
**DEPARTMENT
POLICY****MA Only**

This item contains Medicaid policy for trusts. The item is divided into three parts:

- Medicaid trusts.
- Medicaid qualifying trusts (MQTs).
- Other trusts.

Which policy applies depends on the terms of the trust and when the trust was established.

Use policy in Bridges Eligibility Manual (BEM) 400 and Bridges Administrative Manual (BAM) 805 for prepaid funeral contracts and life insurance funded funerals.

MAGI-related MA

For MAGI related programs there is no asset test. However, disbursements from annuities are generally countable as income in the month that they are received. In some cases, such as structured annuities that result from lawsuit settlements, this annuity income may not be taxable. Therefore, part or all of the annuity payments may not be countable toward an individual's MAGI income. In order to determine what parts of an annuity payment may or may not be countable toward an individual's income please follow the process for referrals to the Trusts and Annuities Unit outlined in this item to have the annuity evaluated. In the case of MAGI-related annuity evaluations, a copy of the lawsuit settlement agreement **must** be submitted to the Trusts and Annuities Unit in order to to make the determination.

**GENERAL
DEFINITIONS****MA Only**

These definitions apply to all trust policy. There are special definitions for Medicaid trusts.

Beneficiary - the person for whose benefit a trust is created.

Grantor or settlor - the person who established the trust. Any person who contributes to a trust is considered a grantor.

Principal or corpus - the assets in the trust. The assets may be real property (house, land) or personal property (for example, stocks, bonds, life insurance policies, savings accounts).

Trust - a right of property created by one person for the benefit of himself or another. It includes any legal instrument or device that exhibits the general characteristics of a trust but is not called a trust or does not qualify as a trust under state law. Examples of such devices might be annuities, escrow accounts, pension funds and investment accounts managed by someone with fiduciary obligations.

Trustee - the person who has legal title to the assets and income of a trust and the duty to manage the trust for the benefit of the beneficiary.

REFERRALS TO TRUSTS AND ANNUITIES UNIT

A completed DHS-1517, Request for Trust/Annuity Evaluation, **must** accompany all trusts/annuities requests. Send all trusts and annuities to the Trusts and Annuities Unit for evaluation. The evaluation request must be sent to the following email box:

MDHHS-MA-FAP-Trusts_Annuities@michigan.gov

Email is the preferred method for submitting evaluation requests; however, if necessary, requests may also be sent via ID mail to:

Michigan Department of Health and Human Services
Legal Affairs Administration
Attn: Trust & Annuities
333 S Grand Avenue
P.O. Box 30195
Lansing, MI 48909

Email address boxes for requests or inquiries to the Legal Affairs Administration can be found on the MDHHS-Net at:
<http://inside.michigan.gov/dhs/DeptSites/CentOff/olsp/Pages/default.aspx>

This does not apply to the following:

- Prepaid funeral contracts.
- Life insurance funded funerals.
- Limited Liability Companies (LLC).

- S-Corporations.

Once a trust has been evaluated, a re-evaluation is not required unless the local office believes a change has occurred affecting availability of the trust principal or income, including a change in department policy.

An evaluation of a trust advises local offices on:

- Whether a trust is revocable or irrevocable, and
- Whether any trust income or principal is available.

Advice is only available to local offices for purposes of determining eligibility or an initial assessment when a trust actually exists. Advice is not available for purposes of estate planning, including advice on proposed trusts or proposed trust amendments.

Send the referral as soon as possible so that everyone can complete their tasks timely. The referral must be in writing and include:

- Referring specialist's name, email address, phone number and local office.
- What advice is being requested.
- What programs are involved.
- Whether the grantor is living or dead.
- Whether the person is an applicant or recipient.
- Source of the assets used to establish the trust (for example money from the grantor's lawsuit settlement).
- The MA client's name and, if applicable, their spouse's name.
- The grantor's relationship to the MA client or spouse.
- The name of the person(s) who contributed to the trust and their relationship to the MA client and spouse.
- Legible copies of the complete trust document, all amendments to the trust, addenda, correspondence and other pertinent information.

