

**WSR 14-04-006**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 14-11—Filed January 23, 2014, 9:29 a.m., effective January 24, 2014]

Effective Date of Rule: January 24, 2014.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:  
 Repealing WAC 232-28-61900X.

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 Kendall Creek Hatchery has met broodstock needs from returning hatchery winter steelhead to meet basin production goals. Reopening the Nooksack River will provide 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: January 23, 2013 [2014].

Philip Anderson  
 Director

**REPEALER**

The following section of the Washington Administrative code is repealed effective January 24, 2014:

WAC 232-28-61900X Exceptions to statewide rules—  
 Nooksack River. (14-03)

**WSR 14-04-007**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 14-12—Filed January 23, 2014, 9:31 a.m., effective January 24, 2014]

Effective Date of Rule: January 24, 2014.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:  
 Repealing WAC 232-28-61900W and 232-28-61900Z; 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: The Whitehorse Hatchery has met broodstock needs from returning hatchery winter steelhead to meet basin production goals. Reopening the North Fork Stillaguamish River will provide 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 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: January 23, 2014.

Philip Anderson  
 Director

**NEW SECTION**

**WAC 232-28-61900Z Exceptions to statewide rules—Cascade River.** Notwithstanding the provisions of WAC 232-28-619, effective immediately through January 31, 2014, it is unlawful to fish in waters of the Cascade River from the Rockport-Cascade Road downstream to the mouth.

REPEALER

The following section of the Washington Administrative Code is repealed effective January 24, 2014:

WAC 232-28-61900W Exceptions to statewide rules—Cascade and North Fork Stillaguamish rivers. (14-02)

REPEALER

The following section of the Washington Administrative Code is repealed effective February 1, 2014:

WAC 232-28-61900Z Exceptions to statewide rules—Cascade River.

**WSR 14-04-008****EMERGENCY RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed January 23, 2014, 10:00 a.m., effective January 26, 2014]

Effective Date of Rule: January 26, 2014.

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*.

**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 previously 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 filing another emergency rule filing to enable adoption of the permanent rule without a lapse. 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. The department is in the process of considering and responding to public comments received, and expects to file the permanent CR-103 by the end of February 2014. This CR-103E supersedes the CR-103E filed as WSR 13-20-076 on September 27, 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: January 21, 2014.

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 14-05 issue of the Register.

**WSR 14-04-010****EMERGENCY RULES****DEPARTMENT OF****FISH AND WILDLIFE**

[Order 14-13—Filed January 23, 2014, 1:59 p.m., effective January 25, 2014]

Effective Date of Rule: January 25, 2014.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07300H; and amending WAC 220-52-073.

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: Quota shares of green sea urchins in Districts 3 and 4 have been fully utilized, and the districts must be closed to prevent overharvest. 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: January 23, 2014.

Philip Anderson  
Director

#### NEW SECTION

**WAC 220-52-07300I Sea urchins** Notwithstanding the provisions of WAC 220-52-073, effective January 25, 2014, until further notice, it is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section:

(1) Red sea urchins: Sea Urchin District 4 is open seven days-per-week. It is unlawful to harvest red sea urchins smaller than 3.25 inches or larger than 5.0 inches (size is largest test diameter exclusive of spines).

(2) Green sea urchins: Sea Urchin Districts 6 and 7 are open seven days-per-week. It is unlawful to harvest green sea urchins smaller than 2.25 inches (size is largest test diameter exclusive of spines).

#### REPEALER

The following section of the Washington Administrative Code is repealed effective January 25, 2014:

WAC 220-52-07300H Sea urchins. (14-10)

**WSR 14-04-012**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 14-14—Filed January 23, 2014, 4:35 p.m., effective January 28, 2014, 12:01 p.m.]

Effective Date of Rule: January 28, 2014, 12:01 p.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-36000H; and amending WAC 220-56-360.

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: Survey results show that adequate razor clams are available for harvest in Razor Clam Areas 1, 3, 4 and 5. Washington department of health has certified clams from these beaches are safe for human consumption. 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: January 23, 2014.

Joe Stohr  
for Philip Anderson  
Director

#### NEW SECTION

**WAC 220-56-36000H Razor clams—Areas and seasons.** Notwithstanding the provisions of WAC 220-56-360, it is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 3, 4, or 5, except as provided in this section:

(1) Effective 12:01 p.m. January 29, 2014 through 11:59 p.m. February 2, 2014, razor clam digging is allowed in Razor Clam Area 1. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

(2) Effective 12:01 p.m. January 28, 2014 through 11:59 p.m. February 2, 2014, razor clam digging is allowed in

Razor Clam Area 3. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

(3) Effective 12:01 p.m. February 1, 2014 through 11:59 p.m. February 1, 2014, razor clam digging is allowed in Razor Clam Area 4. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

(4) Effective 12:01 p.m. January 30, 2014 through 11:59 p.m. February 2, 2014, razor clam digging is allowed in Razor Clam Area 5. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

It is unlawful to dig for razor clams at any time in Long Beach, Twin Harbors Beach or Copalis Beach Clam sanctuaries as defined in WAC 220-56-372.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. February 3, 2014:

WAC 220-56-36000H Razor clams—Areas and seasons.

#### **WSR 14-04-055**

##### **EMERGENCY RULES**

#### **HEALTH CARE AUTHORITY**

(Medicaid Program)

[Filed January 27, 2014, 5:01 p.m., effective January 28, 2014]

Effective Date of Rule: January 28, 2014.

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: January 27, 2014.

