

Health Care Finance and Administration	Section: Financial Eligibility
Policy Manual Number: 010.070	Chapter: Trusts and Medically Needy Categories

TRUSTS AND MEDICALLY NEEDED CATEGORIES

Legal Authority: 42 USC 1396p; State Medicaid Manual § 3257

1. Overview

A trust is a right of funds or property held by an individual (the trustee) for the benefit of another (the beneficiary) or for self-benefit. A trust is composed of the initial amount used to create the trust (the principal) and any income (usually interest) it may produce. The trustee holds legal title to the trust and manages it for the benefit or use of the beneficiary.

Determine whether a trust is a countable or excluded resource when the applicant or household member is either the trust's trustee or beneficiary.

2. Definitions

Trust: A right of funds or property held by an individual, the trustee, for the benefit of another individual, the beneficiary, or by an individual for self-benefit.

Legal Instrument or Device Similar to a Trust: Any financial instrument that resembles a trust which includes, but is not limited to: escrow accounts, pension funds, annuities and other similar financial tools managed by an individual or entity with fiduciary responsibilities.

Grantor/Trustor: The person who creates a trust, including a court or administrative body with legal authority to act in place of or on behalf of or at the request or direction of the individual or his or her spouse.

Trustee: An individual who holds the legal title to funds for the benefit or use of another individual.

Beneficiary: An individual for whose benefit a trust is created.

Self-Settled Trust or Grantor Trust: The grantor of the trust is the sole beneficiary of the trust (i.e., the grantor established a trust for himself or herself).

Mandatory Trust: Requires the trustee to pay to or for the beneficiary's benefit, the trust's earnings and principal at certain times in specified amounts or for a specified type of care. The trustee has no discretion on distribution from the trust.

Discretionary Trust: The trustee has discretion to use the trust for the beneficiary's needs as he or she deems appropriate. The beneficiary has no control over the trust.

Totten Trust: A trust in which the grantor makes himself or herself trustee of his or her own funds for the benefit of another. The trustee or grantor can revoke the trust at any time. If the trustee dies before revoking the trust, the beneficiary becomes owner of the trust. The terms of the trust will indicate how the trust is to be used or what limits are placed on the use of the funds by the trustee.

3. Accessibility

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Trusts must be evaluated for accessibility. If a trust is accessible, and verification is received that only a portion of the trust is available to the individual, only the available portion will be considered in the resource determination. If such verification is not received, the full value of the trust will be considered available to each beneficiary.

a. Revocable Trust

A revocable trust is a trust that can be modified or terminated by the grantor, or someone else, according to the terms of the trust. A trust which is called irrevocable but which terminates if the grantor or someone else takes some action is also considered a revocable trust.

i. Revocable Trust Established prior to 8/11/1993

The full amount of the trust is a countable resource. Interest which accrues to the account is counted as unearned income. Withdrawals from the trust are not considered income, as they are a conversion of a resource.

ii. Revocable Trust Established on or after 8/11/1993

Any revocable trust or similar device established on or after 8/11/1993 is considered an accessible resource. If an individual's assets form part or all of the revocable trust, and it was established by the individual, his or her spouse, or an entity with legal authority to act in behalf or at the direction or request of the individual, the trust is subject to the following policy:

- The principal of the trust is a countable resource; and
- Any payments from the trust to or for the benefit of the individual are considered income for the individual;

b. Irrevocable Trust

An irrevocable trust is a trust that cannot be modified or terminated by the grantor or (in most cases) anyone else. A trust which is called irrevocable but which terminates if the grantor or someone else takes some action is considered a revocable trust. An irrevocable trust may be accessible and countable for eligibility purposes.

i. Irrevocable Trust Established prior to 8/11/1993

If the trust is legally irrevocable and the beneficiary is not a financially responsible relative (FRR) or one for whom the individual is not financially responsible, the individual does not have access to the funds unless he or she is also a beneficiary.

This policy does not apply to Medicaid Qualifying or Testamentary trusts.

ii. Irrevocable Trust Established on or after 8/11/1993

An irrevocable trust or similar device which contains an individual's own assets, forms all or part of the principal of a trust and is established (other than by will) by the individual or spouse, or by a person/entity with legal authority to act on behalf of or at the direction of the individual or spouse is subject to the policy outlined below. This policy applies to the portion

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of the trust which includes the assets of the individual regardless of the purpose of the trust, whether the trustees have or exercise any discretion under the trust, or any restrictions on distributions or use of distributions:

- Any payments from the trust paid to or for the benefit of the individual for any purpose are considered income to the individual unless payment is made for medical care or other purposes not considered income.
- Income on the corpus (principal) of the trust or any portion of the principal which could be paid to or for the benefit of the individual is considered an available resource to the individual.

