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**RESOURCES**

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**TRUSTS/TRANSFERS OF ASSETS**

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**E. MEDICAID  
QUALIFYING  
TRUSTS**

Section 9506 of the Consolidated Omnibus Reconciliation Act of 1985 (P.L. 99-272) established the "Medicaid Qualifying Trust" (MQT) provision. An MQT is defined in federal statute as "a trust, or similar legal device, established (other than by will) by an individual (or an individual's spouse) under which the individual may be the beneficiary of all or part of the payments from the trust and the distribution of such payments is determined by one or more trustees who are permitted to exercise any discretion with respect to the distribution to the individual."

If a trust meets the definition of an MQT, then federal law states the amounts from the trust deemed available to a grantor is the maximum amount of payments that may be permitted under the terms of the trust to be distributed to the grantor, assuming the full exercise of discretion by the Trustee(s) for the distribution of the maximum amount to the grantor.

The MQT provision applies without regard to whether or not the MQT is irrevocable or is established for purposes other than to qualify for medical assistance or whether or not the discretion of the trustee(s) is actually exercised.

The effective date for application of the MQT provision is March 1, 1987. Any trust or similar legal device established on or after this date is subject to MQT rules. The MQT provision also applies to SSI recipients, as discussed in Section B, Special Handling of SSI cases.

**1. Policy  
Principles**

In determining whether an MQT exists, look for these 3 main components:

- The grantor is the Medicaid client or his representative (e.g., spouse, parent, guardian or conservator or anyone holding power of attorney for the client);

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- The trust was established with property belonging to the client; and
- The client is at least one of the beneficiaries of the trust.

The client is considered to be the grantor even if the trust was established pursuant to court order issued upon the petition of the client or his representative. In this situation, the court acts as the client's agent in establishing the trust.

It is not necessary that there be a trust agreement, as defined by State law, for MQT policies to apply. MQT policies also apply to "similar legal devices," or arrangements having all of the characteristics of an MQT except there is no actual trust instrument. Examples of such devices might be escrow accounts, savings accounts, pension funds, annuities, investment accounts and other accounts managed by agents with fiduciary obligations.

The MQT provision does not apply to trust agreements established by a will. These trusts are treated as standard trusts. If, however, a client inherits resources and in turn establishes a trust, then the MQT provision could apply.

**2. Resource Treatment of MQT's**

Each trust document must be reviewed individually to determine the resource treatment of the trust but in general:

- a. For revocable MQT's, the entire corpus is an available resource to the client. Resources comprising the corpus are subject to the individual resource exclusions since the client can access these resources except for the exclusion of the home for institutionalized recipients. Home property loses its excluded status when transferred to an MQT.

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- b. For irrevocable MQT's the countable amount of the corpus is the maximum amount the trustee can disburse to (or for the benefit of) the client, using his full discretionary powers under the terms of the trust. If the trustee has unrestricted access to the corpus and has discretionary power to disburse the entire corpus to the client (or to use it for the client's benefits), then the entire corpus is an available resource to the client. Resources transferred to such a trust lose individual resource consideration. For example, home property transferred to such a trust can no longer be excluded as home property but is included in the value of the corpus.
  - c. If the trust does not specify an amount for distribution from the corpus of the trust or from the income produced by the corpus, but the trustee has access to and use of both corpus and income, the entire amount is an available resource to the client.
  - d. If the trust permits a specified amount of trust income to be distributed to the client (or to be used for his benefit), but these distributions are not made, the client's countable resources increase cumulatively by the undistributed amount.
- 3. Income Treatment of MQT's**
- a. Amounts of trust income distributed to the client are counted as income when distributed.
  - b. Amounts of trust income distributed to third parties for the client's benefit (including payments for medical services) are countable income when distributed.
  - c. Exculpatory Clauses which limit the authority of a trustee to distribute funds from a trust if such distribution would jeopardize eligibility for government programs are ignored for MQT purposes if the language explicitly or implicitly links the trustee's discretion to Medicaid requirements.

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| <b>4.</b> | <b>MQT's<br/>Transfer<br/>of Assets<br/>Policy</b> | If the MQT is irrevocable, a transfer of resources has occurred if the resources are no longer available to the client. Resources rendered unavailable are subject to the transfer penalty based on the value of the unavailable resources without consideration of whether the resource would have been excluded under ongoing policy.                                   |
| <b>5.</b> | <b>MQT's<br/>Undue<br/>Hardship</b>                | The MQT provision may be waived if an undue hardship exists. This means Medicaid should not be denied to an individual under this provision if the individual would be forced to go without life sustaining services because the trust funds cannot be released. This does not include situations where the trustee simply chooses not to make the trust funds available. |