

## RESOURCES

### TRUST FUNDS

**Description:** A trust is a legal instrument by which an individual gives control over his/her assets to another (the trustee) to disburse according to the instructions of the individual creating the trust.

**Policy:** Trust funds are real or personal property held by a party known as the trustee. The trustee has the duty of administering such funds or property for the benefit of the beneficiary of the trust. The beneficiary does not own trust funds, either private or established by court order. They are under the control of a trustee who must carry out the conditions of payment as specified in the trust.

Trusts must be evaluated to determine if there is any countable income and/or resources and to determine if there has been a transfer of assets for less than fair market value. The treatment of trusts depends on who established the trust and what type of trust it is.

**References:**

SSL Sect.	366 366.2(b)
Dept. Reg.	360-4.4 360-4.5
ADMs	10 OHIP/ADM-10 04 OMM/ADM-6 96 ADM-8 92 ADM-45 89 ADM-45 88 ADM-32
INFs	05 OMM/INF-1
GISs	09 MA/027 08 MA/020

**Interpretation:** There are a number of different types of trusts, including escrow accounts and investment accounts.

- a. Exception Trusts – Exception trusts are trusts established on or after August 11, 1993, which are required to be disregarded as available income and resources for the purposes of determining Medicaid eligibility. Income diverted directly to an exception trust or income received

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by an A/R and then placed into an exception trust is not counted as income to the A/R in the Medicaid eligibility determination process. Verification that the income was placed into the trust is required. In order to eliminate a monthly verification, the A/R is advised to have the income diverted directly to the exception trust. Any trust assets actually distributed to the A/R are counted as income in the month received and as a resource for SSI-related A/Rs if retained into subsequent months. Exception trusts generally will conform to the definition of supplemental needs trust. There are two types of exception trusts:

- (1) One type of exception trust is a trust created for the benefit of a disabled person under the age of 65. It must:

be created with the individual's own assets;

be created by the disabled person's parent, grandparent, legal guardian, or by a court of competent jurisdiction; and,

include language specifying that upon the death of the disabled person, the local social services district will receive all amounts remaining in the trust, up to the amount of Medicaid paid out on behalf of the individual.

Once established, additional funds can be added to the trust until the person reaches age 65. However, any additions to the trust made after the person reaches age 65 would be treated as a transfer of assets, and may require the imposition of a penalty period. If a local district