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|  | <b>GEORGIA DIVISION OF FAMILY AND CHILDREN SERVICES<br/>MEDICAID POLICY MANUAL</b> |                                  |                        |                   |
|   | <b>Chapter:</b>  | <b>2300</b>                      | <b>Effective Date:</b> | <b>April 2020</b> |
|   | <b>Policy Title:</b>   | <b>Trust Property – OBRA '93</b> |                        |                   |
| <b>Policy Number:</b>   | <b>2337</b>  | <b>Previous Policy Update:</b>   | <b>MT 39</b>           |                   |

## REQUIREMENTS

Effective with all trusts created on or after 8-11-93 by the A/R or someone acting on behalf of the A/R, the corpus of a trust is either (1) a resource available to the A/R; or, (2) is subject to the transfer of resources penalty. Disbursements from the trust are countable income.

## BASIC CONSIDERATIONS

The Omnibus Budget Reconciliation Act of 1993 (OBRA '93) applies to all trusts into which an A/R has placed his/her resources. The A/R may have established the trust for his/her own benefit, or the benefit of another person.

**NOTE:** Refer to [Section 2338](#), Trust Property, for definitions pertaining to trusts and for policy on trusts created by a will. Refer to [Section 2336](#), Trust Property – Medicaid Qualifying, for trusts created prior to 8-11-93.

Consider all trusts created by the following individuals:

- the A/R
- the A/R's spouse
- any person, including a court or administrative body, acting at the request or direction of the A/R or spouse
- any person, including a court or administrative body, with the legal authority to act on behalf of the A/R or spouse.

Consider all trusts, except those created by a will, which were created as follows:

- with the A/R's resources  
AND/OR
- with the A/R as beneficiary

**BASIC CONSIDERATIONS (cont.)****Burial Trusts**

A burial trust is a trust established by the A/R to pay for the funeral expenses of the A/R. Beginning January 1, 2007, burial exclusions may be up to a maximum of \$10,000 for Non-FBR A/Rs and deemors. This includes the total of the face value of life insurance policies (Section 2323), burial funds (Section 2313) and burial trusts/pre-need contracts (Section 2311) and burial trusts/pre-need contracts (Section 2311).

The following trusts will NOT be counted as a resource or considered a transfer of assets as long as it is considered a valid document by DCH Legal:

- For guidelines on a *Special Needs Trust* (SNT) refer to Section 2346, Special Needs Trust. DCH Legal determines the validity of any SNTs.
- A Qualified Income Trust (QIT), also known as a Miller Trust, established in the state for the benefit of an individual if:
  - the trust is composed only of pension, Social Security, and other income to the individual (and accumulated income in the trust),
  - the trust is irrevocable,
  - the state will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual, and
  - Income placed in the QIT is not counted in the eligibility determination. However, the patient liability/cost share budget incorporates the A/R's income in the QIT, and income not put in the QIT. See Section 2407 for more complete information.
- A trust, generally referred to as a *Pooled Trust*, contains the assets of an individual who is disabled that meets the following conditions:
  - The definition of disabled for purposes of a Pooled Trust is that the A/R was under age 65 and disabled according to the SSA definition of disability when the trust was established. **NOTE:** Please include documentation of AR's disability when sending the trust to DCH.
  - The trust is established and managed by a non-profit organization.
  - Separate accounts are maintained for each beneficiary, even if pooled for purposes of investment and management.
  - The trust was established by the disabled individual, their parents, grandparents, legal guardian or the court.
  - All trusts funded with the proceeds of a settlement must submit a certified copy of the court order and the Settlement Agreement to DCH. The joinder agreement must specifically identify in an attached schedule the initial source of the funding of the beneficiary's account.