4. Medically Needy Trust Exclusion

This policy applies to inaccessible trusts that have been set up for a minor (under age 18). If the value of the inaccessible trust is \$5,000 or less, the trust is an excluded resource.

If the value of the trust is greater than \$5,000, the caretaker of the child beneficiary has 60 days from the date of application or redetermination to attempt to make the trust accessible or available. Exclude the value of the trust as an inaccessible asset during the 60-day period. At the expiration of the 60-day period, secure verification from the applicant's caretaker that action has been taken to make the trust accessible. If the trust has been made accessible, evaluate the resource based on the trust type. If the trust has not yet been made accessible, follow-up on the status of the trust at least every 60 days. Continue to exclude the trust while steps are being taken to make it accessible.

If the value of the trust is greater than \$5,000 and the caretaker of the child beneficiary does not take action to make the trust accessible, remove the caretaker from the household size but continue to count his or her income in household income. The trust will not be a countable resource if it remains inaccessible.

5. Trusts Types

a. Burial Trust

A burial trust is a trust established by an individual for purposes of setting aside funds for payment of burial expenses for the individual or someone else. Burial trusts are not the same as funds held in trust by a funeral home in conjunction with a prepaid funeral arrangement or burial contract.

A burial trust is excluded for the TennCare Medicaid Medically Needy categories.

b. Living Trust

A "living trust" is usually a revocable, self-settled trust often created for tax and estate planning purposes. A living trust is a countable resource for the TennCare Medicaid Medically Needy categories.

c. Self-Settled Trust

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A self-settled trust is a trust created by a person with his or her own funds for his or her own primary benefit. A self-settled trust is a countable resource.

d. Testamentary Trust (Trust Created by a Will)

Determining the countable value of a testamentary trust as a resource to the beneficiary depends on the terms of the will. The terms of the will may specify that only the income or both the income and the principal are available to the beneficiary. In addition, the terms may specify that the beneficiary has limited access to the funds or that only the trustee or the court has access to the trust amount. If the trustee has the discretion to use the trust principal for the applicant's support and maintenance and/or medical needs, the value of the trust is an unavailable asset, but the trust itself is a third party medical resource and must be reported as a third party liability.

e. Medicaid Qualifying Trust

A Medicaid Qualifying Trust is not a countable resource for the TennCare Medicaid Medically Needy categories. See the *ABD Trusts* policy.

f. Pooled Trust

A Pooled Trust is not a countable resource for the TennCare Medicaid Medically Needy categories. See the *Trusts* policy in the ABD Manual.

g. Special Needs Trust

A Special Needs Trust is not a countable resource for the TennCare Medicaid Medically Needy categories. See the *Trusts* policy in the ABD Manual.

h. Medicaid Qualifying Income Trust (QIT) or Miller Trust

Only individuals who are applying for Institutional Medicaid and long term services and supports may establish a QIT.

6. Trust Income

a. If the trust is a testamentary trust and/or it is producing regular income for the beneficiary, the value of the trust is not a countable asset as long as the terms of the trust specify the following,:

- The beneficiary does not have access to the trust principal and/or income; and
- Such access is limited to the trustee or to the court; and
- The trust does not contain the beneficiary's own assets.

Any payments an individual receives from the trust are considered unearned income. Income is counted in the month it becomes available to the individual.

b. Dividends, interest, rents and other income generated by a trust fund, unless otherwise excluded, that can be paid to or for the benefit of the beneficiary are considered countable income to the beneficiary in the month they become available, regardless of whether the income is actually paid out to the beneficiary.

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- c.** Income earned by a trust that can be, but is not distributed to the beneficiary, and is instead retained in the trust becomes a countable resource in the months following the month the income was available for distribution. This provision applies even if the remainder of the principal of the trust is not a countable resource to the beneficiary.
- d.** Funds withdrawn from the principal of an inaccessible or excluded trust, unless otherwise excluded, are countable as income in the month received.
- e.** Funds withdrawn from the principal of an accessible or countable trust are excluded as income because an accessible trust fund is a countable resource. Money cannot be considered both income and resource in the same month.
- f.** If the trustee has the discretion to use the trust principal for the individual's support and maintenance of medical needs, the value of the trust is an unavailable asset, but the trust itself is a third party medical resource and must be reported to HCFA Third Party Liability Unit.