Note: Do not send asset and/or income verifications to the Trust and Annuities Unit.

EVALUATING TRUSTS

Determine if a trust established on or after August 11, 1993, is a Medicaid trust using:

- *Medicaid trust definitions* and
- *Medicaid trust criteria*.

Use the following policies if the trust is a Medicaid trust:

- *Countable assets from Medicaid trusts*.
- *Countable income from Medicaid trusts*.
- *Transfers for less than FMV*.

Determine if a trust established before August 11, 1993, is a Medicaid Qualifying Trust (MQT). Use the following policies if the trust is an MQT.

- *Countable MQT assets*.
- *Countable MQT income*.

Use *other trust* policy when a trust is **not**:

- An MQT.
- A Medicaid trust.

MEDICAID TRUST DEFINITIONS

Use the *general definitions* and these definitions when determining:

- Whether a trust is a Medicaid trust, and
- What is available from and transferred for a Medicaid trust.

Irrevocable Trust - a trust that is not a revocable trust; see *revocable trust* in this item.

Resources - all income and assets of a person and the person's spouse. It includes any income and assets the person or spouse is entitled to but does not receive because of action:

- By the person or spouse.
- By someone else (including a court or administrative body) with legal authority to act in place of or on behalf of the person or spouse.

- By someone else (including a court or administrative body) acting at the direction or upon the request of the person or spouse.

Revocable trust - a trust which can be revoked or modified by:

- The grantor.
- A court.
- The trustee.
- Any other person or entity.

This includes a trust which allows for revocation or modification only when a change occurs, such as the grantor leaves the LTC facility or the beneficiary becomes competent.

Modify means changing the beneficiaries or the availability of principal or income.

ANNUITY DEFINED

Annuity- A written contract, with a commercial insurance company, establishing a right to receive specified, periodic payments for life or for a term of years. They are usually designed to be a source of retirement income.

TRANSFERS TO AN ANNUITY EFFECTIVE 9/1/05

Converting countable resources to income through the purchase of an annuity or the amendment of an existing annuity by or on behalf of an annuitant who has applied for medical assistance with respect to nursing facility services or other long-term care services on or after 09/01/05, is considered a transfer for less than fair market value unless the annuity meets the conditions listed below:

- Is commercially issued by a company licensed in the United States and issued by a licensed producer (a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance), and
- Is irrevocable, and
- Is purchased by an applicant or recipient for Medicaid or their spouse and solely for the benefit of the applicant or recipient or their spouse, and

- Is actuarially sound and returns the principal and interest within the annuitant's life expectancy, and
- Payments must be in substantially equal monthly payments (starting with the first payment) and continue for the term of the payout (no balloon or lump sum payments) and

If the annuity was purchased or amended by, or on behalf of, the applicant or recipient on or after February 8, 2006 the State of Michigan must be named as the remainder beneficiary in the first position, or as the second remainder beneficiary after the community spouse or minor or disabled child, for an amount at least equal to the amount of the Medicaid benefits paid on behalf of the institutionalized individual. The naming of the state in the first or second position must be verified at application or redetermination. If the State of Michigan is not named as a beneficiary as required in this paragraph, the total purchase price of the annuity will be considered to be the amount transferred for less than fair market value.

If an annuity is actuarially sound and provides for payment only to the community spouse during his/her lifetime then the annuity is considered to be for the sole benefit of the applicant's spouse, and it is not a transfer for less than fair market value and does not have to name the State of Michigan as a remainder beneficiary.