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 orienta-

tion, 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 on or before the tenth day after the date the person receives the written notice of the WAH decision, WAH coverage will continue or be reinstated until the appeals process ends, unless otherwise specified in this section. This is called continued coverage. The agency will treat the fifth day after the date on the notice as the date the person received the notice; however, if the person shows that he or she received the notice more than five days after the date on the notice, the agency will use the actual date the person received the notice for counting the ten-day appeal period for the purpose of providing 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 ((per-son)) 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/ltcstandardsPNAchartsfile.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 medic-aid~~) 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 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.~~

~~(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.~~

~~(e) 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 hun-

dred 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 hun-

dred 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~~.

~~((6) 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) ~~((ADD 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 14-04-056**  
**EMERGENCY RULES**  
**HEALTH CARE AUTHORITY**

(Medicaid Program)

[Filed January 27, 2014, 5:09 p.m., effective January 28, 2014]

Effective Date of Rule: January 28, 2014.

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 23, 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 23, Amended 15, Repealed 4.

Date Adopted: January 27, 2014.

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))~~ persons 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 person enrolled in a silver level plan in the health benefit exchange or for a person 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. Any advance payments of the tax credit 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 via the Washington Healthplanfinder at <http://www.wahealthplanfinder.org>;
- (b) By calling the Washington Healthplanfinder customer support center number;
- (c) By mail to Washington Healthplanfinder, the agency or the agency's designee;
- (d) By fax to Washington Healthplanfinder; or
- (e) At a local department of social and health services (DSHS) office.

More information on how to give us an application may be found at the agency's web site: <http://www.hca.wa.gov>.

(2) You may start an application for WAH by giving us at least the following information:

- (a) Name or names of those applying;
- (b) Birth dates;
- (c) Contact information; and
- (d) Your signature on the application.

(3) To complete an application for WAH, you must also give us all of the other information requested on the application form.

(4) 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.

(5) You may need to complete a separate application directly with the program providers for the following programs:

- (a) Breast and cervical cancer treatment program described in WAC 182-505-0120; and
- (b) TAKE CHARGE program described in chapter 182-532 WAC.

(6) If you need help filing an application, you can:

(a) Contact the Washington Healthplanfinder customer support center number listed on the application form;

(b) Contact an application assistant, certified application counselor or navigator; or

(c) Have an authorized representative apply on your behalf as described in WAC 182-500-0010.

(7) We will help you with the application or renewal process in a manner that is accessible to persons with disabilities as described in WAC 182-503-0120 and in a manner that is accessible to those who are limited-English proficient as 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 correctional institutions described in RCW 9.94.049, including any of the following institutions, the agency will coordinate with the correctional institution to enroll you in WAH coverage for which you are determined eligible no later than the day 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, with the following exceptions:

(a) If you are pregnant, we process your application within fifteen calendar days;

(b) If you are applying for a program that requires a disability decision, we process your application within sixty calendar days; or

(c) The modified adjusted gross income (MAGI)-based WAH application process using Washington Healthplanfinder may provide faster or real-time determination of eligibility for medicaid.

(2) For calculating time limits, "day one" is the day we get an application from you that includes at least the information described in WAC 182-503-0005(2). If you give us your application during business hours, "day one" is the day you give us your application. If you give us your application outside of business hours, "day one" is the next business day.

(3) We determine eligibility as quickly as possible and respond promptly to applications and information received. We do not delay a decision by using the time limits in this section as a waiting period.

(4) If we need more information to decide if you can get WAH coverage, we will send you a letter within twenty calendar days of your initial application that:

(a) Follows the rules in chapter 182-518 WAC;

(b) States the additional information we need; and

(c) Allows at least ten calendar days to provide it. We will allow you more time if you ask for more time or need an accommodation due to disability or limited-English proficiency.

(5) 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.

(6) 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 promptly on requested information when you provided it timely; or

(b) We did not document the good cause reason before missing a time frame 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 orally or in writing to withdraw your request for coverage; or

(b) Based on all information we have received from you and other sources within the time frames stated in WAC 182-503-0060, including any extra time given at your request or to accommodate a disability or limited-English proficiency:

(i) We are unable to determine that you are eligible; or

(ii) We determine that 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:

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

(b) You request a hearing within ninety days of the date on the denial letter and an administrative law judge (ALJ) or HCA review judge 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 person.** (1) An institutionalized person is a person who resides in an institution as defined in WAC 182-500-0050. The term "person" used in this section means an "institutionalized person" unless otherwise indicated. It does not include persons who receive services under a home and community-based waiver program. When a state is making a placement for a person 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 a person is capable of indicating their intent to reside in Washington state when deciding whether that person is a resident of the state. The agency determines that persons who meet the following criteria are deemed incapable of indicating intent to reside in the state:

- (a) The person 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 person is incapable of indicating intent; or
  - (c) The person is incapable of declaring intent due to a documented medical condition.
- (3) When a person 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 person's state of residence, unless the person 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 a person 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 person.

(b) The state of residence is the state where the parent or legal guardian currently is a resident if the person resides in an institution in that state.

(c) If the parents of the person 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 person has a legal guardian, the state of residence is where the legal guardian is a resident.

(e) If the person 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 persons who are admitted to state institutions. In that case, the state of residence for the person is the state where the institution is located (unless another state has authorized the placement).

(f) If the person 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 person is institutionalized. The term abandoned also includes situations where the parents or legal guardian are deceased.

(5) A person 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) A person 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 person is physically residing, unless the person has been placed in the institution by another state.

