



Golden State Pooled Trust

ELIMINATION OF THE MEDI-CAL RESOURCE LIMIT AND THE ESTATE PLANNING PROFESSIONAL

Stephen W. Dale, Trustee -
Golden State Pooled Trust

www.gspt.org

877-336-3096

PRESENTED BY:

VENTURA COUNTY BAR ASSOCIATION
ESTATE PLANNING & PROBATE SECTION

JUNE 27, 2024



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1



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Introduction

AB 133 eliminated the resource limit for persons getting Medi-Cal in California beginning January 1st, 2024.


What didn't change are the rules about counting income for Medi-Cal recipients.



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Introduction


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Traditionally, SSI rules have been the primary focus for settlement planning. With the elimination of the resource limit, in many cases the focus has changed.

Greater attention needs to be made on

- Medi-Cal's income rules.
- Avoiding Share of Cost
- Weighing the value of the benefits against the "payback" required in a Self Settled D4A or D4C Trust


With the elimination of the resource limit for Medi-Cal recipients, in some cases, a self settled trust may be unnecessary or even harmful.



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Introduction

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Today we will review

- how income is counted for Aged & Disabled Federal Poverty Level Medi-Cal (A&D FPL) and Aged, Blind, & Disabled Medically Needy Medi-Cal (ABD-MN)
- rules concerning share of cost under the ABD-MN program.
- ACWDL 23-22E, Treatment of Trusts after the January 1, 2024, Elimination of Assets
- OBRA 93 Trusts or Medicaid Trusts (22 CCR § 50489.5) Trusts created by a Medi-Cal individual or spouse with their own assets.



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4



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Disability and Simple



- Disability and Simple are 2 words that seldom go together
- When considering options, it is best to approach this as a process.
 1. Determine the services you are trying to protect
 2. Determine options to secure those services
 3. Factor in the costs of securing those services and balance that against the value of the services you are protecting.
 4. Determine what vehicle best meets the clients needs including a variety of trust options.

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STEP 1 - DETERMINE WHICH KIND OF MEDI-CAL YOU ARE TRYING TO PROTECT



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Types of Medi-Cal


- MAGI Medi-Cal (Covered California)
- SSI-linked Medi-Cal and SSI 1619(b)-linked Medi-Cal
- Medi-Cal's Working Disabled Program,
- **Aged & Disabled Federal Poverty Level Medi-Cal (A&D FPL) and**
- **Aged, Blind, & Disabled Medically Needy Medi-Cal (ABD-MN)**



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Engage a Care Manager to Review the Client's Benefits and Options


- If your office is not well versed in benefit eligibility and options, it might be best to engage a care manager who is.
- A care manager's assessment can be useful to assist all parties involved in the settlement to understand the complexities of the various options.
- It can also save the settlement professional time in analyzing the situation and to focus on clients that need our services.
- Explain to the client that even if you pay for an assessment that determines that nothing needs to be done, at least they can have peace of mind that you are making the right decision.



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STEP 2 - DETERMINE THE MEDI-CAL RECIPIENTS' COUNTABLE INCOME



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Elimination of resources as a factor determining eligibility for Medi-Cal

- Beginning January 1st, 2024, California implemented the final phase of AB 133 which eliminated resources as a factor determining eligibility for Medi-Cal.
- Even so, California continues to count income when determining eligibility for Medi-Cal.
- Keep in mind, SSI has not changed and continues to have a \$2,000 resource limit.



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10

A Primer on Share of Cost Medi-Cal
From www.disabilitybenefits101.org

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See how work and benefits go together
You can make work a part of your plan.

See how benefits support work →

Find programs that can help you find work →

Discover ways to save up money while working →

ALL WORK & BENEFITS →

Benefits Planning Estimators
Check the numbers to see how you can have more money when you work.

Get Help ?

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Aged & Disabled Federal Poverty Level Medi-Cal (A&D FPL).
From DisabilityBenefits101.org
https://ca.db101.org/ca/programs/health_coverage/medi_cal/program2a.htm

- If you are aged or disabled, and are not eligible for SSI, you may be able to get Medi-Cal through the Aged & Disabled Federal Poverty Level (A&D FPL) program. You must:
 - Be either aged (65+), or disabled (meet Social Security's [definition of disability](#), even if your disability is blindness)
 - Have less than \$1,732 in countable monthly income for an individual (\$2,351 for a couple).
- If you are single and live on your own, follow these steps to figure out if your countable income makes you eligible for A&D FPL Medi-Cal.

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Aged & Disabled Federal Poverty Level Medi-Cal (A&D FPL).

From DisabilityBenefits101.org

https://ca.db101.org/ca/programs/health_coverage/medi_cal/program2a.htm

1. Find your total countable income using [Social Security's rules](#).
2. Take the number of people in your household who are **not** applying for the A&D FPL program, and use it to figure out your [Maintenance Needs Level](#). Maintenance Needs Levels are listed in the attached table. Subtract this amount from your total countable income:
3. Subtract any health insurance premiums that you pay. These include Medicare, health, vision, and dental insurance premiums.
4. If you are living in a board and care facility, subtract \$315.

