

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-005 What is the purpose and scope of this chapter?

The purpose of this chapter is to establish the rules for the developmental disabilities endowment trust fund to implement RCW ((43.330.195 through 43.330.240)) 43.330.430 through 43.330.437.

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-010 How may a member of the public appear before the governing board?

Members of the public may appear before the governing board at ((their)) the board's regularly scheduled meetings or may submit written comments to the governing board for consideration at their regularly scheduled meetings. Requests for meeting schedules and agendas should be made to the ((program manager)) chair of the governing board or his or her designee. Meeting schedules and agendas are also available online at the department's boards and councils web page.

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-015 What definitions apply to this chapter? "Beneficiary" means an eligible person for whom an individual trust account has been established within the trust fund and who is identified in the joinder agreement.

"Department" means the department of ((community, trade and economic development, office of community development)) commerce.

"Disbursement plan" means a plan, submitted by the primary donor at the time of enrollment as part of the joinder agreement, that identifies the goods or services most likely to be appropriate to the supplemental needs of the beneficiary. The primary donor may periodically change the disbursement plan by amending the joinder agreement.

"Disposition plan" means a plan, submitted by the primary donor at the time of enrollment as part of the joinder agreement, that directs how any remaining private funds will be disbursed from the individual trust account on the death of the beneficiary.

"Governing board" means the seven-member group established according to RCW ((43.330.210)) 43.330.433 to design and administer the trust fund.

"Individual trust account" means the account that holds assets for the benefit of an individual beneficiary within the trust fund.

"Joinder agreement" means an agreement establishing the primary donor's consent to the master trust document for the trust fund. The joinder agreement shall include the disbursement plan and the disposition plan for the individual trust account, and designate the primary representative and additional persons authorized to request disbursements.

"Master trust" means the developmental disabilities endowment trust I agreement or the developmental disabilities endowment trust II agreement, as may from time-to-time be amended.

"Primary donor" means the person ((who sets up an account for a beneficiary and submits and signs the joinder agreement. Under conditions described in the master trust document, the primary donor may be the beneficiary)) whose funds are contributed to an individual trust account at the time the individual trust account is established pursuant to the joinder agreement.

"Primary representative" means ((the person named in the joinder agreement with whom the governing board and/or the trust manager is authorized to communicate regarding an individual beneficiary's interests)) one or more persons designated in the joinder agreement as having the authority to communicate to the trust manager or governing board concerning the interests and needs of the beneficiary of an individual trust account. Multiple alternate primary representatives may be designated in the joinder agreement and the joinder agreement may include a process to identify additional alternate primary representatives.

("Program manager" means the person designated by the department to manage the developmental disabilities endowment fund and act as the department liaison with other state agencies to facilitate governing board activities.)

"Resident" means a person who lives in the state of Washington. For purposes of the trust fund, a beneficiary must be a resident at the time of enrollment.

"State administrator" means the person designated by the governing board to serve the administrative functions of the developmental disabilities endowment trust fund as defined by the governing board and act as the liaison with other state agencies to facilitate governing board activities.

"Trust fund" means the developmental disabilities endowment trust fund.

"Trust manager" means the person or persons or entity designated by the governing board pursuant to RCW ((43.330.200 to authorize disbursements from the trust fund)) 43.330.431. The trust manager ((is)) may be authorized to:

(a) Process enrollments;

(b) Receive contributions to individual trust accounts;

(c) Make disbursements in its discretion consistent with and as authorized under this chapter ((and will consider)), upon consideration of the disbursement plan filed by the primary donor as part of the joinder agreement when making decisions regarding disbursements ((The trust manager shall take into account how any individual disbursement will affect the ability of the account to sustain the needed disbursements over a significant portion of the beneficiary's anticipated remaining life));

(d) Manage and provide accounting information on the individual trust accounts; and

(e) Other duties as assigned by the governing board in accordance with the contract with the trust manager.

"Vested account" means an account that has initially qualified for matching funds by meeting requirements over a three-year period.

