

Chapter 182-516 WAC
TRUSTS, ANNUITIES, LIFE ESTATES, AND PROMISSORY NOTES—EFFECT ON MEDICAL PROGRAMS

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WAC

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WAC 182-516-0001 Definitions. "Acquire" means, in the context of trusts, to gain title to, or to gain ownership interest in an asset in a trust. Receiving payment or benefit from an asset in a trust is not acquiring the asset.

"Annuitant" means a person or entity that receives the stream of payments from an annuity.

"Annuity" means a policy, certificate, or contract that is an agreement between two parties in which one party pays a lump sum to the other, and the other party agrees to guarantee payment of a set amount of money over a set amount of time.

"Beneficiary" means, in the context of a trust, a person or entity that is entitled to benefit from a trust.

"Grantor" means the person or entity who owned the asset immediately before establishing a trust with that asset.

"Immediate" means, in the context of annuities, an annuity that is fully funded at purchase with no accumulation or deferral to allow accumulation.

"Income" means, in the context of a trust, the undistributed proceeds that a trust principal generates over a period including, but not limited to, interest, dividends, rents and realized gains on the sale or exchange. Any income not disbursed in one period is principal the next period.

"Irrevocable":

(a) For a trust, "irrevocable" means the grantor or someone acting on behalf of the grantor cannot reacquire any portion of the assets in the trust for the benefit of the grantor or unilaterally change the terms of the trust; and the beneficiary or someone acting on behalf of the beneficiary cannot acquire any portion of the assets in the trust for the benefit of the beneficiary or unilaterally change the terms of the trust. A legal instrument that is called irrevocable, but permits acquisition or reacquisition of any portion of the assets if some action is taken by or on behalf of the grantor or the beneficiary, is revocable for the purposes of this chapter.

(b) A trust or annuity that is not irrevocable is revocable.

(c) A trust is still irrevocable if it meets the definition under (a) of this definition, but allows modifications to the trust to conform with changes in trust law, which occur after the establishment of the trust.

(d) For an annuity, "irrevocable" means the contract cannot be canceled and the terms of the contract cannot be changed.

"Principal" means the assets, other than income, that make up the trust, promissory note, or loan.

"Revocable" means the instrument is not irrevocable. See the definition of "irrevocable."

"Self-settled trust" means any trust established with assets that were originally owned by the beneficiary, or would have been owned by the beneficiary if they had not been diverted into the trust by the beneficiary, the court, or someone acting on the beneficiary's behalf. Depending on the date a trust is established, a trust may be self-settled if the assets were originally owned by the beneficiary's spouse, or would have been owned by the beneficiary's spouse if they had not been diverted into the trust by the beneficiary's spouse, the court, or someone acting on the beneficiary's spouse's behalf.

"Sole benefit" of a beneficiary means a trust benefits no one but that beneficiary, whether at the time the trust is established or at any time during the lifetime of the beneficiary.

"Third-party trust" means a trust established with assets originally owned by someone other than the beneficiary. However, depending on the date a trust is established, a trust may be self-settled if the assets were originally owned by the beneficiary's spouse, or would have been owned by the beneficiary's spouse if they had not been diverted into the trust by the beneficiary's spouse, the court, or someone acting on the beneficiary's spouse's behalf.

"To or for the benefit of" means that a payment or benefit of any sort from a trust is transferred to the beneficiary, another person, or entity such that the beneficiary derives some benefit from the transfer.

"Trust" means:

(a) Any arrangement in which a grantor transfers property to a trustee with the intention that it be held, managed, or administered by the trustee for the benefit of the grantor or another beneficiary; or

(b) Any legal instrument, device, or arrangement similar to a trust in which:

(i) A grantor transfers an asset to another; and

(ii) The grantor transfers the asset intending that it be held, managed, or administered for the benefit of the grantor or another beneficiary.

"Trustee" means a person or entity that manages and administers a trust for the beneficiary.

