Article 11. Medicaid Treatment of Trusts.

Section

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- **7 AAC 100.600. Applicability of Medicaid trust provisions.** (a) The provisions of 7 AAC 100.600 7 AAC 100.619 apply to an individual who is eligible for Medicaid under an eligibility category identified in 7 AAC 100.002(a) (e). However, an applicant or recipient may not use a recognized Medicaid trust under 7 AAC 100.604 to meet income and resource requirements for eligibility categories identified in 7 AAC 100.002(e).
- (b) For the purposes of 7 AAC 100.600 7 AAC 100.619, an applicant or recipient is the grantor of a trust if
- (1) any amount of the applicant's or recipient's assets is used to form all or part of the corpus of the trust; and
 - (2) the trust is created by
 - (A) the applicant or recipient;
 - (B) the applicant's or recipient's spouse;
 - (C) an individual authorized to act on behalf of the applicant or recipient or applicant's or recipient's spouse; or
 - (D) a court order.
 - (c) The provisions of 7 AAC 100.600 7 AAC 100.619 do not apply to a trust that
- (1) is established by a third party, including a trust established by will or other testamentary instrument; and
- (2) names the applicant or recipient as beneficiary or excludes the applicant's or recipient's income or resources.
- (d) The provisions of this chapter that are applicable to an applicant's or recipient's eligibility category are used to determine whether a trust described in (c) of this section is a countable resource or if payment from the trust is income.
- (e) A trust that is funded by the proceeds of a court settlement in which the applicant or recipient was a plaintiff is a trust created with the assets of the applicant or recipient and is subject to 7 AAC 100.600 7 AAC 100.619.
- (f) If a transaction is identified in 7 AAC 100.600 7 AAC 100.619 as a transfer of an asset for less than fair market value under 7 AAC 100.510, an applicant or recipient may request an undue hardship exemption in accordance with 7 AAC 100.516. (Eff. 7/20/2007, Register 183)

- **7 AAC 100.602. General trust rules.** (a) Except as provided under 7 AAC 100.604, if an applicant or recipient is the grantor of a revocable trust,
- (1) the entire principal counts as an available resource to the applicant or recipient;
- (2) a payment from the trust to, or for the benefit of, the applicant or recipient is income to the applicant or recipient; and
- (3) a payment or a partial payment from the trust to a third party that does not benefit the applicant or recipient is a transfer of an asset for less than fair market value under 7 AAC 100.510.
- (b) Except as provided under 7 AAC 100.604, if an applicant or recipient is the grantor of an irrevocable trust and the terms of the trust authorize the trustee to make a payment to, or for the benefit of, the applicant or recipient
- (1) the principal of the trust is not a countable resource, but the maximum amount that the terms of the trust allow the trustee to pay to, or for the benefit of, the applicant or recipient is a countable resource regardless of actual payment;
- (2) a payment from the trust to, or for the benefit of, the applicant or recipient is income to the applicant or recipient; and
- (3) a payment, or a portion of a payment, from the trust to a third party that does not benefit the applicant or recipient is a transfer of an asset for less than fair market value under 7 AAC 100.510.
- (c) Except as provided under 7 AAC 100.604, if an applicant or recipient is the grantor of an irrevocable trust under 7 AAC 100.600 and the terms of the trust prohibit a portion of that trust from being paid to, or for the benefit of, the applicant or recipient under any circumstances, that portion of the trust is a transfer of an asset for less than fair market value under 7 AAC 100.510. The date of the transfer is the date the trust was established or the date on which payment to, or for the benefit of, the applicant or recipient was foreclosed, whichever is later. An addition to the trust by the applicant or recipient is a new transfer of an asset for less than fair market value if
- (1) the trust prohibits payment of that addition to, or for the benefit of, the applicant or recipient; and
 - (2) the addition occurred after the first transfer to the trust.
- (d) Except as provided under 7 AAC 100.604, a payment from a trust is income to the applicant or recipient, according to the provisions of this chapter that are applicable to the applicant's or recipient's eligibility category, if the payment is
 - (1) made directly to the applicant or recipient;
 - (2) made to an individual acting on behalf of the applicant or recipient; or
- (3) used to purchase a product or service from which the applicant or recipient receives some direct benefit.
- (e) If the trust corpus includes assets contributed by more than one beneficiary, this section applies only to that portion of the trust assets actually contributed by the beneficiary who is an applicant or recipient. (Eff. 7/20/2007, Register 183)

