

# COMBINED MEDICAID 402-3

## Trust Funds

**Supersedes:** CMA 402-3 (03/01/2017)

**Reference:** CFR 435.601; Social Security Act §1917; 42 U.S.C. 1396p(d) for trusts established after 8/11/93 or 42 U.S.C. 1396a(k) for trusts established prior to 8/11/93.

**Overview:** A trust and the income it generates may be countable or excluded depending on the trust creation date, the source of assets used to fund the trust, the nature of the trust, and other factors. All trusts must be evaluated to determine their availability for the household's support and maintenance.

Exclusions listed in this section do not apply to property the filing and/or assistance unit does not own. This includes, but is not limited to property owned by or held in:

1. A trust of any kind (whether or not any filing/assistance unit member is a trust beneficiary or a trustor),
2. A corporation of any kind (whether or not any filing/assistance unit member is a corporate shareholder),
3. A partnership of any kind (whether or not any filing/assistance unit member is a partner),
4. A limited liability company of any kind (whether or not any filing/assistance unit member is a member of the company)
5. Any other legal entity, instrument, device or arrangement of any kind confirming the filing or assistance unit does not own the property.

**NOTE:** Property placed into a trust is not personally owned; it is owned by the trust. Therefore, personal resource exclusions (i.e., home and surrounding property, etc.) listed in CMA 402-1 **cannot** be used to reduce the trust value.

### **SUPPORT AGREEMENTS:**

If any filing unit member has a written agreement stating that another person, entity or corporation agrees to support the household or household member (e.g., family farm corporation, communal living, fraternal organization, etc.), the agreement must be evaluated to determine if it meets:

1. the legal definition of a trust;
2. ownership;
3. accessibility; and
4. value

### **ACCESSIBILITY:**

If the client verifies that only a portion of the trust is available to them, only that portion is counted. If this is not verified, the full trust value is considered available to each trust beneficiary. A trust may be designated as revocable or irrevocable.

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. 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 also considered a revocable trust. An irrevocable trust may be accessible and countable for Medicaid eligibility purposes.

For trusts created on or after 8/11/93, a revocable trust is considered an accessible resource. For example, if the trust document states the trust can only be modified or terminated by a court, it is considered to be available since the grantor/representative can petition the court to terminate the trust (regardless of whether or not the court chooses to modify or terminate the trust). See Medicaid Qualifying Trusts in this section for trusts established prior to 8/11/93. When the grantor, beneficiary, or trustee has access to a revocable or irrevocable trust created after 8/11/93, regardless of the stated use of the funds, the trust principal is treated as a countable resource. If the trust principal is available under any circumstances, it is a countable resource, if the trust was created after 8/11/93.

**NOTE:** Nearly any trust created on or after 8/11/93 can be counted when determining Medicaid eligibility, other than those special needs trusts and self-sufficiency trusts that comply with specific criteria in the federal law. No clause or requirement in a trust, no matter how specifically it applies to Medicaid or other federal or state programs, precludes a trust from being considered a resource.

**EXAMPLE:**

Accessible Trust - The grandparents of a child receiving family-related Medicaid are the sole contributors to an investment fund for the child's benefit. The child's mother is the custodian of the fund (trustee). The grandparents state that the money is intended for the child's college education and not for basic necessities. ACTION: These funds are available as a resource to the child, and must be counted. Access to the funds is not restricted and the child is not obligated, in the legal sense, to use the funds for his/her college education. Further, the trust may be a countable resource to the grandparents if the trust is revocable.

**TRUST INCOME:**

This section applies to trusts created on or after 8/11/93.

Unless otherwise excluded, dividends, interest, rents and other trust income that can be paid to or for the trust beneficiary's benefit is countable in the month it becomes available, regardless of whether the income is actually paid. Trust income that can be but is not distributed to the beneficiary, and is instead retained in the trust, is a countable resource beginning the month following the month the income could have been distributed. This is true even if the remainder of the trust principal is excluded.

Monies withdrawn from the principal of an inaccessible or excluded trust, unless otherwise excluded, are countable income in the month received; because an accessible or countable trust is a countable resource, funds withdrawn from the principal are excluded as income. The funds cannot be counted as both income and a resource in the same month. Monies received by the trustee and used for the care and maintenance of a third party beneficiary (adult or child) are excluded as income for the trustee.

