



Eligibility Operations Memo 23-15
May 2023

TO: MassHealth Eligibility Operations Staff

FROM: Heather Rossi, Director of Eligibility Policy

RE: **Eligibility Changes Concerning Transfers to Pooled Trusts**

Introduction

MassHealth is revising its regulations at 130 CMR 515.001 and 130 CMR 520.019(D) and protocol concerning certain transfers into pooled trust accounts. The changes comply with federal law and Centers for Medicare & Medicaid Services (CMS) guidance stating that transfers of resources to pooled trust accounts are not permissible if the applicant, member, or spouse is age 65 or older. The First Circuit Court of Appeals issued a decision affirming that such transfers are subject to a period of ineligibility, and this decision is binding on MassHealth.

These updates take effect 60 days from December 31, 2023, (60 days from the end of Maintenance of Effort (MOE)) on March 1, 2024.

Background

A pooled trust is a trust account that can be established for a disabled individual under the authority of § 1917(d)(4)(C) of the Social Security Act. A pooled trust that has been found by MassHealth as meeting the requirements of §1917(d)(4)(C) and associated state laws may be exempt from being treated under normal Medicaid trust countability rules in §1917(d).

The CMS guidance directs that only pooled trust accounts established for a permanently and totally disabled individual age 64 or younger are exempt from the transfer of assets penalty provisions of §1917(c)(2)(B)(iv) of the Act. Therefore, an applicant or member's funds placed in a pooled trust account established for or on behalf of the individual age 65 or older is not considered a permissible transfer and is subject to a penalty period as a transfer of assets for less than fair-market value if the transfer occurred within the MassHealth look-back period.

Revised Procedure

The changes to 130 CMR 520.019(D) make MassHealth regulations consistent with the CMS guidance that permissible transfers into valid pooled trust accounts can only be made before the permanently and totally disabled individual turns age 65. This change does not alter trust countability rules for properly established and funded pooled trust accounts under 42 U.S.C. §1396(p)(d)(4)(C) and 130 CMR 520.023(D)(1). A properly established pooled trust will continue to be excluded from a disabled applicant or member's countable assets regardless of their age, but the funding of the pooled trust will be subject to disqualifying transfer analysis if the applicant, member, or spouse is age 65 or older. All pooled trusts and pooled trust accounts should continue to be evaluated by MassHealth to ensure they meet the requirements of 130 CMR 515.001.

The transfer of assets to a validly established and administered pooled trust account that occur before an individual turns 65 are not subject to a penalty period, even if, after age 65, the individual applies for long-term care (LTC) or any other MassHealth program that is subject to the five year look-back rules. If additional funds are deposited on or after the individual turns 65, the transfer penalty applies only to the additional funds.

The change to 130 CMR 520.019(D) does not affect an individual's ability to claim that transfers of resources for less than fair-market value may be subject to other provisions of 130 CMR 520.019, such as 130 CMR 520.019(F) and 130 CMR 520.019(L).

Implementation Rules

- Individuals who are permanently and totally disabled and age 64 or younger may transfer assets into a MassHealth-approved pooled trust without incurring a penalty.
- Funds in a MassHealth-approved pooled trust and properly administered pooled trust account are typically noncountable.
- Generally, individuals age 65 or older are subject to a penalty when assets are transferred into a pooled trust account on or after the five-year look-back period.

New Applications

For new applications received on or after March 1, 2024, from individuals age 65 or older, who transferred assets into a pooled trust at age 65 or older within five years of applying for MassHealth, are subject to the penalty period.

Example: An individual applies at age 70 and it is determined that assets were transferred into a pooled trust account at age 67. The transfer is within the five-year look-back period, so a penalty period would be assessed.

Example: An individual applied at age 72 and the application is denied for excess assets. The applicant provides verification of asset reduction within the allowable time frame. The mechanism the applicant used to reduce the assets was to place the assets into a pooled trust. This would be considered a disqualifying transfer.

Example: An individual age 85 years old applies for long-term-care benefits. Their spouse, also age 85, transferred assets into a pooled trust for the benefit of their spouse, also age 85. The transfer occurred within the look-back period, so this would be considered a disqualifying transfer and a penalty period would be imposed.

Example: An individual age 86 sells real estate and transfers the proceeds from the sale into a pooled trust account on June 3, 2016. The individual applies for long-term-care benefits on November 8, 2021. The funds were transferred into the pooled trust account outside of the five-year look-back period so this would not be considered a disqualifying transfer and a penalty period would not be imposed

Current Members

- Current members who at the time of application were age 65 or older when they first applied for and were approved for MassHealth long-term care (LTC) or any other MassHealth program that is subject to the five year look-back rules transferred an asset into a pooled trust within the look-back period are not subject to the penalty period.

Example: An existing member applied for MassHealth at age 70. At age 67, the member transferred assets into a previously-approved pooled trust account for their benefit. The transaction occurred prior to the effective date of the regulatory changes, was reported to MassHealth at the time of application, and the application was approved. MassHealth will not impose a penalty period, including at eligibility redetermination.

- Current members who transfer resources into a pooled trust on or after March 1, 2024, will be subject to a penalty period based on the date of transfer or date they are otherwise eligible, whichever is later.

Example: An existing member applied for and was approved for MassHealth long-term-care benefits at age 80. At age 83, and after implementation of the regulatory changes, the member sold their home and the proceeds were used to fund a pooled trust account. The transfer of the proceeds to the pooled trust account would be subject to a penalty period.

Questions

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