

WSR 24-03-022

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed January 5, 2024, 8:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-23-044.

Title of Rule and Other Identifying Information: WAC 182-508-0001 Washington apple health—Coverage options for adults not eligible under MAGI methodologies and 182-512-0920 SSI-related medical—Deeming/allocation of income from nonapplying spouse.

Hearing Location(s): On February 27, 2024, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_oPnu_jscTpmcOi88CFPCRQ. If the link 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 earlier than February 28, 2024.

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 February 27, 2024, 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 February 16, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending WAC 182-508-0001 and 182-512-0920 to remove the maximum age restriction for apple health for workers with disabilities categorically needy coverage. This change is consistent with amendments made to RCW 74.09.540 and WAC 182-511-1050 effective January 1, 2020.

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, 74.09.540.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Paige Lewis, P.O. Box 42722, Olympia, WA 98504-2722, 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.

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.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: Changes to the proposed rule are dictated by RCW 74.09.540(2) "The authority may not establish eligibility restrictions for the buy-in program based upon a person's income or **maximum age.**" The proposed rule pertains to client program eligibility and does not impose any costs on businesses.

Scope of exemption for rule proposal:
Is fully exempt.

January 5, 2024
Wendy Barcus
Rules Coordinator

OTS-5083.1

AMENDATORY SECTION (Amending WSR 23-11-009, filed 5/4/23, effective 6/4/23)

WAC 182-508-0001 Washington apple health—Coverage options for adults not eligible under MAGI methodologies. (1) This chapter provides information on eligibility determinations for adults who:

- (a) Need a determination of eligibility on the basis of being aged, blind, or disabled;
- (b) Need a determination of eligibility based on the need for long-term institutional care or home and community-based services;
- (c) Are excluded from coverage under a modified adjusted gross income (MAGI)-based program as referenced in WAC 182-503-0510 on the basis of medicare entitlement;
- (d) Are not eligible for health care coverage under chapter 182-505 WAC due to citizenship or immigration requirements; or
- (e) Are not eligible for health care coverage under chapter 182-505 WAC due to income which exceeds the applicable standard for coverage.

(2) The agency determines eligibility for Washington apple health (WAH) noninstitutional categorically needy (CN) coverage under chapter 182-512 WAC for an adult who is age 65 or older, or who meets the federal blind or disabled criteria of the federal SSI program, and:

- (a) Meets citizenship/immigration, residency, and Social Security number requirements as described in chapter 182-503 WAC; and
- (b) Has CN countable income and resources that do not exceed the income and resource standards in WAC 182-512-0010.

(3) The agency determines eligibility for WAH health care for workers with disabilities (HWD) CN coverage for adults who meet the requirements described in WAC 182-511-1050, as follows:

- (a) Are age 16 (~~(through 64)~~) or older;
- (b) Meet citizenship/immigration, residency, and Social Security number requirements as described in chapter 182-503 WAC;
- (c) Meet the federal disability requirements described in WAC 182-511-1150; and
- (d) Are employed full- or part-time (including self-employment) as described in WAC 182-511-1200.

(4) The agency determines eligibility for WAH long-term care CN coverage for adults who meet the institutional status requirements defined in WAC 182-513-1320 under the following rules:

- (a) When the person receives coverage under a MAGI-based program and needs long-term care services in an institution, the agency follows rules described in chapter 182-514 WAC;

(b) When the person meets aged, blind, or disabled criteria as defined in WAC 182-512-0050 and needs long-term care services, the agency follows rules described in:

(i) Chapter 182-513 WAC, for an adult who resides in an institution; and

(ii) Chapter 182-515 WAC, for an adult who is determined eligible for WAH home and community-based waiver services.

(5) The agency determines eligibility for WAH noninstitutional CN or medically needy (MN) health care coverage for an adult who resides in an alternate living facility under rules described in WAC 182-513-1205.

(6) The agency determines eligibility for WAH-CN coverage under institutional rules described in chapters 182-513 and 182-515 WAC for an adult who:

(a) Has made a voluntary election of hospice services;

(b) Is not otherwise eligible for noninstitutional CN or MN health care coverage or for whom hospice is not included in the benefit service package available to the person; and

(c) Meets the aged, blind, or disabled criteria described in WAC 182-512-0050.

(7) The agency uses the following rules to determine eligibility for an adult under the WAH-MN program:

(a) Noninstitutional WAH-MN is determined under chapter 182-519 WAC for an adult with countable income that exceeds the applicable CN standard; and

(b) Non-SSI-related institutional WAH-MN long-term care coverage is determined under WAC 182-514-0263 for pregnant people and people age 20 and younger who:

(i) Meet institutional status requirements described in WAC 182-513-1320;

(ii) Do not meet blind or disabled criteria described in WAC 182-512-0050; and

(iii) Have countable income that exceeds the applicable CN standard.

