

WSR 22-07-101

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed March 22, 2022, 2:30 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-15-025.

Title of Rule and Other Identifying Information: WAC 182-504-0015 Washington apple health—Certification periods for categorically needy programs, 182-505-0115 Washington apple health—Eligibility for pregnancy and after-pregnancy-related coverage, 182-505-0117 Washington apple health—Eligibility for pregnant minors, 182-509-0305 MAGI income—Persons subject to the modified adjusted gross income (MAGI) methodology, and 182-514-0263 Non-SSI-related institutional medically needy coverage for pregnant people and people age 20 and younger.

Hearing Location(s): On April 26, 2022, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the health care authority (HCA) continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state. To attend the virtual public hearing, you must register in advance https://zoom.us/webinar/register/WN_zsdIV_bnTFeOWg0-cl_Xmw. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than April 27, 2022.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by April 26, 2022.

Assistance for Persons with Disabilities: Contact HCA rules coordinator, phone 360-725-1306, fax 360-586-9727, telecommunication[s] relay services 711, email arc@hca.wa.gov, by April 15, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending these rules to align with SSB 5068 and the American Rescue Plan Act of 2021, which extends postpartum coverage through Washington apple health from 60 days to 12 months, beginning with the month after a pregnancy ends. The revised rules allow people to apply for after-pregnancy coverage within 12 months of their last pregnancy date and also allow people to apply who were not on an apple health program during the time they were pregnant.

Reasons Supporting Proposal: The new rules remove an unsafe gap in coverage and will provide birthing parents with access to stable and consistent care that improves maternal and infant health.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160; SSB 5068.

Rule is necessary because of federal law, Public Law No. 117-2 American Rescue Plan Act of 2021.

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: Melissa Rivera, P.O. Box 45534, Olympia, WA 98504-5534, 360-725-1713.

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

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

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

March 22, 2022
Wendy Barcus
Rules Coordinator

OTS-3524.2

AMENDATORY SECTION (Amending WSR 17-12-017, filed 5/30/17, effective 6/30/17)

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

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

(3) If you are (~~a person~~) eligible for apple health based on pregnancy, the certification period (~~ends~~) continues through the last day of the (~~month that includes the sixtieth day from the day the pregnancy ends.~~

~~(4))~~ month the pregnancy ends. After-pregnancy coverage begins the first day of the month, following the end of the pregnancy, and ends the last day of the 12th month from the time after-pregnancy coverage began.

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

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

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

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

~~((5))~~ (6) For all other CN coverage, the certification period is ((twelve)) 12 months.

~~((6))~~ (7) If you are a child, eligibility is continuous throughout the certification period regardless of a change in circumstances, unless a required premium (described in WAC 182-505-0225) is not paid for three consecutive months, or you:

(a) Turn age ((nineteen)) 19;

(b) Move out-of-state; or

(c) Die.

~~((7))~~ (8) When you turn ~~((nineteen))~~ 19, the certification period ends after the redetermination process described in WAC 182-504-0125 is completed, even if the ~~((twelve))~~ 12-month period is not over, unless:

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

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

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

~~((8))~~ (9) A retroactive certification period is described in WAC 182-504-0005.

~~((9))~~ (10) Coverage under premium-based programs included in apple health for kids as described in chapter 182-505 WAC begins no sooner than the month after creditable coverage ends.

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

OTS-3525.3

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

WAC 182-505-0115 Washington apple health—Eligibility for ~~((pregnant women))~~ pregnancy and after-pregnancy-related coverage.

(1) A pregnant ~~((woman))~~ person is eligible for the Washington apple

health (~~((WAH) for pregnant women program)~~) pregnancy-related coverage if (~~(she)~~) the person:

(a) Meets citizenship or immigration status under WAC 182-503-0535;

(b) Meets Social Security number requirements under WAC 182-503-0115;

(c) Meets Washington state residency requirements under WAC 182-503-0520 and 182-503-0525; and

(d) Has countable income at or below the limit described in:

(i) WAC 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)~~) person meets any required spenddown liability as described in WAC 182-519-0110.