(7) A person 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 person moves directly from another state to an institution in Washington state, it is not necessary for the person 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) A person 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 person 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) Person who is otherwise eligible for medical care services (see WAC 182-508-0005);
  - (iii) Child under age nineteen; or
  - (iv) 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, who physically entered the U.S. before August 22, 1996, you may receive WAH for nonpregnant adults if you:

- (a) Became a qualified alien before August 22, 1996; or
- (b) Became a qualified alien on or after August 22, 1996, and have continuously resided in the U.S. between your date of entry into the U.S. and the date on which you became a qualified alien.

(4) If you are a qualified alien who physically entered the U.S. on or after August 22, 1996, and you are a nonpregnant adult, you are not eligible to receive WAH for five years beginning on the day you most recently became a qualified alien, unless you meet one of the exemptions in subsection (5) of this section. This is called the five-year bar. The five-year bar starts on the day you obtain qualified alien 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, or a family member of 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) WAH for kids for pregnant minors as described in WAC 182-505-0117;
- (d) State-funded WAH for kids as described in WAC 182-505-0210; or
- (e) 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 persons 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 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 applying for ((medical coverage)) WAH are considered first for federally funded or federally matched programs. State-funded programs are considered after the person 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 a program specific WAC, the eligibility criteria for each ~~((medical))~~ WAH program ~~((is))~~ are 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 ~~((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))~~ person 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 persons 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))~~ 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 person 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 person receives inpatient hospital services outside of the public institution or correctional facility.

(6) Persons terminated from SSI or ~~((FANF 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)))—Persons who are not residing in an institution.~~** ~~((This section applies to medical care services (MCS-))~~

(1) A resident is ~~((an individual who:~~

~~((a)))~~ a person (including an emancipated person under age eighteen and a married person under age eighteen who is capable of indicating intent) who currently lives in Washington and:

(a) Intends to ~~((continue living here permanently or for an indefinite period of time))~~ reside here, including persons 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))~~ A person 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 who is not covered by subsection (1) of this section and is not eligible for WAH coverage under WAC 182-505-0210 (8) through (10), is a resident if:

(a) The child lives in the state, including with a custodial parent or caretaker with or without a fixed address; or

(b) The child's parent or caretaker has entered the state with a job commitment or seeking employment (whether or not currently employed).

(4) A resident applying for or receiving health care coverage 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 coverage being denied or terminated, if the person:~~

~~(a) Intends to return to the state once the purpose of his or her absence has been accomplished and provides adequate information of this intent after a request by the agency or its designee; and~~

~~(b) Has not been determined eligible for medicaid or state-funded health care coverage in another state (other than coverage in another state for incidental or emergency health care).~~

~~(5) A person 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 a person who moves from another state directly into an institution in Washington state. Residency rules for institutionalized persons are described in WAC 182-503-0525.~~

~~(6) A person of any age who receives a state supplemental payment (SSP) is considered a resident of the state that is making the payment.~~

~~(7) A person 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 person does not live in the state that is making the foster or adoption assistance payment; or~~

~~(b) The person 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 person 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 pro-

grams, ~~((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).~~

~~(5) A person will not lose eligibility for medical assistance programs), your health care coverage may end unless you can show good reason not to cooperate with the agency. Examples of good reason not to cooperate include, but are not limited to:~~

~~(a) Your reasonable belief that cooperating with the agency would result in serious physical or emotional harm to you or the child in your care; and~~

~~(b) Your being incapacitated without the physical ability to cooperate with the agency.~~

~~(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.

~~(5) ((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) 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) 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) 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) 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 person, agency, or 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 your change report, whichever is later.

If you are a WAH-MN recipient with a spenddown liability that has not yet been met and you report a change that results in an increased scope of care, your change report will be treated as a new application for purposes of retroactive WAH coverage as described in WAC 182-504-0005.

(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 reported changes** ~~((on medical program eligibility)).~~ (1) ~~((An individual))~~ If you report a change required under WAC 182-504-0105 during a certification period, you continue((s)) to be eligible for ((medical assistance)) Washington apple health (WAH) 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)) we decide if you can keep getting WAH coverage under a different WAH program.~~

(2) If ((CN medical)) your WAH categorically needy (CN) coverage ends ((under one program and the individual meets)) due to a reported change and you meet all the eligibility requirements ((to be eligible under)) for a different ((CN medical)) WAH-CN program, ((coverage is approved)) we will approve your coverage under the new WAH-CN program. If ((the individual's income exceeds the standard for CN medical coverage, the agency or the agency's designee considers eligibility under the medically needy (MN) program where appropriate.

~~(3) If)) you are not eligible for coverage under any WAH-CN ((medical coverage ends and the individual does not)) program but you meet the eligibility requirements ((to be eligible under a different medical program, the redetermination process is complete and medical assistance is terminated giving advance and adequate notice with the following exception:~~

~~(a) An individual who claims)) for either WAH alternative benefits plan (ABP) coverage or WAH medically needy (MN) coverage, we will approve your coverage under the program you are eligible for. If you are not eligible for coverage under any WAH-CN program but you meet the eligibility requirements for both WAH-ABP coverage and WAH-MN coverage, we will approve the coverage that provides more appropriate coverage for your health care needs.~~

(3) If your WAH coverage ends and you are not eligible for a different WAH program, we stop your WAH coverage after giving you advance and adequate notice unless the exception in subsection (4) applies to you.

