

WSR 23-08-062

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed April 4, 2023, 8:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-05-107.

Title of Rule and Other Identifying Information: WAC 182-509-0300 Modified adjusted gross income (MAGI), 182-509-0305 MAGI-income—Persons subject to the modified adjusted gross income (MAGI) methodology, and 182-512-0880 SSI-related medical—Special income disregards.

Hearing Location(s): On May 9, 2023, 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_hBvwLAWGQNaCbFhRKR7ciw. 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: May 10, 2023.

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 May 9, 2023, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email Johanna.Larson@hca.wa.gov, by April 28, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is adding the 1915i income disregard equal to the difference between 150 percent of the federal poverty level and 300 percent of the federal benefit rate. This disregard is targeted to individuals seeking community behavioral health support services.

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 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: None.

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: Paige Lewis, P.O. Box 45534, Olympia, WA 98504-5534, 360-725-0757.

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.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

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 rules do not impose any costs on businesses.

April 4, 2023
Wendy Barcus
Rules Coordinator

OTS-4467.1

AMENDATORY SECTION (Amending WSR 20-17-136, filed 8/18/20, effective 9/18/20)

WAC 182-509-0300 Modified adjusted gross income (MAGI). (1) The agency uses the modified adjusted gross income (MAGI) methodology to determine eligibility for MAGI-based Washington apple health programs described in WAC 182-509-0305.

(2) MAGI methodology is described in WAC 182-509-0300 through 182-509-0375. Generally, MAGI includes adjusted gross income (as determined by the Internal Revenue Code (IRC)) increased by:

(a) Any amount of foreign income excluded from gross income under Section 911 of the IRC;

(b) Any amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax; and

(c) Any amount of Title II Social Security income or Tier 1 Railroad Retirement income which is excluded from gross income under Section 86 of the IRC.

(3) When calculating a person's eligibility for the programs listed in WAC 182-509-0305, the agency uses the person's MAGI income with the following exceptions:

(a) Scholarships or fellowship grants described in WAC 182-509-0335 used for education purposes are excluded from income;

(b) Income received by American Indian/Alaskan Native individuals described in WAC 182-509-0340 is excluded from income;

(c) Any income received as a lump sum as described in WAC 182-509-0375 is counted as income only in the month in which it is received; and

(d) Income received by a child age ((~~eighteen~~) 18 or younger or a tax dependent as described in WAC 182-509-0360 is excluded from income.

(4) Countable MAGI income is reduced by an amount equal to five percentage points of the federal poverty level (FPL) based on household size to determine net income except that there is no such reduction of countable MAGI income for parents or caretaker relatives with an eligible dependent child (as described in WAC 182-509-0305(1)). Net income is compared to the applicable standard described in WAC 182-505-0100.

(5) When calculating a person's eligibility for MAGI-based programs listed in WAC 182-509-0305, the agency determines the medical assistance unit for each person according to WAC 182-506-0010 and 182-506-0012.

(6) When calculating a person's eligibility for the community behavioral health support services (CBHS) benefit described in chapter

182-561 WAC, the agency disregards or deducts the amount of the person's income over 150 percent of the FPL.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-17-136, § 182-509-0300, filed 8/18/20, effective 9/18/20. 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, § 182-509-0300, filed 10/7/14, effective 11/7/14. Statutory Authority: RCW 41.05.021, P.L. 111-148, 42 C.F.R. §§ 431, 435, 457, and 45 C.F.R. § 155. WSR 14-01-021, § 182-509-0300, filed 12/9/13, effective 1/9/14.]

AMENDATORY SECTION (Amending WSR 22-12-033, filed 5/24/22, effective 6/24/22)

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

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

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

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

(d) Pregnant people whose net countable income, based on a household size that includes any unborn children, is below 193 percent FPL at the time of application, as described in WAC 182-505-0115.

(e) People within the 12-month postpartum period beginning the month after the pregnancy ends whose net countable income is below 193 percent FPL at the time of application, as described in WAC 182-505-0115.

(f) Children age 18 or younger in households with net countable income which is below 210 percent FPL, as described in WAC 182-505-0210 (3) (a).

(g) Children age 18 or younger in households with net countable income that is between 210 percent and 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.

(h) People age 18 and older who have income over 150 percent FPL who are financially and functionally eligible to receive the community behavioral health support services (CBHS) benefit, as described in chapter 182-561 WAC.

(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 and 41.05.160. WSR 22-12-033, § 182-509-0305, filed 5/24/22, effective 6/24/22. 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-4468.1

AMENDATORY SECTION (Amending WSR 14-07-059, filed 3/14/14, effective 4/14/14)

WAC 182-512-0880 SSI-related medical—Special income disregards.

Portions of a person's income the agency otherwise counts are disregarded when determining eligibility for Washington apple health ((WAH)) SSI-related medical programs.

(1) The agency disregards 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) Is currently receiving Title II Social Security benefits;
 (b) Was eligible for and received SSI or State Supplement payments (SSP) but became ineligible for those payments after April, 1977; and

(c) Would still be eligible for SSI or SSP payments if the amount of Social Security COLA increases paid under section 215(i) of the Social Security Act were deducted from ((his or her)) the person's current Title II Social Security benefits.

(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)) their 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 person who:

(i) Was entitled to SSA title II (widow/widower's) benefits in December 1983;

(ii) Was at least ((fifty)) 50 years old, but not yet ((sixty)) 60 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.

(b) Widow, Widower or Surviving Divorced Spouse (title II) benefits for a 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 person is considered an SSI recipient until becoming entitled to medicare Part A.

(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)) Apple Health categorically needy (CN) health care coverage if disregarding the SSA DAC benefits and COLA brings countable income below the CN standards, and the person:

(a) Is ((eighteen)) 18 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.

(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)) 20 percent increase in Social Security benefits under P.L. 92-336.

(5) ((Persons)) People 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.

(6) TANF income methodology is used to determine countable income for children and pregnant ((women)) people applying for ((WAH)) medically needy (MN) coverage unless the SSI methodology would be more beneficial to the person. When using the TANF income methodologies, deduct:

(a) A ((fifty)) 50 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.

(7) The agency disregards a person's income over 150 percent of the FPL when determining eligibility for the community behavioral health support services (CBHS) benefit under chapter 182-561 WAC. This disregard only applies to eligibility for the CHBS benefit and does not apply to:

(a) Long-term services and supports eligibility determinations under chapters 182-513 and 182-515 WAC; or

(b) Post-eligibility treatment of income (PETI).

[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, § 182-512-0880, filed 3/14/14, effective 4/14/14. WSR 11-24-018, recodified as § 182-512-0880, filed 11/29/11,

effective 12/1/11. Statutory Authority: RCW 74.04.050, 74.08.090. WSR 04-09-005, § 388-475-0880, filed 4/7/04, effective 6/1/04.]