- **7 AAC 100.604. Recognized Medicaid trusts.** (a) The following three types of recognized Medicaid trusts are exceptions to the general trust requirements in 7 AAC 100.602 for trusts:
- (1) a qualifying income trust authorized under 42 U.S.C. 1396p(d)(4)(B) that meets the requirements of 7 AAC 100.610;
- (2) a special needs trust authorized under 42 U.S.C. 1396p(d)(4)(A) that meets the requirements of 7 AAC 100.612;
- (3) a pooled trust authorized under 42 U.S.C. 1396p(d)(4)(C) that meets the requirements of 7 AAC 100.614.
- (b) An applicant or recipient must submit a recognized Medicaid trust document to the department for review and approval before the department determines Medicaid eligibility. To be approved by the department, in addition to meeting the applicable requirements of 7 AAC 100.610, 7 AAC 100.612, or 7 AAC 100.614, the trust document must
- (1) cite the federal statute listed in (a) of this section applicable to the type of trust;
- (2) state that at the time the trust is funded, the applicant or recipient will be either under 65 years of age or 65 years of age or older, as applicable;
- (3) for a special needs or pooled trust, identify the date the beneficiary was last determined or redetermined blind under 7 AAC 40.140(a) or disabled under 7 AAC 40.170(a);
- (4) for a qualifying income trust, prohibit a person from depositing into the trust anything other than the applicant's or recipient's income;
- (5) prohibit the applicant or recipient from being a trustee or from having any ability, access, or authority to manage or control the trust account;
- (6) include a provision for reimbursing the state in accordance with 7 AAC 100.608:
 - (7) identify the trustee, including a co-trustee;
- (8) identify procedures for resignation of the trustee and for designating a successor trustee, including a successor co-trustee; the procedure must require that, at least 30 days before the change, written notification of the change in trustee be sent to the beneficiary, the beneficiary's authorized representative if applicable, the department, and the court where the trust is registered; and
- (9) identify on each page of the trust document the person or organization that drafted the trust document.
- (c) If the department approves a recognized Medicaid trust, the trust and administration of the trust are subject to review by the department, upon notice, to determine whether the trust remains a valid trust for the purposes of meeting the requirements of a recognized Medicaid trust. Upon request, the trustee shall provide the department with the trust account number and the name of the financial institution holding the trust account. The department will consider a trust to be an invalid trust for the purposes of meeting the requirements of a recognized Medicaid trust if
 - (1) the trust is not registered with a court;
- (2) the trust account receives or uses the assets of another person, except as provided under 7 AAC 100.614;
- (3) the applicant or recipient functions as the trustee or has any other ability, access, or authority to manage or control the trust account;

- (4) the trustee fails to provide the department with all requested information necessary to identify the trust account number and financial institution holding the trust account;
- (5) the trustee fails to cooperate or interferes with the department's ability to track and monitor the trust account, including failing to disclose or account for any payment from or deposit into the trust account;
- (6) the applicant or recipient has a cost-of-care liability under 7 AAC 100.550, but the trustee fails to make payments toward the cost-of-care liability;
 - (7) the trustee fails to adhere to the terms of the trust as written; or
 - (8) the trustee fails to comply with the requirements of (e) or (f) of this section.
- (d) If the department determines that a trust is invalid under (c) of this section, the department will redetermine the applicant's or recipient's Medicaid eligibility, applying the provisions of 7 AAC 100.600 and 7 AAC 100.602 to any existing trust.
- (e) If a trustee decides, consistent with the trustee's fiduciary duty, that use of a recognized Medicaid trust approved under this section is no longer needed to maintain the beneficiary's Medicaid eligibility, the trustee shall notify in writing the beneficiary, the beneficiary's authorized representative if one exists, the department, and the court where the trust is registered in writing no later than the first day of the month immediately preceding the month a trust or trust account will no longer be funded. The trustee shall keep the corpus of the trust intact until the trust is terminated and the state is reimbursed in accordance with 7 AAC 100.608. If the trustee fails to notify the department in accordance with this subsection, the department may find that the trust is invalid under (c) of this section.
- (f) If a trustee plans to resume use of an unfunded recognized Medicaid trust, the trustee shall notify the department in writing no later than the 15th day of the month immediately preceding the month that use of the trust will resume. If the trustee fails to notify the department in accordance with this subsection, the department may find the applicant or recipient ineligible for Medicaid. (Eff. 7/20/2007, Register 183)

