinator

NEW SECTION

WAC 182-505-0117 Washington apple health—Eligibility for pregnant minors. (1) A pregnant minor is eligible for the Washington apple health (WAH) for kids program if she:

(a) Meets citizenship or immigration status under WAC 182-503-0535;

(b) Meets Social Security number requirements under WAC 182-503-0115; and

(c) Meets Washington state residency requirements under WAC 182-503-0520 and 182-503-0525.

(2) The medical assistance unit (MAU) of a pregnant minor is the pregnant minor.

(3) There are no income standards and no resource tests for a pregnant minor to be eligible for WAH for kids.

(4) A noncitizen pregnant minor does not need to meet the requirements in subsection (1)(a) or (b) of this section to be eligible for WAH and receive WAH for kids.

(5) The assignment of medical support rights as described in WAC 182-503-0540 does not apply to pregnant minors.

(6) A pregnant minor who was eligible for and received coverage under any WAH program on the last day of pregnancy is eligible for extended medical coverage for postpartum care for a minimum of sixty days from the end of her pregnancy. This extension continues through the end of the month in which the sixtieth day falls.

(7) A pregnant minor who is covered by WAH for kids will be automatically enrolled in the WAH for pregnant women program if she has her nineteenth birthday during her pregnancy.

AMENDATORY SECTION (Amending WSR 12-19-051, filed 9/13/12, effective 10/14/12)

**WAC 182-508-0001 (~~Medical assistance coverage~~)
Washington apple health—Coverage options for adults not (~~covered under family medical programs~~) eligible under MAGI methodologies.** ((1) An adult who does not

meet the institutional status requirements as defined in WAC 388-513-1320 and who does not receive waiver services as described in chapter 388-515 WAC is considered for categorically needy (CN) coverage under this chapter. Individuals excluded from this section have rules applied to eligibility from chapter 388-513 WAC. Under this section an individual is eligible for CN coverage when the individual:

(a) Meets citizenship/immigrant, residency, and Social Security number requirements as described in WAC 182-503-0505; and

(b) Has CN countable income and resources that do not exceed the income and resource standards in WAC 182-512-0010; and

(c) Is sixty five years of age or older, or meets the blind and/or disability criteria of the federal SSI program.

(2) An adult not meeting the conditions of subsection (1)(b) of this section is eligible for CN medical coverage if the individual:

(a) Is a current beneficiary of Title II of the Social Security Act (SSA) benefits who:

(i) Was a concurrent beneficiary of Title II and supplemental security income (SSI) benefits;

(ii) Is ineligible for SSI benefits and/or state supplementary payments (SSP); and

(iii) Would be eligible for SSI benefits if certain cost-of-living (COLA) increases are deducted from the client's current Title II benefit amount:

(A) All Title II COLA increases under P.L. 94-566, section 503 received by the individual since their termination from SSI/SSP; and

(B) All Title II COLA increases received during the time period in (d)(iii)(A) of this subsection by the individual's spouse or other financially responsible family member living in the same household.

(b) Is an SSI beneficiary, no longer receiving a cash benefit due to employment, who meets the provisions of section 1619(b) of Title XVI of the SSA;

(c) Is a currently disabled individual receiving widow's or widower's benefits under section 202 (e) or (f) of the SSA if the disabled individual:

(i) Was entitled to a monthly insurance benefit under Title II of the SSA for December 1983;

(ii) Was entitled to and received a widow's or widower's benefit based on a disability under section 202 (e) or (f) of the SSA for January 1984;

(iii) Became ineligible for SSI/SSP in the first month in which the increase provided under section 134 of P.L. 98-21 was paid to the individual;

(iv) Has been continuously entitled to a widow's or widower's benefit under section 202 (e) or (f) of the SSA;

(v) Would be eligible for SSI/SSP benefits if the amount of that increase, and any subsequent COLA increases provided under section 215(i) of the SSA, were disregarded;

(vi) Is fifty through fifty-nine years of age; and

(vii) Filed an application for medicaid coverage before July 1, 1988.

(d) Was receiving, as of January 1, 1991, Title II disabled widow or widower benefits under section 202 (e) or (f) of the SSA if the individual:

(i) Is not eligible for the hospital insurance benefits under medicare Part A;

(ii) Received SSI/SSP payments in the month before receiving such Title II benefits;

(iii) Became ineligible for SSI/SSP due to receipt of or increase in such Title II benefits; and

(iv) Would be eligible for SSI/SSP if the amount of such Title II benefits or increase in such Title II benefits under section 202 (e) or (f) of the SSA, and any subsequent COLA increases provided under section 215(i) of the act were disregarded.

