



Eligibility Operations Memo 20-04
February 18, 2020

TO: MassHealth Eligibility Operations Staff

FROM: Heather Rossi, Deputy Policy Director for Eligibility

RE: **Determination of Countability of Irrevocable Trusts**

Introduction

MassHealth evaluates trusts upon application and when a member creates a new trust or amends an existing trust to determine financial eligibility for MassHealth. This memo provides additional guidance on the evaluation of irrevocable trusts established and/or funded on or after August 11, 1993, by a Medicaid applicant, spouse, or someone acting on their behalf or at their direction (“irrevocable trust”).

Federal Law and State Regulation

Federal Medicaid law at 42 USC § 1396p(d) and MassHealth regulations at 130 CMR 520.021 through 520.024 contain rules for the evaluation of certain trusts for purposes of determining Medicaid financial eligibility. For an irrevocable trust, any portion of the principal or income from the principal of that irrevocable trust that could be paid under any circumstances to, or for the benefit of, a Medicaid applicant and/or spouse is countable under 42 USC § 1396p(d)(3)(B) and 130 CMR 520.023(C). This is called the “any circumstances” test.

Medicaid law at 42 USC § 1396p(d)(2)(C) requires that the “any circumstances” determination be made without regard to 1) the purpose for which the trust is established; 2) whether the trustees have or exercise any discretion under the trust; 3) any restrictions on when or whether distributions may be made from the trust; or 4) any restrictions on the use of distributions from the trust.

MassHealth Treatment of Irrevocable Trusts

Consistent with the “any circumstances” test, MassHealth considers the principal of an irrevocable trust to be a countable asset if there is any circumstance in which the trust principal could be paid to the applicant and/or spouse or used for their benefit. In making its determination, MassHealth reviews all relevant trust documents, including the trust instrument, amendments, trustee’s certificate, and schedule of beneficiaries, as well as any other documents related to the trust and its administration.

MassHealth considers the principal of an irrevocable trust a countable asset if any one or more of the following circumstances exist under the trust. **It is important to note that the list provides examples of commonly seen circumstances that render the principal of an irrevocable trust countable. The list is illustrative in nature and is not meant to be exhaustive.** MassHealth evaluates each trust based on a totality of circumstances and the cumulative effect of the trust. There are other scenarios that will render the principal of an irrevocable trust countable.

Examples

1. **Principal beneficiary:** The applicant and/or spouse is a principal beneficiary of the trust, or can add himself or herself as a principal beneficiary.
2. **Power of appointment, special power of appointment, and/or limited power of appointment:** The applicant and/or spouse can appoint the trust principal to other individuals or entities, including to beneficiaries, and impose conditions or limitations on the receipt of the trust principal under such power of appointment. This power of appointment provision renders the trust principal countable unless there is language within the same appointment provision that completely prohibits the distribution to, or use of trust principal for, the benefit of the applicant and/or spouse in any way. In contrast, if there are only limited restrictions on the appointment power stating that the power cannot be used to discharge the applicant's and/or spouse's legal obligations, then the trust principal remains countable.
3. **Charitable or nonprofit organization:** The applicant and/or spouse can appoint the trust principal to charitable or nonprofit organizations. This power of appointment provision renders the trust principal countable unless there is language within the same appointment provision that completely prohibits the distribution to, or use of trust principal for, the benefit of the applicant and/or spouse in any way. In contrast, if there are only limited restrictions on the appointment power stating that the power cannot be used to discharge the applicant and/or spouse's legal obligations, then the trust principal remains countable.
4. **Purchase of financial products:** The trustees can use the trust principal to buy financial products such as life insurance, long-term-care insurance, or endowment policies *for the benefit of the applicant and/or spouse.*
5. **Lending trust principal:** The trustee can lend the trust principal to the applicant and/or spouse without adequate interest or security.

Questions

If you have any questions about this memo, please have your MEC designee contact the Policy Hotline.