Family Maintenance Need Level (MNL)

Family Size	MNL
1	\$600
2	\$750
2 adults	\$934
3	\$934
4	\$1,100
5	\$1,259
6	\$1,417
7	\$1,550
8	\$1,692
9	\$1,825
10	\$1,959

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Aged & Disabled Federal Poverty Level Medi-Cal (A&D FPL).

From DisabilityBenefits101.org


https://ca.db101.org/ca/programs/health_coverage/medi_cal/program2a.htm

- The number you get is the amount of monthly income that is counted for the A&D FPL program.
- *If it is less than \$1,732 for individuals or \$2,351 for a couple, then you qualify for free, full scope Medi-Cal based on A&D FPL rules. (these numbers are for 2024 and likely to change in 2025)*

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Aged, Blind, & Disabled Medically Needy Medi-Cal (ABD-MN)

From DisabilityBenefits101.org


https://ca.db101.org/ca/programs/health_coverage/medi_cal/program2a.htm

- If you cannot qualify for free Medi-Cal..., you may be able to get Medi-Cal through the Aged, Blind, & Disabled - Medically Needy (ABD-MN) program.
- However, you would be required to pay a share of cost.
- A share of cost is a certain amount of money you must spend on medical care each month before Medi-Cal begins to pay for services.

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15



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Aged, Blind, & Disabled Medically Needy Medi-Cal (ABD-MN)

From DisabilityBenefits101.org

https://ca.db101.org/ca/programs/health_coverage/medi_cal/program2a.htm

EXAMPLE

- You live alone and have \$1,832 per month in countable income and have no other insurance.
- Your countable income is too high for free Medi-Cal You qualify for ABD-MN Medi-Cal.
- Your share of cost is \$1,832 (your countable income) - \$600 (the Maintenance Needs Level for an individual living alone) = \$1,232.
- You will have to pay the first \$1,232 in medical expenses during the month before Medi-Cal will start covering you.

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How Does Investment Income Affect AB 133?

- i. EXAMPLE - Bob is disabled and receives 283 hours a month of IHSS under the Aged & Disabled Federal Poverty Level Medi-Cal program.
1. He is receiving \$1,500 a month of SSDI, and no other income
 2. On January 2024, he gets an inheritance of \$100,000.
 3. Under AB 133 - he can invest the funds, BUT, if he realizes more than \$232 a month (\$2,784 a year or a 2.8% return) of investment income, it will throw him into share of cost.
 4. Therefore his share of cost would be \$1,132 (\$1,732 - \$600) meaning that he must spend \$1,132 in a month on his medical care before he is eligible for Medi-Cal that month.
 5. Let's say instead Bob receives \$1,000,000 after 2024 - he can invest the funds, BUT, if he realizes more than \$232 a month (\$2,784 a year or a .28% return) of investment income, it will throw him into share of cost.

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17



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How Does Investment Income Affect AB 133?


Irrevocable Trusts

- 22 CCR § 50501 states that "Income shall be considered as income only if it is currently available."
- Therefore, if the funds are placed in a trust then any investment income will not affect Bob.
- Distributions in-kind are not income (with the exception of Income in kind under §50509(a) for food, utilities and rent when the Medi-Cal recipient does not pay the entire amount)

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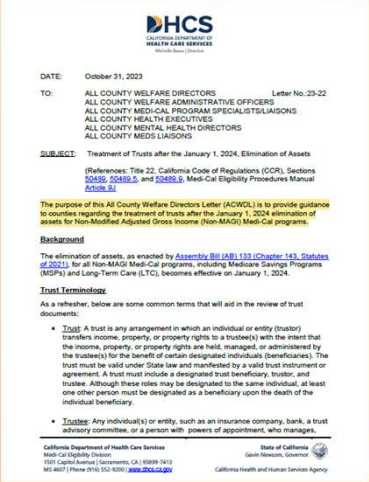
18



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ALL COUNTY WELFARE DIRECTORS LETTERS (ACWDL) 23-22E,


TREATMENT OF TRUSTS AFTER THE JANUARY 1, 2024, ELIMINATION OF ASSETS



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19



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What is an All County Letter?


- The Department of Health Care Services (DHCS) provides county public social services agencies with All County Welfare Directors Letters (ACWDL) and Medi-Cal Eligibility Division Information Letters (MEDIL) regarding new or changed policies and/or procedures used in determining eligibility for Medi-Cal benefits.



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20



**ACWDL 23-22E,
Treatment of Trusts after the January 1, 2024, Elimination of Assets
Page 1**

- The purpose of this All County Welfare Directors Letter (ACWDL) is to provide guidance to counties regarding the treatment of trusts after the January 1, 2024 elimination of assets for Non-Modified Adjusted Gross Income (Non-MAGI) Medi-Cal programs.



