

## GUIDELINES FOR REVIEWING TRUSTS FOR THE DISABLED

**INTRODUCTION:** This guideline has two parts.

**Part I:** Guide to determine if a trust established for a disabled individual is a:

- qualified disabled trust in accordance with the ACCESS Florida Program Policy Manual, Chapter 1600 (Legal Basis: 42 USC 1396p(d) (4)); or
- “nonexempt” trust to be treated in accordance with the ACCESS Florida Program Policy Manual, Chapter 1600 (Legal Basis: 42 USC 1396p(d) (3)).

**Part II:** Guide on how to treat trust income and assets.

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Note: All references below refer to passages in the ACCESS Florida Program Policy Manual. Further sources of information regarding SSI-Related Medicaid Program policy may be located in 20 CFR 416 (Supplemental Security Income (SSI) policy) and 42 CFR 435 (Medicaid policy).

### **PART I: IS THE TRUST A QUALIFIED TRUST FOR THE DISABLED UNDER 65?**

**STEP 1: (ES) Was the trust established on or after 10/1/93 with funds (income or assets) belonging to the individual or their spouse? (Eligibility specialist (ES) determines this.)**

Background: It is okay if the trust is set up with the community spouse’s assets as long as the community spouse does not benefit from the trust. If the community spouse does or will benefit from the trust, this is not a qualified disabled trust and provisions in Chapter 1600 apply.

\*\*If **YES**, go to Step 2.

\*\*If **NO**, treat income/assets according to SSI rules in Chapter 1600. If the trust is set up with someone else’s funds, there is no transfer of assets. (Trust rules in Chapter 1600 do not apply.)

\*\*If the trust was set up before October 1993, policies in Chapter 1600 apply.

**STEP 2: (ES) Was the trust set up for an individual under age 65 who is disabled as defined by Social Security criteria (1614(a) (3) of the Social Security Act)? (Eligibility specialist determines this.)**

Background: A Medicaid determination of disability or receipt of SSI or Social Security benefits as a disabled person fulfills these criteria. If the individual (including a family-related child or caretaker relative) does not receive SSI or Social Security Disability payments for himself and has not had a Medicaid disability determination done, it is necessary for the

eligibility specialist to request a determination from the district medical review team or the Office of Disability Determinations according to appropriate standard procedures found in Chapter 1400.

**\*\*If YES**, go to Step 3.

**\*\*If NO**, follow the trust policy in section Chapter 1600. (If the trust is a pooled trust or an income trust, follow appropriate manual policy in Chapter 1600 or 1800.)

**STEP 3: (ES)** **Was the trust set up by the individual (only applicable on or after 12/13/16), a parent, grandparent, legal guardian or court?** (Eligibility specialist determines this; District Legal Counsel confirms.)

Policy: The individual himself cannot set up a qualified disabled trust, nor can his power of attorney, if established prior to 12/13/16.

If **YES**, go to Step 4.

If **NO**, this is not a qualified trust for the disabled. If the trust was transferred “for the sole benefit of” (according to Chapter 1600) the disabled individual, transfer of asset provisions do not apply and the trust is evaluated according to the trust policy in Chapter 1600.

**STEP 4: (ES/DLC)** **Was the trust set up for the sole benefit of the individual (Chapter 1600)?** (Eligibility Specialist provides information to DLC; DLC confirms that the trust provisions conform to the eligibility specialist’s understanding.)

Policy: If the trust benefits anyone other than the individual, whether at the time the trust is established or at any time in the future prior to the satisfaction of the state’s claim, it is not for the sole benefit of the individual.

Policy: The trust may provide for disbursements for expenses associated with the trust or to purchase items and services for the sole benefit of the individual at no more than fair market value. The trust may provide for disbursements (after the individual’s death) to other beneficiaries after the state is reimbursed.

**\*\*If YES**, go to Step 5.

**\*\*If NO**, the eligibility specialist must determine:

- if a transfer of income/assets without fair compensation has occurred; and
- if trust provisions in Chapter 1600 apply; and
- whether income must be counted in determining eligibility.

**STEP 5: (ES/DLC)** **Is the trust revocable?** (Eligibility specialist determines; DLC confirms.)

**\*\*If the trust is revocable, the corpus is a countable asset and the Eligibility specialist needs to apply revocable policies in Chapter 1600.**

**\*\*If the trust is irrevocable, the corpus is not a countable asset; go to Step 6.**

**STEP 6: (ES/DLC) Is the state (not necessarily Florida, because the individual may move to, or from, another state and receive benefits in both states) designated to receive the funds remaining in the trust at the time of the individual's death up to the amount of benefits paid out by Medicaid during the individual's lifetime? (Eligibility specialist determines this; DLC confirms.)**

Background: If a trust was set up while the individual was a resident of another state and the individual received Medicaid benefits in that state before receiving benefits in Florida, the trust must provide that the funds remaining in the trust are distributed to each state in which the individual received Medicaid, based on the state's proportionate share of the total amount of Medicaid benefits paid by all of the states on the individual's behalf. (Cite: Health Care Financing Administration (HCFA) State Medicaid Manual, section 3259.7)

**\*\*If YES, the trust meets the criteria as a qualified disabled trust, apply provisions in Chapter 1600. Trust is exempt from transfer provisions and from trust provisions in Chapter 1600.**

**\*\*If NO, apply trust policies in Chapter 1600 and determine if this was a transfer "for sole benefit of" the individual to determine if transfer provisions apply.**

- If the trust meets "for sole benefit of" criteria (Chapter 1600), there is no period of ineligibility based on the transfer provision.
- If the trust does not meet the transfer "for the sole benefit of" criteria, it must be considered a transfer of assets without fair compensation and a period of ineligibility must be imposed unless the individual can prove this was a transfer solely for another purpose than to become Medicaid eligible or that undue hardship applies.

**PART II: HOW TO CONSIDER ASSETS AND INCOME OF A TRUST FOR THE DISABLED.**

**STEP 1: (ES) IF the trust meets the criteria of a qualified trust for the disabled under age 65, follow policies in Chapter 1600.**

Policy: Income deposited into the trust is not counted when determining if the individual meets the Medicaid income standard but is counted when computing patient responsibility for Medicaid residents in a nursing home.

**STEP 2: (ES) IF the trust does not meet the criteria of a qualified trust for the disabled under age 65, follow trust policies in Chapter 1600 or, ABSB if set up by someone else, follow policies in Chapter 1600.**