

**WISCONSIN DEPARTMENT OF REVENUE  
DIVISION OF INCOME, SALES, AND EXCISE TAX**

**NOTICE OF PROPOSED GUIDANCE DOCUMENTS**

Pursuant to sec. 227.112, Wis. Stats., the Wisconsin Department of Revenue, Division of Income, Sales, and Excise Taxes hereby seeks comment on the proposed guidance documents listed in the table below.

**SUBMITTING PUBLIC COMMENTS**

Public comments on proposed or adopted guidance documents may be submitted online at: <https://www.revenue.wi.gov/Pages/contactUs/proposed-Guidance.aspx>.

**DEADLINE FOR SUBMISSION**

The period for public comment for proposed guidance documents ends 21 days after publication in the Administrative Register, unless the Governor approves a shorter commenting period.

<b>Document Number</b>	<b>Document Title</b>
<b>100168</b>	Medicaid Home and Community-Based Services Waiver Programs - Common Questions

State of Wisconsin  
Department of Revenue

# Medicaid Home and Community-Based Services Waiver Programs

**This is a proposed guidance document. The document has been submitted to the Legislative Reference Bureau for publication in the Administrative Register for public comment as provided by sec. 227.112(1), Wis. Stats.**

1. What is a Medicaid home and community-based services waiver program?
2. What does it mean to be self-directed?
3. What are the federal tax consequences of amounts received by a person who is hired by the participant to provide care and supportive services?
4. Does the federal tax treatment of the Medicaid waiver payments apply for Wisconsin?
5. I previously reported Medicaid waiver payments as taxable income on my Wisconsin income tax return. May I file amended returns to exclude such income?
6. Do I have to adjust any credits if I file an amended return to remove Medicaid waiver payments from income?

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1. **What is a Medicaid home and community-based services waiver program?**

Home and community-based services waivers provide opportunities for Medicaid beneficiaries to receive services in their own home or community rather than in institutions or other isolated settings. The following are Medicaid waiver programs administered by the Wisconsin Department of Health Services:

- Family Care program
- Family Care Partnership program
- IRIS (Include, Respect, I Self-Direct) program

2. **What does it mean to be self-directed?**

"Self-directed" means that the participant in the program has increased control over the long-term care, goods, and services purchased and how they are provided. The participant can hire, supervise, and dismiss his/her own workers or purchase services through an agency.

**3. What are the federal tax consequences of amounts received by a person who is hired by the participant to provide care and supportive services?**

The federal Internal Revenue Service issued Notice 2014-7, which provides that certain payments received by an individual care provider under a state Medicaid Home and Community-Based Services Waiver (Medicaid waiver) program are difficulty of care payments that are excluded from income under section 131 of the Internal Revenue Code (IRC).

Difficulty of care payments are compensation for providing the additional care of a qualified foster individual which is:

- Required by reason of a physical, mental, or emotional handicap of such individual with respect to which the State has determined that there is a need for additional compensation, and
- Provided in the home of the foster care provider.

The payments must be designated by the payor as compensation for providing the additional care.

This treatment applies whether the care provider is related or unrelated to the eligible individual.

Under Notice 2014-7, the "placement" requirement of section 131 of the IRC will be considered met for otherwise qualified Medicaid waiver payments. The other eligibility requirements of section 131 of the IRC must still be met for exclusion of the payments from income. For instance, payments are not excludable to the extent they are made for more than:

- 10 qualified foster individuals who have not attained age 19, and
- 5 qualified foster individuals who have attained age 19.

**4. Does the federal tax treatment of the Medicaid waiver payments apply for Wisconsin?**

Yes. Any Medicaid waiver program payments treated as difficulty of care payments that are excluded from federal income are also excluded from Wisconsin income.

**5. I previously reported Medicaid waiver payments as taxable income on my Wisconsin income tax return. May I file amended returns to exclude such income?**

Yes. Amended returns may be filed within 4 years of the original due date of the return. For example, returns for calendar year 2015 were due April 15, 2016. A 2015 amended return may be filed on or before April 15, 2020.

**6. Do I have to adjust any credits if I file an amended return to remove Medicaid waiver payments from income?**

Yes. There are several credits that must be adjusted when you amend your Wisconsin income tax return to remove Medicaid waiver payments from income. These payments were previously reported as wages. The affected credits include:

- *Wisconsin itemized deduction credit* - Any decrease in income may increase your standard deduction which in turn will affect your itemized deduction credit.
- *Married couple credit* - The decrease in the amount reported as wage income may decrease your married couple credit.

- *Homestead credit or farmland preservation credit from Schedule FC* - A taxpayer who is amending to remove the Medicaid waiver payments from income should also amend homestead credit or farmland preservation credit if previously claimed. The amount of these payments is not included in household income for homestead or farmland preservation credit purposes.

## Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations in effect as of November 1, 2019: Sections 71.01, 71.07, 71.52, 71.53, 71.54 and 71.60, Wis. Stats., secs. Tax 2.12 and 14.03, Wis. Adm. Code, and 26 U.S. Code § 131.

Laws enacted and in effect after November 1, 2019, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to November 1, 2019, that is contrary to the information in this document is superseded by this document, pursuant to sec. 73.16(2)(a), Wis. Stats.

### FOR QUESTIONS OR COMMENTS CONTACT:

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