(e) Is a disabled or blind individual receiving Title II Disabled Adult Childhood (DAC) benefits under section 202(d) of the SSA if the individual:

(i) Is at least eighteen years old;

(ii) Lost SSI/SSP benefits on or after July 1, 1988, due to receipt of or increase in DAC benefits; and

(iii) Would be eligible for SSI/SSP if the amount of the DAC benefits or increase under section 202(d) of the DAC and any subsequent COLA increases provided under section 215(i) of the SSA were disregarded.

(f) Is an individual who:

(i) In August 1972, received:

(A) Old age assistance (OAA);

(B) Aid to blind (AB);

(C) Aid to families with dependent children (AFDC); or

(D) Aid to the permanently and totally disabled (APTD);

and

(ii) Was entitled to or received retirement, survivors, and disability insurance (RSDI) benefits; or

(iii) Is eligible for OAA, AB, AFDC, SSI, or APTD solely because of the twenty percent increase in Social Security benefits under P.L. 92-336.

(3) An adult who does not meet the institutional status requirement as defined in WAC 388-513-1320 and who does not receive waiver services as described in chapter 388-515 WAC is considered for medically needy (MN) coverage under this chapter. Individuals excluded from this section have rules applied to eligibility from chapter 388-513 WAC. Under this section an individual is eligible for MN coverage when the individual:

(a) Meets citizenship/immigrant, residency, and Social Security number requirements as described in WAC 182-503-0505; and

(b) Has MN countable income that does not exceed the income standards in WAC 182-512-0010, or meets the excess income spenddown requirements in WAC 388-519-0110; and

(c) Meets the countable resource standards in WAC 182-519-0050; and

(d) Is sixty five years of age or older or meets the blind and/or disability criteria of the federal SSI program.

(4) MN coverage is available for an aged, blind, or disabled ineligible spouse of an SSI recipient. See WAC 388-519-0100 for additional information.

~~(5) An adult may be eligible for the alien emergency medical program as described in WAC 182-507-0110.~~

~~(6) An adult is eligible for the aged, blind, or disabled program when the individual:~~

~~(a) Meets the requirements of the aged, blind, or disabled program in WAC 388-400-0060 and 388-478-0033; or~~

~~(b) Meets the SSI-related disability standards but cannot get the SSI cash grant due to immigration status or sponsor deeming issues. An adult may be eligible for aged, blind, or disabled cash benefits and CN medical coverage due to different sponsor deeming requirements.~~

~~(7) An adult is eligible for the medical care services (MCS) program when the individual:~~

~~(a) Meets the requirements under WAC 182-508-0005; or~~

~~(b) Meets the aged, blind, or disabled requirements of WAC 388-400-0060 and is a qualified alien as defined in WAC 388-424-0001 who is subject to the five-year bar as described in WAC 388-424-0006(3); or a nonqualified alien as defined in WAC 388-424-0001; or~~

~~(c) Meets the requirements of the ADATSA program as described in WAC 182-508-0320 and 182-508-0375.~~

~~(8) An adult receiving MCS who resides in a county designated as a mandatory managed care plan county must enroll in a plan, pursuant to WAC 182-538-063.) (1) This chapter provides information on eligibility determinations for adults who:~~

~~(a) Need a determination of eligibility on the basis of being aged, blind, or disabled;~~

~~(b) Need a determination of eligibility based on the need for long-term institutional care or home and community-based services;~~

~~(c) Are excluded from coverage under a modified adjusted gross income (MAGI)-based program as referenced in WAC 182-503-0510 on the basis of medicare entitlement;~~

~~(d) Are not eligible for health care coverage under chapter 182-505 WAC due to citizenship or immigration requirements; or~~

~~(e) Are not eligible for health care coverage under chapter 182-505 WAC due to income which exceeds the applicable standard for coverage.~~

~~(2) The agency determines eligibility for Washington apple health (WAH) noninstitutional categorically needy (CN) coverage under chapter 182-512 WAC for an adult who is age sixty-five or older, or who meets the federal blind or disabled criteria of the federal SSI program, and:~~

~~(a) Meets citizenship/immigration, residency, and Social Security number requirements as described in chapter 182-503 WAC; and~~

~~(b) Has CN countable income and resources that do not exceed the income and resource standards in WAC 182-512-0010.~~

~~(3) The agency determines eligibility for WAH health care for workers with disabilities (HWD) CN coverage for adults who meet the requirements described in WAC 182-511-1050, as follows:~~

~~(a) Are age sixteen through sixty-four;~~

~~(b) Meet citizenship/immigration, residency, and Social Security number requirements as described in chapter 182-503 WAC;~~

(c) Meet the federal disability requirements described in WAC 182-511-1150;

(d) Have net income that does not exceed the income standard described in WAC 182-511-1060; and

(e) Are employed full- or part-time (including self-employment) as described in WAC 182-511-1200.

