PROPOSED RULE MAKING

CR-102 (June 2004)
(Implements RCW 34.05.320)
Do **NOT** use for expedited rule making

Agency: Department of Social and Health Services, Health and Recovery Administration

☒ **Preproposal Statement of Inquiry was filed as WSR** 08-19-032**; or**
☐ **Expedited Rule Making--Proposed notice was filed as WSR __________; or**
☐ **Proposal is exempt under RCW 34.05.310(4).**

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

Title of rule and other identifying information: (Describe Subject)
The department is amending WAC 388-519-0100 – Eligibility for the medically needy program; and WAC 388-519-0110 – Spenddown of excess income for the medically needy program; and other related rules as appropriate.

Hearing location(s):
Blake Office Park East – Rose Room
4500 – 10th Ave. SE
Lacey, Washington 98503
(One block north of the intersection of Pacific Ave. SE and Alhadeff Lane. A map or directions are available at http://www.dshs.wa.gov/msa/rpau/docket.html or by calling 360-664-6094)

Date: **January 27, 2009** Time: **10:00 a.m.**

Submit written comments to:
Name: DSHS Rules Coordinator
Address: PO Box 45850, Olympia WA, 98504-5850
Delivery: 4500 – 10th Ave. SE, Lacey, Washington 98503
E-mail: DSHSRPAURulesCoordinator@dshs.wa.gov
Fax: (360) 664-6185
by
5 p.m. on January 27, 2009

Date of intended adoption: Not sooner than January 28, 2009 (Note: This is **NOT** the **effective** date)

Assistance for persons with disabilities: Contact Jennisha Johnson, DSHS Rules Consultant by January 13, 2009
TTY (360) 664-6178 or (360) 664-6094 or
by e-mail at johnsjl4@dshs.wa.gov

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

The department is clarifying language, updating outdated WAC references, and adding additional provisions relating to expenses an individual can use toward meeting spenddown. The rules allow both paid and unpaid medical expenses incurred by a client during the retroactive eligibility period to be applied towards the client's spenddown in the current eligibility period. Treatment of hospital bills will no longer be singled out, but will mirror the federal rule by eliminating specific references to hospital bills and amending the language regarding the prioritization of expenses.

Reasons supporting proposal:

To comply with federal regulations and provide program transparency.

Statutory authority for adoption: RCW 74.04.055; 74.04.050; 74.04.057; 74.08.090, and 74.09.500

Statute being implemented: 42 CFR 435.831(3)(e) and (f)

Is rule necessary because of a:

Federal Law?	☐ Yes	☒ No
Federal Court Decision?	☐ Yes	☒ No
State Court Decision?	☐ Yes	☒ No

If yes, CITATION:

DATE
December 15, 2008

NAME (type or print)
Stephanie Schiller

SIGNATURE
Stephanie E Schiller

TITLE
DSHS Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: December 24, 2008
TIME: 8:41 AM

WSR 09-01-181

(COMPLETE REVERSE SIDE)

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

None

Name of proponent: (person or organization) Department of Social and Health Services

☐ Private
☐ Public
☒ Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting...............	Jonell Blatt	PO Box 45504, Olympia WA, 98504-5504	(360) 725-1571
Implementation....	Catherine Fisher	PO Box 45534, Olympia WA, 98504-5534	(360) 725-1357
Enforcement........	Catherine Fisher	PO Box 45534, Olympia WA, 98504-5534	(360) 725-1357

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

☐ Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:
Name:
Address:

phone ( )
fax ( )
e-mail

☒ No. Explain why no statement was prepared.

This proposed rule does not increase or impose new costs or otherwise impact small businesses.

Is a cost-benefit analysis required under RCW 34.05.328?

☐ Yes A preliminary cost-benefit analysis may be obtained by contacting:
Name:
Address:

phone ( )
fax ( )
e-mail

☒ No: Please explain:

Per RCW 34.05.328(5)(vii), client eligibility rules for financial and medical assistance programs are exempt from the cost-benefit analysis requirement.

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-519-0100 Eligibility for the medically needy program. (1) ((~~A person~~)) An individual who meets the following conditions ((~~is considered~~)) may be eligible for medically needy (MN) coverage under the special rules in chapters 388-513 WAC((~~,~~)) and 388-515 WAC:

(a) ((~~A person who meets the institutional status requirements of WAC 388-513-1320~~)) Meets the institutional status requirements of WAC 388-513-1320; ((~~or~~))

(b) ((~~A person who receives waiver services under chapter 388-515 WAC~~)) Resides in a medical institution as described in WAC 388-513-1395; or

(c) Receives waiver services under a medically needy in-home waiver (MNIW) according to WAC 388-515-1550 or a medically needy residential waiver (MNRW) according to WAC 388-515-1540.