(c) WAH-MN long-term care coverage is determined under WAC 182-513-1395 for an aged, blind, or disabled adult who resides in an institution and has countable income that exceeds the special income level (SIL).

(8) An adult is eligible for WAH-MN coverage when he or she:

(a) Meets citizenship/immigration, residency, and Social Security number requirements as described in WAC 182-503-0505;

(b) Has MN countable income that does not exceed the effective MN income standards in WAC 182-519-0050, or meets the excess income spenddown requirements in WAC 182-519-0110;

(c) Meets the countable resource standards in WAC 182-519-0050; and

(d) Is 65 years of age or older or meets the blind or disabled criteria of the federal SSI program.

(9) WAH-MN coverage is available for an aged, blind, or disabled ineligible spouse of an SSI recipient. See WAC 182-519-0100 for additional information.

(10) An adult who does not meet citizenship or alien status requirements described in WAC 182-503-0535 may be eligible for the WAH alien emergency medical program as described in WAC 182-507-0110.

(11) An adult is eligible for the state-funded medical care services (MCS) program when he or she meets the requirements under WAC 182-508-0005.

(12) A person who is entitled to medicare is eligible for coverage under a medicare savings program or the state-funded buy-in program when he or she meets the requirements described in chapter 182-517 WAC.

OTS-5084.2

AMENDATORY SECTION (Amending WSR 17-15-014, filed 7/6/17, effective 8/6/17)

WAC 182-512-0920 SSI-related medical—Deeming/allocation of income from nonapplying spouse. The agency considers the income of financially responsible persons to determine if a portion of that income is available to other household members.

(1) A portion of the income of a nonapplying spouse is considered available to meet the needs of a Washington apple health SSI-related applicant. A nonapplying spouse is defined as someone who is:

(a) Financially responsible for the SSI-related applicant as described in WAC 182-506-0015 and 182-512-0960. For apple health institutional and home and community based waiver programs, see WAC 182-513-1315;

(b) Living in the same household with the SSI-related applicant;

(c) Not receiving a needs based payment such as temporary assistance to needy families (TANF) or state-funded cash assistance (SFA); or

(d) Not related to SSI, or is not applying for apple health coverage including spouses receiving SSI.

(2) An ineligible spouse is the spouse of an SSI cash recipient and is either not eligible for SSI for themselves or who has elected to not receive SSI cash so that their spouse may be eligible. An SSI-related applicant who is the ineligible spouse of an SSI cash recipient is not eligible for apple health categorically needy (CN) health care coverage and must be considered for health care coverage under the apple health medically needy (MN) program or for a modified adjusted gross income-based program if the person does not receive medicare.

(3) When determining whether a nonapplying spouse's income is countable, the agency:

(a) Follows the income rules described in WAC 182-512-0600 through 182-512-0780;

(b) Excludes income described in WAC 182-512-0800 (2) through (10), and all income excluded under federal statute or state law as described in WAC 182-512-0860;

(c) Excludes work-related expenses described in WAC 182-512-0840, with the exception that the (~~sixty-five dollars~~) \$65 plus one half earned income deduction described in WAC 182-512-0840(2) does not apply;

(d) Deducts any court ordered child support which the nonapplying spouse pays for a child outside of the home (current support or arrears); and

(e) Deducts any applicable child-related income exclusions described in WAC 182-512-0820.

(4) The agency allocates income of the nonapplying spouse to nonapplying children who reside in the home as described in WAC 182-512-0820. Allocations to children are deducted first from the nonapplying spouse's unearned income, then from their earned income.

(a) For apple health CN medical determinations, allocations to children are not allowed out of the income of the SSI-related applicant, only from the income of the nonapplying spouse.

(b) For apple health MN medical determinations, allocations to children are allowed from the income of the SSI-related applicant if the applicant is unmarried.

(5) For apple health SSI-related CN medical determinations, a portion of the countable income of a nonapplying spouse remaining after the deductions and allocations described in subsections (3) and (4) of this section may be deemed to the SSI-related applicant. If the nonapplying spouse's countable income is:

(a) Less than or equal to one-half of the federal benefit rate (FBR), no income is deemed to the applicant. Compare the applicant's countable income to the one-person SSI categorically needy income level (CNIL) described in WAC 182-512-0010. For health care for workers with disabilities (HWD) applicants, compare to the one-person HWD standard described in WAC 182-505-0100 (1)(c).

(b) Greater than one-half of the FBR, then the entire nonapplying spouse's countable income is deemed to the applicant. Compare the applicant's income to the two-person SSI CNIL. For HWD applicants, compare to the two-person HWD standard described in WAC 182-505-0100 (1)(c).

