

For MARC Special Needs Pooled Trust applicants age 65 and older, PLAN of Massachusetts and Rhode Island advises the applicant and his or her attorney, legal representative or guardian of the following:

“That as of May 12, 2008, the continuation of the policy of allowing transfers of assets into pooled trusts by persons age 65 or older for Massachusetts Medicaid purposes has been thrown into doubt. On that date, the Boston Regional Office of Centers for Medicare and Medicaid Services (CMS) promulgated State Agency Regional Bulletin No. 2008-05 (copy attached). This federal bulletin directs MassHealth, among other Medicaid agencies, to apply the Medicaid transfer-of-asset rule when a Medicaid recipient age 65 or over sets up a pooled trust account. Presumably, MassHealth is currently reviewing its policy and may change its current regulation in response. Elder and disability law attorneys and their elderly and disabled clients are advised to follow developments on this issue. In the event that the transfer is not allowed by MassHealth, PLAN of Massachusetts and Rhode Island will consult with the beneficiary and legal counsel to determine appropriate course of action.”

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Division of Medicaid and Children's Health Operations/Boston Regional Office

STATE AGENCY REGIONAL BULLETIN
No. 2008-05

TO: All Medicaid State Agencies DATE: May 12, 2008

FROM: Richard R. McGreal
Associate Regional Administrator, Region I

SUBJECT: Medicaid Eligibility - Application of Transfer of Assets Penalty for Pooled Trust

The purpose of this bulletin is to clarify Medicaid policy with respect to the application of the transfer of assets penalty provisions on pooled trusts established by individuals age 65 and older. A pooled trust established by an individual age 65 and older is not exempt from the transfer of assets provisions.

A pooled trust is a trust that can be established for a disabled individual under the authority of §1917(d)(4)(C) of the Social Security Act (the Act). A trust that meets the requirements of this section of the statute is exempt from being treated under the normal Medicaid trust rules in §1917(d) of the Act. A pooled trust is run by a non-profit organization. The trust (or more accurately, a sub-account within the trust) is established for each individual beneficiary. All the beneficiary sub-accounts are pooled for investment and management purposes. Upon the death of the disabled individual, the balance remaining in the account is paid back to the State Medicaid agency in an amount equal to the medical assistance paid on behalf of the beneficiary. The statute also allows the trust to retain some portion of the balance remaining after the death of the beneficiary.

Although a pooled trust may be established for beneficiaries of any age, funds placed in a pooled trust established for an individual age 65 or older may be subject to penalty as a transfer of assets for less than fair market value. When a person places funds in a trust, the person gives up ownership of those funds. Since the individual generally does not receive anything of comparable value in return, placing funds in a trust is usually a transfer for less than fair market value. The statute does provide an exception to imposing a transfer penalty for funds that are placed in a trust established for a disabled individual. However, only trusts established for a disabled individual age 64 or younger are exempt from application of the transfer of assets penalty provisions (see §1917(c)(2)(B)(iv) of the Act).

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We are asking that you review your policy on pooled trusts to assure that it meets Federal statutory requirements. If not, Chong Tieng and Allen Bryan are available to assist your staff in bringing your policy into compliance with Federal statutory requirements.

Please contact Mr. Tieng or Mr. Bryan if there are any questions. They can be reached at (617) 565-9157, or (617) 565-1246, respectively.

Source: Memorandum dated April 14, 2008, from Gale P. Arden to Jay Gavens,
Acting Associate Regional Administrator, entitled "Pooled Trusts."

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