(2) ((~~MN coverage is considered under this chapter when a person:~~

~~(a) Is not excluded under subsection (1) of this section; and~~

~~(b) Is not eligible for categorically needy (CN) medical coverage because they have CN countable income which is above the CN income standard~~)) An SSI-related individual who lives in a department contracted alternate living facility may be eligible for MN coverage under the rules described in WAC 388-513-1305.

(3) ((~~MN coverage is available for children, for persons who are pregnant or for persons who are SSI-related. MN coverage is available to an aged, blind, or disabled ineligible spouse of an SSI recipient even though that spouse's countable income is below the CN income standard. Adults with no children must be SSI related in order to be qualified for MN coverage~~)) An individual may be eligible for MN coverage under this chapter when he or she is:

(a) Not covered under subsection (1) and (2) of this section; and

(b) Eligible for categorically needy (CN) medical coverage in all other respects except that his or her CN countable income is above the CN income standard.

(4) ((~~A person not eligible for CN medical and who is applying for MN coverage has the right to income deductions in addition to those used to arrive at CN countable income. The following deductions are used to calculate their countable income for MN. Those deductions to income are applied to each month of the base period and determine MN countable income~~)) MN coverage may be available if the individual is:

(a) ((~~All health insurance premiums expected to be paid by the client during the base period are deducted from their income~~)) A child; ((~~and~~))

(b) ((~~For persons who are SSI-related and who are married, see the income provisions for the nonapplying spouse in WAC 388-450-0210~~)) A pregnant woman; ((~~and~~))

(c) ((~~For persons who are not SSI-related and who are married, an income deduction is allowed for a nonapplying spouse:~~

~~(i) If the nonapplying spouse is living in the same home as the applying person; and~~

~~(ii) The nonapplying spouse is receiving community and home based services under chapter 388-515 WAC; then~~

~~(iii) The income deduction is equal to the one person MNIL less the nonapplying spouse's actual income~~)) A refugee;

(d) An SSI-related individual including an aged, blind or disabled individual with countable income under the CN income standard, who is an ineligible spouse of an SSI recipient; or

(e) A hospice client with countable income which is above the special income level (SIL).

(5) ((~~A person who meets the above conditions is eligible for MN medical coverage if their MN countable income is at or below the medically needy income level (MNIL) in WAC 388-478-0070. They are certified as eligible for up to twelve months of MN medical coverage. Certain SSI or SSI-related clients have a special MNIL. That MNIL exception is described in WAC 388-513-1305~~)) An individual who is not eligible for CN medical and who is applying for MN coverage has the right to income deductions in addition to those used to arrive at CN countable income. Deductions to income are applied to each month of the base period to determine MN countable income. The following deductions are used to calculate countable income for MN:

(a) All health insurance premiums expected to be paid by the individual during the base period(s);

(b) Any allocations to a spouse or to dependents for an SSI-related individual who is married or who has dependent children. Rules for allocating income are described in WAC 388-475-0900; and

(c) For an SSI-related individual who is married and lives in the same home as his or her spouse who receives home and community based waiver services under chapter 388-515 WAC, an income deduction equal to the medically needy income level (MNIL) minus the nonapplying spouse's income.

(6) ((~~A person whose MN countable income exceeds the MNIL may become eligible for MN medical coverage when they have or expect to have medical expenses. Those medical expenses or obligations may be used to offset any portion of their income which is over the MNIL~~)) The MNIL for individuals who qualify for MN coverage under subsection (1) of this section is based on rules in chapter 388-513 and 388-515 WAC.

(7) ((~~That portion of a person's MN countable income which is over the department's MNIL standard is called "excess income."~~)) The MNIL for all other individuals is described in WAC 388-478-0070. If an individual has countable income which is at or below the MNIL, he or she is certified as eligible for up to twelve months of MN medical coverage.

(8) ((~~When a person has or will have "excess income" they are not eligible for MN coverage until they have medical expenses which are equal in amount to that excess income. This is the process of meeting "spenddown~~)) If an individual has countable income which is over the MNIL, the countable income that exceeds the department's MNIL standards is called "excess income."