(4) If you claim to have a disability ((is referred to the division of disability determination services for a disability determination if)) and that is the only basis ((under which the individual is)) for you to be potentially eligible for ((medical assistance)) WAH coverage, then we refer you to the division of disability determination services (within the department of social and health services) for a disability determination. Pending the outcome of the disability determination, ((medical eligibility is considered)) we also determine if you are eligible for WAH coverage under the SSI-related medical program described in chapter ((388-475)) 182-512 WAC.

((b) An individual with countable income in excess of the SSI-related CN medical standard is considered for medically needy (MN) coverage or medically needy (MN)) If you have countable income in excess of the SSI-related categorically needy income level (CNIL), then we look to see if you can get coverage under WAH-MN with spenddown 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) If you receive coverage under the WAH parent and caretaker relative program described in WAC 182-505-0240, you will be eligible for the WAH health care extension program described in WAC 182-523-0100, if your coverage ends as a result of an increase in your 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 medical extension program.~~

~~(7) We redetermine 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 countable 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 who receives)) If you get SSI-related WAH-CN ((medical)) coverage and report((s)) a change in work or earned income which ((exceeds the substantial gainful activity (SGA) limit set by Social Security Administration)) results in a determination by the division of disability determination services that you no longer meet((s)) the definition of a disabled ((individual)) person as described in WAC 182-512-0050((, unless the individual continues to receive a Title 2 cash benefit, e.g., SSDI, DAC, or DWB. The agency or the agency's designee)) due to work or earnings at the level of substantial gainful activity (SGA), we redetermine((s)) your eligibility for ((such an individual)) coverage under the health care for workers with disabilities (HWD) program ((which waives the SGA income test)). The HWD program is a premium-based program that waives the SGA work or earnings test, and ((the individual)) you must approve the premium amount before ((the agency or the agency's designee)) we can authorize ((ongoing CN medical benefits)) coverage under this program. For HWD program rules, see chapter 182-511 WAC.~~

(9) Prior to a scheduled renewal or March 31, 2014, whichever is later, your WAH coverage will not end and you will not pay more for your WAH coverage as a result of an eligibility determination if:

(a) You are enrolled in WAH at the time of the eligibility determination;

(b) You were enrolled in WAH prior to October 1, 2013; and

(c) At the time of the eligibility determination, your enrollment in WAH is not yet 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 notice of renewal with the information used. You are required to inform us if any of the information we used is wrong.

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

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

(b) If your WAH coverage is terminated because you 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.

(4) If we determine that you are not eligible for renewal of your WAH coverage, we consider your eligibility for all other WAH programs and, with respect to qualified health plans, for health insurance premium tax credits (as defined in WAC 182-500-0045) and cost-sharing reductions (as defined in WAC 182-500-0020).

#### 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 (as described in WAC 182-505-0240) or WAH modified adjusted gross income (MAGI)-based adult coverage (as described in WAC 182-505-0250), you must also report changes to the following:

(a) When total income increases or total deductions decrease by one hundred fifty dollars or more a month and the change will continue for at least two months;

(b) Your federal income tax filing status that you expect to use when you file your taxes for the current tax filing year (such as changing from "married filing separately" to "married filing jointly"); and

(c) The tax dependents you expect to claim when you file your federal income tax return for the current tax filing year.

(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), as required by WAC 182-504-0105, 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). Persons enrolled for parents and caretaker relatives whose earned income increases above this limit are the only persons who may be eligible for the WAH transitional medical program 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 do 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) spend-down 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 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 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)(e) 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, without a new application, when they are born to a mother who is eligible for WAH:

- (a) On the date of the newborn's birth, including a retroactive eligibility determination; or
- (b) Based on meeting a medically needy (MN) spenddown 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 182-519-0110, 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, are 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) ~~((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 the Children's Health Insurance Program Reauthorization Act (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))~~ persons 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, 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-relatable 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.

## 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 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 because you withdrew your application) for any program for any reason (according to rules in WAC 182-503-0080);

(d) Ask you for more information to decide if you can start or renew 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 send written notice when we approve, reopen, reinstate, or deny coverage for any Washington apple health (WAH) program. The notice includes the information described in WAC 182-518-0005(4) and all of the following:

- (a) The WAH coverage for each person approved, reopened or reinstated;
  - (b) The date that each person's coverage begins (the effective date); and
  - (c) The dates for which we approved each person's coverage (certification period).
- (2) Denial and withdrawal notices include:
- (a) The date of denial;
  - (b) Specific facts and reason(s) supporting the decision; and
  - (c) Specific rules or statutes that support or require the decision.
- (3) If we deny your request for health care coverage or consider it withdrawn because you failed to give us requested information, the denial notice also includes:
- (a) A list of the information you did not give us;
  - (b) The date we asked you for the information and the date it was due;
  - (c) Notice that we will reconsider your eligibility if we receive any information related to determining your eligibility, including any changes to information we have, within thirty days of the date of the notice; and
  - (d) Information described in subsection (1) of this section.

NEW SECTION

**WAC 182-518-0015 Washington apple health—Notice requirements verification requests.** (1) We send you written notice when we need more information as described in WAC 182-503-0050 to decide if you are eligible to receive or continue receiving Washington apple health (WAH) coverage. The notice includes:

- (a) A description or list of 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 required in WAC 182-518-0005(4).
- (2) If we have received conflicting information about facts we need to determine your coverage, the notice will also include:
- (a) The information we received that does not match what you gave us and the source; and
  - (b) A request that you send us a statement explaining the difference(s) between the information from you and the information from the other source.
- (3) 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.