(2) A noncitizen pregnant (~~(woman)~~) person who does not (~~(need to)~~) meet the requirements in subsection (1)(a) or (b) of this section (~~(to be)~~) is eligible for ((WAH and receives either)) apple health if they meet countable income standards for CN or MN coverage ((based upon her)) and have countable income as described in subsection (1)(d) of this section.

(3) The assignment of medical support rights as described in WAC 182-503-0540 (~~(do)~~) does not apply to pregnant ((women)) people.

(4) A (~~(woman)~~) person who was eligible for and (~~(received coverage)) covered under any ((WAH)) minimum essential coverage apple health program as described in WAC 182-500-0070 on the last day of pregnancy ((is)) remains continuously eligible for ((extended medical)) after-pregnancy coverage ((for postpartum care)) for ((a minimum of sixty days from the end of her pregnancy)) 12 months, beginning the month after their pregnancy ends. This includes (~~(women)) people~~ 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)) After-pregnancy coverage has the same scope of coverage as pregnancy-related coverage.~~~~

(5) (~~(All women approved for WAH pregnancy coverage at any time are eligible for family planning services for twelve months after the pregnancy ends.)) A person is eligible for after-pregnancy coverage if they:~~

(a) Apply for and meet all requirements of the apple health pregnancy-related coverage program; and

(b) Apply any time during their 12-month postpartum period to receive ongoing medical coverage until the end of the 12th month after their pregnancy ends.

[Statutory Authority: RCW 41.05.021, 41.05.160, Public Law 111-148, 42 C.F.R. § 431, 435, and 457, and 45 C.F.R. § 155. WSR 14-16-052, § 182-505-0115, filed 7/29/14, effective 8/29/14. WSR 12-13-056, recodified as § 182-505-0115, filed 6/15/12, effective 7/1/12. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 42 U.S.C. 9902(2). WSR 05-07-032, § 388-462-0015, filed 3/9/05, effective 4/9/05. Statutory Authority: RCW 74.08.090, 74.08A.100, 74.09.080, and 74.09.415. WSR 02-17-030, § 388-462-0015, filed 8/12/02, effective 9/12/02. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-462-0015, filed 7/31/98, effective 9/1/98. Formerly WAC 388-508-0820, 388-508-0830, 388-522-2230 and 388-508-0835.]

AMENDATORY SECTION (Amending WSR 14-21-040, filed 10/7/14, effective 11/7/14)

WAC 182-505-0117 Washington apple health—Eligibility for pregnant minors. (1) For the purposes of this rule, "minor" means a person under the age of (~~nineteen~~) 19.

(2) A pregnant minor who meets Washington state residency requirements under WAC 182-503-0520 and 182-503-0525 is eligible for the Washington apple health (~~(WAH)~~) for kids program.

(3) The medical assistance unit (MAU) of a pregnant minor is the pregnant minor.

(4) There are no income standards and no resource tests for a pregnant minor to be eligible for (~~(WAH)~~) apple health for kids.

(5) To ensure reimbursement from the U.S. Department of Health and Human Services, every pregnant minor applicant for (~~(WAH)~~) apple health for kids must provide (~~(her)~~) their Social Security number, unless (~~(she is)~~) they are exempt under WAC 182-503-0515, and must provide (~~(her)~~) their citizenship or immigration status. The immigration status of a pregnant minor who is an undocumented alien (see WAC 182-503-0530) will not be disclosed to any third party.

(6) The assignment of rights as described in WAC 182-503-0540 does not apply to pregnant minors.

(7) A pregnant minor covered by the (~~(WAH)~~) apple health for kids program (~~(will have)~~) has a one-year certification period (~~(unless she has her nineteenth)~~). If a minor has their 19th birthday during (~~(her)~~) their pregnancy, (~~(at which time she will be)~~) they are automatically enrolled in (~~(the WAH)~~) apple health for (~~(pregnant women program. Under the WAH for pregnant women program, her coverage will continue through the end of her pregnancy and she will be)~~) pregnancy coverage through the end of their pregnancy. They are eligible for (~~(extended medical)~~) after-pregnancy coverage for (~~(postpartum care through the end of the month of the sixtieth day after the end of her pregnancy)~~) 12 months, beginning the month after their pregnancy ends.

