

WSR 21-07-122

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed March 23, 2021, 1:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-02-042.

Title of Rule and Other Identifying Information: WAC 182-512-0550 SSI-related medical—All other excluded resources.

Hearing Location(s): On April 27, 2021, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the agency will not provide a physical location for this hearing. This promotes social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. To attend, you must register prior to the virtual public hearing (April 27, 2021, 10:00 a.m. Pacific Time). Registration URL <https://attendee.gotowebinar.com/register/181514389970288398>. Webinar ID 554-761-747. After registering, you will receive a confirmation email containing the information about joining the webinar.

Date of Intended Adoption: Not sooner than April 28, 2021.

Submit Written Comments to: Health care authority (HCA) Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by April 27, 2021.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email amber.lougheed@hca.wa.gov, by April 9, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending this section due to some clients receiving long-term services and supports who have accumulated resources under requirements described in section 6008 of the Families First Coronavirus Response Act (FFCRA) that may result in their loss of coverage when the public health emergency (PHE) ends. The proposed rules allow the client to spend down these excess resources over twelve months beginning the month following the end of the PHE. Additionally, the interim rule with comment published by the Centers for Medicare and Medicaid Services that is being codified in 42 C.F.R. 433.400 requires action on changes in circumstances for these clients, which had been prohibited under FFCRA.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; 42 C.F.R. 433.400.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Michael Williams, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1346; Implementation and Enforcement: Steve Kozak, P.O. Box 45534, Olympia, WA 98504-2716, 360-725-1343.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule pertains to client program eligibility and does not impose any costs on businesses.

March 23, 2021
Wendy Barcus
Rules Coordinator

OTS-2893.2

AMENDATORY SECTION (Amending WSR 19-23-063, filed 11/15/19, effective 1/1/20)

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 person who is blind or disabled to fulfill a self-sufficiency plan approved by the agency.

(2) Retroactive payments from SSI or old age, survivors, and disability insurance (OASDI), including benefits a 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 person, the person's spouse, or any other person financially responsible for the person;

(b) SSI payments for benefits due for the month(s) before the month of continuing payment;

(c) OASDI 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 (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) The excluded resources described in WAC 182-512-0770 and other resources of American Indians/Alaska Natives that are excluded by federal law.

(6) 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.

(7) Funds received from the Agent Orange Settlement Fund or any other funds established to settle Agent Orange liability claims.

(8) 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.

(9) 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.

(10) 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.

(11) The unspent social insurance payments received due to wage credits granted under sections 500 through 506 of the Austrian General Social Insurance Act.

(12) Tax refunds and earned income tax credit refunds and payments are excluded as resources for twelve months after the month of receipt.

(13) Payments from a state administered victim's compensation program for a period of nine calendar months after the month of receipt.

(14) 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 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 available resources when not used within the allowable time periods.

(15) Insurance proceeds or other assets recovered by a Holocaust survivor.

(16) 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 persons, known as Keogh plans).

(17) 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.

(18) SSA- or division of vocational rehabilitation (DVR)-approved plans for achieving self-support (PASS) accounts, allowing blind or

disabled persons to set aside resources necessary for the achievement of the plan's goals, are excluded.

(19) Food and nutrition programs with federal involvement. This includes Washington Basic Food, school reduced and free meals and milk programs and WIC.

(20) 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.

(21) 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.

(22) The following are among assets that are not 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.

(23) Resources accumulated in a separate account, designated by the client, that result from work activity during the client's enrollment in apple health for workers with disabilities (HWD) program under chapter 182-511 WAC.

(24) Limited to clients who have been or continue to be subject to participation as defined in WAC 182-513-1100 during the public health emergency (PHE), resources accumulated due to not increasing participation in response to section 6008(b) of the Families First Coronavirus Response Act (FFCRA) are excluded for:

(a) The duration of the PHE; and

(b) A period of twelve months after the PHE ends.

(25) Resources listed in the program operations manual system (POMS), not otherwise excluded under this section, are excluded (see SSA POMS Section SI 01130.050 <http://secure.ssa.gov/apps10/poms.nsf/lrx/0501130050>).

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2019 c 70. WSR 19-23-063, § 182-512-0550, filed 11/15/19, effective 1/1/20. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 19-13-010, § 182-512-0550, filed 6/6/19, effective 7/7/19. Statutory Authority: RCW 41.05.021 and Patient Protection and Affordable Care Act (Public Law 111-148), 42 C.F.R. §§ 431, 435, 457 and 45 C.F.R. § 155. WSR 14-07-059, § 182-512-0550, filed 3/14/14, effective 4/14/14. WSR 11-24-018, recodified as § 182-512-0550, filed 11/29/11, effective 12/1/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, chapter 74.12 RCW, and The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010. WSR 11-21-025, § 388-475-0550, filed 10/11/11, effective 10/29/11. Statutory Authority: RCW 74.08.090 and ARRA of 2009, Public Law 111-5, Section 5006(b); 42 C.F.R. 435.601, EEOICPA of 2000, Public Law 106398, Sec. 1, app., Title XXXVI (Oct. 30, 2000) (section 1 adopting as Appendix H.R. 5408), Section 3646 of the Appendix. WSR 10-15-069, § 388-475-0550, filed 7/16/10, effective 8/16/10. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.500, and Social Security Act as amended by P.L. 108-203. WSR

06-04-046, § 388-475-0550, filed 1/26/06, effective 2/26/06. Statutory Authority: RCW 74.04.050, 74.08.090. WSR 04-09-004, § 388-475-0550, filed 4/7/04, effective 6/1/04.]