
MEDI-CAL ELIGIBILITY PROCEDURES MANUAL

1. REVOCABLE TRUSTS

The entire amount of funds held in a revocable trust shall be considered totally available to the Medi-Cal applicant, beneficiary, his/her spouse or member(s) of the MFBU as long as one or more of them have the legal right, power and authority to revoke the trust and the right to use the funds.

- a. Trust principal is available property (pursuant to Section 50402, except that subsection 50402(e) does not apply to annuities purchased on or after August 11, 1993).
- b. Trust interest is income and is treated in accordance with Article 10. If the trust income is not distributed in the month of receipt, the trust income is considered income in the month received and is treated as available property (pursuant to Section 50402, except that subsection 50402(e) does not apply to annuities purchased on or after August 11, 1993). in the month following receipt.
- c. Trust assets (income and principal) are not available until distributed when the individual does not have the legal right, power, and authority to revoke the trust and to use trust proceeds.

2. IRREVOCABLE TRUSTS

The funds in an irrevocable trust shall be considered available only if they are actually distributed.

- a. If established with the income, property or property rights of the individual or individual's spouse:
 1. Funds distributed from trust income shall be considered income in accordance with Article 10.
 2. Funds distributed from trust principal shall be considered available property.
 3. Funds that cannot be distributed to or for the benefit of the individual or spouse shall be considered transferred assets and may result in a disqualifying transfer.



Example: Ann Jones is applying for Medi-Cal on behalf of her husband Bob who is in long term care. She declares that her husband placed all of his separate property into a trust on September 20, 1992. Ann is the trustee. The trust document has been set up to be irrevocable and provides no discretion for Ann to release funds from either the principal or income. Bob's son Joseph is the beneficiary upon Bob's death. The trust contains approximately \$100,000 in personal property which is income producing.



Discussion: In this example, the trust was established on September 20, 1992 with the assets of Bob Jones. The trustee has no discretion to release funds from the trust. The \$100,000 would be considered a transferred asset which may result in a disqualifying transfer.

- b. If established with income, property or property rights of an individual who is not a MFBU member or responsible relative:

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1. Funds actually distributed for the support and maintenance of the individual or spouse shall be considered income in accordance with Article 10.
2. Funds that are not distributed are not subject to the transfer of asset provisions since the trust was established with funds belonging to an individual who is not the individual or spouse, not a member of the MFBU and not a responsible relative.

C. TRUSTS ESTABLISHED ON OR AFTER AUGUST 11, 1993 FOR DISABLED INDIVIDUALS

Two types of trusts established on or after August 11, 1993, specifically for disabled individuals, have been excepted from treatment under the OBRA '93 provisions. These two types, Individual Trusts and Pooled Trusts, are established with the assets or property rights of disabled individuals and are to be treated in accordance with Section 50489.9 described in B above. Per ACWDL 94-01, treatment is effective no earlier than October 1, 1993 at application and redetermination.



Note: Transfer of asset provisions do not apply to Individual and Pooled Trusts for Disabled Individuals established on or after August 11, 1993 unless there is an addition or augmentation to that trust after the individual or spouse reaches age 65 [refer to Section C(3) below].

If a trust is established on or after August 11, 1993 for a disabled individual or disabled spouse, with his/her assets or property rights, which meets the criteria for an Individual Trust except that the disabled individual or disabled spouse is age 65 or older, it shall be treated as an OBRA '93 trust pursuant to Section 50489.5 and the exceptions discussed in this subsection shall not apply. If a trust is established on or after August 11, 1993 for a disabled individual or disabled spouse, with his/her assets, which meets the criteria for a Pooled Trust except that the disabled individual or disabled spouse is age 65 or older, the transfer may be considered a disqualifying transfer of assets. The Pooled Trust shall continue to be treated under the following procedures.

1. INDIVIDUAL TRUST CHARACTERISTICS

Individual trusts must have all of the following conditions:

- a. Was established on or after August 11, 1993, and
- b. Was established for the benefit of the disabled individual or disabled spouse, by a parent, grandparent, legal guardian of the individual, or court, and
- c. Contains the assets or property rights of the disabled individual or disabled spouse who was both:
 - (1) under the age of 65 when the trust was established whether or not he/she is currently age 65 or over, and
 - (2) who, at the time the trust was established, was determined to be disabled as verified in accordance with Title 22, Section 50167(a) and who is currently determined to be disabled, and

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- d. Provides that, upon the death of the disabled individual or disabled spouse or upon termination of the trust, DHS shall receive all assets remaining in the trust up to an amount equal to the total medical assistance paid on behalf of that individual by Medi-Cal.



Note: A beneficiary may be named in the trust, to receive amounts remaining in the trust upon the death of the primary beneficiary, however, the terms of the trust must be clear that the transfer to the secondary beneficiary occurs only after DHS has been reimbursed for the medical assistance provided.

- (1) Funds may be retained by the trust upon the death of the disabled individual or disabled spouse, for whose benefit the trust was established, for:

- ✓ the cost of the individual's remaining management and investment fees, or
- ✓ outstanding bills for the benefit of the disabled individual or disabled spouse that fall within the terms of the trust, or
- ✓ burial/funeral expenses of the disabled individual or disabled spouse.

