

WSR 22-17-067

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed August 15, 2022, 2:12 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-13-156.

Title of Rule and Other Identifying Information: WAC 182-503-0535 Washington apple health—Citizenship and immigration status and 182-507-0135 Immigration status requirement for refugee medical assistance.

Hearing Location(s): On September 27, 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://us02web.zoom.us/webinar/register/WN_9Uo_ve5ETY2is3tDmG1Udw. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than September 28, 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 September 27, 2022, by 11:59 p.m.

Assistance for Persons with Disabilities: Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email johanna.larson@hca.wa.gov, by September 16, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending these rules to align with the Additional Ukraine Supplemental Appropriations Act (AUSAA), 2022, Public Law 117-128. AUSAA provides for resettlement assistance, entitlement programs, and other benefits available to refugees for Ukrainian populations and other non-Ukrainian people in response to their displacement from Ukraine and entry into the United States.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

Rule is necessary because of federal law, Public Law 117-128.

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: Dodi McAlpine, P.O. Box 45534, Olympia, WA 98504-5534, 360-725-9964.

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 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: Public Law 117-128, Sec. 401.

AUSAA authorizes the agency to grant medicaid to Ukrainian nationals and certain other individuals who last habitually resided in Ukraine. If the agency does not adopt this rule, it will be out of compliance with federal law.

Scope of exemption for rule proposal:

Is fully exempt.

August 15, 2022
Wendy Barcus
Rules Coordinator

OTS-3918.3

AMENDATORY SECTION (Amending WSR 22-08-002, filed 3/23/22, effective 4/23/22)

WAC 182-503-0535 Washington apple health—Citizenship and immigration status. (1) Definitions.

(a) **Nonqualified alien** means someone who is lawfully present in the United States (U.S.) but who is not a qualified alien, a U.S. citizen, a U.S. national, or a qualifying American Indian born abroad.

(b) **Qualified alien** means someone who is lawfully present in the United States and who is one or more of the following:

(i) A person lawfully admitted for permanent residence (LPR).

(ii) An abused spouse or child, a parent of an abused child, or a child of an abused spouse who no longer resides with the person who committed the abuse, and who has one of the following:

(A) A pending or approved I-130 petition or application to immigrate as an immediate relative of a U.S. citizen or as the spouse of an unmarried LPR younger than 21 years of age.

(B) Proof of a pending application for suspension of deportation or cancellation of removal under the Violence Against Women Act (VAWA).

(C) A notice of prima facie approval of a pending self-petition under VAWA. An abused spouse's petition covers his or her child if the child is younger than 21 years of age. In that case, the child retains qualified alien status even after he or she turns 21 years of age.

(iii) A person who has been granted parole into the U.S. for one year or more, under the Immigration and Nationality Act (INA) Section 212 (d) (5), including public interest parolees.

(iv) A member of a Hmong or Highland Laotian tribe that rendered military assistance to the U.S. between August 5, 1964, and May 7, 1975, including the spouse, unremarried widow or widower, and unmarried dependent child of the tribal member.

(v) A person who was admitted into the U.S. as a conditional entrant under INA Section 203 (a) (7) before April 1, 1980.

(vi) A person admitted to the U.S. as a refugee under INA Section 207.

(vii) A person who has been granted asylum under INA Section 208.

(viii) A person granted withholding of deportation or removal under INA Section 243(h) or 241 (b) (3).

(ix) A Cuban or Haitian national who was paroled into the U.S. or given other special status.

(x) An Amerasian child of a U.S. citizen under 8 C.F.R. Section 204.4(a).

(xi) A person from Iraq or Afghanistan who has been granted one of the following:

(A) Special immigrant status under INA Section 101 (a) (27);

(B) Special immigrant conditional permanent resident; or

(C) Parole under Section 602 (b) (1) of the Afghan Allies Protection Act of 2009 or Section 1059(a) of the National Defense Authorization Act of 2006.

(xii) An Afghan granted humanitarian parole between July 31, 2021, and September 30, 2022, their spouse or child, or a parent or guardian of an unaccompanied minor who is granted parole after September 30, 2022, under Section 2502 of the Extending Government Funding and Delivering Emergency Assistance Act of 2021.

(xiii) A citizen or national of Ukraine (or a person who last habitually resided in Ukraine) who, under section 401 of the Additional Ukraine Supplemental Appropriations Act, 2022 (AUSAA), was:

(A) Granted parole into the United States between February 24, 2022, and September 30, 2023; or

(B) Granted parole into the United States after September 30, 2023, and is:

(I) The spouse or child of a person described in (b) (xiii) (A) of this subsection; or

(II) The parent, legal guardian, or primary caregiver of a person described in (b) (xiii) (A) of this subsection who is determined to be an unaccompanied child under section 462 (g) (2) of the Homeland Security Act of 2002 or section 412 (d) (2) (B) of the Immigration and Nationality Act.

(xiv) A person who has been certified or approved as a victim of trafficking by the federal office of refugee resettlement, or who is:

(A) The spouse or child of a trafficking victim of any age; or

(B) The parent or minor sibling of a trafficking victim who is younger than 21 years of age.

~~((xiv))~~ (xv) A person from the Federated States of Micronesia, the Republic of Palau, or the Republic of the Marshall Islands living in the United States in accordance with the Compacts of Free Association.

(c) **U.S. citizen** means someone who is a United States citizen under federal law.

(d) **U.S. national** means someone who is a United States national under federal law.

(e) **Undocumented person** means someone who is not lawfully present in the U.S.

(f) **Qualifying American Indian born abroad** means someone who:

(i) Was born in Canada and has at least 50 percent American Indian blood, regardless of tribal membership; or

(ii) Was born outside of the United States and is a member of a federally recognized tribe or an Alaska Native enrolled by the Secretary of the Interior under the Alaska Native Claims Settlement Act.