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WAC 365-220-020 Who authorizes disbursements? The trust manager will review all disbursement requests submitted by persons authorized in the joinder agreement. Only the governing board and/or the trust manager may authorize disbursements. ~~((In the event of disbursement denial, the trust manager will provide a written explanation for such a denial on the request of the primary representative.))~~

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WAC 365-220-025 What types of disbursements are allowed? ~~((Recommended supplemental services and supports))~~ (1) Goods or services that are most likely to be appropriate to the supplemental needs of the beneficiary may include, but are not limited to:

- ~~((1))~~ (a) Education, information, and training opportunities.
- ~~((2))~~ (b) Living arrangements, including personal assistance services, skill building, financial management, medical monitoring, meal preparation, shopping, home maintenance, and house cleaning.
- ~~((3))~~ (c) Unusual or extraordinary disability-related shelter expenses.
- ~~((4))~~ (d) Capital expenses, including environmental modifications and transportation.
- ~~((5))~~ (e) Employment supports and tuition.
- ~~((6))~~ (f) Social productivity and personal fulfillment activities, such as volunteering, club membership, and recreation.
- ~~((7))~~ (g) Assistive technology, including computers and electronic equipment.
- ~~((8) Specialized clothing, or clothing not covered by public benefits.~~
- ~~((9))~~ (h) Clothing.
- (i) Respite care.
- ~~((10))~~ (j) Disability-related support groups.
- ~~((11))~~ (k) Medical care, counseling, therapies, and other health related services, including alternative practitioners, not covered by public benefits.
- ~~((12))~~ (l) Utility and transportation costs, including the purchase of a vehicle.
- ~~((13))~~ (m) Vacation, travel, and recreation.
- ~~((14) Birthday and holiday presents for the beneficiary to give to others.~~
- ~~((15))~~, including travel companion(s) as appropriate to meet the beneficiary's needs.
- (n) Advocacy and legal services.
- ~~((16))~~ (o) Prepaid funeral and burial expenses consistent with federal and state law.
- (p) Individual trust account expenses including enrollment, book-keeping, tax return preparation and filing, tax payments, annual management expenses, and other trust related fees.
- ~~((17))~~ (q) Items the trust manager deems appropriate and reasonable within the guidelines of the governing board.

(2) All disbursements shall be for the sole benefit of the beneficiary.

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-040 What happens to an account when the beneficiary dies? ~~((At the time of enrollment, the primary donor will designate in the joinder agreement how any remaining private funds, and any earnings attributable to remaining private funds, will be distributed on the death of the beneficiary. The primary donor will indicate the amount of funds to be disbursed and to whom they will be disbursed.))~~ Upon the death of the beneficiary, the beneficiary's account shall be distributed consistent with the master trust, joinder agreement and disposition plan. In some cases, state and federal law may require certain distributions of remaining funds notwithstanding the joinder agreement and the disposition plan. ~~((When an individual trust account is closed by reason of the death of the beneficiary, the unexpended state matching money and any earnings attributable to the unexpended state matching money revert to the developmental disabilities endowment trust fund.))~~

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-045 Can the disposition plan be changed? Once an individual trust account is funded, the primary donor cannot amend the joinder agreement to change the disposition plan. A change to the disposition plan may be made only by court order or other dispute resolution mechanism available under state law, including a nonjudicial resolution of dispute agreement under chapter 11.96A RCW. The nonjudicial resolution could be an agreement signed by all of the interested parties changing the terms of the disposition plan of a developmental disabilities endowment trust fund individual trust account. The agreement needs to be in writing, state that it is being made pursuant to RCW 11.96A.220, set forth the change that is being made to the trust, and be signed by the primary donor (if alive), the trustee, and all beneficiaries (current and residual) of the trust account.

NEW SECTION

WAC 365-220-048 What if a disbursement request is denied? In the event of disbursement denial, the trust manager will provide a written explanation for such a denial on the request of the primary representative.