DATE: October 31, 2023

TO: ALL COUNTY WELFARE DIRECTORS Letter No: 23-22
ALL COUNTY WELFARE ADMINISTRATIVE OFFICERS
ALL COUNTY MEDICAL PROGRAM SPECIALISTS/LIAISONS
ALL COUNTY HEALTH EXECUTIVES
ALL COUNTY MENTAL HEALTH DIRECTORS
ALL COUNTY MEDS LIAISONS

SUBJECT: Treatment of Trusts after the January 1, 2024, Elimination of Assets
(References: Title 22, California Code of Regulations (CCR), Sections 22215, 22216, and 22218; Medi-Cal Eligibility Procedures Manual Article 5)

The purpose of this All County Welfare Directors Letter (ACWDL) is to provide guidance to counties regarding the treatment of trusts after the January 1, 2024 elimination of assets for Non-Modified Adjusted Gross Income (Non-MAGI) Medi-Cal programs.

Background
The elimination of assets, as enacted by Assembly Bill (AB) 113 (Chapter 143, Statutes of 2021) for all Non-MAGI Medi-Cal programs, including Medicare Savings Programs (MSPs) and Long-Term Care (LTC), becomes effective on January 1, 2024.

Trust Terminology
As a refresher, below are some common terms that will aid in the review of trust documents:

- **Trust:** A trust is any arrangement in which an individual or entity (trustor) transfers income, property, or property rights to a trustee(s) with the intent that the income, property, or property rights are held, managed, or administered by the trustee(s) for the benefit of certain designated individuals (beneficiaries). The trust must be valid under State law and manifested by a valid trust instrument or agreement. A trust must include a designated trust beneficiary, trustor, and trustee. Although these roles may be designated to the same individual, at least one other person must be designated as a beneficiary upon the death of the individual beneficiary.
- **Trustee:** Any individual(s) or entity, such as an insurance company, bank, a trust advisory committee, or a person with powers of appointment, who manages, administers, or controls the trust.


California Department of Health Care Services
Medi-Cal Eligibility Division
100 Capitol Avenue (Sacramento, CA 95839-1413)
Medi-Cal (Phone: 916) 101-1000 www.dhs.ca.gov

State of California
San Francisco, California
California Health and Human Services Agency

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21



**ACWDL 23-22E,
Treatment of Trusts after the January 1, 2024, Elimination of Assets
Page 3**

- **Tips for Reviewing Trust Documents**
- 1. Review the trust documentation to determine who is the applicant or Medi-Cal member and their role (i.e., are they the trust beneficiary?).
- 2. Review the trust documentation to determine if the trust allows for or requires any distributions/payments from the trust.
- 3. Determine how trust income is treated (e.g., whether it is distributed), and if it is distributed, who receives it? How often is trust income distributed? How much is the income distribution?

Letter No: 23-22
Page 3
Date: October 31, 2023

- Any subsequent additions of income, property, or property rights into the trust, and
- Any income (such as interest and dividends) generated by the income, property, or property rights placed in the trust for which there are no provisions in the trust documents for distribution.

• **Trust Income:** Trust income is income generated by the trust, such as interest and dividends, or payments of income made in the name of the trust, such as annuity payments, etc.

• **Property right:** The right of an individual to receive income or property. It could be the right to any type of specific property, such as real property, personal property, intellectual property, etc. An individual is said to have a property right when:

- the individual has been designated or named to receive income or property such as in a will, trust, or insurance policy, or
- when the individual has been awarded income or property, such as in a settlement by the courts, or
- when the individual contracts with them.

Tips for Reviewing Trust Documents

1. Review the trust documentation to determine who is the applicant or Medi-Cal member and their role (i.e., are they the trust beneficiary?).
2. Review the trust documentation to determine if the trust allows for or requires any distributions/payments from the trust?
3. Determine how trust income is treated (e.g., whether it is distributed), and if it is distributed, who receives it? How often is trust income distributed? How much is the income distribution?

Common Trust Types

There are three primary types of trusts that counties are likely to see and their treatment for Medi-Cal eligibility purposes is as described below:

- **OBRA 93 Trusts or Medicaid Trusts (22 CCR 5.50485.5)**
 - Trusts created by a Medi-Cal individual or spouse with their own assets.

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ACWDL 23-22E, Treatment of Trusts after the January 1, 2024, Elimination of Assets pages 3-4

There are three primary types of trusts that counties are likely to see and their treatment for Medi-Cal eligibility purposes is described below:

- **OBRA 93 Trusts or Medicaid Trusts (22 CCR § 50489.5)** ○ Trusts created by a Medi-Cal individual or spouse with their own assets.
- **Third Party Trusts (22 CCR § 50489(c)(3))** ○ These are also referred to as Other Trusts. These trusts are established with the assets of someone other than the trust beneficiary or their spouse.
- **Excepted OBRA 93 Trusts for Disabled Individuals (22 CCR § 50489.9(a)(3)-(a)(4))** ○ These trusts are sometimes referred to as Special Needs Trusts, (D)(4)(A) trusts, or payback trusts.

Common Trust Types

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- **OBRA 93 Trusts or Medicaid Trusts (22 CCR § 50489.5)**
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Letter No: 23-22
Page: 4
Date: October 31, 2023

- **Third Party Trusts (22 CCR § 50489(c)(3))**
 - These are also referred to as Other Trusts. These trusts are established with the assets of someone other than the trust beneficiary or their spouse.
- **Excepted OBRA 93 Trusts for Disabled Individuals (22 CCR § 50489.9(a)(3)-(a)(4))**
 - These trusts are sometimes referred to as Special Needs Trusts, (D)(4)(A) trusts, or payback trusts.