(9) When individuals have "excess income" they are not

eligible for MN coverage until they provide evidence to the department of medical expenses incurred by themselves or family members who live in the home for whom they are financially responsible. An expense has been incurred when:

(a) The individual has received the medical treatment or medical supplies, is financially liable for the medical expense but has not yet paid the bill; or

(b) The individual has paid for the expense within the current or retroactive base period described in WAC 388-519-0110.

(10) Incurred medical expenses or obligations may be used to offset any portion of countable income that is over the MNIL. This is the process of meeting "spenddown."

(11) The department calculates the amount of an individual's spenddown by multiplying the monthly excess income amount by the number of months in the certification period as described in WAC 388-519-0110. The allowable medical expenses must be greater than or equal to the total calculated spenddown amount based on a three or a six month certification period.

(12) An ((~~person~~)) individual who is considered for MN coverage under this chapter may not spenddown excess resources to become eligible for the MN program. Under this chapter ((~~a person is~~)) individuals are ineligible for MN coverage if their resources exceed the program standard in WAC 388-478-0070. ((~~A person~~)) An individual who is considered for MN coverage under ((~~chapter 388-513~~)) WAC 388-513-1395, 388-505-0250 or 388-505-0255 is allowed to spenddown excess resources.

((~~(10) No extensions of coverage or automatic redetermination process applies to MN coverage. A client must submit an application for each eligibility period under the MN program.~~))

(13) There is no automatic redetermination process for MN coverage. An individual must submit an application for each eligibility period under the MN program.

(14) An individual who requests a timely administrative hearing under WAC 388-458-0040 is not eligible for continued benefits under the medically needy program.

AMENDATORY SECTION (Amending WSR 06-24-036, filed 11/30/06, effective 1/1/07)

WAC 388-519-0110 Spenddown of excess income for the medically needy program. (1) ((~~The person applying for MN medical~~)) An individual who applies for medical assistance and is eligible for medically needy (MN) coverage with a spenddown may choose((~~s~~)) a three month or a six month base period ((~~for spenddown calculation~~)). A base period is a time period used to compute the amount of the spenddown liability. The months must be consecutive calendar months unless one of the conditions in subsection (4) of this section ((~~apply~~)) applies.

(2) A ((~~person's~~)) base period begins on the first day of the month ((~~of application~~)), in which an individual applies for medical assistance, subject to the exceptions in subsection (4) of this section.

(3) An individual may request a separate base period ((~~may be made for a retroactive period. The retroactive base period is made up of the~~)) to cover the time period up to three calendar months immediately prior to the month of application. This is called a retroactive base period.

(4) A base period may vary from the terms in subsections (1), (2), or (3) of this section if:

(a) A three month base period would overlap a previous eligibility period; or

(b) ((~~A client is not or will not be resource eligible for the~~)) The individual has countable resources that are over the applicable standard for any part of the required base period; or

(c) The client is not or will not be able to meet the TANF-related or SSI-related requirement for the required base period; or

(d) The ((~~client~~)) individual is ((~~or will be~~)) eligible for categorically needy (CN) coverage for part of the required base period; or

(e) The client was not otherwise eligible for MN coverage for each of the months of the retroactive base period.

(5) ((~~The amount of a person's "~~)) An individual's spenddown((~~"~~)) liability is calculated by the department. The MN countable income from each month of the base period is compared to the medically needy income level (MNIL). ((~~The excess income from each of the~~)) Income which is over the MNIL (based on the individual's household size) in each month((~~s~~)) in the base period is added together to determine the total ((~~"~~))spenddown((~~" for the base period~~)) amount. The MNIL standard is found at http://www.dshs.wa.gov/pdf/esa/manual/standards_C_MedAsstChart.pdf and is updated annually in January.

(6) If household income varies and ((~~a person's~~)) an individual's MN countable income falls below the MNIL for one or more months, the difference is used to offset the excess income in other months of the base period. If this results in a spenddown amount of zero dollars and cents, see WAC ((~~388-519-0100(5)~~))

388-519-0100(7).

(7) ((~~Once a person's spenddown amount is known, their qualifying medical expenses are subtracted from that spenddown amount to determine the date of eligibility. The following medical expenses are used to meet spenddown:~~

~~(a) First, Medicare and other health insurance deductibles, coinsurance charges, enrollment fees, or copayments;~~

~~(b) Second, medical expenses which would not be covered by the MN program;~~

~~(c) Third, hospital expenses paid by the person during the base period;~~

~~(d) Fourth, hospital expenses, regardless of age, owed by the applying person;~~

~~(e) Fifth, other medical expenses, potentially payable by the MN program, which have been paid by the applying person during the base period; and~~

~~(f) Sixth, other medical expenses, potentially payable by the MN program which are owed by the applying person~~)) If income decreases, the department approves CN coverage for each month in the base period when the individual's countable income and resources are equal to or below the applicable CN standards. Children under the age of nineteen and pregnant women who become CN eligible in any month of the base period remain continuously eligible for CN coverage for the remainder of the certification even if there is a subsequent increase in income.