(4) The agency determines eligibility for WAH long-term care CN coverage for adults who meet the institutional status requirements defined in WAC 182-513-1320 under the following rules:

(a) When the person receives coverage under a MAGI-based program and needs long-term care services in an institution, the agency follows rules described in chapter 182-514 WAC;

(b) When the person meets aged, blind, or disabled criteria as defined in WAC 182-512-0050 and needs long-term care services, the agency follows rules described in:

(i) Chapter 182-513 WAC, for an adult who resides in an institution; and

(ii) Chapter 182-515 WAC, for an adult who is determined eligible for WAH home and community-based waiver services.

(5) The agency determines eligibility for WAH noninstitutional CN or medically needy (MN) health care coverage for an adult who resides in an alternate living facility under rules described in WAC 182-513-1305.

(6) The agency determines eligibility for WAH-CN coverage under institutional rules described in chapters 182-513 and 182-515 WAC for an adult who:

(a) Has made a voluntary election of hospice services;

(b) Is not otherwise eligible for noninstitutional CN or MN health care coverage or for whom hospice is not included in the benefit service package available to the person; and

(c) Meets the aged, blind, or disabled criteria described in WAC 182-512-0050.

(7) The agency uses the following rules to determine eligibility for an adult under the WAH-MN program:

(a) Noninstitutional WAH-MN is determined under chapter 182-519 WAC for an adult with countable income that exceeds the applicable CN standard; and

(b) WAH-MN long-term care coverage is determined under WAC 182-514-0255 for an adult age nineteen or twenty who:

(i) Meets institutional status requirements described in WAC 182-513-1320;

(ii) Does not meet blind or disabled criteria described in WAC 182-512-0050; and

(iii) Has countable income that exceeds the applicable CN standard.

(c) WAH-MN long-term care coverage is determined under WAC 182-513-1395 for an aged, blind, or disabled adult who resides in an institution and has countable income that exceeds the special income level (SIL).

(8) An adult is eligible for WAH-MN coverage when he or she:

(a) Meets citizenship/immigration, residency, and Social Security number requirements as described in WAC 182-503-0505;

(b) Has MN countable income that does not exceed the effective MN income standards in WAC 182-519-0050, or

meets the excess income spenddown requirements in WAC 182-519-0110;

(c) Meets the countable resource standards in WAC 182-519-0050; and

(d) Is sixty-five years of age or older or meets the blind or disabled criteria of the federal SSI program.

(9) WAH-MN coverage is available for an aged, blind, or disabled ineligible spouse of an SSI recipient. See WAC 182-519-0100 for additional information.

(10) An adult who does not meet citizenship or alien status requirements described in WAC 182-503-0535 may be eligible for the WAH alien emergency medical program as described in WAC 182-507-0110.

(11) An adult is eligible for the state-funded medical care services (MCS) program when he or she meets the requirements under WAC 182-508-0005.

(12) A person who is entitled to medicare is eligible for coverage under a medicare savings program or the state-funded buy-in program when he or she meets the requirements described in chapter 182-517 WAC.

NEW SECTION

WAC 182-526-0102 Coordinated appeals process with the Washington health benefits exchange. (1) The health care authority (HCA) coordinates with the Washington state health benefits exchange (HBE) to ensure a seamless appeal process for determinations related to eligibility for Washington apple health (WAH) when the modified adjusted gross income (MAGI) methodology is used as described in WAC 182-509-0305.

(2) An applicant, recipient, or an authorized representative of an applicant or recipient may request a WAH hearing:

(a) By telephone;

(b) By mail (which should be sent to Health Care Authority, P.O. Box 45504, Olympia, WA 98504-5504);

(c) In person;

(d) By facsimile transmission;

(e) By e-mail; or

(f) By any other commonly available electronic means.

(3) When an applicant or recipient appeals an HBE determination of eligibility for health insurance premium tax credits (HIPTC) or cost-sharing reductions with HBE and also requests a hearing with the health care authority related to WAH eligibility, the ALJ will not require the applicant or recipient to submit information to the ALJ that the applicant or recipient previously submitted to HBE.

(4) If an applicant or recipient submits to HBE a request for a hearing related to WAH eligibility, the ALJ will accept the date HBE received the request for the hearing as the date filed for the purposes of timeliness standards and will treat it as a valid hearing request.

(5) If the applicant or recipient appeals only the determination related to WAH eligibility, subsection (3) of this section does not apply.