- **7 AAC 100.606. Recognized Medicaid trust; effect on financial eligibility.** (a) A payment that would otherwise be available to an applicant or recipient that is deposited directly into a recognized Medicaid trust account, or earnings of the trust account that remain in the trust account, is not income for the purposes of determining Medicaid eligibility.
- (b) A payment or deposit of an asset belonging to the applicant or recipient that is placed into the applicant's or recipient's special needs trust or pooled trust is not a countable resource for the purposes of determining Medicaid eligibility.
- (c) A payment made by the trustee from the trust account to the applicant or recipient is income according to the provisions of this chapter that are applicable to the applicant's or recipient's eligibility category.
- (d) For eligibility categories identified under 7 AAC 100.002(b) or (d), a payment made from a recognized Medicaid trust directly to a third-party vendor is not a transfer of asset for less than fair market value and is not income to the applicant or recipient if the payment is not accessible to the applicant or recipient and the payment is
- (1) for a product or service that provides a direct and measurable contribution to the applicant or recipient under (g) of this section;

- (2) to a medical facility to pay for the applicant's or recipient's cost-of-care obligation; or
 - (3) for medical care of a community spouse.
- (e) A payment from a trust account to a third party that is not payment for a product or service that makes a direct and measurable contribution to the applicant or recipient, or that does not otherwise satisfy an independent legal obligation of the applicant or recipient, is a transfer of an asset for less than fair market value under 7 AAC 100.510.
- (f) Except as provided under 7 AAC 40.320 for in-kind support and maintenance, a payment from a recognized Medicaid trust directly to a third-party vendor for food or shelter is income to the applicant or recipient up to \$20 plus one-third of the SSI eligibility standard or, if applicable, up to a maximum amount determined under the presumed value rule in 20 C.F.R. 416.1140.
- (g) For purposes of this section, a product or service makes a direct and measurable contribution to the applicant or recipient if the
- (1) applicant or recipient is the primary beneficiary of the product or service purchased by the trust payment; and
- (2) value of the contribution to the applicant or recipient of that product or service can be measured by a health care provider or assigned a monetary value based upon readily available consumer economic or market data. (Eff. 7/20/2007, Register 183)

- **7 AAC 100.608.** Medicaid reimbursement from a recognized Medicaid trust. (a) If a recognized Medicaid trust terminates by death of the recipient or by court order, a recognized Medicaid trust may pay for any outstanding legal and administrative fees associated with establishing and maintaining the trust and trust account before paying the state under (b) of this section.
- (b) A recognized Medicaid trust document must provide that upon termination of the trust by death of the recipient, any money remaining in the trust must be paid to the state, up to the amount the state paid in Medicaid benefits for the recipient while the trust existed. If a recipient has received Medicaid in more than one state, the trust document must provide that the money remaining in the trust be distributed to each state in which the recipient received Medicaid based on the state's proportionate share of the total amount of Medicaid benefits paid by all of the states on the recipient's behalf.
- (c) If a court terminates a trust before the death of the recipient, the state must be reimbursed according to (b) of this section, or the corpus of the trust must be placed in another recognized Medicaid trust approved by the department. Once a court terminates a recognized Medicaid trust, the trust may not be used again.
- (d) A trustee may make advance payments on the trust obligation to reimburse the state. The department will credit each advance payment against the recipient's obligation under (b) of this section. (Eff. 7/20/2007, Register 183)

