PROPOSED RULE MAKING

CR-102 (December 2017)  
(Implements RCW 34.05.320)
Do NOT use for expedited rule making

Agency: Health Care Authority

☒ Original Notice
☐ Supplemental Notice to WSR _____
☐ Continuance of WSR _____

☒ Preproposal Statement of Inquiry was filed as WSR 22-06-096; or
☐ Expedited Rule Making--Proposed notice was filed as WSR _____; or
☐ Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or
☐ Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) 182-513-1350 Defining the resource standard and determining resource eligibility for SSI-related long-term care services.

Hearing location(s):

<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Location (be specific)</th>
<th>Comment:</th>
</tr>
</thead>
</table>
| June 7, 2022 | 10:00 AM | In response to the Coronavirus disease 2019 (COVID-19) public health emergency, the Health Care Authority 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__edPzYSMR9CMXCEzVlvwWw  
After registering, you will receive a confirmation email containing information about joining the public hearing. |

Date of intended adoption: Not sooner than June 8, 2022 (Note: This is NOT the effective date)

Submit written comments to:
Name: HCA Rules Coordinator  
Address: PO Box 42716, Olympia WA 98504-2716  
Email: arc@hca.wa.gov  
Fax: (360) 586-9727  
Other:  
By (date) June 7, 2022

Assistance for persons with disabilities:
Contact HCA Rules Coordinator  
Phone: (360) 725-1306  
Fax: (360) 586-9727  
TTY: Telecommunication Relay Services (TRS): 711  
Email: arc@hca.wa.gov  
Other:  
By (date) May 20, 2022
Purpose of the proposal and its anticipated effects, including any changes in existing rules: The agency is increasing the excess equity amount allowed for homeowners who are eligible for Apple Health long-term services and supports (LTSS) benefits to the maximum amount allowed under federal law.

Reasons supporting proposal: State property values have increased substantially during the last several years. This amendment would allow more homeowners who are otherwise eligible for LTSS benefits to receive them.

Statutory authority for adoption: RCW 41.05.021, 41.05.160

Statute being implemented: RCW 41.05.021, 41.05.160

<table>
<thead>
<tr>
<th>Is rule necessary because of a:</th>
<th>☐  Yes</th>
<th>☒  No</th>
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</thead>
<tbody>
<tr>
<td>Federal Law?</td>
<td>☐  Yes</td>
<td>☒  No</td>
</tr>
<tr>
<td>Federal Court Decision?</td>
<td>☐  Yes</td>
<td>☒  No</td>
</tr>
<tr>
<td>State Court Decision?</td>
<td>☐  Yes</td>
<td>☒  No</td>
</tr>
</tbody>
</table>

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: N/A

Name of proponent: (person or organization) Health Care Authority  ☐  Private  ☒  Public  ☒  Governmental

<table>
<thead>
<tr>
<th>Name of agency personnel responsible for:</th>
<th>Name</th>
<th>Office Location</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drafting:</td>
<td>Melinda Froud</td>
<td>PO Box 42716, Olympia WA 98504-2716</td>
<td>360-725-1408</td>
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<tr>
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<td>Paige Lewis</td>
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<td>360-725-0757</td>
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<tr>
<td>Enforcement:</td>
<td>Paige Lewis</td>
<td>PO Box 45534, Olympia, WA 98504-5534</td>
<td>360-725-0757</td>
</tr>
</tbody>
</table>

Is a school district fiscal impact statement required under RCW 28A.305.135? ☐  Yes  ☒  No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

Is a cost-benefit analysis required under RCW 34.05.328? ☐  Yes

If yes: A preliminary cost-benefit analysis may be obtained by contacting:

- Name:
- Address:
- Phone:
- Fax:
RCW 34.05.328 does not apply to Health Care Authority rules unless requested by the Joint Administrative Rules Review Committee or applied voluntarily.

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, may be exempt from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

☐ This rule proposal, or portions of 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. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

☐ This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

☐ This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

☐ This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

☐ RCW 34.05.310 (4)(b)  ☐ RCW 34.05.310 (4)(e)
  (Internal government operations)  (Dictated by statute)
☐ RCW 34.05.310 (4)(c)  ☐ RCW 34.05.310 (4)(f)
  (Incorporation by reference)  (Set or adjust fees)
☐ RCW 34.05.310 (4)(d)  ☐ RCW 34.05.310 (4)(g)
  (Correct or clarify language)  ((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

☐ This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of exemptions, if necessary:

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COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is not exempt, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

☐ No  Briefly summarize the agency's analysis showing how costs were calculated. The amended rules do not impose any costs on small businesses.