The treatment of each of the three types of trusts, both revocable and irrevocable, is discussed in the specified sections below.

*Please note: Medi-Cal Qualifying Trusts (MQTs) are trusts established prior to October 1, 1993; therefore, they are uncommon. For purposes of this letter, DHCS is only focusing on the most common types of trusts that are likely to be reported by applicants and members. If the county does come across an MQT, please refer to Medi-Cal Eligibility Procedures Manual [Article 9](#) or contact DHCS for technical assistance.

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OBRA 93 TRUSTS OR MEDICAID TRUSTS (22 CCR § 50489.5) TRUSTS CREATED BY A MEDI-CAL INDIVIDUAL OR SPOUSE WITH THEIR OWN ASSETS.

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24



ACWDL 23-22E,
Treatment of Trusts after the January 1, 2024, Elimination of Assets
OBRA 93 Trusts (Page 4)

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An OBRA 93 trust is a trust that is **established by an individual** on or after August 11, 1993 and is **made up in whole or in part of assets (income, property, or property rights) of the individual** and is created by a means other than by will. An OBRA 93 trust **can be either revocable or irrevocable**.

A trust is considered to have been established by an individual if it is established by:

- **The Medi-Cal individual,**
- **The individual's spouse,**
- **A person or entity, including a court,** or administrative body with legal authority to act for the Medi-Cal individual or spouse or who acts at the direction or request of the Medi-Cal individual or spouse.

Letter No. 23-22
Page: 4
Date: October 31, 2023

- **Third Party Trusts (22 CCR § 50489.6(a)(3))**
 - These are also referred to as Other Trusts. These trusts are established with the assets of someone other than the trust beneficiary or their spouse.
- **Excepted OBRA 93 Trusts for Disabled Individuals (22 CCR § 50489.6(a)(3), (a)(4))**
 - These trusts are sometimes referred to as Special Needs Trusts, (D)(4)(A) trusts, or payback trusts.

The treatment of each of the three types of trusts, both revocable and irrevocable, is discussed in the specified sections below.

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OBRA 93 Trusts

An OBRA 93 trust is a trust that is established by an individual on or after August 11, 1993 and is made up in whole or in part of assets (income, property, or property rights) of the individual and is created by a means other than by will. An OBRA 93 trust can be either revocable or irrevocable.

A trust is considered to have been established by an individual if it is established by:

- The Medi-Cal individual,
- The individual's spouse,
- A person or entity, including a court, or administrative body with legal authority to act for the Medi-Cal individual or spouse or who acts at the direction or request of the Medi-Cal individual or spouse.

Revocable OBRA 93 Trusts


Treatment effective January 1, 2024

The principal of a revocable trust will be disregarded because resources are no longer a factor in the Medi-Cal eligibility determination. Payments from the trust to or for the benefit of the individual are counted as income to the individual. Any other payments are considered transfers of assets made by the individual. (22 CCR § 50489.5(a)).

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25



ACWDL 23-22E,
Treatment of Trusts after the January 1, 2024, Elimination of Assets
OBRA 93 Trusts (Page 4)

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Revocable OBRA 93 Trusts

Treatment effective January 1, 2024

The principal of a revocable trust will be disregarded because resources are no longer a factor in the Medi-Cal eligibility determination.

- **Payments from the trust to or for the benefit of the individual are counted as income to the individual.**
- **Any other payments are considered transfers of assets made by the individual. (22 CCR § 50489.5(e)).**

Letter No. 23-22
Page: 4
Date: October 31, 2023

- **Third Party Trusts (22 CCR § 50489.6(a)(3))**
 - These are also referred to as Other Trusts. These trusts are established with the assets of someone other than the trust beneficiary or their spouse.
- **Excepted OBRA 93 Trusts for Disabled Individuals (22 CCR § 50489.6(a)(3), (a)(4))**
 - These trusts are sometimes referred to as Special Needs Trusts, (D)(4)(A) trusts, or payback trusts.

The treatment of each of the three types of trusts, both revocable and irrevocable, is discussed in the specified sections below.

Please note: Medi-Cal Qualifying Trusts (MQTs) are trusts established prior to October 1, 1993; therefore, they are uncommon. For purposes of this letter, DHCS is only focusing on the most common types of trusts that are likely to be reported by applicants and members. If the county does come across an MQT, please refer to Medi-Cal Eligibility Procedures Manual [Article 9.1](#) or contact DHCS for technical assistance.

OBRA 93 Trusts

An OBRA 93 trust is a trust that is established by an individual on or after August 11, 1993 and is made up in whole or in part of assets (income, property, or property rights) of the individual and is created by a means other than by will. An OBRA 93 trust can be either revocable or irrevocable.

A trust is considered to have been established by an individual if it is established by:

- The Medi-Cal individual,
- The individual's spouse,
- A person or entity, including a court, or administrative body with legal authority to act for the Medi-Cal individual or spouse or who acts at the direction or request of the Medi-Cal individual or spouse.

