

## WSR 21-13-163

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed June 23, 2021, 8:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-03-068.

Title of Rule and Other Identifying Information: WAC 182-509-0365 MAGI income—Self-employment income, 182-509-0370 MAGI income—How self-employment income is counted, and 182-509-0375 MAGI income—Lump sums.

Hearing Location(s): On July 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. To attend the virtual public hearing, you must register at the following link [https://zoom.us/webinar/register/WN\\_wMJYBSAHTh2zJLDCJYIPhw](https://zoom.us/webinar/register/WN_wMJYBSAHTh2zJLDCJYIPhw). After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: Not sooner than July 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](mailto:arc@hca.wa.gov), fax 360-586-9727, by July 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](mailto:amber.lougheed@hca.wa.gov), by July 16, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is making amendments to update these rules and align them with the Internal Revenue Code.

**Changes to WAC 182-509-0365: Subsection (1)** includes examples of self-employment business structures, and new subsection (2) states that self-employment income is counted as earned income and lists exceptions.

**In subsection (3) (d)**, the agency added several tax schedules that a self-employed person may use to report income, to align with the IRS Code.

**In subsection (5)**, the agency removed examples of self-employment, as these fall under the more general income descriptions in subsection (1).

The agency removed former **subsection (6)** regarding American Indian/Alaska Native excluded income because this is already addressed in WAC 182-509-0340.

The agency removed former **subsection (7)** regarding job duties not considered to be self-employed, which was redundant with proposed subsections (2) and (3). Former **subsection (8)** has been moved to subsection (2).

**Changes to WAC 182-509-0370:** In **subsections (1) and (2)**, the agency removed language about working at a business long enough to file a tax return because some people may not be required to file, regardless of the time worked.

The agency removed **subsection (3)**, which was not needed with the new language in subsections (1) and (2).

**Changes to WAC 182-509-0375:** The agency revised **subsection (2)** to clarify when a lump sum payment is counted as income.

The agency removed **subsection (4)** regarding lump sums received by members of federally recognized tribes because this income is already addressed in WAC 182-509-0340.

The agency also removed **subsection (5)** regarding tax refunds because this income is already addressed in WAC 182-509-0320.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Mark Westenhaver, P.O. Box 45543, Olympia, WA 98504-2716, 360-725-1324.

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. These rules do not impose any costs on businesses.

June 23, 2021

Wendy Barcus

Rules Coordinator

## OTS-2988.2

AMENDATORY SECTION (Amending WSR 14-01-021, filed 12/9/13, effective 1/9/14)

**WAC 182-509-0365 MAGI income—Self-employment income.** For purposes of determining eligibility for modified adjusted gross income (MAGI)-based Washington apple health (~~((WAH))~~) (see WAC 182-509-0300):

(1) Self-employment income is income earned by a person from running a business, performing a service, selling items that are made, or reselling items with the intent to make a profit, after deducting allowable IRS self-employment expenses. This income can be earned if the person is carrying on a trade or business as a sole proprietor or an independent contractor; a member of a partnership that carries on a trade or business; or otherwise in business for themselves (including a part-time business). Examples of self-employment business structures include, but are not limited to:

(a) Sole proprietorship - An unincorporated business owned by one person.

(b) Partnership - A relationship between two or more people who conduct a trade or business.

(c) Corporation - An entity that conducts business, realizes net income or loss, pays taxes, and distributes profits to shareholders.

(d) S corporation - Similar to a corporation, but this structure passes corporate income, losses, deductions, and credits through to the shareholders for federal tax purposes.

(e) Limited liability company (LLC) - An entity formed by one or more people or entities through a special written agreement that details the organization of the LLC.

(2) Self-employment income is counted as earned income as described in WAC 182-509-0330, except when it is earned by a child or tax dependent and the income is below the filing threshold, as described in WAC 182-509-0360(1).

(3) A person is considered to be self-employed if they earn income without having an employer/employee relationship with the individual who pays the income. ~~((Factors to consider are))~~ Self-employed people do not work for a specific employer who pays them a consistent salary or wage. Factors to consider are whether:

(a) The person has primary control or has the right to control what they do and how they do their job;

(b) The business aspects of the person's job are controlled by the person and not the payer (this includes things like how the person is paid, whether expenses are reimbursed, or who provides tools/supplies);

(c) The person has a ~~((written))~~ contract stating that ~~((he or she is))~~ they are an independent contractor; or

(d) The person reports ~~((his or her))~~ their income using one or more IRS schedules or forms that include, but are not limited to:

(i) Schedule C ~~((r))~~;

(ii) Schedule C-EZ ~~((r))~~;

(iii) Schedule E;

(iv) Schedule F;

(v) Schedule K-1 ~~((r or))~~;

(vi) Schedule SE;

(vii) Form 940;

(viii) Form 941;

(ix) Form 942;

(x) Form 943;

(xi) Form 1065; or

(xii) Form 1120.

~~((3))~~ (4) A person is considered to have an employer/employee relationship when:

(a) The individual the person provides services for has primary control of how the work is done; or

(b) The person receives an IRS Form W-2 to report the income that is earned.