☐ Yes  Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name: 
Address: 
Phone: 
Fax: 
TTY: 
Email: 
Other: 

Date: May 3, 2022  Signature: 

Name: Wendy Barcus  
Title: HCA Rules Coordinator
WAC 182-513-1350 Defining the resource standard and determining resource eligibility for SSI-related long-term care (LTC) services.

(1) General information.

(a) This section describes how the agency or ((its)) the agency's designee defines the resource standard and countable or excluded resources when determining a person's eligibility for SSI-related long-term care (LTC) services.

(b) "Resource standard" means the maximum amount of resources a person can have and still be resource eligible for program benefits.

(c) For a person not SSI-related, the agency applies program specific resource rules to determine eligibility.

(2) Resource standards.

(a) The resource standard for the following people is $2000:

(i) A single person; or

(ii) An institutionalized spouse.

(b) The resource standard for a legally married couple is $3000, unless subsection (3)(b)(ii) of this section applies.

(c) The resource standard for a person with a qualified long-term care partnership policy under WAC 182-513-1400 may be higher based on the dollar amount paid out by a partnership policy.

(d) Determining the amount of resources that can be allocated to the community spouse when determining resource eligibility is under WAC 182-513-1355.

(3) Availability of resources.

(a) General. The agency or ((its)) the agency's designee applies the following rules when determining available resources for LTC services:

(i) WAC 182-512-0300 SSI-related medical—Resources eligibility;

(ii) WAC 182-512-0250 SSI-related medical—Ownership and availability of resources; and

(iii) WAC 182-512-0260 SSI-related medical—How to count a sponsor's resources.

(b) Married couples.

(i) When both spouses apply for LTC services, the resources of both spouses are available to each other through the month in which the spouses stopped living together.

(ii) When both spouses are institutionalized, the agency or ((its)) the agency's designee determines the eligibility of each spouse as a single person the month following the month of separation.

(iii) If the agency or ((its)) the agency's designee has already established eligibility and authorized services for one spouse, and the community spouse needs LTC services in the same month, but after eligibility has been established and services authorized for the institutionalized spouse, then the agency applies the standard under subsection (2)(a) of this section to each spouse. If doing this would make one of the spouses ineligible, then the agency applies subsection (2)(b) of this section for the couple.

(iv) The resources of the community spouse are unavailable to the institutionalized spouse the month after eligibility for LTC services is established, unless (v) or (vi) of this subsection applies.
When a single institutionalized individual marries, the agency or (its) the agency's designee redetermines eligibility applying the resource and income rules for a legally married couple.

A redetermination of the couple's resources under this section is required if:

(A) The institutionalized spouse has a break of at least (thirty) 30 consecutive days in a period of institutional status;

(B) The institutionalized spouse's countable resources exceed the standard under subsection (2)(a) of this section, and WAC 182-513-1355 (2)(b) applies; or

(C) The institutionalized spouse does not transfer the amount, under WAC 182-513-1355 (3) or (5), to the community spouse by either:

(I) The end of the month of the first regularly scheduled eligibility review; or

(II) A reasonable amount of time necessary to obtain a court order for the support of the community spouse.

(4) Countable resources.

(a) The agency or (its) the agency's designee determines countable resources using the following sections:

(i) WAC 182-512-0200 SSI-related medical—Definition of resources.

(ii) WAC 182-512-0250 SSI-related medical—Ownership and availability of resources.

(iii) WAC 182-512-0260 SSI-related medical—How to count a sponsor's resources.

(iv) WAC 182-512-0300 SSI-related medical—Resources eligibility.

(v) WAC 182-512-0350 SSI-related medical—Property and contracts excluded as resources;

(vi) WAC 182-512-0400 SSI-related medical—Vehicles excluded as resources;

(vii) WAC 182-512-0450 SSI-related medical—Life insurance excluded as a resource; and

(viii) WAC 182-512-0500 SSI-related medical—Burial funds, contracts and spaces excluded as resources.

