

Center for Medicare & Medicaid Services

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Treatment of Trusts

(Section 1917(d) of the Social Security Act; U.S. Code Reference 42 U.S.C. 1396p(d))

Where an individual, his or her spouse, or anyone acting on the individual's behalf, establishes a trust using at least some of the individual's funds, that trust can be considered available to the individual for purposes of determining eligibility for Medicaid.

In determining whether the trust is available, no consideration is given to the purpose of the trust, the trustee's discretion in administering the trust, use restrictions in the trust, exculpatory clauses, or restrictions on distributions.

How a trust is treated depends to some extent on what type of trust it is; for example, whether it is revocable or irrevocable, and what specific requirements and conditions the trust contains. In general, however, payments actually made to or for the benefit of the individual are treated as income to the individual. Amounts that could be paid to or for the benefit of the individual, but are not, are treated as available resources. Amounts that could be paid to or for the benefit of the individual, but are paid to someone else, are treated as transfers of assets for less than fair market value. Amounts that cannot, in any way, be paid to or for the benefit of the individual are also treated as transfers of assets for less than fair market value.

Certain trusts are not counted as being available to the individual. They are:

Trusts established by a parent, grandparent, guardian, or court for the benefit of an individual who is disabled and under the age of 65, using the individual's own funds.

Trusts established by a disabled individual, parent, grandparent, guardian, or court for the disabled individual, using the individual's own funds, where the trust is made up of pooled funds and managed by a non-profit organization for the sole benefit of each individual included in the trust.

Trusts composed only of pension, Social Security, and other income of the individual, in States which make individuals eligible for institutional care under a special income level, but do not cover institutional care for the medically needy.

In all of the above instances, the trust must provide that the State receives any funds, up to the amount of Medicaid benefits paid on behalf of the individual, remaining in the trust when the individual dies.

A trust will not be counted as available to the individual where the State determines that counting the trust would work an undue hardship.

Contact Person:

For additional information concerning Federal rules for treatment of trusts, contact Roy Trudel, (410) 786-3417; E-Mail address, rtrudel@cms.hhs.gov, or Barbara Collins, (410) 786-3364; E-Mail address bcollins@cms.hhs.gov.

If you have questions about how a specific State applies the rules on treatment of trusts, please contact the State directly. See the State Contact Page for a list of States and contact information.

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