"Uncompensated asset transfer" means the entirety of the fair market value of the asset transferred was uncompensated, regardless of any consideration received in return for the asset.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 42 U.S.C. 1396p. WSR 18-04-037, § 182-516-0001, filed 1/30/18, effective 3/2/18. WSR 13-01-017, recodified as § 182-516-0001, filed 12/7/12, effective 1/1/13. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.575. WSR 03-06-048, § 388-561-0001, filed 2/28/03, effective 4/1/03. Statutory Authority: RCW 74.04.050, 74.08.090, and 74.09.500. WSR 01-06-043, § 388-561-0001, filed 3/5/01, effective 5/1/01.]

WAC 182-516-0100 Trust index. The medicaid agency or the agency's designee applies the following rules to determine how trusts affect eligibility for medicaid:

- (1) WAC 182-516-0105 General rules that apply to all trusts.
- (2) WAC 182-516-0110 Self-settled trusts overview.
- (3) WAC 182-516-0115 Revocable self-settled trusts established on or after August 11, 1993.
- (4) WAC 182-516-0120 Irrevocable self-settled trusts for a disabled client under age sixty-five established on or after August 11, 1993.
- (5) WAC 182-516-0125 Irrevocable pooled self-settled trusts for a disabled client established on or after August 11, 1993.
- (6) WAC 182-516-0130 Irrevocable self-settled trusts established on or after August 11, 1993.
- (7) WAC 182-516-0135 Self-settled trusts established before August 11, 1993.
- (8) WAC 182-516-0140 Third-party trusts.
- (9) WAC 182-516-0145 Trusts containing both assets of the beneficiary and third-party assets.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 42 U.S.C. 1396p. WSR 18-04-037, § 182-516-0100, filed 1/30/18, effective 3/2/18. WSR 13-01-017, recodified as § 182-516-0100, filed 12/7/12, effective 1/1/13. Statutory Authority: RCW 34.05.353 (2)(d), 74.08.090, and chapters 74.09, 74.04 RCW. WSR 08-11-047, § 388-561-0100, filed 5/15/08, effective 6/15/08. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.575. WSR 03-13-113, § 388-561-0100, filed 6/17/03, effective 8/1/03. Statutory Authority: RCW 74.04.050, 74.08.090, and 74.09.500. WSR 01-06-043, § 388-561-0100, filed 3/5/01, effective 5/1/01.]

WAC 182-516-0105 General rules that apply to all trusts. (1) Regardless of treatment under this chapter, all trusts remain subject to Title 182 WAC, which include income and resource rules under chapter 182-512 WAC and asset transfer rules under WAC 182-513-1363, unless specified otherwise.

(2) The medicaid agency or the agency's designee treats the trust or a distribution from the trust as a third-party resource under WAC 182-501-0200 if:

(a) The agency or the agency's designee determines the trust is not an available resource or determines the distributions from a trust are not income; and

(b) The terms of the trust or how the trust is being administered meet the third-party resource rules under WAC 182-501-0200.

(3) The agency or the agency's designee applies the rules under WAC 182-516-0100 to both the language of the trust and how the trust is being administered.

(4) Assets in a trust are available resources to the beneficiary if the beneficiary:

(a) Is a trustee; or

(b) Can direct the use of the trust principal or income, or direct the trustee's use of trust principal or income, for that beneficiary's support and maintenance under the terms of the trust.

(5) Cash distributions from a trust to the beneficiary are unearned income to the beneficiary in the month they are received or should have been received under the trust's terms.

(6) For asset transfer dates for trusts, the transfer date of an asset under WAC 182-513-1363 is the latest of:

(a) The date the trust was established;

(b) The date the asset being evaluated was transferred into the trust; or

(c) The date access to the asset was foreclosed by any action, inaction, or language in the trust, which prevents the beneficiary from accessing the asset.