Annuities Funded With Certain Retirement Resources

An annuity purchased by or on behalf of an annuitant who has applied for Medical assistance with respect to nursing facility services or other long-term care services on or after 2/8/2006 is **not** a transfer for less than fair market value if it is funded with certain retirement resources and established under any of the following sections of the Internal Revenue Code (IRC)

1. The annuity is considered either:
 - An individual retirement annuity under section 408(b) of the IRC; or
 - A deemed Individual Retirement Account under a qualified employer plan under section 408(q) of the IRC; or

2. The annuity is purchased with proceeds from one of the following:
 - A traditional individual retirement account (IRA) under section 408(a) of the IRC; or
 - Certain accounts or trusts which are established by employers or certain associations of employees under section 408(c) of the IRC; or
 - A simple retirement account under section 408(p) of the IRC; or
 - A simplified employee pension under section 408(k) of the IRC; or
 - A Roth IRA under section 408A of the IRC

Annuities established under any sections of the Internal Revenue Code referenced above do **not** have to be irrevocable or actuarially sound, and do not have to provide for equal monthly payments.

MEDICAID TRUST CRITERIA

A Medicaid trust is a trust that meets conditions 1 through 5 below:

1. The person whose resources were transferred to the trust is someone whose assets or income must be counted to determine MA eligibility, an MA post-eligibility patient-pay amount, a divestment penalty or an initial asset assessment (IAA) amount. A person's resources include his spouse's resources (see definition).
2. The trust was established by:
 - The person.
 - The person's spouse.
 - Someone else (including a court or administrative body) with legal authority to act in place of or on behalf of the person or the person's spouse, or an attorney, or adult child.

- Someone else (including a court or administrative body) acting at the direction or upon the request of the person or the person's spouse or an attorney ordered by the court.
- 3. The trust was established on or after August 11, 1993.
- 4. The trust was not established by a will.
- 5. The trust is **not** described in *Exception A, Special Needs Trust, or Exception B, Pooled Trust* in this item.

Exception A, Special Needs Trust

A trust is **not** a Medicaid trust if it meets all the following conditions:

- The trust must be unchangeable with regard to the provisions that make it an *Exception A, Special Needs Trust*. This is necessary to ensure that a trust initially meeting the other conditions still meets those conditions when the person dies; it must be irrevocable.
- The trust contains the resources of a person who is under age 65 and is disabled (not blind) per BEM 260. See *Continuing Exception A* when the person has attained age 65.
- The trust was established for the person described above. This means that the trust must ensure that none of the principal or income can be used for someone else during the person's lifetime, except for trustee fees per BEM 405.
- The trust was established by a court, by the person described above, or by the person's:
 - Parent.
 - Grandparent.
 - Legal guardian/conservator.
- The trust imposes on the trustee an automatic duty to repay Medicaid upon the person's death up to an amount equal to the total Medical Assistance paid on behalf of the person.

When a person has lived in more than one state, the trust must provide that the funds remaining in the trust are distributed to each state in which the individual received Medicaid, based on

the state's proportionate share of the total amount of Medicaid benefits paid by all of the states on the person's behalf.

Examples of circumstances under which a trust **fails** this repay condition are:

- Requiring a trustee to reimburse Medicaid only if Medicaid first submits a claim.
- Failing to provide that repaying Medicaid has priority over all debts and expenses except those given higher priority by law.

Transfers to Exception A Trust

Treat assets and income transferred into an *Exception A, Special Needs Trust* as part of the trust for the entire month of transfer.

Continuing Exception A

A trust that is an *Exception A, Special Needs Trust* when the person was under age 65 continues being an *Exception A, Special Needs Trust* after the person attains age 65. However, any additions or augmentations to the trust after the person attains age 65 are not protected by the exception. The additions/ augmentations are subject to trust and divestment policies without regard to *Exception A, Special Needs Trust*.

Countable Exception A Payments

Count as a person's unearned income any payment received from the trust.

Exception B, Pooled Trust

A trust is **not** a Medicaid trust if it meets all of the following conditions:

- The trust must be unchangeable with regard to the provisions that make it an *Exception B, Pooled Trust*. This is necessary to ensure that a trust initially meeting the other conditions still meets those conditions when the person dies.

