

TO: Local District Commissioners, Medicaid Directors

FROM: Judith Arnold, Director
Division of Eligibility and Marketplace Integration

SUBJECT: Clarification of Policy for Treatment of Income Placed in Medicaid Exception Trusts

ATTACHMENT: Attachment I - Explanation of the Effect of Trusts on Medicaid Eligibility (OHIP-0119)
Attachment II - List of Revised Manual Excess Income Eligibility Notices

EFFECTIVE DATE: Immediately

CONTACT PERSON: Local District Support Units
Upstate (518) 474-8887 NYC (212) 417-4500

The purpose of this General Information System (GIS) message is to provide local departments of social services (LDSS) with clarification of policy for treatment of income placed in "exception trusts", and to inform districts of an additional insert ("Explanation of the Effect of Trusts on Medicaid Eligibility," OHIP-0119) that must be included with excess income notices which explains generally the effect of trusts on an applicant/recipient's (A/R) Medicaid eligibility.

Exception trusts are trusts which are required to be disregarded as available income and resources for the purposes of determining Medicaid eligibility pursuant to the provisions of Social Services Law Section 366(2)(b)(2)(iii) and 18 NYCRR 360-4.5(b)(5). They include "special needs trusts" (sometimes referred to as "supplemental needs trusts") and pooled trusts. A special needs trust is created for the benefit of a certified disabled person under age 65. The trust must: be created with the disabled person's own assets; be established by the disabled person, the disabled person's parent, grandparent or legal guardian, or by a court; and specify that upon death of the disabled person, the State will receive all funds remaining in the trust, up to the amount of Medicaid paid on behalf of the disabled person. Pooled trusts are created for the benefit of a certified disabled individual of any age, and are established and managed by a non-profit organization. The trust maintains separate accounts for each person participating in the pooled trust, but pools the trust assets for purposes of investment and management of trust funds. The disabled person's account in the trust must: be created with the disabled person's own assets; be established by the disabled person, the disabled person's parent, grandparent or legal guardian, or by a court; and the trust must specify that upon death of the disabled person, funds not retained by the non-profit organization will be paid to the State, up to the amount of Medicaid paid on behalf of the disabled person.

Note: If a trust is established by an agent acting under a Power of Attorney (POA), the powers granted under the POA must include permission to gift assets.

Medicaid will not count the assets in an exception trust if the trust meets the described criteria. Income directly diverted to an exception trust, or income received and then placed into the trust is excluded when determining income eligibility for a certified disabled individual under community rules. The income exclusion applies only to income that is placed into the A/R's own exception trust during the same month in which the income is received. Since the exclusion is applied monthly, districts must obtain a written statement from the A/R indicating the amount of monthly income to be deposited into the A/R's trust. The

amount provided in the statement is to be excluded prospectively in the monthly income calculation by entering the amount in the MBL budget with Unearned Income Exemption Code 20, "Other Amounts Limited by Designated Use". Districts are reminded to review trust activity at each renewal to confirm the income was deposited into the trust each month as provided in the written statement. Recipients should not be required to submit proof of deposits to their trust each month, unless it has been determined upon review of trust activity that the consumer did not deposit monthly income as indicated in his/her written statement.

Note: For married and single individuals, assets used to fund an exception trust and which may not count under community rules will count in determining the amount of income the recipient must contribute toward the cost of long term nursing home care. Additional rules apply to transfers to and from trusts under the transfer of assets provisions, as provided in 96 ADM-8, "OBRA '93 Provisions on Transfers and Trusts".

If when determining Medicaid eligibility, the consumer is eligible for the Medicare Savings Program after exempting the amount deposited into an exception trust, the LDSS should inform the consumer that the amount deposited monthly into the trust may have to increase to avoid a spenddown. Policy regarding the Medicare Savings Program and the program requirements are provided in 00 OMM/ADM-7 "Medicare Premium Payment Program (MPPP)".

Eligibility notices for individuals with excess income have been revised to include a newly created informational notice titled "Explanation of the Effect of Trusts on Medicaid Eligibility" (OHIP-0119) which explains generally the effect of trusts on Medicaid eligibility, including that income deposited in exception trusts is excluded. Effective with the release of this GIS, districts must use the updated manual eligibility notices, destroy all previous versions and enclose the OHIP-0119 with all manual excess income eligibility notices. A copy of the OHIP-0119 informational notice and a list of the applicable manual excess income notices are provided as attachments to this GIS, and have been posted to the DOH, Office of Health Insurance Programs website: <http://health.state.nyenet/revdssforms.htm>. The informational notice is now included as a new section on upstate CNS excess income notices; New York City CNS excess income notices are currently being developed. Lastly, the information is also available on the Department of Health (DOH) website at https://health.ny.gov/health_care/medicaid/index.htm#trusts.

The "Explanation of the Effect of Trusts on Medicaid Eligibility" (OHIP-0019) includes the DOH Medicaid Helpline number for questions. However, districts may be contacted with questions concerning trusts. Districts should not attempt to offer recommendations or legal advice, or to advise on how to invest funds or hold property in trust, and are encouraged to refer to the "Explanation of the Effect of Trusts on Medicaid Eligibility" (OHIP-0119) and 96 ADM-8, "OBRA '93 Provisions on Transfers and Trusts", when discussing Medicaid policy for treatment of trusts. Districts should instruct individuals interested in setting up a trust to consult a lawyer, legal services organization or financial advisor about his/her circumstances.

Please direct any questions to your local district support liaison.