(7) A client who is denied or terminated from medicaid due to the application of any rules under WAC 182-516-0100 may apply for a hardship waiver under WAC 182-513-1367.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 42 U.S.C. 1396p. WSR 18-04-037, § 182-516-0105, filed 1/30/18, effective 3/2/18.]

WAC 182-516-0110 Self-settled trusts overview. (1) A trust containing the assets of a beneficiary's spouse may be a self-settled trust based on the date it was established. For specific rules regarding this, see WAC 182-516-0130.

(2) To determine whether the assets of the self-settled trust should be counted as income, a resource, or an asset transfer, the medicaid agency or the agency's designee applies the following rules based on when the trust was established:

(a) For revocable self-settled trusts, see WAC 182-516-0115.

(b) For irrevocable self-settled trusts for a disabled client under age sixty-five established on or after August 11, 1993, see WAC 182-516-0120.

(c) For irrevocable pooled self-settled trusts for a disabled client established on or after August 11, 1993, see WAC 182-516-0125.

(d) For all other irrevocable self-settled trusts:

(i) Established on or after August 11, 1993, see WAC 182-516-0130.

(ii) Established before August 11, 1993, see WAC 182-516-0135.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 42 U.S.C. 1396p. WSR 18-04-037, § 182-516-0110, filed 1/30/18, effective 3/2/18.]

WAC 182-516-0115 Revocable self-settled trusts established on or after August 11, 1993. (1) This section applies to revocable trusts that are self-settled and established on or after August 11, 1993.

(2) This section does not apply to assets in a revocable trust established before August 11, 1993.

(3) A revocable trust is a self-settled trust if:

(a) The assets of the trust are at least partially from 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.

(4) The medicaid agency or the agency's designee treats assets in a revocable self-settled trust under this section as follows:

(a) Assets are subject to the resource exclusions under chapter 182-512 WAC; however, for an institutionalized individual, the resource exclusion for the home under WAC 182-512-0350 does not apply; and

(b) Assets not excluded under chapter 182-512 WAC are available resources.

(5) Payments from assets in the trust under this section to or for the benefit of the beneficiary are unearned income of the beneficiary.

(6) If unearned income under subsection (5) of this section was from an available resource under subsection (4) of this section, then the value of the available resource will be reduced by the amount of unearned income under subsection (5) of this section.

(7) Any payments from the revocable trust, other than payments under subsections (5) and (6) of this section, are uncompensated asset transfers.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 42 U.S.C. 1396p. WSR 18-04-037, § 182-516-0115, filed 1/30/18, effective 3/2/18.]

WAC 182-516-0120 Irrevocable self-settled trusts for a disabled client under age sixty-five established on or after August 11, 1993.

(1) This section governs how the agency or the agency's designee treats self-settled trusts, for a disabled client under age sixty-five established under 42 U.S.C. 1396p (d)(4)(a) on or after August 11, 1993, for medicaid eligibility purposes.

(2) A self-settled trust established on or after August 11, 1993, is not an available resource if:

(a) The beneficiary is under age sixty-five and disabled under WAC 182-512-0050 (1)(c) when the trust is established;

(b) The trust is irrevocable;

(c) The trust was established for the sole benefit of that beneficiary;

(d) The trust was established by the beneficiary's parent, the beneficiary's grandparent, the beneficiary's legal guardian, by a court, or on or after December 13, 2016, the beneficiary; and

(e) The trust says that the states that have spent medicaid funds for the beneficiary will receive all amounts remaining in the trust up to the amount of medicaid funds spent for the beneficiary.

(i) For trusts established from August 11, 1993, to July 31, 2003, the trust must pay the states when the beneficiary dies.

(ii) For trusts established on or after August 1, 2003, the trust must pay the states when the beneficiary dies, the trust terminates, or the beneficiary's disability ends.

(3) The medicaid agency or the agency's designee does not apply a penalty period to a beneficiary for asset transfers into a trust, described under subsection (2) of this section, when the beneficiary is under age sixty-five as of the date of the transfer.