**BASIC CONSIDERATIONS (cont.)**

- *Pooled Trust (cont.)*
  - The trustee must notify DCH within five days of the death of the beneficiary. Amounts remaining upon the beneficiary's death are paid to the State by the trust in an amount equal to the total amount of medical assistance paid on his/her behalf. The following expenses and payments are NOT permitted prior to reimbursement of the State for medical assistance:
    - Payment of debts owed to third parties,
    - Funeral expenses, and
    - Payments to residual beneficiaries.
  - A pooled trust established by or for the benefit of an aged individual (age 65 or older) on or after May 1, 2006 should be treated as a transfer of resources and a transfer penalty applied.
  - DCH determines the validity of all Pooled Trusts. If DCH Legal does not approve an irrevocable trust, compute a transfer of resource penalty; if it was revocable, count as a resource. Refer to Section 2342. Submit a copy of a Pooled Trust for approval prior to completion of an application or review (if not previously approved by DCH).
  - Send all SNT, QIT's that deviate from one of the approved templates, and Pooled Trust to:
    - DCH Legal Services Section
    - 2 Peachtree St., NW, 40th floor
    - Atlanta, Ga. 30303-3159

**NOTE: All trusts are considered a TPR and must be sent to the Third-Party Liability Unit. Refer to Section 2230 for more information.**

**Revocable Trusts**

Any disbursements from the trust given directly to the A/R or disbursements paid to a third party for the purpose of food, clothing or shelter are considered income to the A/R in the month of disbursement.

Count the corpus or principal of a revocable trust as a resource available to the A/R.

**Irrevocable Trusts**

Count any money generated by the trust as income to the A/R, whether or not received by the A/R.

Count any portion of the corpus or principal of an irrevocable trust from which it is possible to make a disbursement to the A/R as a resource available to the A/R.

**BASIC CONSIDERATIONS (cont.)****Irrevocable Trusts (cont.)**

Count any portion of the corpus or principal of the trust from which it is NOT possible to make a disbursement to the A/R as a transfer of resources.

Count any disbursements from the trust as income to the A/R, whether or not received by the A/R.

**Transfer of Resources Penalty**

Consider the transfer of resources penalty, if appropriate, for any resource placed into a trust within the 60 month look back period.

The transfer of resources penalty does not apply to resources that are excluded under Non-FBR policy if transferred into a trust.

If a resource can be considered under both the OBRA '93 trust provision OR the transfer of resource penalty provision treat the resource under OBRA '93 trust provisions.

Refer to Section 2342, Transfer of Resources, and Section 2345, Undue Hardship Provision for ABD Medicaid

**PROCEDURES**

Follow the steps below to determine the treatment of a trust:

- Step 1** Obtain a copy of the trust document and any supporting documentation detailing any investments and distributions made by the trust. For QITs refer to Section 2407; for SNTs refer to Section 2346.
- Step 2** Determine the date that the trust was established.
- If established on or after 8-11-93, continue to step 3.
  - If established prior to 8-11-93, see Section 2336, Trust Property, Medicaid Qualifying, and Section 2338, Trust Property.
- Step 3** Determine if the trust is revocable or irrevocable.

**PROCEDURES (cont.)**

- Step 4** For an irrevocable trust, based on the conditions of the trust document, determine the following:
- the total amount of the corpus or principal considered available to the A/R. Count as a resource available to the A/R.
  - the total amount to the corpus or principal considered NOT available to the A/R. Consider the transfer of resources penalty.
  - the total amount of income generated by the trust. Count as income to the A/R, whether or not received by the A/R.
  - any disbursements that have been made from the trust. Count as income to the A/R, whether or not received by the A/R.
- Step 5** For a revocable trust, count the total value of the corpus or principal as a resource available to the A/R. Count any disbursements that have been made from the trust as income to the A/R, whether or not received by the A/R.
- Step 6** If AU is approved, attach a copy of the trust document to a completed Form DMA-285 and forward to: (signature of A/R or RP not required)

Third Party Liability Unit  
P.O. Box 38439  
Atlanta, Georgia 30334