WAC 365-220-055 What is the dispute process? (1) To appeal a board decision, a primary donor or primary representative must send a letter addressed to the ((~~program manager at the department~~)) state administrator. The letter of appeal must be signed by the appealing party and be received by the ((~~program manager~~)) state administrator within thirty calendar days of the date of the decision. The letter must include:

(a) The name and mailing address of the appealing party;
(b) A description of the decision being appealed; and
(c) A statement explaining why the appealing party believes the decision was incorrect, outlining the facts surrounding the decision and including supporting documentation.

(2) On receiving the letter of appeal, the ((~~program manager~~)) state administrator will send written notice to the appealing party within fourteen days, confirming the appeal has been received and indicating when a decision can be expected.

(3) The governing board or its designee will conduct appeals according to RCW 34.05.485. The governing board or its designee will review and decide the appeal based on the submitted documents unless the governing board or its designee and the appealing party agree to hold a hearing in person or by telephone.

(4) The ((~~program manager~~)) state administrator will send the appealing party written notification of the governing board or its designee's initial decision within ((~~ninety~~)) one hundred twenty days of receiving the letter of appeal. The notice will include the reasons for the initial decision, and instructions on further appeal rights.

(5) The initial decision of the governing board or its designee becomes the final decision unless the ((~~program manager~~)) state administrator receives a request for a review hearing from the appealing party within thirty days of the date of the decision. The appealing party may, by written notice, request review of the initial decision. The person requesting review must reference the initial decision and provide any additional written information that the appealing party would like considered in the review. A review officer designated by the governing board will review the decision through a hearing conducted under RCW 34.05.488 through 34.05.494.

(6) The officer will review and decide the appeal based on submitted documents unless the governing board or its designee and the appealing party agree to hold a hearing in person or by telephone.

(7) The review officer will make any inquiries necessary to determine whether the proceeding must become a formal adjudicative proceeding under the provisions of chapter 34.05 RCW.

(8) If the appealing party disagrees with a review decision under subsection (6) of this section, the appealing party may request judicial review of the decision, as provided for in RCW 34.05.542. Request for judicial review must be filed with the court within thirty days of service of the final agency decision.

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-060 Who is eligible to be a beneficiary in the trust fund? Individuals are eligible to be beneficiaries if they meet ~~((two))~~ the following conditions at the time of enrollment:
(1) Beneficiaries must reside in Washington state; and
(2) Must meet the definition of developmental disability in RCW 71A.10.020(~~((3))~~) (5); and
(3) Any other condition(s) required under the master trust.

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-065 How is eligibility determined? At the time of enrollment, a prospective beneficiary must meet the definition of developmental disability in RCW 71A.10.020(~~((3))~~) (5), as determined by a representative of the ~~((division of))~~ developmental disabilities administration of the department of social and health services. The primary donor must make arrangements for notification of this determination to be sent to the trust ~~((fund office))~~ manager.

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-070 What happens if a beneficiary moves out of the state of Washington? If the beneficiary moves out of the state of Washington(~~((r))~~):
(1) The primary representative is required to notify the trust manager in writing within thirty days of the beneficiary's move out of the state of Washington.
(2) The the governing board may elect, in its discretion, one of three options:

A The balance of the beneficiary's individual trust account will be placed in another existing special needs trust established for the beneficiary. Any costs relating to the transfer will be charged to the beneficiary's individual trust account.

-OR-

B The individual trust account will remain open, and the account will be assessed fees at a level that will support all costs of maintaining the account. The beneficiary will no longer be eligible for the state match as of the date the beneficiary ceases to be a resident of Washington.

-OR-

C The beneficiary's individual trust account will be terminated and distributed as if the beneficiary had died.

~~((The primary representative is required to notify the trust manager if the beneficiary moves out of the state of Washington.))~~

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-075 What happens if a beneficiary is determined to no longer meet the Washington state definition of developmental disability in RCW 71A.10.020(~~(3)~~) (5)? (1) The primary representative is required to notify the trust manager in writing if the beneficiary is found to no longer meet the definition of a person with a developmental disability in RCW 71A.10.020(5) within thirty days of the decision.