[Statutory Authority: RCW 41.05.021, 41.05.160, P.L. 111-148, 42 C.F.R. §§ 431, 435, 457, and 45 C.F.R. § 155. WSR 14-21-040, § 182-505-0117, filed 10/7/14, effective 11/7/14.]

OTS-3526.3

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

WAC 182-509-0305 MAGI income—Persons subject to the modified adjusted gross income (MAGI) methodology. (1) Eligibility for Washington apple health (~~(WAH)~~) for the following (~~(persons)~~) people is determined using the modified adjusted gross income (MAGI) methodology described in WAC 182-509-0300 (~~(-)~~):

(~~(1)~~) (a) Parents or caretaker relatives with an eligible dependent child (described in WAC 182-503-0565) whose net countable income is below (~~(fifty-four)~~) 54 percent of the federal poverty level (FPL) as described in WAC 182-505-0240.

~~((2))~~ (b) Parents or caretaker relatives with an eligible dependent child whose net countable income exceeds the standard described in (a) of this subsection ~~((1) of this section)~~ but is at or below ~~((one hundred thirty-three))~~ 133 percent FPL as described in WAC 182-505-0250 and 182-507-0110.

~~((3))~~ (c) Adults with no eligible dependent child with net countable income at or below ~~((one hundred thirty-three))~~ 133 percent FPL as described in WAC 182-505-0250 and 182-507-0110.

~~((4))~~ (d) Pregnant ~~((women or women within a two-month post-partum period))~~ people whose net countable income, based on a household size that includes any unborn children, is below ~~((one hundred ninety-three))~~ 193 percent FPL at the time of application, as described in WAC 182-505-0115.

~~((5))~~ (e) Children age ~~((eighteen))~~ 18 or younger in households with net countable income which is below ~~((two hundred ten))~~ 210 percent FPL, as described in WAC 182-505-0210 (3) (a).

~~((6))~~ (f) Children age ~~((eighteen))~~ 18 or younger in households with net countable income ~~((which))~~ that is between ~~((two hundred ten))~~ 210 percent and ~~((three hundred twelve))~~ 312 percent FPL, as described in WAC 182-505-0215. Children who are eligible under this section are subject to premiums as described in WAC 182-505-0225.

~~((7))~~ (2) Household size for a person who is subject to MAGI income methodologies is determined according to WAC 182-506-0010.

[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, § 182-509-0305, filed 12/9/13, effective 1/9/14.]

OTS-3527.1

AMENDATORY SECTION (Amending WSR 17-23-039, filed 11/8/17, effective 1/1/18)

WAC 182-514-0263 Non-SSI-related institutional medically needy coverage for pregnant ~~((women))~~ people and people age ~~((twenty))~~ 20 and younger. (1) Medically needy (MN) coverage under this section is only available for people age ~~((twenty))~~ 20 and younger or pregnant ~~((women))~~ people. The medicaid agency determines a client who meets SSI-related criteria under WAC 182-512-0050 eligible for institutional MN coverage under WAC 182-513-1395. If a client meets requirements in both this section and WAC 182-513-1395, the client may choose which program to enroll in for coverage.

(2) A client whose income exceeds the categorically needy (CN) standards under WAC 182-514-0250 and 182-514-0260 is:

(a) Eligible for MN coverage with no spenddown if the client's countable income (CI) is equal to or less than the department-contracted daily rate times the number of days in the institution;

(b) Eligible for MN coverage after a spenddown under WAC 182-519-0110 is met if the client's CI is above the department-contracted daily rate times the number of days in the institution but less than the institution's private rate;

(c) Not eligible for payment of long-term care services provided by the institution if the person's CI exceeds the institution's private rate;

(d) Responsible for paying up to the monthly state rate for the facility as participation in the cost of care; and

(e) Allowed to keep a monthly personal needs allowance (PNA) under WAC 182-513-1105. Current PNA and long-term care standards can be found at (~~www.heca.wa.gov/medicaid/eligibility/pages/standards.aspx~~) the agency's program standard for income and resources webpage.

(3) If a client's CI exceeds the institution's private rate, the agency determines eligibility for medical coverage under chapter 182-519 WAC.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2017 c 270. WSR 17-23-039, § 182-514-0263, filed 11/8/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160. WSR 16-04-087, § 182-514-0263, filed 1/29/16, effective 2/29/16.]