(8) ((~~If a person meets the spenddown obligation at the time of application, they are eligible for MN medical coverage for the remainder of the base period. The beginning date of eligibility would be determined as described in WAC 388-416-0020~~)) Once an individual's spenddown amount has been determined, qualifying medical expenses are deducted. To be considered a qualifying medical expense, the expense must:

(a) Be an expense for which the individual is financially liable;

(b) Not have been used to meet another spenddown;

(c) Not be the confirmed responsibility of a third party. The department allows the entire expense if the third party has not confirmed its coverage of the expense within:

(i) Forty-five days of the date of service; or

(ii) Thirty days after the base period ends.

(d) Be an incurred expense for the individual or:

(i) The individual's spouse;

(ii) A family member, residing in the home of the individual, for whom the individual is financially responsible; or

(iii) A relative, residing in the home of the individual, who is financially responsible for the individual.

(e) Meet one of the following conditions:

(i) Be an unpaid liability at the beginning of the base period;

(ii) Be for medical services either paid or unpaid and incurred during the base period;

(iii) Be for medical services incurred and paid during the three month retroactive base period if eligibility for medical assistance was not established in that base period. Paid expenses that meet this requirement may be applied towards the current base period; or

(iv) Be for medical services incurred during a previous base period and either unpaid or paid for, if it was necessary for the individual to make a payment due to delays in the certification for that base period.

(9) ((~~If a person's spenddown amount is not met at the time of application, they are not eligible until they present evidence of additional expenses which meets the spenddown amount~~)) An exception to the provisions in subsection (8) of this section exists for qualifying medical expenses that have been paid on behalf of the individual by a publicly administered program during the current base period. The department uses the qualifying medical expenses to meet the spenddown liability. To qualify for this exception the program must:

(a) Not be federally funded or make the payments from federally matched funds;

(b) Not pay the expenses paid on behalf of the individual; and

(c) Provide proof of the expenses paid on behalf of the individual.

(10) ((~~To be counted toward spenddown, medical expenses must~~)) Once the department has determined that the expenses meet the definition of a qualified expense as defined in subsection (8) or (9) of this section, the expenses are subtracted from the spenddown liability to determine the date the individual is eligible for medical coverage to begin. Qualifying medical expenses are deducted in the following order:

(a) ((~~Not have been used to meet a previous spenddown~~)) First, medicare and other health insurance deductibles, coinsurance charges, enrollment fees, copayments and premiums that are the individual's responsibility under Part A, Part B, Part C and Part D. (Health insurance premiums are income deductions under WAC 388-519-0100(5)); ((~~and~~))

(b) ((~~Not be the confirmed responsibility of a third party. The entire expense will be counted unless the third party confirms its coverage within:~~

~~(i) Forty-five days of the date of the service; or~~

~~(ii) Thirty days after the base period ends; and~~

~~(c) Meet one of the following conditions:~~

~~(i) Be an unpaid liability at the beginning of the base period and be for services for:~~

~~(A) The applying person; or~~

~~(B) A family member legally or blood-related and living in the same household as the applying person.~~

~~(ii) Be for medical services either paid or unpaid and incurred during the base period; or~~

~~(iii) Be for medical services paid and incurred during a previous base period if that client payment was made necessary due to delays in the certification for that base period~~)) Second, medical expenses incurred and paid by the individual during the three month retroactive base period if eligibility for medical assistance was not established in that base period;

(c) Third, current payments on, or unpaid balance of, medical expenses incurred prior to the current base period which have not been used to establish eligibility for medical coverage in any other base period. The department sets no limit on the age of an unpaid expense; however, the expense must still be a current liability and be unpaid at the beginning of the base period;

(d) Fourth, other medical expenses that would not be covered by the department's medical programs, minus any third party payments which apply to the charges. The items or services allowed as a medical expense must have been provided or prescribed by a licensed health care provider;

(e) Fifth, other medical expenses which have been incurred by the individual during the base period that are potentially payable by the MN program (minus any confirmed third party payments that apply to the charges), even if payment is denied for these services because they exceed the department limits on amount, duration or scope of care. Scope of care is described in WAC 388-501-0060 and 388-501-0065; and

(f) Sixth, other medical expenses that have been incurred by the individual during the base period that are potentially payable by the MN program (minus any confirmed third party payments that apply to the charges) and that are within the department limits on amount, duration or scope of care.