(2) If the beneficiary is determined to no longer meet the definition of a person with a developmental disability in RCW 71A.10.020(~~(3)~~) (5), the governing board may elect, at its discretion, one of three options:

A The balance of the beneficiary's individual trust account will be placed in another existing special needs trust established for the beneficiary. Any costs relating to the transfer will be charged to the beneficiary's individual trust account.

-OR-

B The beneficiary's individual trust account will remain open, and the account will be assessed fees at a level that will support all costs of maintaining the account. The beneficiary will no longer be eligible for the state match as of the date the beneficiary is determined to no longer meet the definition of a person with a developmental disability in RCW 71A.10.020(~~(3)~~) (5). New contributions will not be accepted into the individual trust account during any period when the beneficiary does not meet the definition of the person with a developmental disability in RCW 71A.10.020(5).

-OR-

C The trust manager will make or direct distributions to or for the benefit of the beneficiary or to an achieving a better life experience (ABLE) account of the beneficiary, after first, the taxes and administrative expenses are paid and after second, the medicaid payback is enforced (if applicable).

~~((The primary representative is required to notify the trust manager if the beneficiary is found to no longer meet the definition of a person with a developmental disability in RCW 71A.10.020(3).))~~

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-080 What fees must be paid to enroll in and participate in the trust fund? The following fees may be charged by entities

or individuals associated with the developmental disabilities endowment trust fund as a condition of participation:

(1) State investment board fees. All investment and operating costs associated with the investment of money shall be paid to the state investment board from the trust fund, as required by RCW 43.33A.160 and 43.84.160.

(2) State treasurer fees. Fees charged for the services of the state treasurer will not exceed .00274% per day while funds remain in the custody of the state treasurer, as specified in RCW 43.08.190. State treasurer fees will be deducted from the trust fund.

(3) Annual management fees. An annual management fee will be charged to each individual trust account for services (~~including bookkeeping, banking services, governing board and department activities, legal services,~~) and other expenses deemed necessary by the governing board. The governing board shall authorize all changes in the annual management fees. The governing board may establish a minimum and a maximum annual management fee. Primary representatives of existing accounts will be notified sixty days in advance of the effective date of any changes in the minimum or maximum annual management fees.

(4) Enrollment fees. (~~Each individual trust account will be charged~~) A six hundred dollar enrollment fee will be charged for each individual trust account at the time of enrollment. The governing board may (~~increase~~) adjust the enrollment fee on an annual basis, (~~within~~) consistent with the limits set forth in RCW 43.135.055. The governing board shall authorize all changes in enrollment fees.

(5) Trust manager fees. Any fees for trust manager services will be charged by the entity under contract for trust management according to the terms of the contract between the trust manager and the developmental disabilities endowment trust fund. Current fee levels will be disclosed prior to enrollment. The governing board shall authorize all changes in the trust manager fees. Primary representatives of existing accounts will be notified sixty days in advance of the effective date of any changes in trust manager fees.

(6) Tax return preparation and filing fees. As necessary, the fees associated with preparing and filing tax returns for individual trust accounts will be deducted from those accounts. Current fee levels will be disclosed prior to enrollment. The governing board shall authorize all changes in tax return preparation and filing fees. Primary representatives of existing accounts will be notified sixty days in advance of the effective date of any changes in tax return preparation and filing fees.

(7) Fees for locating remainder beneficiaries named in the disposition plan. The (~~trust fund~~) governing board or its designee reserves the right to charge fees to cover the costs associated with locating any remainder beneficiary under the disposition plan. Fees for locating a remainder beneficiary of an individual trust account will be levied only against such accounts.

(8) Fees for resolving disposition plans and remainder beneficiaries. The governing board or its designee reserves the right to charge fees to cover the costs associated with resolving any remainder beneficiary under a disposition plan or terminating an account. This could include, but not be limited to, resolving tribal per capita payments, payments under the Alaska Native Claims Settlement Act, unnamed heirs in law, and nonjudicial agreements changing the disposition plan pursuant to WAC 365-220-045. Fees for resolving disposition plans or ter-

minating an individual trust account will be levied only against such accounts.

