

# MISSISSIPPI DIVISION OF MEDICAID

## Eligibility Policy and Procedures Manual

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### Trust Provisions (Continued)

The rules set forth in this section apply to trusts without regard to:

- The purpose for which the trust is established;
- Whether the trustee(s), has or exercises any discretion under the trust;
- Any restrictions on when or whether distributions can be made from the trust; or
- Any restrictions on the use of distributions from the trust.

This means that any trust which meets the basic definition of a trust can be counted in determining eligibility for Medicaid. No clause or requirement in the trust, no matter how specifically it applies to Medicaid or other Federal or State programs (i.e., an exculpatory clause), precludes a trust from being considered under these rules.

**Note:** Exceptions to the count ability of trusts as a resource do exist and are outlined later in the section.

Trust assets include both resources and income the individual or individual's spouse own or would have owned but for actions taken to direct the assets elsewhere.

All assets held in a trust must be verified and the value of the assets established and documented.

#### **304.03.01     TREATMENT OF REVOCABLE TRUSTS**

In the case of a revocable trust:

- The entire corpus of the trust is counted as an available resource to the individual. Any income earned by the trust and paid into the trust is also an available resource.
- Any payments from the trust made to or for the benefit of the individual are counted as income to the individual, provided the payment is counted as income under SSI cash assistance rules.
- Any payments from the trust which are not made to or for the benefit of the individual are considered assets disposed of for less than fair market value. Refer to OBRA-93 Transfer of Assets policy.

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### Treatment of Revocable Trusts (Continued)

- Changes made to a revocable trust that restrict or limit its use for the individual or spouse may be a transfer of assets.

When a portion of a revocable trust is treated as a transfer of assets for less than fair market value, the look-back period in OBRA-93 transfer policy is 60 months. The 60-month look back period for assets placed in a trust is not phased in as it is for other types of transfers handled under DRA rules.

**Note:** Home property placed in a revocable trust loses its excluded status if the client is in an institution.

### 304.03.02 TREATMENT OF IRREVOCABLE TRUSTS

#### Payment Can Be Made Under Terms of Trust

In the case of an irrevocable trust, where there are any circumstances under which payment can be made to or for the benefit of the individual from all or a portion of the trust, the following rules apply to that portion:

- Payments from income or from the corpus made to or for the benefit of the individual are treated as income to the individual, provided the payment is counted as income under SSI cash assistance rules;
- Income received by the trust which could be paid to or for the benefit of the individual is treated as a resource available to the individual;
- The portion of the corpus that could be paid to or for the benefit of the individual is treated as a resource available to the individual; and,
- Payments from income or from the corpus that are made but not to or for the benefit of the individual are treated as a transfer of assets for less than fair market value. The 60 month look back period for transfer of assets applies.