**MEDICAID QUALIFYING TRUSTS (MQT):**

An MQT may be a revocable or irrevocable trust or similar legal device which:

1. was established with the client's own resources;
2. was established by the client, client's spouse, client's parent or client's legal guardian;
3. names the client as beneficiary of all or part of the payments;

4. has disbursements made by one or more trustees who are permitted to exercise discretion with respect to the amount disbursed; and
5. was established prior to 8/11/1993.

The maximum amount that can be distributed if the trustee exercises full authority under the trust terms, less any funds actually disbursed is a countable resource to the Medicaid client. Funds disbursed for any purpose are countable unearned income to the client.

The grantor's intended use of a MQT must be considered when determining accessibility. If a trust created prior to 8/11/93 states its intended purpose is for education and the beneficiary is not pursuing education, the trust is inaccessible/ excluded for Medicaid purposes as it is not intended for anything except education.

### **SPECIAL NEEDS TRUST:**

A Special Needs Trust is a trust:

1. Established for the sole benefit of a disabled individual (as defined by the Social Security Act) under age 65 by:
  - a. the disabled individual (for SNT trusts established after 12-13-2016);
  - b. a parent;
  - c. a grandparent;
  - d. a legal guardian; or
  - e. the court.
2. Established with assets of the disabled individual under age 65, **and**
3. If the trust is terminated for any reason, including death of the disabled individual, the State Medicaid Program will receive all amounts remaining in the trust up to the total amount of medical assistance paid on behalf of the individual during his or her lifetime.

**NOTE:** This trust exclusion continues after the individual reaches age 65. However, the trust cannot be added to nor otherwise augmented after the beneficiary reaches age 65.

Funds contained in a Special Needs Trust are excluded as resources. Income of a Special Needs Trust is not counted as income to the disabled individual (beneficiary of the trust) unless actually distributed in the form of cash or vendor payments for food or shelter (see MA 500, "In-kind Income).

### **POOLED TRUSTS:**

Exclude funds contained in a pooled trust. A pooled trust is:

1. Established for a disabled (as defined by the Social Security Act) individual's sole benefit by:
  - a. the disabled individual (regardless of age);
  - b. a parent;
  - c. a grandparent;
  - d. a legal guardian; or
  - e. the court.
2. Established with disabled individual's assets
3. Established and managed by a nonprofit association (e.g. PLUK---"People, Let's Unite for Kids," in the case of Self-Sufficiency Trusts of Montana);
4. With a separate account maintained for each trust beneficiary, but for purposes of investment and fund management, the trust pools these accounts; and

5. If the trust is terminated for any reason, including death of the disabled individual, the State Medicaid Program will receive all amounts remaining in the trust up to the total amount of medical assistance paid on behalf of the individual during his or her lifetime.

Income of a pooled trust is not counted as income to the disabled individual (trust beneficiary) unless actually distributed as a direct payment to the beneficiary or his/her agent or vendor payments for food or shelter (see MA 500, "In-kind Income).

#### **BURIAL TRUSTS:**

A trust established to set aside funds to pay burial expenses for the individual or someone else (normally a spouse or a family member). Burial trusts under this provision are not the same as funds held in trust by a funeral home in conjunction with a prepaid funeral agreement/burial contract.

Regardless of value, irrevocable burial trusts are excluded resources when determining Medicaid eligibility, unless the individual also obtains an irrevocable funeral agreement.

Revocable burial trusts with a value exceeding \$1500 are countable resources when determining Medicaid eligibility if created on or after 8/11/93. Revocable burial trusts created before 8/11/93 are evaluated according to MQT provisions. The total value of a revocable burial trust and any other revocable burial account/contract cannot exceed \$1500 equity per person. If the combined values exceed \$1500, the burial trust and account/contract are countable in full. See CMA 402-1 for more information on burial accounts/contracts. Creation of an irrevocable burial trust up to \$5,000 is not considered an uncompensated asset transfer. If an irrevocable burial trust is created with more than \$5,000 (or augmented with additional funds to increase the value above \$5,000 at any time after creation), the trust principal will continue to be considered an excluded resource, but the creation of or addition to a trust will be evaluated as an uncompensated asset transfer according to provisions in CMA 404-1 and 404-2. The uncompensated asset transfer policy is applied to the full trust value when initially funded with more than \$5,000, and to the full amount added to an existing trust to increase the burial trust's value to more than \$5,000.

**Effective Date:** June 01, 2022