



UPDATING AMERICAN INDIAN/ALASKA NATIVE INCOME EXCLUSIONS UNDER WIC IN WASHINGTON STATE

I. Impacts of Failure to Exclude AI/AN Income

Unique considerations must be given to the nutritional needs of the American Indian/Alaska Natives (AI/AN). These considerations must include the adverse consequences of long-term exposure to poor nutrition resulting from historical and persistent inequities. These inequities stem from forced relocation to reservations where traditional food and medicine gathering practices were not possible. As AI/AN individuals faced starvation, this led to eating the high calorie, nutrient-poor commodity foods provided by the federal government. AI/AN also faced serious impacts from extremely poor nutrition experienced by generations of boarding school survivors.

Lack of access to nutrition contributes significantly to health disparities among AI/AN today. Unnecessarily denying AI/AN access to WIC services is an urgent issue that further contributes to these disparities and the ongoing inequities in AI/AN nutrition. AI/AN are frequently being denied WIC services because of a failure to exclude certain AI/AN income that are excluded under federal law. These exclusions are based upon the unique legal status of federally recognized Indian Tribes and their government-to-government relationship with the United States.

This policy brief provides recommendations to the Washington State Department of Health (DOH) for excluding AI/AN income in a manner similar to the Internal Revenue Service and Medicaid laws and regulations. Aligning WIC AI/AN income exclusions with other federal agency laws and regulations will create increased consistency in eligibility determinations and reduce denial of WIC services to AI/AN individuals.

II. General Welfare Income

A. What is General Welfare Income?

The Internal Revenue Service (IRS) defines the “general welfare doctrine” as the concept that “payments made under social benefit programs for promotion of general welfare are excludable.”¹ The Tribal General Welfare Exclusion Act of 2014² amended the Internal Revenue Code by providing an exclusion from income for payments from certain benefit programs

¹ Internal Revenue Service, ITG FAQ #6 Answer-What is the General Welfare Doctrine? <https://www.irs.gov/government-entities/indian-tribal-governments/itg-faq-6-answer-what-is-the-general-welfare-doctrine>.

² [Pub. L. No. 113-168, 128 Stat. 1883 \(2014\)](#).

provided by an Indian Tribal government for the general welfare of its members.³ Payments made by Indian Tribal governments to an individual recipient qualify for the general welfare exclusion if the payments are:

- (1) made pursuant to a governmental program of the Tribe;
- (2) for the promotion of general welfare (that is, based on individual or family need, and, uniquely in the case of programs of Indian Tribal governments, to help establish Indian-owned businesses on or near the reservation); and
- (3) not compensation for services. These Tribal government programs include: (a) housing program assistance; (b) educational programs; (c) elder and disabled programs; (d) other qualifying assistance programs; and (e) cultural and religious programs.⁴

B. General Welfare Income and WIC

While both the IRS and Medicaid currently exclude general welfare income pursuant to federal law, the federal regulations for WIC do not include general welfare income under the list of excluded income.⁵

C. Excluding General Welfare Income under a Washington State Waiver

In December of 2021, the American Indian Health Commission (AIHC) and a number of Tribes requested USDA Food and Nutrition Service seek to amend [7 C.F.R. § 246.7\(d\)\(2\)\(D\)](#) to include updated AI/AN income exclusions recognized by IRS and Medicaid. USDA has not informed the AIHC or Tribes of any efforts to amend federal WIC regulations.

DOH notified AIHC of their intent to apply for a federal waiver to exclude AI/AN general welfare income. In implementing this waiver, AIHC recommends DOH exclude AI/AN income in a similar manner to the state's Medicaid program. The state's MAGI Medicaid AI/AN income exclusion regulation, [WAC 182-509-0340](#), provides more up-to-date and accurate AI/AN income exclusions than those provided in [7 C.F.R. § 246.7\(d\)\(2\)\(D\)](#). Specifically, [WAC 182-509-0340\(7\)](#) excludes "Any other applicable income exclusion as provided by federal law, regulation, or rule, including the Internal Revenue Code, treasury regulations, and Internal Revenue Service revenue rulings, revenue procedures, notices, and other official tax guidance." General welfare income clearly falls under [WAC 182-509-0340\(7\)](#) as it is excluded from the IRS as income under [26 U.S.C. § 139E](#), [IRS Notice 2015-34](#), and [IRS Revenue Procedure 2014-35](#).

We understand that USDA may have concerns as to how a WIC agency should verify whether a Tribe has a general welfare exclusion program and if it meets certain requirements. We find that imposing any additional requirements upon Tribes is unnecessary and inconsistent with Medicaid and IRS guidance. The Health Care Authority, the State's Medicaid agency, does not require Tribes to verify that they administer a Tribal general welfare program.⁶ In addition, IRS does not impose such additional requirements upon Tribes. Rather, [IRS Revenue Procedure](#)

³ [26 U.S.C. § 139E](#).

⁴ [IRS Revenue Procedure 2014-35](#).

⁵ [7 C.F.R. § 246.7\(d\)\(2\)\(D\)](#).

⁶ For example, [HCA Apple Health Medicaid Manual, Revision #13](#) states that general welfare income is to be excluded under the Tribal Elder Security Assistance Plan Assistance but does not require any verification process of the Tribe's general welfare exclusion program.

[2014-35](#) provides that “governmental payors and payment recipients must maintain accurate books or records” and “keep these books or records at all times available for inspection by authorized internal revenue agents or employees, and must maintain them as long as their contents are material in the administration of any internal revenue law.”⁷ Requiring Tribes to go through additional procedures would be administratively burdensome for Tribes, DOH, and WIC agencies and further delay access to WIC services.

III. Other AI/AN Income Exclusions Should Be Included in the Waiver

AI/AN are being denied WIC services because of a failure to exclude not just general welfare income but also other AI/AN income that are currently excluded under the state’s Medicaid program. AIHC additionally requests that under this waiver, DOH exclude all AI/AN income recognized under federal law and regulations in manner similar to [WAC 182-509-0340](#).

IV. The Importance of Written Guidance and Training on AI/AN Income Exclusions

AIHC recommends that DOH’s efforts in implementing this potential waiver focus on educating WIC agencies on AI/AN income exclusions, with a particular emphasis on general welfare exclusions. Such efforts should include creating written guidance and online trainings on AI/AN income exclusions. The guidance should provide similar language provided in [WAC 182-509-0340](#) and be developed in consultation and collaboration with Tribes.

⁷ [IRS Revenue Procedure 2014-35](#), p. 3-4