(4) Assets in trusts under subsection (2) of this section continue to be unavailable resources, even after the beneficiary turns age sixty-five.

(5) Asset transfers to the trust from the beneficiary, after the beneficiary turns age sixty-five, may be subject to a transfer penalty under WAC 182-513-1363.

(6) If a trust does not meet the requirements under subsection (2) of this section, see WAC 182-516-0130.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 42 U.S.C. 1396p. WSR 18-04-037, § 182-516-0120, filed 1/30/18, effective 3/2/18.]

WAC 182-516-0125 Irrevocable pooled self-settled trusts for a disabled client established on or after August 11, 1993. (1) This section governs how the agency or the agency's designee treats pooled self-settled trusts, for a disabled client established under 42 U.S.C. 1396p (d)(4)(c) on or after August 11, 1993, for medicaid eligibility purposes.

(2) A pooled self-settled trust established on or after August 11, 1993, is not an available resource if:

(a) The beneficiary is disabled under WAC 182-512-0050 (1)(c) when the trust is established;

(b) The trust is irrevocable;

(c) An account in the trust was established for the sole benefit of that beneficiary;

(d) An account in the trust was established by that beneficiary, the beneficiary's parent, grandparent, legal guardian, or by a court;

(e) The trust was established by and is managed by a nonprofit association;

(f) A separate account is maintained for each beneficiary of the trust, but, for the purposes of the investment and management of funds, the trust pools these accounts; and

(g) The trust says that:

(i) Upon the death of the beneficiary, or, for trust accounts established on or after August 1, 2003, when the trust account terminates or the beneficiary's disability ends, the funds will remain in the trust to benefit other disabled beneficiaries; or

(ii) The states that have spent medicaid funds for the beneficiary will receive all amounts remaining in the trust account for that beneficiary up to the amount of medicaid funds spent for the beneficiary.

(A) For trust accounts established from August 11, 1993, to July 31, 2003, the trust must pay the states when the beneficiary dies.

(B) For trust accounts established on or after August 1, 2003, the trust must pay the states when the beneficiary dies, the trust terminates, or the beneficiary's disability ends.

(3) The medicaid agency or the agency's designee does not apply a penalty period to a beneficiary for asset transfers into a trust, described under subsection (2) of this section, when the beneficiary is under age sixty-five as of the date of the transfer.

(4) Assets in trusts under subsection (2) of this section continue to be unavailable resources, even after the beneficiary turns age sixty-five.

(5) Asset transfers to the trust from the beneficiary, after the beneficiary turns age sixty-five, may be subject to a transfer penalty under WAC 182-513-1363.

(6) If a trust does not meet the requirements under subsection (2) of this section, see WAC 182-516-0130.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 42 U.S.C. 1396p. WSR 18-04-037, § 182-516-0125, filed 1/30/18, effective 3/2/18.]

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.]

WAC 182-516-0135 Self-settled trusts established before August 11, 1993. (1) A revocable or irrevocable self-settled trust established before August 11, 1993, under this section is one:

(a) Established other than by will by a beneficiary or that beneficiary's spouse;

(b) Under which that beneficiary may be the beneficiary of all or part of the payments from the trust; and

(c) Under which the distribution of those payments is determined by one or more trustees who are permitted to exercise any discretion with respect to the distribution to the beneficiary.

(2) For trusts established under subsection (1) of this section, the maximum value the trustee may distribute, under any circumstances, to the beneficiary is unearned income.

(3) If a trust does not meet subsection (1)(c) of this section:

(a) The trust is an available resource to the extent that trust assets can be used for the beneficiary; and

(b) Any asset that cannot be used for the beneficiary is an uncompensated asset transfer.

(4) This section does not apply to any trust or initial trust decree established before April 7, 1986, for the sole benefit of an intellectually disabled client who resides in an intermediate care facility for the intellectually disabled.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 42 U.S.C. 1396p. WSR 18-04-037, § 182-516-0135, filed 1/30/18, effective 3/2/18.]