Authority: AS 47.05.010 AS 47.07.020 AS 47.07.040

7 AAC 100.610. Qualifying income trust. To be approved by the department, a qualifying income trust

- (1) must consist exclusively of income to the applicant or recipient, including accumulated interest:
 - (2) must be irrevocable;
 - (3) may not contain an asset other than income;
- (4) must terminate upon a court order or the death of the recipient, whichever is earlier; and
- (5) must provide for reimbursement to the state under 7 AAC 100.608. (Eff. 7/20/2007, Register 183)

7 AAC 100.612. Special needs trust. (a) To be approved by the department, a special needs trust must

- (1) be established for the sole benefit of the applicant or recipient who is under 65 years of age and who is blind under 7 AAC 40.140(a) or disabled under 7 AAC 40.170(a);
 - (2) consist exclusively of the income and resources of the applicant or recipient;
 - (3) be irrevocable:
- (4) terminate upon a court order or the death of the recipient, whichever is earlier; and
 - (5) provide for reimbursement to the state under 7 AAC 100.608.
- (b) The asset protection offered by a special needs trust continues after the applicant or recipient reaches 65 years of age, but the trust may not receive any additional income or resources after the applicant or recipient reaches 65 years of age. The trust may continue to receive income or resources from the same source, or its successor, from where it received income before the applicant or recipient reached 65 years of age, including any increase in the periodic amount from that same source. Any income or resource deposited into a special needs trust after the applicant or recipient reaches 65 years of age is a transfer of an asset for less than fair market value under 7 AAC 100.510. Nothing in this section prohibits the establishment of a separate pooled trust under 7 AAC 100.614 for the beneficiary of a special needs trust who reaches 65 years of age. (Eff. 7/20/2007, Register 183)

Authority: AS 47.05.010 AS 47.07.020 AS 47.07.040

7 AAC 100.614. Pooled trust. (a) To be approved by the department, a pooled trust must

- (1) be established and managed by a nonprofit association;
- (2) contain the assets of beneficiaries who are blind under 7 AAC 40.140(a) or disabled under 7 AAC 40.170(a);
- (3) maintain a separate account for each beneficiary of the trust; the separate account must be established for the sole benefit of the individual beneficiary; for purposes of this paragraph, a separate account is established for the sole benefit of the beneficiary if no person other than the beneficiary benefits from the trust account or a payment from the trust account during the trust account's existence, except as provided in (6) of this subsection;
 - (4) be irrevocable;
- (5) require that each beneficiary's trust account terminate upon a court order or the death of that beneficiary, whichever is earlier; and

- (6) provide that any money remaining in a beneficiary's trust account that is not used by the nonprofit association to maintain the pooled trust be paid to the state, up to the total amount of Medicaid paid on behalf of the beneficiary.
- (b) In this section, "nonprofit association" includes a governmental body charged with providing guardian services to state residents. (Eff. 7/20/2007, Register 183)

- **7 AAC 100.619. Definitions.** In 7 AAC 100.600 7 AAC 100.619, unless the context requires otherwise,
- (1) "beneficiary" means an individual designated by a trust document to receive the benefits of the trust;
- (2) "irrevocable trust" means a trust that, absent a court order, may not be revoked or modified by a grantor, beneficiary, or trustee;
- (3) "recognized Medicaid trust" means a qualifying income trust under 7 AAC 100.610, a special needs trust under 7 AAC 100.612, or a pooled trust under 7 AAC 100.614;
- (4) "revocable trust" means a trust that may be revoked or modified by the grantor;
- (5) "trust" means a valid legal arrangement, manifested by a trust document or agreement, in which a grantor transfers income or resources to a trustee to be held, managed, or administered by a trustee for the benefit of a beneficiary;
- (6) "trustee" means an individual or entity that holds, manages, and administers trust property according to the terms of the trust and for the benefit of a beneficiary. (Eff. 7/20/2007, Register 183)