

## POOLED TRUST 65 AND OLDER SURVEY JULY 2020

Eighteen (18) states and Washington DC allow transfers into pooled trust sub-accounts without imposing a penalty: AL, AR, AK, CA, DC, DE, FL, IA, IN, ID, KY, MA, MD, MT, OH, TN, RI, WV, and WI:

Eleven (10) states all have variations or are unknown:

- CO – Medicaid is approving most transfers with a spending plan after successful litigation. They are still pursuing legislation to revise the statute to codify this.
- CT does not allow funding unless there is a spending plan, approved by the state, that shows the amounts contributed will be spent on a actuarially sound basis;
- IL – allows if public guardian involved; otherwise it does not.
- KS – per holding in *Hutson*, the state cannot impose a per se penalty based upon the transfer to the trust, but must analyze whether fair market value was received by the applicant/beneficiary.
- MN – impose a penalty unless fair market value is shown – Two cases in litigation right now – one on hold and one pending argument before the Minnesota Supreme Court.
- NY - No transfer penalty for “Community” Medicaid services but Transfer penalty for purposes of “institutional” Medicaid service eligibility.
- MI must show fair market value; still in litigation; Supreme Court ruled that funding a trust for one’s own benefit is not a transfer (not a pooled trust+65 case) (May, 2019).
- MO – mixed – imposes a penalty for NF services but not for some 1915 waiver services.
- OR – holding now “*may* constitute a disqualifying transfer” OAR 461-140-210)

Twenty-three (23) states penalize transfers into pooled trust sub-accounts for individuals age 65 and older *per se*: AZ, GA, HI, LA, ME, MS, NC, ND, NE, NH, NJ, NM, NV, OK, PA, SC, SD, TX, UT, VA, VT, WA, and WY.