Revocable OBRA 93 Trusts

Treatment effective January 1, 2024

The principal of a revocable trust will be disregarded because resources are no longer a factor in the Medi-Cal eligibility determination. Payments from the trust to or for the benefit of the individual are counted as income to the individual. Any other payments are considered transfers of assets made by the individual. (22 CCR § 50489.5(e)).

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26




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SO LETS CHANGE THE SCENARIO A BIT

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ACWDL 23-22E, Treatment of Trusts after the January 1, 2024, Elimination of Assets OBRA 93 Trusts (Page 5)

Revocable OBRA 93 Trust—Example 1

- Professor Sun established a **Revocable Trust** with a trust principal of **\$100,000** on January 15, 2024, naming their child, Aspen, as the trustee. Professor Sun enters a Long-Term Care facility on October 7, 2024, and applies for Medi-Cal on November 15, 2024. Under the terms of the trust, the trustee has complete discretion in disbursing funds from the trust. **Each month, Aspen disburses \$250 to Professor Sun, made up of \$100 from the trust income and \$150 from principle.** The \$250 payment from the trust made up of income and principle would count as unearned income for Professor Sun's Medi-Cal eligibility determination in accordance with 22 CCR § 50489.5(e). **The remaining principal of Professor Sun's trust is disregarded because resources are no longer a factor in the Medi-Cal eligibility determination**



DATE: October 31, 2023

TO: ALL COUNTY WELFARE SERVICES (Letter No. 23-22)
ALL COUNTY WELFARE ADMINISTRATIVE OFFICERS
ALL COUNTY MEDICAL PROGRAM SPECIALISTS/ASSISTANTS
ALL COUNTY HEALTH EDUCATORS
ALL COUNTY MENTAL HEALTH DIRECTORS
ALL COUNTY NURSING SERVICES

SUBJECT: Treatment of Trusts after the January 1, 2024, Elimination of Assets (References: Title 22, California Code of Regulations (CCR), Sections 50489.50005 and 50489.50006, Medi-Cal Eligibility Procedures Manual (EPM))

The purpose of this All County Welfare Directors Letter (ACWDL) is to provide guidance to counties regarding the treatment of trusts after the January 1, 2024 elimination of assets for Non-Medicaid Adjusted Gross Income (Non-MAGI) Medi-Cal programs.

Background

The elimination of assets, as enacted by Assembly Bill (AB) 133 (Chapter 143, Statutes of 2023), for all Non-MAGI Medi-Cal programs, including Medicare Savings Programs (MSP) and Long-Term Care (LTC), becomes effective on January 1, 2024.

Trust Terminology

As a reference, below are some common terms that will aid in the review of trust disbursements:

- **Trust:** A trust is any arrangement in which an individual or entity (trustor) transfers income, property, or property rights to a trustee(s) with the intent that the income, property, or property rights are held, managed, or administered by the trustee(s) for the benefit of certain designated individuals (beneficiaries). The trust must be valid under State law and established by a valid trust instrument or agreement. A trust must include a designated trust beneficiary, trustee, and trustee. Although these roles may be designated to the same individual, at least one other person must be designated as a beneficiary upon the death of the individual beneficiary.
- **Trustee:** Any individual(s) or entity, such as an insurance company, bank, a trust advisory committee, or a person with powers of appointment, who manages.

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30



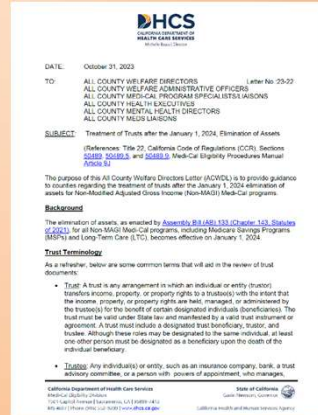
ACWDL 23-22E, Treatment of Trusts after the January 1, 2024, Elimination of Assets OBRA 93 Trusts (Page 5)

Communications with DHCS


- In the Professor Sun example, the disbursement was \$100 from trust income. What I am look for is confirmation that **if instead it were \$100 from income, and \$150 of principle, the entire payment of \$250 would count as income under 22 CCR § 50489.5(e).** Noticed that I changed the scenario to include \$150 principle in the disbursement.

Response from DHCS

In your revised example, **the whole \$250 distribution would be income pursuant to Article 10.** What we mean by that is that you **must first determine what is available income and then what is countable income.** In this case example it looks like the full \$250 is a cash distribution to Professor Sun and that would be all unearned income, but it if was being distributed to Macy's for the Macy's bill, it would not be available income to meet the individual's personal needs. If it was being distributed to the PG&E for utilities, then it would be nothing because it is not a full item of need for utilities since it would not count water and garbage and it is not available since the individual does not have it to meet their personal needs.




A REVIEW OF THE INCOME RULES UNDER MEDI-CAL UNDER ARTICLE 10



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§ 50501. Income -General.




- (a) Income includes benefits in cash or in kind from:
 - (1) Labor.
 - (2) Services provided.
 - (3) Business activities.
 - (4) Returns from real or personal property.
 - (5) Contributions.
 - (6) Other similar sources.
- (b) Income from sources listed in (a) shall be considered as income only if it is currently available in accordance with Sections 50513 through 50517.

