

**STATE OF CONNECTICUT**  
*DEPARTMENT OF SOCIAL SERVICES*  
**PROGRAM INFORMATION BULLETIN**

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 Claudette J. Beaulieu, Deputy Commissioner

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 April 15, 2009

Date

Information Bulletin NO:09-02

PROGRAM (s): MAABD

Subject: Treatment of Pooled Trusts for Individuals Aged 65 and Over

<b>Background</b>	<p>Trusts are complicated legal instruments that workers refer to the department's Office of Legal Counsel, Regulations and Administrative Hearings ("OLCRAH"). The OLCRAH reviews trust documents in the context of state and federal laws and advises workers of the effect on eligibility.</p> <p>Although the changes described in this PIB largely affect reviews of trusts by the OLCRAH, staff should also be aware of these changes as these changes will impact certain clients with previously-approved trusts.</p> <p>Many of the trusts reviewed by the OLCRAH are "self-settled" trusts, which are trusts that are established and funded by individuals applying for Medicaid. The general rule in the Medicaid program is that funds transferred to self-settled trusts are regarded as either available assets or as an improper transfer of assets.</p> <p>There is an exception to this rule. Public Law 103-66 (OBRA '93) exempts special needs trusts and pooled trusts from the general rule. Special needs trusts are trusts for disabled individuals under age 65. Pooled trusts are trusts managed by a non-profit organization for disabled individuals regardless of age.</p> <p>Both special needs trusts and pooled trusts allow the department to exclude funds transferred into these trusts by disabled individuals. Disabled individuals can remain eligible for Medicaid and use these funds to pay for services not covered by Medicaid.</p> <p>Disabled individuals generally can transfer income, as well as assets, into either type of trust without incurring transfer of asset penalties. This is because the term "assets" also includes <i>income</i> under federal law.</p> <p>By transferring income into either type of trust, individuals effectively decrease their gross counted income in the Medicaid program. This is frequently done by individuals applying for a Medicaid waiver program, which has a gross income limit equal to 300% of the SSI payment standard.</p> <p>Descriptions of these types of trusts and how we treat them are outlined in the department's UPM at 4030.80 D. 6, 3028.10 D., 3028.11 D., 3029.10 D. and 3029.11 D.</p>
<b>Recent Guidance from the Centers for Medicare and Medicaid Services ("CMS")</b>	<p>Many states, including Connecticut, interpreted the federal law as allowing disabled individuals, <b>regardless of their age</b>, to transfer income or assets into <b>pooled trusts</b> without incurring a penalty. This is implied at UPM 3028.11 D. and at 3029.11 D.</p>

<p><b>Recent Guidance from the Centers for Medicare and Medicaid Services (“CMS”) (continued)</b></p>	<p>However, the Center for Medicare and Medicaid Services (“CMS”) recently informed us that this is not correct. Exemption from the transfer of asset rules applies only to disabled individuals <b>under age 65</b> who transfer assets into a pooled trust. This language is specifically stated at UPM 3028.10 D. and at 3029.10 D.</p> <p>Disabled individuals age 65 or over who transfer funds into pooled trusts may not, however, be subject to penalty if they make the transfer exclusively for reasons other than qualifying for Medicaid, or if they receive, or are expected to receive, fair value for the transfer.</p>
<p><b>Effect on Individuals’ Eligibility for Medicaid</b></p>	<p>This policy clarification is especially pertinent to disabled individuals aged 65 and over who are applying for or receiving home care services under the Connecticut Home Care Program for Elders (“CHC”) program, if such individuals have income in excess of 300% of SSI. Until now, we have been allowing such individuals to transfer income and assets into a pooled trust without determining whether we should impose a penalty.</p> <p>Effective immediately, we will determine whether a penalty is appropriate when disabled individuals aged 65 and over assign income or transfer assets into a pooled trust and apply for long-term care services within the look-back period. This new guidance also applies to clients with pooled trusts that were previously approved by the OLCRAH. Workers should review these situations at the next redetermination.</p> <p>We will not impose a penalty under the following circumstances:</p> <p>First, if the individual transfers less than \$311.14 monthly into the pooled trust, there is no penalty. The \$311.14 amount, which will be revised each July, represents the average cost for one day’s stay incurred by a private pay resident at an LTCF. Because we do not impose a penalty of less than one day, we do not consider a transfer of less than \$311.14 to have been made in order to qualify for Medicaid.</p> <p>Second, if the individual transfers or assigns \$311.14 or more monthly into the pooled trust, he or she must expend the excess in its entirety within six months to avoid a penalty. The individual must indicate how he or she will use the funds. He or she must have a definite plan, which must be approved by the department, and must receive fair value for these funds. Supervisors can approve such plans. The Adult Support Team is available for guidance if it is needed. For example, a W01 applicant who needs the excess to pay for property taxes every six months may assign or transfer income or assets into a pooled trust in an amount sufficient to pay for the taxes.</p> <p>Finally, if the individual transfers an asset (generally a one-time transfer of a larger amount) into a pooled trust with the intent of expending the asset during his or her lifetime, we will not impose a penalty. Again, the individual must have a definite plan, approved by the department, regarding how he or she will use the asset, and must receive fair value for it. Part of the plan must include a time frame, so that we can determine, based on the individual’s life expectancy, whether the plan is actuarially sound. For example, if an L01 applicant is able to leave the nursing facility within six months (and possibly continue receiving Medicaid as a W01 recipient), and will need to modify the home for handicap access, he or she can transfer assets into a pooled trust to cover the cost of the modifications. These provisions can be combined as described in Example 2 below.</p> <p>If the individual’s circumstances change, we may re-evaluate the validity of his or her plan for use of the excess income or assets. For example, if a W01 recipient has an approved plan to use the excess to pay for home care services, but then enters an LTCF with no intent to return home, we would no longer allow the transfer of the excess funds into the pooled trust based on that plan.</p>

<p><b>Case Scenarios</b></p> <p><b>Case Scenarios (continued)</b></p>	<p>Example 1:</p> <p>Mr. Jones, age 65 and disabled, is applying for Medicaid under the CHC program. He meets all eligibility criteria, except that his gross income is \$2,200 per month (the income limit for CHC is currently \$2022 per month). However, he assigns \$179 of his monthly income into a pooled trust. We now compute his income to be \$2021.00, which would make him eligible for the program (note: he could have assigned up to \$311.14, which would have lowered his applied income).</p> <p>Example 2:</p> <p>Mrs. Smith, age 65 and disabled, is applying for Medicaid under the CHC program. She meets all eligibility criteria, except that her gross income is \$2,500 per month. She assigns \$590 of her monthly income into a pooled trust. The trust pays out \$290 per month on her behalf for additional waiver-type services that are not covered under Medicare or Medicaid. Mrs. Smith expends this \$290 in its entirety every month. The remaining amount, \$300, is less than the one-day penalty amount of \$311.14 described above. Mrs. Smith is eligible for the CHC program.</p> <p>Example 3:</p> <p>Same scenario as example 2, except that the trust does not make any payments on behalf of Mrs. Smith, nor is there an approved plan to expend these funds. The entire \$590 per month is considered an improper transfer that would result in a monthly penalty.</p>

Disposition: Retain for future reference.

Distribution: DSS Regional Office Staff

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