

MISSISSIPPI DIVISION OF MEDICAID

Eligibility Policy and Procedures Manual

304.02 OBRA-93 TRUST POLICY/DRA TRUST POLICY

Section 13611 of the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66) amended Section 1917(d) of the Social Security Act to revise the treatment of trusts effective with trusts established after the date of enactment of OBRA-93, which was August 11, 1993. Trusts established before this date, but added to or otherwise augmented after this date, are treated under OBRA-93 Trust rules.

OBRA-93 Transfer of Assets policy is used in conjunction with OBRA-93 Trust policy and provisions of the Deficit Reduction Act of 2005 (DRA), which amended rules on transfer of assets for less than fair market value by broadening the spectrum of what is considered a transfer, the length of the penalty period, the look back period for transfers, the definition of assets and how penalty periods run consecutively rather than concurrently.

This section discusses OBRA-93 trust provisions, as amended by the DRA. Trusts that do not meet the criteria for OBRA-93 trusts or trusts established prior to 08/11/93 must be reviewed under the applicable trust policy.

Definitions

Trust - For purposes of this section, a trust is any arrangement in which a grantor transfers property to a trustee or trustees with the intention that it be held, managed, or administered by the trustee(s) for the benefit of the grantor or certain designated individuals (beneficiaries). The trust must be valid under State law and manifested by a valid trust instrument or agreement. A trustee holds a fiduciary responsibility to hold or manage the trust's corpus and income for the benefit of the beneficiaries. The term "trust" also includes any legal instrument or device that is similar to a trust. It does not cover trusts established by will. Such trusts must be dealt with using Standard Trust policy.

Legal Instrument or Device Similar to Trust - This is any legal instrument, device, or arrangement which may not be called a trust under State law but which is similar to a trust. That is, it involves a grantor who transfers property to an individual or entity with fiduciary obligations (considered a trustee for purposes of this section). The grantor makes the transfer with the intention that it be held, managed, or administered by the individual or entity for the benefit of the grantor or others. This can include (but is not limited to) escrow accounts, investment accounts, pension funds, and other similar devices managed by an individual or entity with fiduciary obligations.

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Trustee - A trustee is any individual, individuals, or entity (such as an insurance company or bank) that manages a trust or similar device and has fiduciary responsibilities.

Grantor - A grantor is any individual who creates a trust. For purposes of this section, the term "grantor" includes:

- The individual;
- The individual's spouse;
- A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; and
- A person, including a court or administrative body, acting at the direction or upon the request of the individual, or the individual's spouse.

Revocable Trust - A revocable trust is a trust which can under State law be revoked or amended by the grantor. A trust which provides that the trust can only be modified or terminated by a court is considered to be a revocable trust, since the grantor (or his/her representative) can petition the court to terminate the trust. Also, a trust which is called irrevocable but which terminates if some action is taken by the grantor is a revocable trust for purposes of this instruction. For example, a trust may require a trustee to terminate a trust and disburse the funds to the grantor if the grantor leaves a nursing facility and returns home. Such a trust is considered to be revocable.

Irrevocable Trust - An irrevocable trust is a trust which cannot, in any way, be revoked or amended by the grantor. Being irrevocable does not make the trust an unavailable asset.

Beneficiary - A beneficiary is any individual or individuals designated in the trust instrument as benefiting in some way from the trust, excluding the trustee or any other individual whose benefit consists only of reasonable fees or payments for managing or administering the trust. The beneficiary can be the grantor himself, another individual or individuals, or a combination of any of these parties. For DRA purposes, the beneficiary of a trust must be the applicant or recipient or another allowable person, as described in the trust and transfer of assets policy, and under specified conditions. A transfer of assets will result if a trust beneficiary is not an allowable person and the trust is funded with assets belonging to the applicant or recipient and/or their spouse.

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Payment - For purposes of this section a payment from a trust is any disbursement from the corpus of the trust or from income generated by the trust which benefits the party receiving it. A payment may include actual cash, as well as noncash or property disbursements, such as the right to use and occupy real property.

Annuity - An annuity is a right to receive fixed, periodic payments, either for life or a term of years.

For the Sole Benefit of - A trust is considered to be for the sole benefit of a spouse, blind or disabled child, or disabled individual if the trust benefits no one but that individual, whether at the time the trust is established or any time in the future. However, the trust may provide for reasonable compensation for a trustee or trustees to manage the trust, as well as for reasonable costs associated with investing or otherwise managing the funds or property in the trust.

304.03 TRUST PROVISIONS

This section applies to any individual who establishes a trust, and who is an applicant for or recipient of Medicaid. An individual is considered to have established a trust if his or her assets (regardless of how little) were used to form part or all the corpus of the trust and if any of the parties described as a grantor established the trust, other than by will.

When a trust corpus includes assets of another person or persons as well as assets of the individual, the rules in this section apply only to the portion of the trust attributable to the assets of the individual. Thus, in determining countable income and resources in the trust for eligibility and post-eligibility purposes, you must prorate any amounts of income and resources, based on the proportion of the individual's assets in the trust to those of other persons. However, this general rule is subject to the policy that governs payments made by the trust to or for the benefit of the individual, i.e., these payments are income provided the payment is counted as income under SSI rules.