WAC 182-516-0140 Third-party trusts. (1) This section governs third-party trust as defined under WAC 182-516-0001.

(2) A trust containing the assets of a beneficiary's spouse may be a self-settled trust based on the date it was established. For specific rules regarding this, see WAC 182-516-0130.

(3) A testamentary trust is a third-party trust created by a will where the trust is in the will and the estate is the grantor.

(4) There is no requirement for a state to be named as a remainder beneficiary in third-party trusts.

(5) If the beneficiary has the power to acquire the assets from the third-party trust, the trust is an available resource.

(6) If the beneficiary has no power to access or control trust assets or distributions, as described under WAC 182-516-0105(4), a third-party trust is not an available resource.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 42 U.S.C. 1396p. WSR 18-04-037, § 182-516-0140, filed 1/30/18, effective 3/2/18.]

WAC 182-516-0145 Irrevocable trusts containing both assets of the beneficiary and third-party assets. (1) For irrevocable trusts that contain both assets of the beneficiary and third-party assets, the medicaid agency or the agency's designee treats the assets of the beneficiary under the self-settled trust rule in effect as of the date of the trust's establishment:

(a) After August 11, 1993:

(i) For irrevocable self-settled trusts for a disabled client under age sixty-five, see WAC 182-516-0120;

(ii) For irrevocable pooled self-settled trusts for a disabled client, see WAC 182-516-0125; and

(iii) For all other trusts, see WAC 182-516-0130.

(b) Before August 11, 1993, see WAC 182-516-0135.

(2) For irrevocable trusts that contain both assets of the beneficiary and third-party assets, the agency or the agency's designee treats third-party assets under the third-party trust rules under WAC 182-516-0140.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 19-02-047, § 182-516-0145, filed 12/27/18, effective 1/27/19. Statutory Authority: RCW 41.05.021, 41.05.160 and 42 U.S.C. 1396p. WSR 18-04-037, § 182-516-0145, filed 1/30/18, effective 3/2/18.]

WAC 182-516-0200 Annuities established prior to April 1, 2009.

(1) A revocable annuity is an available resource.

(2) An irrevocable annuity established prior to May 1, 2001, is not an available resource when issued by an individual, insurer, or other body licensed and approved to do business in the jurisdiction in which the annuity is established.

(3) The income from an irrevocable annuity that meets the requirements of this section is income for determining eligibility and the amount of participation in the total cost of care. The annuity itself is not a resource.

(4) Subject to subsection (5) of this section, an annuity established on or after May 1, 2001, and before April 1, 2009, is an available resource unless it:

(a) Is irrevocable;

(b) Is paid out in equal monthly amounts within the actuarial life expectancy of the annuitant;

(c) Is issued by an individual, insurer, or other body licensed and approved to do business in the jurisdiction in which the annuity is established; and

(d) Names the state of Washington as the beneficiary of the remaining funds up to the total of medicaid funds spent on the client during the client's lifetime. This subsection only applies if the annuity is in the client's name.

(5) If an irrevocable annuity is an available resource under subsection (4) of this section because it does not pay out in equal monthly amounts, it is an unavailable resource if:

(a) The full pay out is within the actuarial life expectancy of the client; and

(b) The client:

(i) Changes the scheduled pay out into equal monthly payments within the actuarial life expectancy of the annuitant; or

(ii) Requests that the medicaid agency or the agency's designee calculate and budget the payments as equal monthly payments within the actuarial life expectancy of the annuitant. The income from the annuity remains unearned income to the annuitant.

(6) An irrevocable annuity is unearned income when the annuitant is:

(a) The client;

(b) The spouse of the client;

(c) The blind or disabled child, as defined in WAC 182-512-0050 (1)(b) and (c), of the client; or

(d) A person designated to use the annuity for the sole benefit of the client, client's spouse, or a blind or disabled child, as defined in WAC 182-512-0050 (1)(b) and (c), of the client.

