

**CONNECTICUT DEPARTMENT OF SOCIAL SERVICES
UNIFORM POLICY MANUAL**

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Transmittal: UP-02-10

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Treatment of Assets

Type:

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AABD

MA

Subject:

Trusts

4030.80 B. Testamentary Trusts and Certain Inter Vivos Trusts that are not Established or Funded by the Individual or by his or her Spouse during their Lifetime (continued)

1. The Department determines whether the corpus, or principal of such a trust is an available asset by referring to the terms of the trust and the applicable case law construing similar instruments.
2. The principal of such a trust is an available asset to the extent that the terms of the trust entitle the individual to receive trust principal or to have trust principal applied for his or her general or medical support.
3. Under circumstances described in subparagraph 2 above, the trust principal is considered an available asset if the trustee's failure to distribute the principal for the benefit of the individual in accordance with the terms of the trust would constitute an abuse of discretion by the trustee.
4. The Department considers the following factors in determining whether the trustee would be abusing his or her discretion by refusing to distribute trust principal to the individual:
 - a. the clarity of the settlor's intention to provide for the general or medical support of the individual; and
 - b. the degree of discretion afforded to the trustee; and
 - c. the value of the trust created, with a high dollar value tending to indicate an intent to provide for general or medical support; and
 - d. the history of trust expenditures prior to the filing of an application for assistance for or on behalf of the individual.

C. Medicaid-Qualifying Trusts -- MA

The funds in an inter vivos trust, to the extent that they may be used at the discretion of the trustee, are considered available to an individual if:

1. the trust was established by the individual or individual's spouse prior to August 11, 1993; and
2. the individual is a beneficiary of the trust; and

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4030.80 C. Medicaid-Qualifying Trusts – MA (continued)

3. the trustee is able to distribute the funds to the individual at the trustee's discretion. This is true even if:
 - a. the trust is irrevocable; and
 - b. the trustee does not exercise his or her discretion.

D. Inter Vivos Trusts Established on or After August 11, 1993 - MA

For the purpose of determining an individual's eligibility under the Medicaid program, paragraph D pertains to inter vivos trusts established by the individual on or after August 11, 1993.

1. The Department considers an individual to have established a trust if the individual's assets were used to form all or part of the corpus of the trust and if any of the following individuals established the trust by means other than a will:
 - a. the individual; or
 - b. the individual's spouse; or
 - c. a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or
 - d. a person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.
2. For a trust whose corpus includes assets of an individual described in paragraph 1 and of any other person, the Department evaluates only that portion of the trust attributable to the assets of the individual.
3. The Department evaluates trusts described in paragraph D regardless of:
 - a. why the trust was established; or

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- b. whether the trustees have or exercise any discretion under the trust; or
 - c. any restrictions on when or whether distributions may be made from the trust; or
 - d. any restrictions on the use of distributions from the trust.
4. With respect to a revocable trust, the following principles apply:
- a. The Department considers the corpus of such a trust as an available asset.
 - b. The Department considers payments from the trust made to or for the benefit of the individual as income of the individual.
 - c. The Department considers payments from a revocable trust that are neither to nor for the benefit of the individual to be assets transferred by the individual as described in chapter 3028.
5. With respect to an irrevocable trust, the following principles apply:
- a. The Department considers the portion of the corpus of an irrevocable trust, or the income generated by the corpus of such trust to be an available asset of the individual if there are any circumstances under which a payment from the trust could be made to or on behalf of the individual.
 - b. The Department considers payments from that portion of the corpus or income generated by the corpus of a trust described in paragraph a to be:
 - (1) the individual's income, if the payments are to or for the benefit of the individual; and
 - (2) a transfer of assets by the individual, as described in chapter 3028, if the payments are for any other purpose.

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- c. The Department considers any portion of a trust from which, or any income generated by the corpus from which, no payment could be made to the individual under any circumstances as a transfer of assets, as described in chapter 3028.
6. The Department does not consider the following types of trusts in determining the individual's eligibility for Medicaid:
- a. a trust containing the assets of an individual under age 65 who is disabled, according to criteria under the SSI program, if:
- (1) the trust is established for the benefit of such individual by his or her parent, grandparent, or legal guardian, or by a court acting in accordance with the authority of state law; and
- (2) under the terms of the trust, the state will receive all amounts remaining in the trust upon the death of the individual, up to an amount equal to the total amount of Medicaid benefits paid on behalf of the individual.
- b. a trust that meets the following conditions:
- (1) the trust is established and managed by a non-profit association; and
- (2) a separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of the funds, the trust pools these accounts; and
- (3) accounts in the trust are established solely for the benefit of individuals who are disabled, according to criteria under the SSI program, by the individuals, their parent, grandparent or legal guardian, or by a court; and

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(4) to the extent that the amounts remaining in the individual's account upon his or her death are not retained by the trust, the trust is required by its terms to pay to the state from such remaining amount, an amount equal to the total amount of Medicaid benefits paid on behalf of the individual.

7. The Department waives the policies described in paragraph D if it is determined that the application of such policies would create an undue hardship (Cross Reference: 3028 for undue hardship criteria).

| E. Trusts in the Food Stamps Program

1. The funds in a trust are considered inaccessible to the assistance unit if:

a. the trust arrangement is not likely to cease during the certification period and the assistance unit has no power to revoke the trust arrangement or change the name of the beneficiary during the certification period; or

b. the trustee is either:

(1) a court or an institution, corporation or organization which is not under the direction or ownership of the assistance unit; or

(2) an individual appointed by the court who has court imposed limitations placed on the use of the funds; or

c. trust investments made on behalf of the trust do not directly involve or assist any business or corporation under the control, direction, or influence of the assistance unit; and

d. the funds held in irrevocable trust are either:

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- (1) established from the assistance unit's own funds, if the trustee uses the funds solely to make investments on behalf of the trust or to pay the educational or medical expenses of any person named by the assistance unit creating the trust; or
 - (2) established from non-assistance unit funds by a non-assistance unit member.
2. If the funds in a trust are totally available to the assistance unit at the present time, the total value is a counted asset.