- The trust contains the resources of a person who is disabled (not blind), per BEM 260; see *Transfers to an Exception B trust* in this item.
- The trust is established and managed by a nonprofit association.
- A separate account is maintained for each beneficiary of the trust, but for purposes of investment and management of funds, the trust pools these accounts.
- Accounts in the trust are established for the benefit of persons who are disabled (not blind) per BEM 260. This means the trust must ensure that none of the principal or income attributable to a person's account can be used for someone else during the person's lifetime, except for trustee fees per BEM 405.
- Accounts in the trust are established by the disabled person, the courts, or by the disabled person's:
 - Parents.
 - Grandparents.
 - Legal guardians/conservators.
- The trust provides that to the extent any amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, **the trust will pay to the state** the amount remaining up to an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under a state Medicaid plan.

When a person has lived in more than one state, the trust must provide that the funds remaining in the trust are distributed to each state in which the individual received Medicaid, based on the state's proportionate share of the total amount of Medicaid benefits paid by all of the states on the person's behalf.

Examples of circumstances under which a trust **fails** this repay condition are:

- Requiring a trustee to reimburse Medicaid only if Medicaid first submits a claim.
- Failing to provide that repaying Medicaid has priority over all debts and expenses except those given higher priority by law.

**Transfers to
Exception B Trust**

Treat assets and income transferred into an *Exception B, Pooled Trust* as part of the trust for the entire month of transfer.

Transfers to an *Exception B, Pooled Trust* by a person age 65 or older are subject to divestment analysis. Do a complete divestment determination if the person is in a Penalty Situation per BEM 405.

**Countable
Exception B
Payments**

Count any payment received from the trust by the client as unearned income in the month received.

**Multiple
Contributors**

When someone other than the person or the person's spouse has contributed to the principal of a trust, do not count as the person's assets or transferred assets an amount proportional to that other person's contributions to the principal.

Example: The Lang family contributed assets to the Lang Trust as follows:

John (MA applicant)	\$50,000
Sally (John's daughter)	<u>\$10,000</u>
Total Contributions	\$60,000

Sally has contributed 1/6 of the total contributions. The value of the entire principal is currently \$102,000. Therefore, \$17,000.00 (one-sixth) of the current value cannot be counted as John's assets. Do not count the contributor's share as an asset.

**REPAYMENT
INQUIRIES**

Refer trustees seeking to repay Medicaid to the following:

Michigan Department of Health and Human Services
Court Originated Liability Section
PO Box 30435
Lansing, Michigan 48909

**COUNTABLE
ASSETS FROM
MEDICAID TRUSTS**

How much of the principal of a trust is a countable asset depends on:

- The terms of the trust, and
- Whether any of the principal consists of countable assets or countable income.

Countable Assets

The following are countable assets.

- Assets that are countable using SSI-related MA policy in BEM 400. Do not consider an asset unavailable because it is owned by the trust rather than the person.
- The homestead of an L/H or waiver patient or the patient's spouse even if the home was transferred before the patient was institutionalized or approved for the waiver.

Countable Income

Countable income from a trust is income that is countable using SSI-related MA policy in BEM 500. Income from a Medicaid trust that is not to or for the benefit of the person or their spouse is considered a divestment of income; see BEM 405.

Revocable Trust

Count as the person's countable asset the value of the countable assets and countable income in the principal of a revocable trust.

Exceptions:

- Reduce the countable amount when there are Multiple Contributors.
- Do not count the amount if it creates an Undue Hardship.

Example: The trustee of the Lang Trust can cancel the trust, but must pay the entire principal to Sally if the trust is cancelled. Therefore, none of the principal is John's countable asset.

Irrevocable Trust

Count as the person's countable asset the value of the countable assets in the trust principal if there is any condition under which the principal could be paid to or on behalf of the person from an irrevocable trust.

Count as the person's countable asset the value of the trust's countable income if there is any condition under which the income could be paid to or on behalf of the person. Individuals can keep income made off of property and the money goes to the individual not the trust.