- (4) 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 send you written notice before your 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), the notice includes:
- (a) Your new certification period;
  - (b) The information we used to renew 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, the notice 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);
  - (c) What action we will take on what date if we do not receive your completed renewal application on time; and
  - (d) That 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 send you written notice before your Washington apple health (WAH) coverage changes or ends. The notice includes:

- (a) The change in coverage;
  - (b) The date your coverage will change or end;
  - (c) Specific facts and reason(s) for the decision;
  - (d) Specific rules the decision is based on; and
  - (e) Information found in WAC 182-518-0005(4).
- (2) Before we send any notices to end your WAH coverage because your income is more than the modified adjusted gross income (MAGI) standard, we determine if you are eligible for other health care coverage as described in WAC 182-504-0125.
- (3) We notify you at least ten days before we change or end your health care coverage. The ten days start on the day we send you the notice and end on the tenth day. We are not required to give ten days' notice if:
- (a) You asked us to change or end your coverage;
  - (b) We are changing or ending your coverage due to a change in law;
  - (c) We are ending your coverage because everyone in your household either died or has been accepted to receive medicaid coverage somewhere else (another local jurisdiction, state, territory, or commonwealth);

(d) We are ending your coverage because mail we sent you was returned to us with no forwarding address; or

(e) You are incarcerated and it is expected to last more than thirty days.

(4) 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 end 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 send you letters (notices) 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, in an electronic format, or both.

(3) 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 the following information: A valid e-mail address, your name, and your application identification number.

(4) You may ask to receive WAH notices electronically by:

(a) Mailing, delivering, or giving us a written letter to the address listed on our web site;

(b) Sending a facsimile letter to us as directed on our web site;

(c) Call the WAH customer service center at the number listed on our web site;

(d) 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; or

(e) 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 message 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.

**WSR 14-04-057**  
**EMERGENCY RULES**  
**HEALTH CARE AUTHORITY**  
**(Medicaid Program)**

[Filed January 27, 2014, 5:21 p.m., effective January 28, 2014]

Effective Date of Rule: January 28, 2014.

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: January 27, 2014.

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~~((+a))~~

~~(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 ~~((388-478-880))~~ 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;

~~((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.

(5) ~~((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~~(s)~~ 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 transportation. 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 ~~((individuals))~~ person's household.

(3) For ~~((an))~~ 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;
- (iii) 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 182-512-0780 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)~~((:))~~.

(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~~((:))~~:

(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) ~~((#))~~ The service is in the form of food ~~((and/or shelter))~~ that is~~((:~~

~~((A)))~~ on the employer's business premises~~((:~~

~~((B))~~ For the employer's convenience; and

~~((C))~~ If shelter, acceptance by the employee is a condition of employment~~(())~~ 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) ~~((#s))~~ 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 section 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~~(s)~~.

(10) Energy assistance payments including:

(a) Those to prevent fuel cutoffs~~(s)~~; 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)))~~ (i) Is currently receiving ((a)) Title II Social Security ((payment)) benefits;

~~((ii)))~~ (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)))~~ (iii) (c) 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 appli-

cant. 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 ~~((a))~~ 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)~~((s))~~ 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 (~~(388-513-1304)~~) 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.

#### 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](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.

#### **WSR 14-04-058**

#### **EMERGENCY RULES**

#### **HEALTH CARE AUTHORITY**

(Medicaid Program)

[Filed January 27, 2014, 5:27 p.m., effective January 29, 2014]

Effective Date of Rule: January 29, 2014.

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 1, 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 1, Amended 1, Repealed 0.

Date Adopted: January 27, 2014.

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.

#### **WSR 14-04-066**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **FISH AND WILDLIFE**

[Order 14-15—Filed January 29, 2014, 1:22 p.m., effective February 17, 2014]

Effective Date of Rule: February 17, 2014.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:  
Amending WAC 232-28-619.

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 preseason forecast is for a return of five hundred adult spring chinook salmon to the Kalama River in 2014. The closure is necessary to provide enough fish to meet the hatchery escapement goal of approximately four hundred fifty fish. 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 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: January 29, 2014.

Philip Anderson  
Director

#### NEW SECTION

**WAC 232-28-61900A Exceptions to statewide rules—Kalama River.** Notwithstanding the provisions of WAC 232-28-619, effective February 17, 2014, until further notice, it is unlawful to fish for or possess Chinook salmon in waters of the Kalama River from boundary markers at the mouth to the upper salmon hatchery (Kalama Falls).

**WSR 14-04-067  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 14-16—Filed January 29, 2014, 1:24 p.m., effective February 17, 2014]

Effective Date of Rule: February 17, 2014.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-619.

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 preseason forecast is for a return of one thousand one hundred adult spring chinook salmon to the Lewis River in 2014. The closure is necessary to provide enough fish to meet the hatchery escapement goal of approximately one thousand three hundred fifty fish. 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 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: January 29, 2014.

Philip Anderson  
Director

#### NEW SECTION

**WAC 232-28-61900B Exceptions to statewide rules—Lewis River.** Notwithstanding the provisions of WAC 232-28-619, effective February 17, 2014, until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Chinook salmon must be released in waters of the Lewis River from the mouth to the mouth of East Fork.

(2) Chinook salmon must be released in waters of the North Fork Lewis River from the mouth of East Fork to the overhead powerlines below Merwin Dam.

(3) Through May 31, 2014, fishing is closed to all angling on the North Fork Lewis River from Johnson Creek (located downstream from the Lewis River Salmon Hatchery) upstream to Merwin Dam.

**WSR 14-04-075  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 14-19—Filed January 30, 2014, 4:41 p.m., effective February 1, 2014, 12:00 noon]

Effective Date of Rule: February 1, 2014, 12:00 noon.

