

Explanation of the Effect of Trusts on Medicaid Eligibility

What is a Trust?

A trust is a legal instrument by which an individual gives control over his/her assets to another (the trustee) to disburse according to the instructions of the individual creating the trust. A trust can contain:

- Cash or other liquid assets; and
- Real or personal property that could be turned into cash.

What Things Count as Assets and are Used to Establish a Trust?

Assets often placed in trust include income, accumulated resources, and real property.

How Does a Trust Affect My Medicaid Benefits?

As a general rule, if you use your assets to establish a trust on or after January 1, 2000, all or part of the trust assets will be counted as your resource for purposes of determining your Medicaid eligibility.

- In the case of a **revocable** trust, the whole trust is your resource.
- In the case of an **irrevocable** trust, if there are any circumstances under which payment could be made to you or for your benefit, the portion of the trust from which payment could be made is your resource.

Are There Any Exceptions to These Counting Rules?

There are certain exceptions that apply to:

- "special needs trusts" (sometimes referred to as "supplemental needs trusts") which are created for the benefit of a certified disabled person under the age of 65. A "special needs trust" must:
 - be created with the individual's own assets;
 - be created by the disabled person, by the disabled person's parent, grandparent, or legal guardian, or by a court; and
 - include language specifying that upon the death of the disabled person, the state will receive all amounts remaining in the trust, up to the amount of Medicaid paid out on behalf of the individual; and
- "Pooled trusts" which are created for the benefit of a certified disabled person of any age. To be considered a "pooled trust":
 - the trust must be established and managed by a non-profit association;
 - the trust maintains separate accounts for each person whose assets are included in the pooled trust, but pools these accounts for purposes of investment and management of the trust funds;
 - the trust must be created with the individual's own assets;

the disabled individual's account in the trust must be established by the disabled individual, by the disabled individual's parent, grandparent or legal guardian, or by a court; and

the trust must include language specifying that upon the death of the individual, funds not retained by the non-profit organization will go to the state, up to the amount of Medicaid paid out on behalf of the individual.

Medicaid will not count the assets in a special needs trust or pooled trust if it meets the described criteria. Income directly diverted to one of these types of trusts or received and then placed into the trust is not counted as income. Verification that the income was placed into the trust is required. Any trust assets distributed to the disabled individual are counted as income.

How Do I Request that the Local Social Services District Rebudget My Income Once I have Created a Trust?

You must provide a copy of the trust to your local social services district. You must include a written statement indicating the amount of monthly income that will be placed into the trust each month.

How Does Money from a Trust that is *Not* My Resource Affect My Medicaid Benefits?

- Money paid directly to you from the trust is counted as income.
- Money paid directly to someone for your benefit will not count as income (e.g., food, shelter, telephone bills, education, entertainment, etc.).

How Can I Find Out More About Setting Up a Trust?

If you are interested in setting up a trust, you should consult a lawyer or financial advisor. You may be able to get a lawyer at no cost to you by calling your local Legal Aid or Legal Services Office. For the names of other lawyers, call your local or State Bar Association.

If a Power of Attorney (POA) is establishing a trust for you, the powers granted under the POA must include permission to make gifts.

Note: Also, for married and single individuals, assets that you may use to fund a trust and which we may not count while you are living in the community, will count in determining the amount of income you must contribute toward the cost of long term nursing home care. Additional rules apply to transfers to and from trusts under the transfer of assets provisions.

If you are married and your Medicaid eligibility is determined under spousal impoverishment budgeting with post-eligibility rules (e.g. you are enrolled in a Medicaid Managed Long Term Care plan.), any of your income placed in a trust will count in determining your eligibility.

This Information is General.
For More Information Call 1-800-541-2831.