



Eligibility Operations Memo 13-07  
October 10, 2013

TO: MassHealth Eligibility Operations Staff

FROM: Amy Andrade, Director, Member and Provider Services

RE: The Family Trust of Massachusetts's Pooled-Trust Accounts

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### **Introduction**

On June 28, 2013, the United States Court of Appeals upheld a determination by the District Court that the Family Trust of Massachusetts, Inc. ("FTM"), which created the Family Trust for Supplemental Needs II pooled-trust agreement, does not meet the statutory requirements to constitute a charitable organization.

FTM does not meet the first prong of federal Medicaid law and MassHealth regulations that "The trust is established and managed by a non-profit association." As a result, an applicant's or member's assets held in a pooled-trust account held by FTM under the Family Trust for Supplemental Needs II no longer qualify for the noncountable exemption (per 130 CMR 520.023(D); 42 U.S.C. §1396p(d)(4)(C); and 130 CMR 515.001). This ruling applies to both new applicants and existing MassHealth members. MassHealth Enrollment Center (MEC) staff should proceed as follows when they encounter this type of pooled trust account.

### **Procedures for New SMBR**

When an intake worker receives a new application and it is determined that there is an existing pooled-trust account under the Family Trust for Supplemental Needs II, follow these procedures.

- Notify the applicant that this pooled-trust account no longer meets the exemption for Pooled Trusts.
- Advise the applicant that he or she may move the funds into another pooled trust that meets the requirements of 130 CMR 520.023(D), 42 U.S.C. §1396p(d)(4)(C), and 130 CMR 515.001.
- Explain to the applicant that the MassHealth Agency will consider these funds temporarily inaccessible for purposes of the eligibility determination while the funds are being committed to an acceptable trust or permissibly spent down. (See 130 CMR 520.004(A)(1), 130 CMR 520.023(D)(2), and 130 CMR 520.019(K).)

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**Procedures for  
Ongoing Cases and  
Redeterminations**

When a case comes up for redetermination and includes a pooled-trust account held by FTM under the Family Trust for Supplemental Needs II, or if the MassHealth Agency becomes aware that the member has such a pooled-trust account, follow these procedures.

- Notify the member that this pooled-trust account no longer meets the exemption for a pooled account.
- Advise the member that he or she may move the funds into another pooled trust that meets the requirements of 130 CMR 520.023(D), 42 U.S.C. §1396p(d)(4)(C), and 130 CMR 515.001.
- Explain to the applicant that we will consider these funds temporarily inaccessible while the funds are being committed to an acceptable trust. (See 130 CMR 520.004(A)(1), 130 CMR 520.023(D)(2), and 130 CMR 520.019(K).)
- Tell the member that if he or she chooses to liquidate the trust and not put the funds into another pooled-trust account, the member may spend down the assets in accordance with the asset-reduction policy found at 130 CMR 520.004 (A)(1).

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**Questions**

In all situations where a member has a pooled-trust account, and you are unsure how to proceed, please have your MEC designee contact the Policy Hotline for guidance.

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