(2) **Eligibility.**

(a) A U.S. citizen, U.S. national or qualifying American Indian born abroad may be eligible for:

(i) Apple health for adults;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Classic medicaid.

(b) A qualified alien who meets or is exempt from the five-year bar may be eligible for:

- (i) Apple health for adults;
- (ii) Apple health for kids;
- (iii) Apple health for pregnant women; or
- (iv) Classic medicaid.

(c) A qualified alien who neither meets nor is exempt from the five-year bar may be eligible for:

- (i) Alien medical programs;
- (ii) Apple health for kids;
- (iii) Apple health for pregnant women; or
- (iv) Medical care services.

(d) A nonqualified alien may be eligible for:

- (i) Alien medical programs;
- (ii) Apple health for kids;
- (iii) Apple health for pregnant women; or
- (iv) Medical care services.

(e) An undocumented person may be eligible for:

- (i) Alien medical programs;
- (ii) State-only funded apple health for kids; or
- (iii) State-only funded apple health for pregnant women.

(3) **The five-year bar.**

(a) A qualified alien meets the five-year bar if he or she:

(i) Continuously resided in the U.S. for five years or more from the date he or she became a qualified alien; or

(ii) Entered the U.S. before August 22, 1996, and:

(A) Became a qualified alien before August 22, 1996; or

(B) Became a qualified alien on or after August 22, 1996, and has continuously resided in the U.S. between the date of entry into the U.S. and the date he or she became a qualified alien.

(b) A qualified alien is exempt from the five-year bar if he or she is:

(i) A qualified alien as defined in subsection (1)(b)(vi) through ~~((xiv))~~ (xv) of this section;

(ii) An LPR, parolee, or abused person, who is also an armed services member or veteran, or a family member of an armed services member or veteran, as described below:

(A) An active-duty member of the U.S. military, other than active-duty for training;

(B) An honorably discharged U.S. veteran;

(C) A veteran of the military forces of the Philippines who served before July 1, 1946, as described in Title 38 U.S.C. Section 107; or

(D) The spouse, unremarried widow or widower, or unmarried dependent child of an honorably discharged U.S. veteran or active-duty member of the U.S. military.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-08-002, § 182-503-0535, filed 3/23/22, effective 4/23/22; WSR 21-19-029, § 182-503-0535, filed 9/9/21, effective 10/10/21; WSR 15-10-002, § 182-503-0535, filed 4/22/15, effective 5/23/15. 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, § 182-503-0535, filed 7/29/14, effective 8/29/14.]

OTS-3917.3

AMENDATORY SECTION (Amending WSR 22-08-002, filed 3/23/22, effective 4/23/22)

WAC 182-507-0135 Immigration status requirement for refugee medical assistance (RMA). (1) An individual is eligible for refugee medical assistance (RMA) if the individual provides documentation issued by the United States Citizenship and Immigration Services (USCIS) to show that the individual is:

- (a) Admitted as a refugee under section 207 of the Immigration and Nationalities Act (INA);
 - (b) Paroled into the United States as a refugee or asylee under section 212 (d) (5) of the INA;
 - (c) Granted conditional entry under section 203 (a) (7) of the INA;
 - (d) Granted asylum under section 208 of the INA;
 - (e) Admitted as an Amerasian immigrant from Vietnam through the orderly departure program, under section 584 of the Foreign Operations Appropriations Act, incorporated in the FY88 continuing resolution P.L. 100-212;
 - (f) A Cuban-Haitian entrant who was admitted as a public interest parolee under section 212 (d) (5) of the INA;
 - (g) Certified as a victim of human trafficking by the federal Office of Refugee Resettlement (ORR);
 - (h) An eligible family member of a victim of human trafficking certified by ORR who has a T-2, T-3, T-4, or T-5 visa; or
 - (i) Admitted as special immigrant from Iraq or Afghanistan under one of the following:
 - (i) Special immigrant status under section 101 (a) (27) of the INA;
 - (ii) Special immigrant conditional permanent resident; or
 - (iii) Parole under section 602 (b) (1) of the Afghan Allies Protection Act of 2009 or section 1059(a) of the National Defense Authorization Act of 2006.
 - (j) An Afghan granted humanitarian parole between July 31, 2021, and September 30, 2022, their spouse or child, or a parent or guardian of an unaccompanied minor who is granted parole after September 30, 2022, under section 2502 of the Extending Government Funding and Delivering Emergency Assistance Act of 2021;
 - (k) A citizen or national of Ukraine (or a person who last habitually resided in Ukraine) who, under section 401 of the Additional Ukraine Supplemental Appropriations Act, 2022 (AUSAA), was:
 - (i) Granted parole into the United States between February 24, 2022, and September 30, 2023; or
 - (ii) Granted parole into the United States after September 30, 2023, and is:
 - (A) The spouse or child of a person described in (k) (i) of this subsection; or
 - (B) The parent, legal guardian, or primary caregiver of a person described in (k) (i) of this subsection who is determined to be an unaccompanied child under section 462 (g) (2) of the Homeland Security Act of 2002 or section 412 (d) (2) (B) of the Immigration and Nationality Act.
- (2) A permanent resident alien meets the immigration status requirements for RCA and RMA if the individual was previously in one of

the statuses described in subsection (1) (~~((a) through (i))~~) of this section.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-08-002, § 182-507-0135, filed 3/23/22, effective 4/23/22. Statutory Authority: RCW 41.05.021 and 2011 1st sp.s. c 15. WSR 12-19-001, § 182-507-0135, filed 9/5/12, effective 10/6/12.]