- (2) In addition, there is no requirement in State or federal law that DHS is obligated to submit any type of claim in order to be reimbursed, nor is the State required to include reimbursement from this type of trust as part of its estate recovery process. It is the responsibility of the trustee to contact DHS to obtain the dollar amount of medical assistance provided by DHS and then submit that amount, or the amount remaining in the trust, whichever is less, to DHS Recovery Branch. Any trust which contains provisions allowing reimbursement of medical assistance provided only upon submission of a "claim" or a "proper claim", shall not be considered an "Other" trust and shall be treated as an OBRA '93 trust under Procedures Section 9JV.



Note: When a disabled individual or disabled spouse has resided in more than one state, the trust must provide that the funds remaining in the trust be distributed to each state in which the individual received Medicaid, based on the state's proportionate share of the total amount of Medicaid benefits paid by all of the states on behalf of the individual.

2. POOLED TRUST CHARACTERISTICS

Pooled trusts must have all the following conditions:


- a. Established on or after August 11, 1993, and
- b. Established and managed by a non-profit association, and
- c. Contains the assets of the individual or spouse who is determined to be currently disabled as verified in accordance with Title 22, Section 50167 (a)(1), and

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- d. Maintains a separate account for each beneficiary of the trust (but for purposes of investment and management of funds, the trust pools these accounts), and
- e. Provides that DHS, upon the death of the disabled individual or disabled spouse or upon earlier termination of the trust, receive all amounts remaining in that individual's account, equal to the amount of medical assistance paid on behalf of that individual to the extent that amounts remain in that individual's account and are not retained by the trust to cover the costs of that individual's remaining management and investment fees, outstanding bills that fall within the terms of the trusts, and burial/funeral expenses.

In addition, there is no requirement in State or federal law that DHS is obligated to submit any type of claim in order to be reimbursed, nor is the State required to include reimbursement from this type of trust as part of its estate recovery process. It is the responsibility of the trustee to contact DHS to obtain the dollar amount of medical assistance provided by DHS and then submit that amount, or the amount remaining in the trust, whichever is less, to DHS Recovery Branch. Any trust which contains provisions allowing reimbursement of medical assistance provided only upon submission of a "claim" or a "proper claim," shall not be considered an "Other" trust and shall be treated as an ORBA '93 trust under Procedures Section 9JV.

 **Note:** When a disabled individual or disabled spouse has resided in more than one state, the trust must provide that the funds remaining in the trust be distributed to each state in which the individual received Medicaid, based on the state's proportionate share of the individual.

- f. Each account is established solely for the benefit of the disabled individual or the disabled spouse by the disabled individual, disabled spouse, his or her parents or grandparents, the legal guardian of that individual, or by a court order.
 - (1) The account assets are to benefit no one other than the disabled individual or disabled spouse for whose benefit the account was established, from the time the account was established until DHS' interest has been paid. If the account assets are not solely for the benefit of the disabled individual or disabled spouse, then the trust is to be treated as an OBRA '93 trust pursuant to Section 50489.5. (See Procedure Section 9 JV.)

 **Note:** A beneficiary may be named in the trust, to receive amounts remaining in the trust upon the death of the primary beneficiary, however, the terms of the trust must be clear that the transfer to the secondary beneficiary occurs only after DHS has been reimbursed for the medical assistance provided.

- (2) If funds are to be retained by the trust upon the death of the disabled individual or disabled spouse, for whose benefit the trust was established, for any purpose other than:
 - ✓ the cost of the individuals remaining management and investment fees, or
 - ✓ outstanding bills for the benefit of the disabled individual or disabled spouse that fall within the terms of the trust, or


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- ✓ burial/funeral expenses of the disabled individual or disabled spouse,

the account will not be considered solely for the benefit of the disabled individual or spouse and shall be treated as an OBRA '93 trust pursuant to Section 50489.5. (See Procedure Section 9 JV.)

3. ADDITION OR AUGMENTATION OF INDIVIDUAL OR POOLED TRUSTS

When an Individual or Pooled trust is established for a disabled individual or disabled spouse under the age of 65, the exception from treatment under OBRA '93 continues after that individual or spouse becomes age 65. However, Individual and Pooled trusts cannot be added to, or otherwise augmented with assets of the individual or spouse, after that individual or spouse reaches age 65. Any such addition or augmentation may be considered a disqualifying transfer of assets.

-  *Note:* Parents of a disabled son(s) or daughter(s), regardless of age, may make transfers of assets to their disabled son(s) or daughter(s) directly or to the son's or daughter's Individual or Pooled Trust. Such a transfer by a parent of a disabled son or daughter would not be considered a disqualifying transfer of assets in determining the eligibility of the parents for Medi-Cal.

4. RECOVERY OF COSTS

To ensure that recovery of the costs of medical care occurs, counties shall notify Department of Health Services Third Party Liability (TPL) Branch whenever either one of these two types of trusts is discovered. The TPL Branch should be notified whenever the county finds out that the disabled individual or disabled spouse has died or the trust is being terminated. Send the beneficiary's name, Social Security number, Medi-Cal I.D. number, and photocopies of the trust documents to:

Department of Health Services
Third Party Liability Branch
Recovery Section – PI
MS 4720
P.O. Box 997425
Sacramento, CA 95899-7425