(7) An annuity is not an available resource when there is a joint owner, co-annuitant or an irrevocable beneficiary who will not agree to allow the annuity to be cashed, unless the joint owner or irrevocable beneficiary is the community spouse. In the case of a community spouse, the value of the annuity is an available resource and counts toward the maximum community spouse resource allowance.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 42 U.S.C. 1396p. WSR 18-04-037, § 182-516-0200, filed 1/30/18, effective 3/2/18. WSR 13-01-017, recodified as § 182-516-0200, filed 12/7/12, effective 1/1/13. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530. WSR 09-06-048, § 388-561-0200, filed 2/25/09, effective 4/1/09; WSR 08-20-117 and 08-21-083, § 388-561-0200, filed 9/30/08 and 10/14/08, effective 4/1/09. Statutory Authority: RCW 74.04.050, 74.08.090, and 74.09.500. WSR 01-06-043, § 388-561-0200, filed 3/5/01, effective 5/1/01.]

WAC 182-516-0201 Annuities established on or after April 1, 2009. (1) The medicaid agency or the agency's designee determines how an annuity, purchased by or on behalf of an annuitant and established on or after April 1, 2009, affects eligibility for medicaid.

(2) General information.

(a) Clients of noninstitutional medicaid must disclose to the agency or the agency's designee any interest that client, or the financially responsible members of that client's assistance unit, has in an annuity.

(b) Clients of institutional or home and community-based (HCB) waiver services must disclose to the agency or the agency's designee any interest that client, or that client's community spouse, has in an annuity.

(c) Subject to (d) of this subsection, this section applies when the annuitant is:

(i) The client of medicaid;

(ii) That client's spouse, if that spouse is financially responsible for that client; or

(iii) That client's community spouse.

(d) If this section does not apply because of (c) of this subsection, but the client of institutional or HCB waiver services, or that client's community spouse, is the owner of the annuity, then the purchase of the annuity is evaluated as an asset transfer under WAC 182-513-1363.

(e) For the definition of "disabled," see WAC 182-512-0050 (1) (b) and (c).

(f) Actuarial life expectancy in this section is rounded up to the nearest whole year.

(3) Annuities as resources.

(a) Subject to (b) of this subsection, a revocable annuity is an available resource.

(b) The following annuities are not available resources, even if revocable:

(i) An annuity described under 26 U.S.C. Sec. 408 (b) or (q); or

(ii) An annuity purchased with proceeds from:

(A) An account or trust described under 26 U.S.C. Sec. 408 (a), (c), or (p);

(B) A simplified employee pension (within the meaning of 26 U.S.C. Sec. 408(k)); or

(C) A Roth IRA described under 26 U.S.C. Sec. 408A.

(c) An annuity not described under (b) of this subsection is an available resource unless the annuity:

(i) Is issued by an entity licensed and approved to issue annuities in the jurisdiction in which the annuity is established;

(ii) Is immediate, irrevocable, nonassignable; and

(iii) Is paid out, in equal monthly amounts with no deferral and no balloon payments, over a term:

(A) Of at least five years, if the actuarial life expectancy of the annuitant is at least five years; or

(B) Not less than the actuarial life expectancy of the annuitant, if the actuarial life expectancy of the annuitant is less than five years.

(d) If an annuity fails either the immediate requirement under (c)(ii) of this subsection or the monthly payout requirement under (c)(iii) of this subsection, the annuity is not a resource if:

(i) The annuity is fully paid out within the actuarial life expectancy of the annuitant; and

(ii) The annuitant:

(A) Changes the scheduled payout to equal monthly payments; or

(B) Asks the agency or the agency's designee to calculate and budget the periodic payments as equal monthly payments beginning the month of eligibility. Periodic payments made before the month of eligibility are not included in the calculation.

