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ALL MEDI-CAL ELIGIBILITY PROCEDURES MANUAL LETTER NO.: 159

TO: All Holders of the Medi-Cal Eligibility Procedures Manual

Enclosed are revised procedures for Article 9J -- