

WAC 182-516-0130 Irrevocable self-settled trusts established on or after August 11, 1993. (1) This section governs irrevocable self-settled trusts established on or after August 11, 1993, that do not meet the rules under either WAC 182-516-0120 or 182-516-0125.

(2) A trust established on or after August 1, 2003, is a self-settled trust if:

(a) The assets of the trust are at least partially from the beneficiary or the beneficiary's spouse, or would have been owned by the beneficiary or the beneficiary's spouse unless diverted by the beneficiary, the beneficiary's spouse, the court, or someone acting on behalf of the beneficiary or the beneficiary's spouse;

(b) The trust is not established by will; and

(c) The trust was established by:

(i) The beneficiary or that beneficiary's spouse;

(ii) A person, including a court or administrative body, with legal authority to act in place or on behalf of the beneficiary or that beneficiary's spouse; or

(iii) A person, including a court or administrative body, acting at the direction or upon the request of the beneficiary or that beneficiary's spouse.

(3) A trust established from August 11, 1993, to July 31, 2003, is a self-settled trust if:

(a) The assets of the trust are at least partially from the beneficiary, or would have been owned by the beneficiary unless diverted by the beneficiary, the court, or someone acting on behalf of the beneficiary;

(b) The trust is not established by will; and

(c) The trust was established by:

(i) The beneficiary;

(ii) A person, including a court or administrative body, with legal authority to act in place or on behalf of the beneficiary; or

(iii) A person, including a court or administrative body, acting at the direction or upon the request of the beneficiary.

(4) This section applies only to the assets contributed to a trust:

(a) Under subsection (2) of this section, by either the beneficiary or that beneficiary's spouse; or

(b) Under subsection (3) of this section, by the beneficiary.

(5) The medicaid agency or the agency's designee applies the rules of this section without regard to:

(a) The purpose for establishing a trust;

(b) Whether the trustees have or may exercise any discretion under the terms of the trust;

(c) Restrictions on when or whether distributions may be made from the trust; and

(d) Restrictions on the use of distributions from the trust.

(6) Treatment of payments or benefits from trusts established under this section.

(a) Subject to subsection (7) of this section, if there are any circumstances under which payment or benefit from the trust could be made to or for the benefit of the beneficiary, the portion of the principal from which, or the income on the principal from which, payment to the beneficiary could be made is an available resource to the beneficiary, and the payment or benefit from that portion:

(i) Is unearned income when payment or benefit is to or for the benefit of the beneficiary; and

(ii) Is an uncompensated asset transfer, if payment or benefit is for any other purpose.

(b) If there are no circumstances under which any payment or any benefit from the trust could be made to or for the benefit of the beneficiary, the part of the trust or income of that trust, from which payment or benefit cannot be made, is an uncompensated asset transfer.

(7) For the purposes of subsection (6)(a) of this section, "available resource" means a resource after the resource exclusions under chapter 182-512 WAC are applied; however, for an institutionalized individual, the resource exclusion for the home under WAC 182-512-0350 does not apply.

(8) If unearned income under subsection (6)(a)(i) of this section was from an available resource under subsection (6)(a) of this section, then the value of the available resource will be reduced by the amount of unearned income under subsection (6)(a)(i) of this section.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 42 U.S.C. 1396p. WSR 18-04-037, § 182-516-0130, filed 1/30/18, effective 3/2/18.]