(iii) Nothing under (d) of this subsection affects the deferral or balloon payment requirements under (c)(iii) of this subsection, or the payment term requirements under (c)(iii)(A) or (B) of this subsection.

(4) Annuities as income.

(a) If an annuity is not an available resource under subsection (3) of this section, the payments from the annuity are unearned income to the annuitant.

(b) If an annuity is an available resource under subsection (3) of this section, the payments from the annuity are not income to the annuitant.

(5) An annuity as a transfer of assets.

(a) The purchase of an annuity is an uncompensated asset transfer, unless the annuity designates the state of Washington as remainder beneficiary under subsection (6) of this section.

(b) The purchase of an annuity by the client of institutional or HCB waiver services is an uncompensated asset transfer, unless the annuity is an annuity under subsection (3)(b)(i) or (ii) of this section, or the annuity:

(i) Is issued by an entity licensed and approved to issue annuities in the jurisdiction in which the annuity is established;

(ii) Is immediate, irrevocable, nonassignable; and

(iii) Is paid out, in equal periodic amounts with no deferral and no balloon payments, over a term that is actuarially sound (i.e., a term that is not greater than the actuarial life expectancy of that client).

(6) Beneficiary designation requirements.

(a) Subject to (b) of this subsection, to satisfy subsection (5)(a) of this section, when the client of institutional or HCB waiver services, or that client's community spouse, is the annuitant, the annuity must:

(i) Name the states as the remainder beneficiary, for at least the total amount of services covered under medicaid, paid on behalf of the client of institutional or HCB waiver services; and

(ii) The remainder beneficiary must be listed in the annuity in the:

(A) First position;

(B) Next position, after the community spouse, and any minor or disabled children; or

(C) First position, if either the community spouse, or any minor or disabled children, or a representative for such children, named as beneficiary in the first position under (a)(ii)(B) of this subsection, transfers the right to receive payments from the annuity for less than fair market value.

(b) When the community spouse is the annuitant, the community spouse, or the community spouse's estate, cannot be named as remainder beneficiary under (a)(ii)(A) of this subsection.

(c) If a change of circumstance requires a change in beneficiary designation under (a) of this subsection, the agency or the agency's designee reevaluates the annuity's beneficiary designation.

(7) Actuarial life expectancy is determined by tables that are published by the office of the chief actuary of the Social Security Administration.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 42 U.S.C. 1396p. WSR 18-04-037, § 182-516-0201, filed 1/30/18, effective 3/2/18. WSR 13-01-017, recodified as § 182-516-0201, filed 12/7/12, effective 1/1/13. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530. WSR 09-06-048, § 388-561-0201, filed 2/25/09, effective 4/1/09; WSR 08-20-117 and 08-21-083, § 388-561-0201, filed 9/30/08 and 10/14/08, effective 4/1/09.]

WAC 182-516-0300 Life estates. (1) "Life estate" means an ownership interest in real property only during the lifetime of a specified person.

(2) Subject to subsection (3) of this section, a life estate is an available resource, unless it is either excluded or unavailable under chapter 182-512 WAC.

(3) For someone applying for or receiving long-term services and supports, a life estate interest is subject to the home equity limits under:

(a) WAC 182-513-1350 for institutional and home and community-based (HCB) waiver programs; and

(b) WAC 182-513-1215 for community first choice.

(4) For clients of institutional or HCB waiver services:

(a) If the remainder interest was transferred for less than fair market value, the medicaid agency or the agency's designee will evaluate the transaction as an asset transfer under WAC 182-513-1363. "Remainder interest" is the fair market value of the property at the time the client transferred it and retained a life estate, minus the value of the life estate at the time of that transfer.

(b) If a client purchased a life estate but has not lived in the property for at least one year after the purchase, the purchase price of the life estate is an uncompensated asset transfer under WAC 182-513-1363.