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 220-32-05100U and 220-32-05100V; 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: Sets the 2014 treaty Indian winter gillnet season. Allows sales of fish caught with platform and hook and line gear above and below Bonneville Dam as long as the commercial gillnet sales are open, and are authorized through tribal regulations. The legal size fork length for white sturgeon in the Bonneville Pool has been adjusted so that all three pools within the Zone 6 areas have the same fork length criteria of measuring within a 43-54 inch slot limit. Fisheries are consistent with the 2008-2017 management agreement and the associated biological opinion. Rule is consistent with action of the Columbia River compact on January 23, 2012, when the compact adopted the rules as permanent. The process for making the rule permanent is not complete at this time. This regulation will cover the fishery until the rule-making process is complete. Regulation is also consistent with compact action of January 29, 2014. Conforms state rules with tribal rules. 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 allows 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 2; Federal Rules or Standards: New 1, Amended 0, Repealed 2; 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: January 30, 2014.

Philip Anderson  
Director

#### NEW SECTION

**WAC 220-32-05100V Columbia River salmon seasons above Bonneville Dam.** Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 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 1F, 1G, and 1H. However, those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

1. Open Areas: SMCRA 1F, 1G, 1H (Zone 6):

(a) Season: 12:00 noon February 1 through 6:00 p.m. March 21, 2014.

(b) Gear: Gill nets, hoop nets, dip bag nets, and rod and reel with hook and line. No mesh restriction on gillnets.

(c) Allowable sale: Salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon between 43-54 inches in fork length may be sold or retained for subsistence purposes. Live release of all oversize and under-size sturgeon is required. Sales of platform/hook-and-line caught fish can be sold during open commercial seasons. Fish caught during open commercial periods can be sold after the season closes.

(d) River mouth sanctuaries (WAC 220-32-058) remain in effect, except for the Spring Creek Hatchery sanctuary (sub-section 5) of WAC 220-32-058.

(e) 24-hour quick reporting required for Washington wholesale dealers, WAC 220-69-240.

2. 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.

(a) Participants: Tribal members may participate under the conditions described in the appropriate MOA or MOU specific to each tribe. Tribal members must carry an official tribal enrollment card.

(b) Season: 12:00 noon February 1 through 6:00 p.m. March 21, 2014.

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

(d) Allowable sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sales of platform/hook-and-line caught fish can be sold during open commercial seasons. Sales are allowed only when lawfully enacted by tribal regulations. Fish caught during open commercial periods can be sold after the season closes. Sturgeon retention is prohibited; sturgeon may not be sold or retained for ceremonial or subsistence purposes. Sales may not occur on USACE property.

(e) 24-hour quick reporting required for Washington wholesale dealers, WAC 220-69-240.

**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 effective 12:00 noon February 1, 2014:

WAC 220-32-05100U Columbia River salmon seasons above Bonneville Dam. (13-263)

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. March 21, 2014:

WAC 220-32-05100V Columbia River salmon seasons above Bonneville Dam.

**WSR 14-04-076**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 14-17—Filed January 30, 2014, 4:43 p.m., effective February 1, 2014]

Effective Date of Rule: February 1, 2014.

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 77.04.020, 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: Sets a second winter-season retention period in Bonneville Reservoir. Harvest during the first opener was less than expected. Fishery managers set aside around five hundred fifty fish for the winter season from the guideline of one thousand one hundred fish. A balance of approximately three hundred fish remain available for harvest during the winter season. About half of the overall guideline is expected to remain available for harvest during a summer retention season. Regulation is consistent with joint Washington-Oregon action of January 29, 2014. Conforms Washington state rules with Oregon state rules. 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: January 30, 2014.

Philip Anderson  
Director

#### NEW SECTION

**WAC 232-28-61900C Exceptions to statewide rules—Columbia River sturgeon.** Notwithstanding the provisions of WAC 232-28-619:

(1) Effective February 1 through February 17, 2014, it is permissible to retain white sturgeon between 38-inches minimum and 54-inches maximum fork length caught in those waters of the Columbia River and tributaries from Bonneville Dam upstream to The Dalles Dam.

(2) Effective 12:01 a.m. February 18, 2014, until further notice, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from Bonneville Dam upstream to The Dalles Dam. Catch and release is permissible.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900U Exceptions to statewide rules—  
Columbia River sturgeon. (13-300)

**WSR 14-04-077**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 14-09—Filed January 30, 2014, 4:56 p.m., effective January 30,  
2014, 4:56 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To amend cougar hunting rules described in WAC 232-28-297.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-29700G; and amending WAC 232-28-297.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, and 77.12.150.

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 change closes specific cougar hunt areas that have met or exceeded the area harvest guideline. Immediate action is necessary to protect cougars from overharvest in hunt areas that have met or exceeded the area harvest guideline.

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: January 15, 2014.

Philip Anderson  
Director

**Reviser's note:** The agency inadvertently filed an incorrect CR-103E form. The agency has refiled this emergency rule as WSR 14-04-080, Order 14-23.

**NEW SECTION**

**WAC 232-12-24300A Public safety cougar removals**  
Notwithstanding the provisions of WAC 232-12-243, the following provisions are effective immediately, provided that unless otherwise amended, all permanent rules remain in effect:

(1) "Harvest guideline" means the estimated allowable harvest established in WAC 232-28-297; the actual harvest may be less than or more than the harvest guideline.

(2) Public safety cougar removal(s), if warranted will be conducted annually between February 15 and March 31st.