(6) When income is not deemed to the SSI-related applicant from the nonapplying spouse per subsection (5)(a) of this section:

(a) Allow all allowable income deductions and exclusions as described in chapter 182-512 WAC to the SSI-related applicant's income; and

(b) Compare the net remaining income to the one-person SSI CNIL or the one-person HWD standard.

(7) When income is deemed to the SSI-related applicant from the nonapplying spouse per subsection (5)(b) of this section:

(a) Combine the applicant's unearned income with any unearned income deemed from the nonapplying spouse and allow one (~~twenty dollar~~) \$20 general income exclusion to the combined amount. If there is less than (~~twenty dollars~~) \$20 of unearned income, the remainder of the (~~twenty dollar~~) \$20 general income exclusion is deducted from earned income.

(b) Combine the applicant's earned income with any earned income deemed from the nonapplying spouse and allow the (~~sixty-five dollar~~) \$65 plus one half of the remainder earned income deduction (described in WAC 182-512-0840(2)) to the combined amount.

(c) Add together the net unearned and net earned income amounts and compare the total to the two-person SSI CNIL described in WAC 182-512-0010 or the two-person HWD standard described in WAC 182-505-0100 (1)(c). If the income is equal to or below the applicable two-person standard, the applicant is eligible for apple health CN health care coverage.

(8) An SSI-related applicant (~~under the age of sixty-five~~) who is working, whose level of work activity and earnings is determined not to be "substantial gainful activity" in accordance with all applicable Social Security disability determination rules and standards, but who is not eligible for apple health CN coverage under the regular

apple health SSI-related program, may be considered for eligibility under the HWD program. For HWD program rules, see chapter 182-511 WAC.

(9) If the SSI-related applicant's countable income is above the applicable SSI CNIL standard, the agency or its authorized representative considers eligibility under the apple health MN program or under the HWD program if the person is (~~under the age of sixty-five and~~) working. An SSI-related applicant who meets the following criteria is not eligible for apple health MN coverage and eligibility must be determined under HWD or under a MAGI-based apple health program:

(a) The applicant is blind or disabled and, for a MAGI-based apple health program, under the age of (~~sixty-five~~) 65;

(b) The applicant's level of work activity and earnings is determined to be "substantial gainful activity" in accordance with all applicable Social Security disability determination rules and standards; and

(c) The applicant is not receiving a title II Social Security cash benefit based on blindness or disability.

(10) For SSI-related apple health MN medical determinations, a portion of the countable income of a nonapplying spouse remaining after the deductions and allocations described in subsections (3) and (4) of this section may be deemed to the SSI-related applicant. If the nonapplying spouse's countable income is:

(a) Less than or equal to the effective one-person MNIL described in WAC 182-519-0050, no income is deemed to the applicant and a portion of the applicant's countable income is allocated to the nonapplying spouse's income to raise it to the effective MNIL standard.

(b) Greater than the effective MNIL, then the amount in excess of the effective one-person MNIL is deemed to the applicant. Compare the applicant's income to the effective one-person MNIL.

(11) When income is not deemed to the SSI-related applicant from the nonapplying spouse per subsection (10) (a) of this section:

(a) Allocate income from the applicant to bring the income of the nonapplying spouse up to the effective one-person MNIL standard;

(b) Allow all allowable income deductions and exclusions as described in chapter 182-512 WAC to the SSI-related applicant's remaining income;

(c) Allow a deduction for medical insurance premium expenses (if applicable); and

(d) Compare the net countable income to the effective one-person MNIL.

(12) When income is deemed to the SSI-related applicant from the nonapplying spouse per subsection (10) (b) of this section:

(a) Combine the applicant's unearned income with any unearned income deemed from the nonapplying spouse and allow one (~~twenty-dollar~~) \$20 general income exclusion to the combined amount (if there is less than (~~twenty-dollars~~) \$20 of unearned income, the remainder of the (~~twenty-dollar~~) \$20 general income exclusion is deducted from earned income);

(b) Combine the applicant's earned income with any earned income deemed from the nonapplying spouse and allow the (~~sixty-five-dollar~~) \$65 plus one half of the remainder earned income deduction (described in WAC 182-512-0840(2)) to the combined amount;

(c) Add together the net unearned and net earned income amounts;

(d) Allow a deduction for medical insurance premium expenses (if applicable) per WAC 182-519-0100(5); and

(e) Compare the net countable income to the effective one-person MNIL described in WAC 182-519-0050. If the income is:

(i) Equal to or below the effective one-person MNIL, the applicant is eligible for apple health MN health care coverage with no spenddown.

(ii) Greater than the effective MNIL, the applicant is only eligible for apple health MN health care coverage after meeting a spenddown liability as described in WAC 182-519-0110.

(13) The ineligible spouse of an SSI-cash recipient applying for apple health MN coverage is eligible to receive the deductions and allocations described in subsection (10)(a) of this section.