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33



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§ 50501. Income -General.



- (c) Income from sources listed in (a) shall be divided into three types:
 - (1) Gross earned income as described in Section 50503.
 - (2) Gross unearned income as described in Section 50507.
 - (3) Income in kind as described in Section 50509.

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Gross unearned income as described in Section 50507.

(a) Gross unearned income includes:

- (1) Old age, survivors and disability insurance payments from the Social Security Administration (OASDI).
- (2) Annuities, which are sums paid yearly or at other specific intervals in return for payment of a fixed sum by the annuitant.
- (3) Pensions.
- (4) Retirement payments.
- (5) Disability payments except for the State Disability Insurance benefits considered to be earned income under Section 50503(a)(13) of this Title.
- (6) Veterans payments
- (7) Workers' Compensation payments, except for any amount determined to be unavailable in accordance with Section 50515, and except for Temporary Workers Compensation payments considered to be earned income under Section 50503(a)(12) of this Title.
- (8) Railroad Retirement and any other payments made by the Railroad Retirement Board.
- (9) Unemployment Insurance Benefits.
- (10) Proceeds from a life insurance policy which are in excess of the lesser of:
 - (A) \$1,500.
 - (B) The amount expended on the insured person's last illness and burial expenses.

- (11) Other insurance payments.
- (12) Loans which do not require repayment.
- (13) Gifts.
- (14) Non-exempt child/spousal support, whether provided voluntarily or by court order.
- (15) Inheritances which are in the form of cash, securities or other liquid assets.
- (16) Contributions from any source.
- (17) Prizes and awards.
- (18) Net income from the rental of real or personal property which is not considered gross earned income in accordance with Section 50503(a)(8).
- (19) Dividends.
- (20) Interest payments from any source, including trust, trust deeds and contracts of sale.
- (21) Royalties, including but not limited to payments to a holder of a patent or copyright, for the use of the invention, or to the owner of a mine, oil well or similar holdings, for the extraction of the product or other use.
- (22) Income of a PA or Other PA recipient which is not used to determine the recipient's eligibility.
- (23) Incentive payments or training allowances under JTPA.
- (24) Any other income which is available to meet current needs in accordance with Section 50513.
- (25) Any of the items specified in (10) through (24) if received in a lump sum payment.

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35

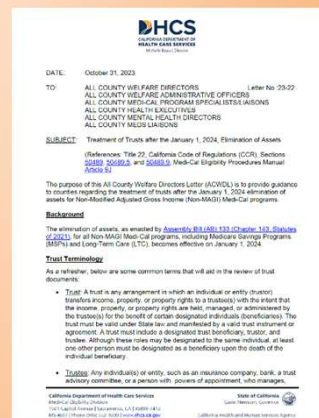


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ACWDL 23-22E, Treatment of Trusts after the January 1, 2024, Elimination of Assets OBRA 93 Trusts (Page 5)

Revocable OBRA 93 Trust—Example 2


- Aspen, the trustee of Professor Sun's revocable trust, disburses a monthly payment of \$200 from the trust income to a property management company for the upkeep of Professor Sun's home while they are in Long-Term Care. This \$200 monthly payment counts as in-kind income for housing to Professor Sun, because the payments are for the benefit of Professor Sun. In-kind income chart values for housing shall be used in the Medi-Cal eligibility determination unless the reported value is less than the chart value.



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36



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Income in kind as described in Section 50509



22 CCR § 50509(a) states - "Income in kind is any support or maintenance received in kind from a person other than a responsible relative for:


- 1) housing
- 2) utilities
- 3) food
- 4) clothing

(b) Income in kind shall be considered income only if the entire item of need is provided."

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37



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Income in kind as described in Section 50509




MFBU SIZE Maintenance Family Budget Unit	HOUSING	UTILITIES	FOOD
1	\$153	\$33	\$86
2	\$206	\$38	\$182
2 Adults	\$206	\$38	\$182
3	\$225	\$40	\$232
4	\$236	\$41	\$286
5	\$236	\$41	\$346
6	\$236	\$41	\$401
7	\$236	\$41	\$447


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38


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Example - Golden State Pooled Trust Pays Entire Rent




- Barbara wants her Golden State Pooled Trust account to pay her rent of \$1,000 a month.
- Barbara receives \$1,600 a month in SSDI.
- She also receives Medi-Cal under the Aged & Disabled Federal Poverty Level Program.


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39


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Example - Golden State Pooled Trust Pays Entire Rent




If The Golden State Pooled Trust pays the full \$1,000, then her countable income will be \$1,600 plus \$153 which makes her countable income \$1,753.

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40



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Example - Golden State Pooled Trust Pays Entire Rent




- Since \$1,753 is greater than the \$ 1,753.00 limit under the Aged & Disabled Federal Poverty Level Program BEGINNING 2024, she will have a share of cost of \$1,153 (\$1,753 - \$600).