(3) Public safety cougar removal permit issuance procedure:

(a) To participate in a public safety cougar removal, individuals must request that his/her name be placed on a list of available participants (participant list) by registering on the Department's website or faxing their request to (360) 902-2162, Attention - Public Safety Cougar Removal. The request must include the individual's WILDID and phone number. An individual's request to be placed on a participant list for a removal period must be submitted on the department's website or received at the department's Olympia office no later than February 7 during the year the removal period begins. To be eligible for a public safety cougar removal permit (permit), the participant must be a Washington resident dog hunter who, at the time of application for a permit, possesses a valid big game license with cougar as a species option. The permit holder must use dogs while participating in a cougar management removal.

(b) To be eligible for a public safety cougar removal permit (permit), the participant must be a Washington resident dog hunter who possesses a valid big game license with cougar as a species option. The permit holder must use dogs while participating in a cougar management removal.

(c) Individuals eligible for participation in a public safety cougar removal will be randomly selected from the participant list. The department will issue a permit to the person whose name is selected from the participant list. Individuals selected will be notified by telephone or mail. Individuals selected must contact the department's wildlife program in Olympia and accept the public safety cougar removal permit within five days of being notified. Failure to contact the department will result in forfeit of the permit and the individual will be placed on the participant list for later selections. Permits may not be sold or reassigned.

(4) Public safety cougar removals: Quota system and participation in public safety cougar removal.

(a) This is a public safety cougar removal administrated by a WDFW designated coordinator. Individuals on the participant list will be contacted on an as-needed basis to conduct removals in portions of GMUs. Not all individuals on the participant list will be contacted in a given year.

(b) Public safety cougar removals will be based on a harvest guideline system established in WAC 232-28-297, where permit holders may hunt cougar until the hunt area harvest guideline has been met and the director has closed the cougar late hunting season or March 31, whichever is first.

(c) It is each cougar hunter's responsibility to verify if the cougar hunting season is open or closed in hunt areas with a harvest guideline. Cougar hunters can verify if the season is open or closed by calling the toll-free cougar hunting hotline or visiting the department's web site.

(d) No more than four total individuals may participate per public safety cougar removal, including the permit holder(s). Only the permit holder, whose name appears on the permit, may take a cougar.

(e) The department reserves the right to accompany permit holders while participating in a public safety cougar removal.

**WSR 14-04-080**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 14-23—Filed January 31, 2014, 10:18 a.m., effective January 31, 2014, 10:18 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend public safety cougar removal rules described in WAC 232-12-243 and file a corrected form.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-12-24300A; and amending WAC 232-12-243.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, and 77.12.150.

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 change addresses emergency confirmed human-cougar safety incidents, confirmed cougar-livestock and cougar-pet depredations.

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 1, 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: January 29, 2014.

Philip Anderson  
Director

**NEW SECTION**

**WAC 232-12-24300B Public safety cougar removals.**

Notwithstanding the provisions of WAC 232-12-243, the following provisions are effective immediately, provided that unless otherwise amended, all permanent rules remain in effect:

(1) "Harvest guideline" means the estimated allowable harvest established in WAC 232-28-297; the actual harvest may be less than or more than the harvest guideline.

(2) Public safety cougar removal(s), if warranted will be conducted annually between February 15 and March 31st.

(3) Public safety cougar removal permit issuance procedure:

(a) To participate in a public safety cougar removal, individuals must request that his/her name be placed on a list of

available participants (participant list) by registering on the Department's website or faxing their request to (360) 902-2162, Attention - Public Safety Cougar Removal. The request must include the individual's WILDID and phone number. An individual's request to be placed on a participant list for a removal period must be submitted on the department's website or received at the department's Olympia office no later than February 7 during the year the removal period begins. To be eligible for a public safety cougar removal permit (permit), the participant must be a Washington resident dog hunter who, at the time of application for a permit, possesses a valid big game license with cougar as a species option. The permit holder must use dogs while participating in a cougar management removal.

(b) To be eligible for a public safety cougar removal permit (permit), the participant must be a Washington resident dog hunter who possesses a valid big game license with cougar as a species option. The permit holder must use dogs while participating in a cougar management removal.

(c) Individuals eligible for participation in a public safety cougar removal will be randomly selected from the participant list. The department will issue a permit to the person whose name is selected from the participant list. Individuals selected will be notified by telephone or mail. Individuals selected must contact the department's wildlife program in Olympia and accept the public safety cougar removal permit within five days of being notified. Failure to contact the department will result in forfeit of the permit and the individual will be placed on the participant list for later selections. Permits may not be sold or reassigned.

(4) Public safety cougar removals: Quota system and participation in public safety cougar removal.

(a) This is a public safety cougar removal administrated by a WDFW designated coordinator. Individuals on the participant list will be contacted on an as-needed basis to conduct removals in portions of GMUs. Not all individuals on the participant list will be contacted in a given year.

(b) Public safety cougar removals will be based on a harvest guideline system established in WAC 232-28-297, where permit holders may hunt cougar until the hunt area harvest guideline has been met and the director has closed the cougar late hunting season or March 31, whichever is first.

(c) It is each cougar hunter's responsibility to verify if the cougar hunting season is open or closed in hunt areas with a harvest guideline. Cougar hunters can verify if the season is open or closed by calling the toll-free cougar hunting hotline or visiting the department's web site.

(d) No more than four total individuals may participate per public safety cougar removal, including the permit holder(s). Only the permit holder, whose name appears on the permit, may take a cougar.