~~((4))~~ (5) Self-employment does not have to be a licensed business for a person's business or activity to qualify as self-employment. ~~((Some examples of self-employment are:~~

~~(a) Child care that requires a license under chapter 74.15 RCW;~~

~~(b) Driving a taxi cab;~~

~~(c) Farming/fishing;~~

~~(d) Odd jobs such as mowing lawns, house painting, gutter cleaning, or car care;~~

~~(e) Running lodging for roomers or boarders. Roomer income includes money paid to a person for shelter costs by someone not included in the person's household who resides in the same home when:~~

~~(i) The person owns or is buying his or her residence; or~~

~~(ii) The person rents all or a part of the residence and the total rent charged to all others in the home is more than the total rent obligation of the person.~~

~~(f) Running an adult family home;~~

~~(g) Providing services such as a massage therapist or a professional escort;~~

~~(h) Retainer fees to reserve a bed for a foster child;~~

~~(i) Selling home-made items or items that are supplied to the individual;~~

~~(j) Selling or donating biological products such as providing blood or reproductive material for profit;~~

~~(k) Working as an independent contractor; and~~

~~(l) Running a business or trade either as a sole proprietorship or in a partnership.~~

~~(5-)) (6) A person must keep records of ((his or her)) their self-employment income and deductions and provide this information to the agency upon request.~~

~~((6) The agency does not count receipt of money by a member of a federally recognized tribe from exercising federally protected rights or extraction of exempt resources as self-employment income (such as fishing, shell-fishing, or selling timber from protected tribal land). This is considered conversion of a resource. See WAC 182-509-0340.~~

~~(7) A person who is an employee of a company or other individual who does the activities listed in subsection (4) of this section as a part of his or her job duties is not considered to be self-employed.~~

~~(8) Self-employment income is counted as earned income as described in WAC 182-509-0330.)~~

[Statutory Authority: RCW 41.05.021, Patient Protection and Affordable Care Act (P.L. 111-148), 42 C.F.R. §§ 431, 435, 457, and 45 C.F.R. § 155. WSR 14-01-021, § 182-509-0365, filed 12/9/13, effective 1/9/14.]

AMENDATORY SECTION (Amending WSR 14-01-021, filed 12/9/13, effective 1/9/14)

**WAC 182-509-0370 MAGI income—How self-employment income is counted.** For purposes of determining eligibility for modified adjusted gross income (MAGI)-based Washington apple health ~~((WAH) (see WAC 182-509-0300):~~

~~(1) If the person has worked long enough at the business to file a federal tax return for the previous year and it represents his or her current income, the agency determines self-employment income by using the income and deductions claimed on the previous year's tax return.~~

~~(2) If the person has not worked long enough at the business to file a federal tax return in the previous year, the agency permits a determination of monthly self-employment income by:~~

~~(a) Adding together gross self-employment income and any profit made from selling business property or equipment over the period of time the business has been in operation within the last year;~~

~~(b) Subtracting business expenses and income deduction expenses allowed by the Internal Revenue Service that the person would be entitled to if they were filing a full year return; and~~

~~(c) Averaging the income to come up with a monthly amount based on the period of time the business has been in operation within the last year.~~

~~(3) If the person's current income does not represent his or her projected income as evidenced by clear indications of future changes in income, the agency permits the person to estimate a monthly amount by averaging income), the medicaid agency counts self-employment income by:~~

~~(1) Adding together gross self-employment income and any profit made from selling business property or equipment over a period of time; and~~

~~(2) Subtracting business expenses and income deductions allowed by the Internal Revenue Service that the person would be entitled to if they were filing a federal tax return and:~~

~~(a) Averaging the income to come up with a monthly amount based on the period of time the business has been in operation within the last year; or~~

~~(b) Averaging the income over a representative period of time if the current income does not represent the person's projected income as shown by clear indications of future changes in income; or~~

~~(c) By averaging the self-employed income and deductions claimed on the previous year's tax return over a representative period of time.~~

[Statutory Authority: RCW 41.05.021, Patient Protection and Affordable Care Act (P.L. 111-148), 42 C.F.R. §§ 431, 435, 457, and 45 C.F.R. § 155. WSR 14-01-021, § 182-509-0370, filed 12/9/13, effective 1/9/14.]

AMENDATORY SECTION (Amending WSR 14-01-021, filed 12/9/13, effective 1/9/14)

**WAC 182-509-0375 MAGI income—Lump sums.** For purposes of determining eligibility for modified adjusted gross income (MAGI)-based Washington apple health ~~((WAH))~~ (see WAC 182-509-0300):

(1) A lump sum payment is money that a person receives but does not expect to receive on a continuing basis, such as an insurance settlement.

~~(2) ((Any portion of a lump sum payment that is awarded for wrongful death, personal injury, damage, or loss of property is excluded from income.~~

~~(3) Any remaining portion of))~~ A lump sum payment is only counted as income if it is received in the month of application, ~~((unless it))~~ and it otherwise qualifies as ~~((nouncounted))~~ countable income under another rule ~~((, and with the exception of subsections (4) and (5) of this section.~~

~~(4) Receipt of a lump sum by a member of a federally recognized tribe from exercising federally protected rights or extraction of exempt resources is considered an exempt resource in the month of receipt and is not budgeted as income.~~

~~(5) Federal, state and local tax refunds (including any interest and penalties) and earned income tax lump sums are not counted as income).~~

[Statutory Authority: RCW 41.05.021, Patient Protection and Affordable Care Act (P.L. 111-148), 42 C.F.R. §§ 431, 435, 457, and 45 C.F.R. § 155. WSR 14-01-021, § 182-509-0375, filed 12/9/13, effective 1/9/14.]