(c) If a client purchased a life estate and has lived in the property for more than one year, it is not an uncompensated transfer, unless the purchase price for the life estate exceeded the value of the life estate. Any amount paid for a life estate in excess of the value of the life estate is an uncompensated transfer under WAC 182-513-1363.

(5) To calculate the value of a life estate:

(a) Identify the person whose life determines the length of the life estate;

(b) Identify whether uncompensated value or home equity is being calculated:

(i) If calculating uncompensated value under subsection (4)(a) or (c) of this section, identify that person's age on the person's last birthday before the transfer; or

(ii) If determining whether home equity requirements are met under subsection (3) of this section, identify that person's age on the person's most recent birthday; and

(c) Multiply the property's fair market value by the life estate factor corresponding to that person's age in the Life Estate and Remainder Interest Tables maintained by the Social Security Administration.

(6) To calculate the remainder interest, subtract the value in subsection (5) of this section from the property's fair market value at the time of the transaction that created the life estate.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 42 U.S.C. 1396p. WSR 18-04-037, § 182-516-0300, filed 1/30/18, effective 3/2/18. WSR 13-01-017, recodified as § 182-516-0300, filed 12/7/12, effective 1/1/13. Statutory Authority: RCW 34.05.353 (2)(d), 74.08.090, and chapters 74.09, 74.04 RCW. WSR 08-11-047, § 388-561-0300, filed 5/15/08, effective 6/15/08. Statutory Authority: RCW 74.04.050, 74.08.090, and 74.09.500. WSR 01-06-043, § 388-561-0300, filed 3/5/01, effective 5/1/01.]

WAC 182-516-0400 Promissory notes and loans. (1) General.

(a) In this section, note includes promissory note, loan or other obligation to pay.

(b) The medicaid agency or the agency's designee determines the value of outstanding principal and interest payments using amortization schedules, unless otherwise stated in this section.

(2) A note as a resource.

(a) A note is a resource. The value of the note is the fair market value (FMV).

(b) The FMV of a note is the outstanding principal of the note, unless convincing evidence to the contrary is provided to the agency or the agency's designee.

(c) If the note owner provides convincing evidence to the agency or the agency's designee of a legal bar to the sale of the note, the note's FMV is zero.

(3) A note as income.

(a) Interest on a note is unearned income.

(b) If the FMV of the note under subsection (2)(c) of this section is zero, the principal portion of recurring payments is unearned income.

(c) The agency or the agency's designee may budget the unearned income in equal monthly amounts at the request of the note owner, or at the agency's or the agency's designee's discretion. The budgeting period will be the note owner's certification period under chapter 182-504 WAC.

(4) A note as an asset transfer under WAC 182-513-1363.

(a) Subject to (b) of this subsection:

(i) The agency or the agency's designee evaluates the purchase of a note as an asset transfer if the purchase price of the note exceeds the FMV of the note;

(ii) The value of the asset transfer is the difference between the purchase price of the note and the FMV of the note at the time of purchase; and

(iii) The agency or the agency's designee determines the FMV of the note at the time of purchase using subsection (2) of this section, but can also determine the FMV of the note at a time after purchase if the agency or the agency's designee determines FMV of the note has changed since the time it was purchased.

(b) The assets used to purchase a note are an uncompensated asset transfer under WAC 182-513-1363, unless the note:

(i) Prohibits the cancellation of the balance of the note upon death of the note owner; and

(ii) Is paid out, in equal periodic amounts with no deferral and no balloon payments, over a term not greater than the actuarial life expectancy of that note owner.

(c) The value of the uncompensated asset transfer under (b) of this subsection is the outstanding balance of the note due as of the date of the client's application for medical assistance for institutional or home and community-based waiver services.

(d) If the purchase of a note results in a period of ineligibility under both (a) and (b) of this subsection, then the period of ineligibility under WAC 182-513-1363 will be the period that is longer.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 42 U.S.C. 1396p. WSR 18-04-037, § 182-516-0400, filed 1/30/18, effective 3/2/18.]