(e) The department reserves the right to accompany permit holders while participating in a public safety cougar removal.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 232-12-24300A Public safety cougar removals.

**WSR 14-04-102**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 14-18—Filed February 4, 2014, 10:18 a.m., effective February 10, 2014, 7:00 p.m.]

Effective Date of Rule: February 10, 2014, 7:00 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 220-33-01000M; 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 the 2014 winter and spring select area commercial seasons. Impacts to nonlocal stocks are expected to be minimal and local chinook stocks reared for the select area sites are available for harvest. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of January 29, 2014. 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: February 4, 2014.

Philip Anderson  
Director

### NEW SECTION

**WAC 220-33-01000N Columbia River seasons below Bonneville.** Notwithstanding the provisions of WAC 220-33-010, WAC 220-33-020, and WAC 220-33-030, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

#### **1. Deep River Select Area**

a) **Dates:** Winter Season: Open hours are 7 PM to 7 AM Monday and Thursday nights from February 10 through April 1, 2014. Spring Season: Open hours are 7 PM to 7 AM Thursday night, April 17; Tuesday night, April 22; and each Monday and Thursday night from April 24, 2014, until further notice.

b) **Area:** From the markers at USCG navigation marker #16, upstream to the Highway 4 Bridge.

c) **Gear:** Gillnets. Winter season: 7-inch minimum mesh. Spring season: 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. Nets cannot be tied off to stationary structures. Nets may not fully cross navigation

channel. It is unlawful to operate in any river, stream or channel any gillnet longer than three-fourths the width of the stream (WAC 220-20-015)(1). It shall be unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in the rules and regulations of the department (WAC 220-20-010)(17). Nets not specifically authorized for use in these areas **may be onboard** a vessel if properly stored (WAC 220-33-001)(2). Nets that are fished at any time between official sunset and official sunrise must have **lighted buoys** on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

d) **Allowable Possession:** Salmon and shad.

e) **Miscellaneous:** Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until WDFW staff has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by WDFW staff. **During the winter season, fishers are required to call 360-795-0319** to confirm the place and time of sampling. In the spring season, a sampling station will be established at WDFW's Oneida Road boat ramp, about 0.5 miles upstream of the lower Deep River area boundary (USCG navigation marker #16).

f) **24-hour** quick reporting is in effect for Washington buyers. (WAC 220-69-240 (14)(d)).

## 2. Tongue Point/South Channel

a) **Dates:** Winter Season: Open hours are 7:00 PM to 7:00 AM. Monday and Thursday nights from February 10 through March 14, 2014. Spring Season: Open hours are 7:00 PM to 7:00 AM. Monday and Thursday nights from April 24, 2014, until further notice.

b) **Area:** Tongue Point fishing area includes all waters bounded by a line extended from the upstream (southern most) pier (#1) at the Tongue Point Job Corps facility, through navigation marker #6 to Mott Island; a line from a marker at the southeast end of Mott Island, northeasterly to a marker on the northwest tip of Lois Island; and a line from a marker on the southwest end of Lois Island, westerly to a marker on the Oregon shore.

The South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy #7 to a marker on the southwest end of Lois Island, upstream to an upper boundary line from a marker on Settler Point, northwesterly to the flashing red USCG marker #10, and northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel.

c) **Gear:** Gillnets. Winter season: 7-inch minimum mesh. Spring season: 9 3/4-inch maximum mesh. In the Tongue Point fishing area, gear restricted to a maximum net length of 250 fathoms, and weight not to exceed two pounds on any one fathom. In the South Channel fishing area, gear restricted to a maximum net length of 250 fathoms, no weight restriction on leadline, and use of additional weights or anchors attached directly to the leadline is allowed.

Nets not specifically authorized for use in these areas **may be onboard** a vessel if properly stored (WAC 220-33-

001(2)). Nets that are fished at any time between official sunset and official sunrise must have **lighted buoys** on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

d) **Allowable Possession:** Salmon and shad.

e) **Miscellaneous:** Fishers are required to call 971-230-8247 and leave a message including name, catch, and where and when fish will be sold. Permanent transportation rules in effect.

f) **24-hour** quick reporting is in effect for Washington buyers. (WAC 220-69-240 (14)(d)).

g) **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. Additionally, cooperation with department personal or observers prior to an open fishery is expected.

## 3. Blind Slough/Knappa Slough Select Area

a) **Dates:** Winter Season: Monday and Thursday nights from February 10 through April 1, 2014. Open hours are 7:00 PM to 7:00 AM

Spring Season: Thursday night, April 17; Tuesday night, April 22; and Monday and Thursday nights from April 24 until further notice. Open hours are 7:00 PM to 7:00 AM

b) **Area:** Winter season: Blind Slough and Knappa Slough both open through March 14 and only Blind Slough is open thereafter. Spring season: Blind Slough and Knappa Slough areas are both open. From May 1 until further notice, the lower boundary of the Knappa Slough fishing area is extended downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon Shore (fall season boundary).

c) **Gear:** Gillnets. Winter season: 7-inch minimum mesh. Spring Season: 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length, with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed.

Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored (WAC 220-33-001(2)). Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

d) **Allowable Possession:** Salmon and shad.

e) **24-hour** quick reporting is in effect for Washington buyers (WAC 220-69-240 (14)(d)). Permanent transportation rules in effect.

f) **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. Additionally, cooperation with department personal or observers prior to an open fishery is expected.



**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 effective 7:00 p.m. February 10, 2014:

WAC 220-33-01000M Columbia River seasons below  
Bonneville. (13-274)