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41



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Example - Golden State Pooled Trust Pays All But \$20 Of Rent



If she pays \$20 of the rent out of her own pocket, and her trust pays the remaining \$980, then the payment of rent does not affect her eligibility

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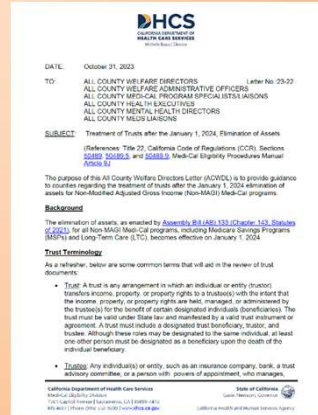
42



ACWDL 23-22E, Treatment of Trusts after the January 1, 2024, Elimination of Assets OBRA 93 Trusts (Page 5)

Irrevocable OBRA '93 Trusts

- **Treatment effective January 1, 2024**
- Trust principal, including the portion from which payments could be made to or for the benefit of the individual or spouse at any time or under any circumstances is disregarded, because resources are no longer a factor in the Medi-Cal eligibility determination.
- Payments from the trust or trust income for the benefit of the individual are counted as unearned income to the individual (22 CCR § 50489.5(f)(2)).
- Payments for any other purpose are considered a transfer of assets by the individual (22 CCR § 50489.5(f)(3)).
- If the trust does not allow for payments of any portion of the trust or trust income, payment to the individual under any circumstances is considered to be a transfer of assets on the date the trust was established, or the date the access to the trust funds was blocked. (22 CCR § 50489.5(f)(4)).



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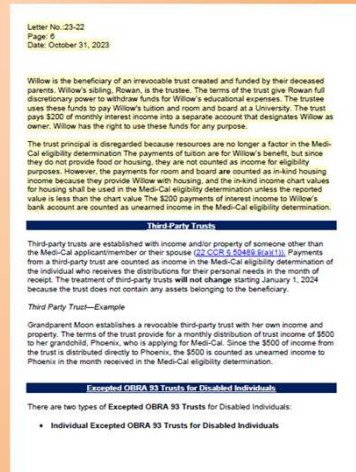
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ACWDL 23-22E, Treatment of Trusts after the January 1, 2024, Elimination of Assets OBRA 93 Trusts (Page 6)

Irrevocable OBRA 93 Trust—Example Letter No.:23-22 Page: 6 Date: October 31, 2023

- Willow is the beneficiary of an irrevocable trust created and funded by their deceased parents. Willow's sibling, Rowan, is the trustee. The terms of the trust give Rowan full discretionary power to withdraw funds for Willow's educational expenses. The trustee uses these funds to pay Willow's tuition and room and board at a University.
- The trust pays \$200 of monthly interest income into a separate account that designates Willow as owner. Willow has the right to use these funds for any purpose.
- The trust principal is disregarded because resources are no longer a factor in the Medi-Cal eligibility determination
- The payments of tuition are for Willow's benefit, but since they do not provide food or housing, they are not counted as income for eligibility purposes.
- However, the payments for room and board are counted as in-kind housing income because they provide Willow with housing, and the in-kind income chart values for housing shall be used in the Medi-Cal eligibility determination unless the reported value is less than the chart value
- The \$200 payments of interest income to Willow's bank account are counted as unearned income in the Medi-Cal eligibility determination.



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4 Step Process










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45



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Disability and Simple 4 Step Process



Disability and Simple are 2 words that seldom go together

- When considering options, it is best to approach this as a process.

1. Determine the benefits you are trying to protect
2. Determine options to preserve eligibility for those benefits.
3. Factor in the costs of preserving eligibility for those benefits and balance that against the value of the services you are protecting.
4. Determine what option best meets the clients needs including a variety of trust options.

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46


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4 Step Process

Step 1 - Determine the benefits you are trying to protect




- If client is receiving and benefits from the Social Security Administration, best to get a benefit verification letter.
- <https://www.ssa.gov/manage-benefits/get-benefit-letter>
- If not on SSI, get verification of what kind of Medi-Cal the benefit recipient is getting

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47


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4 Step Process

Step 2. Determine options to preserve benefit eligibility




2. Determine options to preserve eligibility for those benefits.

- EXAMPLE - Joane is disabled and requires 283 hours of IHSS to meet her basic needs. She receives a settlement of \$250,000.
- She receives \$1,102.94 in SSDI and \$100 of SSI for a total of \$1,202.94 monthly. She receives no other income.
- She could put the funds in a pooled trust or a d4a trust and preserve her SSI.
- If she is willing to forgo the SSI, she could
 - hold the funds outright or in a trust (non d4a or d4c) she would
 - lose her SSI and but remain eligible for A&DFPL Medi-Cal so long as her countable income is less than \$\$1,732. (if greater than \$1,732 then she would likely be subject to a share of cost.

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48


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4 Step Process

Step 3 - Do a Cost / Benefit Analysis.




- Factor in the costs of preserving eligibility for those benefits and balance that against the value of the services you are protecting.
- For some Medi-Cal recipients, losing eligibility would be a disaster.
- For others, the value of the Medi-Cal may be negligible.

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49


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Best Practices For SSI Recipients

THE SSI \$1 MYTH


- We have all heard the commonly held belief that in order to receive Medi-Cal you **MUST** preserve at least \$1 of SSI
- I have seen folks go to extremes to preserve that last dollar of SSI believing that this was the only way to preserve eligibility for SSI.
- That has never been true.



