

From: REDACTED

Sent: Thursday, April 15, 2021 8:26 AM

To: REDACTED

Subject: PLEASE READ: CHANGE IN POLICY REGARDING POOLED TRUSTS - EFFECTIVE IMMEDIATELY!!!

Importance: High

Hi Everyone, please share with your staff and forward appropriately. Let me know if you have any questions. Thank you very much.

I wanted you all to be aware of this change in policy effective immediately regarding the use of pooled trusts for the disabled. This applies to cases pending not yet authorized. Do not authorize any cases with pooled trusts created by individuals 65 or older. The transfer of asset policy now applies to these cases. Please follow transfer of asset procedures on these cases.

OLD POLICY:

Individuals aged 65 or older were allowed to use pooled trusts to exclude their assets and / or qualify their income (used as a QIT) if they were deemed disabled.

NEW POLICY – effective immediately:

If the disabled individual is under 65 when the pooled trust is established, the assets can be excluded in the pooled trust and it can be used for income (used as a QIT). There is no change in policy if the trust was established when the individual is under age 65 and disabled.

If the disabled individual is aged 65 or older when the pooled trust is established, the funding of the trust will now be treated as a transfer of assets. This is the change. It is a transfer of assets if a pooled trust is established for an individual aged 65 or older. Follow transfer of asset procedures.

Below is headquarters explanation as well as clarifications I had asked:

Circumstances required the initial change to 1640.0576.08 “Pooled trusts for the disabled under age 65” be made immediately. We are working on an amendment to the FAC but that will take a minute. We failed to make a corresponding change to “Pooled trusts for the disabled can be established for individuals of any age”. A pooled trust meets and exception for trusts set up 10/01/1993 or later only if the individual is less than 65 when the trust was established. If it does not meet an exception transfer policy is applied. Of course, an individual can establish a pooled trust at any age, but transfer of asset policy will be applied if the individual was 65 or older when trust was established. We will be amending “Pooled trusts for the disabled can be established for individuals of any age” to clarify that transfer policy is applied if

the individual was 65 or older when the trust was established in the next manual update release. Below is our response to you more specific questions. I am coping all regions a they are likely to have similar questions.

Please clarify the following.

- Are we now treating a pooled trust created by a disabled individual 65 or older as a transfer of assets?
 - ***Yes, it is a transfer of assets.***
- Is the disabled individual 65 or older still allowed to use a pooled trust as a qualified income trust?
 - ***There is no change in policy as long the individual was under 65 at the time the trust was established.***
- If a disabled individual creates a pooled trust prior to age 65, what happens when the disabled individual turns 65?
 - ***There is no change in the individual's eligibility as long the individual was under 65 at the time the trust was established.***
- Cases that are already approved with pooled trusts for age 65 or older, are we to now impose a transfer of asset penalty (after the pandemic)?
 - ***This is currently under review. At this point we do not anticipate applying transfer policy to pooled trust for cases that have already been approved. We will update the regions if this changes.***
- Will a pooled trust for an individual 65 or older need to be reviewed by legal counsel?
 - ***Yes, the legality of all trusts, including a Pooled Trust established for someone age 65 or older must be evaluated by the Regions General Counsel.***
- Will a pooled trust for an individual 65 or older now need a disability decision?
 - ***There is no change in the policy, to establish a Pooled Trust the individual must be disabled.***

The specific policy manual passages pertaining to this:

1640.0576.08 Exceptions for Trusts Set Up 10/1/93 or Later (MSSI, SFP)

The policies listed above in passage 1640.0576.07 do not apply to the following trusts:

1. Trusts established by a will (see passage 1640.0576.03).
2. Trusts for the disabled under age 65.
3. Pooled trusts for the disabled under age 65.
4. Qualified income trusts (see passage 1840.0110).

All special trusts must be forwarded to the Region or Circuit Program Office for review and Circuit Legal Counsel's written approval before the case can be approved, per guidelines in the Appendix-A-22.4, A-22.5 and A-22.6.

The following special trusts may be created on or after October 1, 1993, for disabled individuals if the trust meets the specific criteria indicated below:

Trusts for the disabled under 65: A trust containing the assets of a disabled individual under age 65, if:

1. it was established on or after 10/01/93; and
2. it was established for the benefit of the individual by, a parent, grandparent, the disabled individual himself, legal guardian or a court order; and
3. the trust stipulates the state will receive the balance in the trust upon the death of the individual up to an amount equal to the total medical assistance paid on behalf of the individual.

Pooled trusts for the disabled: A trust containing the assets of an individual who is disabled, if:

1. it was established on or after 10/01/93;
2. the trust is established and managed by a nonprofit association;
3. a separate account is maintained for the beneficiary of the trust but, for purposes of investment and management, the trust pools the accounts;
4. the trust is established solely for the disabled individual by a parent, grandparent, legal guardian, court or the individual himself; and
5. to the extent that amounts remaining in the trust upon the individual's death are not retained by the trust, the trust pays to the state an amount equal to the total amount of medical assistance paid on behalf of the individual.

Both of the above special trusts can only be set up to benefit individuals who meet SSI disability criteria. Trusts for the disabled under 65 can be established only for individuals who are under 65. Pooled trusts for the disabled can be established for individuals of any age.

