

TO: Local District Commissioners, Medicaid Directors

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

SUBJECT: Policy Change for Trusts Established for Disabled
Individuals Under Age 65

EFFECTIVE DATE: Immediately

CONTACT PERSON: Local District Support Unit
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This General Information System (GIS) message advises local departments of social services of a change in policy concerning the treatment of "exception trusts" created for the benefit of disabled individuals under age 65.

Section 5007 of the 21st Century Cures Act amended Section 1917(d)(4)(A) of the Social Security Act to allow "exception trusts" created for the benefit of disabled individuals under age 65 to be established by the disabled individual. Previously, such trusts were required to be established by a parent, grandparent, legal guardian, or court of competent jurisdiction.

A bill has been introduced in the Legislature to make a conforming change to Section 366(2)(b)(2)(iii) of the Social Services Law (SSL), and allow certified disabled individuals who are under age 65 to establish their own special needs trust and qualify for the exceptions to Medicaid income and resource counting rules as outlined in Section 366 of the SSL and Department regulations at 18 NYCRR 360-4.5(b)(1)(5)(i)(a).

Effective immediately, in the case of a certified disabled Medicaid applicant/recipient, districts must not consider as available income or resources the corpus or income of a trust established by such disabled individual when he or she was under 65 years of age, provided the trust otherwise complies with the "exception trust" provisions set forth in Administrative Directive 96 ADM-8, "OBRA '93 Provisions on Transfers and Trusts."

Please direct any questions regarding this change to your local district support liaison.