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-095 What happens when fees are past due? Accounts with fees that are not paid for a period of ninety days will be closed. The primary representative of an account will be sent notification that the account will be closed prior to its closure. The ~~((trust manager))~~ governing board or its designee will make a determination regarding the disposition of any remaining money in the individual trust account.

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-100 When and how may individual accounts be transferred? A primary representative may request governing board approval for a transfer of an account to another special needs trust. This must be done through written correspondence to the governing board stating the reasons for the request. The governing board shall review all requests for transfers. Only the governing board or its designee may approve transfers. Any such transfers shall be consistent with the master trust and federal and state law.

Transferring funds from an individual trust account to a qualified achieving a better life experience (ABLE) 529A account for the same beneficiary does not require governing board approval. The primary representative must contact the trust manager to initiate the funds transfer.

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-115 How will access to state matching money be determined? The state matching money is limited. Individual trust accounts will be assigned access to state matching money on a first come, first served basis or on another prioritized basis as determined by the governing board. Matching policies apply only to those individual trust accounts that have been assigned access to matching funds.

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-140 Are extensions allowed? One twelve-month extension may be granted to each individual trust account to extend the time to become vested (~~or to maintain active participation~~) to receive the match. To obtain the extension, a written request must be approved by the governing board or its designee.

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-150 What is the amount of maximum annual contributions eligible for state matching money? The amount of maximum annual private contributions eligible for state matching money is three thousand one hundred dollars. The maximum annual state match available for each beneficiary is seven hundred (~~fifty~~) seventy-five dollars. The amount of the state match is based on the amount of private contributions, and does not take into account any return on the investment of the private contributions. This maximum may be changed at the discretion of the governing board.

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-175 For beneficiaries with multiple individual trust accounts, how is it determined which individual trust account is eligible for state matching money? For beneficiaries with multiple individual trust accounts, the first individual trust account assigned access to the state match will be eligible to receive the state match, provided it is qualified.

If a beneficiary has only one individual trust account, and that account is closed after it has vested, the next individual trust account opened for that beneficiary and assigned access to state matching money will be eligible to receive matching funds, subject to the first come, first served policy or other prioritized policy as determined by the governing board.

If a beneficiary has multiple individual trust accounts, and if an individual trust account for which they have vested is closed, vesting and access to the match are automatically transferred to another individual trust account for that beneficiary, with the transfer made to the longest existing account first.

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-180 In what proportion are state matching funds spent? State matching money will only be disbursed from an individual trust account after that individual trust account has vested. For every disbursement made from an individual trust account that has vested, the amount of state matching money disbursed will be equal to the percentage of the overall balance of the individual trust account which is represented by the state matching money (plus the earnings on the state matching money) (~~for which the individual trust account has qualified,~~) multiplied by the amount of the disbursement.

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-185 What is the enrollment match? After two hundred dollars of the enrollment fee is paid, the enrollment fee will be matched at the rate of one dollar to one dollar. The maximum enrollment match is four hundred dollars per beneficiary. The governing board may (~~increase~~) adjust the maximum enrollment match at its discretion. The enrollment match may be earned prior to vesting but may not be spent prior to vesting. Matching funds allocated for this purpose will not count against the beneficiary's maximum annual or lifetime match. The enrollment match will be credited to the individual trust account and begin to accumulate earnings when the enrollment process is completed for that individual trust account.

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-190 What is the annual management fee match? The annual management fee match will be (~~applied to individual trust accounts that are levied annual management fees in excess of two percent of the account balance. This match will be applied at a rate of one dollar for each dollar the annual management fee exceeds two percent of the account balance. This match only applies when two percent of the account balance is greater than the minimum annual management fee.~~

~~The annual management fee match may be earned prior to vesting but may not be spent prior to vesting. Matching funds allocated for this purpose will not count against the beneficiary's maximum annual or lifetime match)) determined by the governing board.~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 365-220-085 Is it possible to be placed on the list for state matching funds, and delay payment of the enrollment fees?

WAC 365-220-125 How does an individual trust account maintain qualification for state matching money?

WAC 365-220-130 What happens when an individual trust account becomes inactive?