Exceptions:

- Reduce the countable asset amount by the amount of principal or income actually paid to or on behalf of the person during the month.
- Reduce the countable amount for multiple contributors.
- A trust may allow use of one portion of the principal, but not another portion. Count only the usable portion.
- Do not count the amount if it creates an undue hardship; see BEM 405.

Example: The principal of the Lang Trust consists of stocks, bonds, CD's and a life insurance policy with a face value of \$5,000 and cash surrender value of \$2,000. The trustee is prohibited from using the life insurance policy in any way. The trustee can pay from the remaining portion of the trust principal enough to maintain John in the style to which he is accustomed. The trustee must pay the trust income to John. John wants MA for May. In May, the entire principal was worth \$102,000. However, the usable portion of the trust principal (the stocks, bonds and CD's) was worth \$100,000. The trustee used \$300 to buy a TV for John and gave John \$50 from the principal in May.

\$100,000	usable principal
- 16,666	one-sixth reduction for multiple contributors from first example.
\$83,334	
- 350	actually paid
\$82,984	John's countable asset amount

Any portion of the principal or income that could never be paid to or on behalf of the person is transferred for less than fair market value. The look-back period is 60 months; see BEM 405. Reduce the transferred amount to account for multiple contributors and assets and income that are **not** countable assets or countable income.

Undue Hardship

Assume there is no undue hardship unless there is evidence to the contrary. Undue hardship exists when the person's physician (M.D. or D.O.) says:

- Necessary medical care is not being provided, **and**
- The person needs treatment for an emergency condition.

A medical emergency exists when a delay in treatment may result in the person's death or permanent impairment of the person's health.

A psychiatric emergency exists when immediate treatment is required to prevent serious injury to the person or others.

Payments actually made by a trustee to or on behalf of a beneficiary do not create an undue hardship.

See BEM 100, Policy Exception Request Procedure.

COUNTABLE INCOME FROM MEDICAID TRUSTS

Count as a person's unearned income any payment from a **Medicaid Trust** that is made to the person or his legal representative.

Example: In the preceding example for the Lang Trust, the \$50 paid to John from the principal is countable unearned income. The trust income is also countable unearned income when paid to John.

TRANSFERS FOR LESS THAN FMV

Revocable Trust

Count payments from a revocable Medicaid trust to or on behalf of someone other than the person as follows:

- If the other person never contributed to the principal - any payment of countable assets or countable income is a resource transfer for less than fair market value for purposes of BEM 405.
- If the other person contributed to the principal - any payment of countable assets or countable income exceeding the other person's proportional contribution to the principal is a resource transfer for less than fair market value for purposes of BEM 405.

The look-back period for such transfers is 60 months; see BEM 405.

Example: The Lang Trust pays Sally \$300 per month from the trust's \$600 per month income. Sally contributed only 1/6 of the trust principal. Therefore, \$200 ($1/6$ of 600 = \$100. $\$300 - 100 = \200) is a resource transferred for less than fair market value.

Irrevocable Trust

Count any portion of a trust's principal or income that is countable assets or countable income which cannot be paid to or on behalf of the person as transferred for less than fair market value for purposes of BEM 405.

Note: Be sure to adjust the transferred amount to account for multiple contributors.

The look-back period for such transfers is 60 months.

The date of transfer is the date payment is prohibited. The amount transferred is the amount which cannot be used as of that date plus any countable resources added by the person after that date.

Example: On 8/12/07 Ms. Thomas established an irrevocable Medicaid trust. Ms. Thomas transferred \$50,000 cash to the trust on that date and \$10,000 cash on 9/9/07. The trustee may pay all of the trust income to Ms. Thomas but cannot use any of the principal for Ms. Thomas. Ms. Thomas has transferred \$60,000 for less than fair market value: \$50,000 on 8/12/07 and \$10,000 on 9/9/07.

Example: On 10/1/07 Mr. Lewis established an irrevocable Medicaid trust with \$100,000 cash. The trustee has discretion to pay Mr. Lewis as much of the trust income and principal as Mr. Lewis may direct as long as Mr. Lewis is not in a nursing home.