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50



Best Practices For SSI Recipients

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- If the settlement recipient is getting Medi-Cal based on SSI, weigh the value of SSI against the burden of the payback and administrative services.
- The current SSI rate for Californians in 2024 is \$1,182.94 a month OR \$14,195.28 a year.
- The question becomes - is it worth it to preserve eligibility for \$14,195.28 a year in SSI, but go through the expense of administering a self settled trust and subjecting the remainder upon death to a Medi-Cal lien?



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51




Best Practices For SSI Recipients

EXAMPLE -SSI recipient getting partial SSI Benefit

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- **EXAMPLE -**
- John receives \$1,000 a month in SSDI and \$202.94 a month in SSI (\$ 2,435.28 a year)
- He also receives 100 hours a month of IHSS based on Medi-Cal Eligibility.
- He receives a settlement of \$60,000.
- If he were to drop the SSI, his Medi-Cal and IHSS would continue so long as his countable income is less than \$1,732.00
- If he were to draw \$ 2,435.28 annually to make up for the loss of his SSI and made no other expenditures, it would be 24.63 years before his funds would be less than \$2,000 and he would again be eligible for SSI.
- If he were considering the Golden State Pooled Trust, our annual fee would be \$1,500.



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52



Best Practices For SSI Recipients

EXAMPLE -SSI recipient getting partial SSI Benefit


- **EXAMPLE -**
- John needs to decide, is it worth it to join GSPTs Self Settled Pooled Trust and
 - pay for the cost of setting up the account and
 - \$1,500 a year to preserve eligibility for \$2,435.28 of SSI annually.
 - subject the funds to a possible payback, and
 - a loss of control over the funds.



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53



4 Step Process

Step 4 - Determine what option best meets the clients needs




- Possible Options Include
 - For SSI Recipients -
 - Spend-down
 - d4a or d4c trust
 - Forgo the SSI and either apply for Medi-Cal separately or seek other options.
 - For Non-SSI Recipients
 - d4a or d4c trust
 - Hold the funds directly and be careful not to produce more income than allowed under A&D FPL Med-Cal
 - Hold the funds in a revocable trust
 - Distribute funds inkind - avoid cash distributions.
 - Hold the funds in an irrevocable trust
 - Distribute funds inkind - avoid cash distributions.

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54



4 Step Process

Step 4 - Determine what option best meets the clients needs




Suggestions if a Revocable or Irrevocable Trust is Selected

- The guidance we have from the DHCS is that a common revocable living trust managed by the grantor and any income realized by the trust is not considered income to the grantor so long as they are not in cash, and instead purchase the items needed for the grantor directly.

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55



4 Step Process

Step 4 - Determine what option best meets the clients needs




I recently asked for clarification about this scenario

- **Revocable OBRA 93 Trust—Example 1**
- **Professor Sun established a Revocable Trust with a trust principal of \$100,000 on January 15, 2024 , naming their child, Aspen, as the trustee.** Professor Sun enters a Long-Term Care facility on October 7, 2024, and applies for Medi-Cal on November 15, 2024. Under the terms of the trust, the trustee has complete discretion in disbursing funds from the trust. Each month, Aspen disburses \$250 to Professor Sun **from the trust income and \$150 from principle.** The \$250 payment from the trust made up of income and principle would count as unearned income for Professor Sun's Medi-Cal eligibility determination in accordance with 22 CCR § 50489.5(e). The remaining principal of Professor Sun's trust is disregarded because resources are no longer a factor in the Medi-Cal eligibility determination

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56



4 Step Process

Step 4 - Determine what option best meets the clients needs



Here was my query?

- I realize this is pretty basic - but the revocable OBRA trust example -
 - Aspen is the trustee. What if Professor Sun were the trustee?
 - Is there a problem if Professor Sun has the power to revoke?


Here was the answer from DHCS

- **Aspen is the trustee. What if Professor Sun were the trustee?**
 Answer: Since this is a revocable trust, assuming that Professor Sun has the power to revoke the trust that he established, the income and principal of the trust would be exempt property; the **cash distributions** would be considered unearned income under Article 10, Section 50507.
- Is there a problem if Professor Sun has the power to revoke? The same answer as above.

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57



4 Step Process

Step 4 - Determine what option best meets the clients needs



IN MY OPINION

- Make sure that the document allows amendments to comply with any change in Medi-Cal income Rules
- Include some way to transfer funds into a d4a or d4c trust if for instance
 - circumstances or
 - laws change or
 - the grantor moves to another state and requires Medicaid or SSI.
- I believe it is safest to have someone other than the benefits recipient serve as trustee.
 - Consider giving the grantor a True Link Card - and block cash.
 - If benefit eligibility is critical, consider having a professional trustee familiar with benefit eligibility serve as trustee, with maybe a family member as trust protector if the grantor loses capacity.
 - Engage a care manager if the grantor is in long term care, getting IHSS services, or oversight of the grantor is needed.

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58



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ELIMINATION OF THE MEDI-CAL RESOURCE LIMIT AND THE ESTATE PLANNING PROFESSIONAL

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