(11) ((~~An exception to the provisions in subsection (10) of this section exists. Medical expenses the person owes are applied to spenddown even if they were paid by or are subject to payment by a publicly administered program during the base period. To qualify, the program cannot be federally funded or make the payments of a person's medical expenses from federally matched funds. The expenses do not qualify if they were paid by the program before the first day of the base period~~)) If an individual submits verification of qualifying medical expenses with his or her application that meets or exceeds the spenddown liability, he or she is eligible for MN medical coverage for the remainder of the base period unless their circumstances change. See WAC 388-418-0005 to determine which changes must be reported to the department. The beginning of eligibility is determined as described in WAC 388-416-0020.

(12) ((~~The following medical expenses which the person owes are applied to spenddown. Each dollar of an expense or obligation may count once against a spenddown cycle that leads to eligibility for MN coverage:~~

~~(a) Charges for services which would have been covered by the department's medical programs as described in WAC 388-501-0060 and 388-501-0065, less any confirmed third party payments which apply to the charges; and~~

~~(b) Charges for some items or services not typically covered by the department's medical programs, less any third party payments which apply to the charges. The allowable items or services must have been provided or prescribed by a licensed health care provider; and~~

~~(c) Medical insurance and Medicare copayments or coinsurance (premiums are income deductions under WAC 388-519-0100(4)); and~~

~~(d) Medical insurance deductibles including those Medicare deductibles for a first hospitalization in sixty days~~)) If an individual cannot meet the spenddown amount at the time the application is submitted, the individual is not eligible until he or she provides proof of additional qualifying expenses that meet the spenddown liability.

(13) Each dollar of a qualifying medical expense((~~s~~)) may ((~~be used more than once if~~)) count against a spenddown period that leads to eligibility for MN coverage. However, medical expenses may

be used more than once under the following circumstances:

(a) The ((~~person~~)) individual did not meet ((~~their~~)) his or her total spenddown ((~~amount~~)) liability and ((~~did not~~)) become eligible in ((~~that~~)) a previous base period and the bill remains unpaid; ((~~and~~)) or

(b) The medical expense was ((~~applied to that unsuccessful spenddown and remains an unpaid~~)) a bill incurred and paid within three months of the current application and the department could not establish eligibility for medical assistance for the individual in the retroactive base period.

(14) ((~~To be considered toward spenddown, written proof of~~)) The individual must provide the proof of qualifying medical expenses ((~~for services rendered to the client must be presented~~)) to the department. The deadline for ((~~presenting~~)) providing medical expense information is thirty days after the base period ends unless there is a good ((~~cause~~)) reason for delay ((~~can be documented~~)).

(15) ((~~The medical expenses applied to the spenddown amount are the client's financial obligation and are not reimbursed by the department (see WAC 388-502-0100).~~

~~(16)~~)) Once ((~~a person~~)) an individual meets ((~~their~~)) the spenddown ((~~and they are issued a medical identification card for MN coverage~~)) requirement and the certification begin date has been established, newly identified expenses cannot be considered toward that spenddown unless there is a good reason for the delay in submitting the expense or there was department error in determining the correct begin date. ((~~Once the application is approved and coverage begins the beginning date of the certification period cannot be changed due to a clients failure to identify or list medical expenses.~~))

(16) Good reasons for delay in providing medical expense information to the department include, but are not limited to:

(a) The individual did not receive a timely bill from his or her medical provider or insurance company;

(b) The individual has medical issues that prevents him or her from submitting proof in a timely manner; or

(c) The individual meets the criteria for needing a supplemental accommodation under chapter 388-472 WAC.

(17) The department is not responsible to pay for any expense or portion of an expense that has been assigned to an individual's spenddown liability. If an expense is potentially payable under the MN program, and only a portion of the medical expense has been assigned to meet spenddown, the medical provider may not bill the individual for more than the amount which was assigned to the remaining spenddown liability. See WAC 388-502-0160 Billing a client.

(18) The department determines whether any payment is due to the medical provider on medical expenses that have been partially assigned to meet a spenddown liability, according to WAC 388-502-0100.

(19) If the medical expense assigned to spenddown was incurred outside of a period of MN eligibility, or if the expense is not the type that is covered by the department's medical assistance programs, the department is not responsible for any portion of the bill.