Disability must be determined for both of the above special trusts via regular policy; that is, the person must receive Social Security disability or SSI benefits or the Department must make an independent determination to show that the individual meets the disability requirement.

1640.0576.09 Treatment of Qualified Disabled Trusts (MSSI, SFP)

After the trust is approved by the Circuit Legal Counsel as meeting the criteria of a qualified trust for the disabled under age 65 or a pooled trust for individuals under age 65, apply the following policies to determine the individual's eligibility for Medicaid benefits:

1. Do not consider the corpus of the exempt trust as an asset to the individual beginning with the month the assets are placed into an executed qualified disabled trust or pooled trust;
2. Do not consider the funding of a qualified disabled or pooled trust as a transfer of assets or income subject to imposition of a penalty period, provided the trust purchases items and services at fair market value for the sole benefit of the disabled individual (refer to 1640.0609.06);
3. Do not count any income deposited into the trust as income to the individual when determining the individual's eligibility;
4. Do not consider disbursements from the trust to third parties as income to the individual;
5. Do not consider any income earned by the trust which remains in the trust as income to the individual;
6. Count any payments made directly to the individual as income to the individual;
7. Count all income placed into the trust (along with countable income outside the trust) when computing patient responsibility. Standard spousal impoverishment policies apply.

If income is deposited into the trust, the trustee must provide quarterly statements identifying the deposits (and disbursements) made to the trust for each month.

Any funds paid directly to the individual from the trust must be counted as income to the individual. Disbursements not paid to the individual are not counted as income to the individual.

Fax or send a copy of the approved qualified disabled or pooled trust to:

ACS Recovery Services
Post Office Box 12188
Tallahassee, Florida 32317-2188
Fax: (844) 845-8352

When you receive inquiries regarding the settlement of remaining funds in the trust after a recipient's death, tell them to make checks payable to Agency for Health Care Administration and send to the above address. Also advise them to clearly identify the individual by including a note with the individual's full name and social security number or Medicaid number. If there are further questions, refer callers to ACS Recovery Services (877) 357-3268.

1640.0609.01 Identifying Potential Transfers of Assets or Income (MSSI)

Applicants may declare transfers on the application and unreported transfers may be discovered during application processing or the annual review. At application for ICP, ICP-Hospice, HCBS or PACE, ask all applicants if they (or their spouses if applicable) have transferred any assets within the look-back period preceding the month of application. At review, explore transfers that may have occurred over the course of the year, such as a homestead that was excluded at application.

The following list indicates the most common clues to potential transfers of assets:

1. unidentified withdrawals from bank accounts;
2. tax assessor online pages showing change in ownership of property;
3. quit claim deed to property with recent signature date;
4. unidentified deposits on financial statements;
5. data exchange responses for sources not on record;
6. purchase of annuities;
7. promissory notes and mortgages received in exchange for cash or property;
8. formal and informal loans made to others;
9. purchase of personal services or care contract;
10. purchase life estate interest;
11. assets declared at application not included on the Interim Contact Letter; and
12. funds placed in a trust.

Evaluate all the above situations and all other transactions that change an asset from potentially countable to excluded, including transfer of ownership interest in a home that was previously excluded as an asset. A homestead is still subject to a transfer of asset penalty, even if it could be/have been excluded prior to the transfer.

1640.0609.07 Definition of “For the Sole Benefit of” (MSSI)

In order for the transfer to be considered to be for the sole benefit of the spouse, the individual's blind or disabled child, or a disabled individual under age 65 (and not be subject to a transfer penalty), there must be a written transfer document which legally binds the parties to a specific course of action and which clearly sets out the conditions under which the transfer was made, as well as who can benefit from the transfer.

The transfer instrument or document must provide that:

1. no individual or entity except the spouse, the individual's disabled child, or the disabled individual under age 65 can benefit from the assets or income transferred in any way either at the time of the transfer or at any time in the future; and
2. the spending of the funds involved for the benefit of the individual is actuarially sound based on the life expectancy of the individual involved; that is, the individual must be able to receive fair compensation or return of the benefit of the transferred asset during his lifetime. (Follow instructions in 1640.0609.02 and use life expectancy tables in Appendix A-14 to determine if the person will receive fair compensation in his lifetime.)

If the transfer instrument or document does not meet these requirements, it cannot be considered a transfer for the sole benefit of the spouse, the blind or disabled child, or disabled individual and any potential exemption from penalty or consideration for eligibility purposes is void. In this case, you need to compute the uncompensated value of the transferred funds, notify the individual and give him the opportunity to rebut the presumption that the transfer was done to become Medicaid eligible.

Note: There are two issues to consider. An individual who transfers assets to someone else for the sole benefit may not incur a transfer penalty if the transfer meets the above two criteria. For the individual who receives the transferred asset, the asset may or may not count. Assets transferred to a third party in the form of a trust for the sole benefit of the spouse must be evaluated under trust policies. To qualify as being for the sole benefit of the spouse, the assets must be able to be paid to or for the benefit of the spouse over the spouse's lifetime. Assets transferred to a trust for the sole benefit of the spouse count as an available asset to the spouse and must be included in the couple's countable assets.

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