Once Mr. Lewis enters a nursing home, the trustee may only pay the trust income to Mr. Lewis. Mr. Lewis enters a nursing home on 12/12/07. The trust principal on 12/12/07 has a value of \$101,250. On 12/14/07 Mrs. Lewis transfers \$10,000 cash to the trust. The Lewis's have transferred \$111,250 for less than fair market value; \$101,250 on 12/12/07 and \$10,000 on 12/14/07.

Count payments from an irrevocable Medicaid trust to or on behalf of someone other than the person as follows:

- If the other person never contributed to the principal - any payment of countable assets or countable income is a resource transfer for less than fair market value for purposes of BEM 405.
- If the other person contributed to the principal - any payment of countable assets or countable income exceeding the other person's proportional contribution to the principal is a resource transfer for less than fair market value for purposes of BEM 405.

The look-back period for such transfers is 60 months; see BEM 405.

MEDICAID QUALIFYING TRUST

Use the *general definitions* in this item.

A Medicaid qualifying trust (MQT) is a trust that has all of the following characteristics:

- a. It was established before August 11, 1993.
- b. It is established by a person whose assets must be considered or by that person's spouse.
- c. The person whose assets must be considered is the beneficiary of all or part of the payments from the trust.
- d. The amount distributed from the trust is determined by one or more trustees who are permitted to exercise at least some discretion with respect to the amount to be distributed to the person in (c) above.

A trust that is established by a person's guardian or legal representative, acting on the person's behalf, using the person's assets is treated as having been established by the person.

Exceptions:

- A trust is not considered an MQT if the sole beneficiary is a person who has a developmental disability who resides in an Intermediate Care Facility for Individuals with an Intellectual Disability (ICF/ID) **and** the trust or initial trust decree was established prior to April 7, 1986.
- A trust established by a will is not considered an MQT.

Countable MQT Assets

The countable asset amount for each person for whom assets must be considered is:

- The maximum payment that could be made from the trust (principal or income) to that person as a beneficiary of the trust if the trustee exercised his full discretion under the terms of the trust
- **Minus** actual payments made by the trust to or on behalf of the person.

Clauses such as those that prohibit distributions that would affect MA eligibility are not considered limits on a trustee's discretion for purposes of this policy. To do otherwise would effectively negate the MQT policy.

Countable MQT Income

Count payments made to a beneficiary of an MQT as that person's unearned income.

OTHER TRUSTS

Use the *general definitions* in this item.

Use this policy for any trust that is not a Medicaid trust or an MQT.

Countable Assets

The trust principal is considered an available asset of the person who is legally able to:

- Direct use of the trust principal for his/her needs.
- Direct that ownership of the principal revert to himself.

Count only the value of assets that are countable for the MA category being tested per BEM 400. Assume the person owns the asset in determining what is countable.

Transfers to Trust

Do a complete divestment determination when:

- A person has transferred assets to a trust,
- The principal is unavailable, and
- The person is in a penalty situation per BEM 405.

Countable Income

Count as a person's unearned income any payment received from the trust. This includes *Exception A, Special Needs Trust* and *Exception B, Pooled Trust trusts*.

VERIFICATION REQUIREMENTS

Verify income from a trust:

- Prior to authorizing benefits at application.
- At redetermination, and
- Whenever a change affecting income occurs.

Verify the value of a trust's principal if any portion is countable unless countable assets exceed the asset limit based on the client's statement of value.

See BEM 405 regarding verifications for divestment.

Verification Sources

Sources to verify income from a trust include:

- Trust records.
- Trustee correspondence.

Sources to verify the value of a trust's principal include:

- Statements from experts for the types of assets held by the trust.

- Trust records.
- Trustee correspondence.

LEGAL BASE**MA****Before August 11, 1993**

Social Security Act, Section 1902(a)(10) and 1902(k)
42 CFR 435.840-.845
MCL 400.106

Starting August 11, 1993

Social Security Act, Section 1902(a)(18) and 1917(c)-(e)