(ix) Chapter 182-516 WAC, Trusts, annuities, life estates, and promissory notes—Effect on medical programs.

(b) The agency or (its) the agency's designee determines excluded resources based on federal law and WAC 182-512-0550, except:

(i) For institutional and HCB waiver programs, pension funds owned by a nonapplying spouse are counted toward the resource standard.

(ii) For long-term services and supports (LTSS), based on the need for either nursing facility level of care or intermediate care facility for the intellectually disabled level of care, one home is excluded only if it meets the home equity limits of subsection (8) of this section. See WAC 182-512-0350 (1)(b).

(c) The agency or (its) the agency's designee adds together the countable resources of both spouses if subsections (3)(b)(i) and (iv) apply, but not if subsection (3)(b)(ii) or (iii) apply. For a person with a community spouse, see WAC 182-513-1355.

(5) Excess resources.

(a) For LTC programs, a person may reduce excess resources by deducting incurred medical expenses under subsection (6) of this section;

(b) The amount of excess resources is limited to the following amounts:
(i) For LTC services provided under the categorically needy (CN) program:
   (A) In a medical institution, excess resources and available income must be under the state medicaid rate based on the number of days the person spent in the medical institution in the month.
   (B) For HCB waiver eligibility, incurred medical expenses must reduce resources within allowable resource standards. The cost of care for the HCB waiver services cannot be allowed as a projected expense.
(ii) For LTC services provided under the medically needy (MN) program, see:
   (A) WAC 182-513-1395 for LTC programs; and
   (B) WAC 182-513-1245 for hospice.
   (c) Excess resources not otherwise applied to medical expenses will be applied to the projected cost of care for services in a medical institution under WAC 182-513-1380.
   (6) Allowable medical expenses.
      (a) The following incurred medical expenses may be used to reduce excess resources:
         (i) Premiums, deductibles, coinsurance, or copayment charges for health insurance and medicare;
         (ii) Medically necessary care defined under WAC 182-500-0070, but not covered under the state's medicaid plan. Information regarding covered services is under chapter 182-501 WAC;
         (iii) Medically necessary care defined under WAC 182-500-0070 incurred prior to medicaid eligibility. Expenses for nursing facility care are reduced at the state rate for the specific facility that provided the services.
      (b) To be allowed, the medical expense must:
         (i) Have been incurred no more than three months before the month of the medicaid application;
         (ii) Not be subject to third-party payment or reimbursement;
         (iii) Not have been used to satisfy a previous spenddown liability;
         (iv) Not have been previously used to reduce excess resources;
         (v) Not have been used to reduce participation;
         (vi) Not have been incurred during a transfer of asset penalty under WAC 182-513-1363; and
         (vii) Be an amount for which the person remains liable.
   (7) Nonallowable expenses. The following expenses are not allowed to reduce excess resources:
      (a) Unpaid adult family home (AFH) or assisted living facility expenses incurred prior to medicaid eligibility;
      (b) Personal care cost in excess of approved hours determined by the CARE assessment under chapter 388-106 WAC; and
      (c) Expenses excluded by federal law.
   (8) Excess home equity.
      (a) A person with an equity interest in a primary residence in excess of the home equity limit is ineligible for long-term services and supports (LTSS) that are based on the need for either nursing facility level of care or intermediate care facility for the intellectually disabled level of care, unless one of the following persons lawfully resides in the home:
         (i) That person's spouse; or
         (ii) That person's dependent child under age (twenty-one) 21, blind child, or disabled child.
      (b) The home equity provision applies to all applications for LTSS received on or after May 1, 2006.
(c) ((Effective January 1, 2016,)) The excess home equity limit is ($552,000) the federal maximum allowed. On ((January 1, 2017, and on)) January 1st of each year ((thereafter)), this standard may change by the percentage in the consumer price ((index-urban)) index for all consumers (CPI-U). The current maximum home equity limit is posted by the Centers for Medicare and Medicaid Services. (See subsection (9) of this section for institutional resource standards.)

(d) A person who is denied or terminated LTC services due to excess home equity may apply for an undue hardship waiver under WAC 182-513-1367.

(9) Institutional resource standards are found at ((http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources)) https://www.hca.wa.gov/health-care-services-supports/program-standard-income-and-resources.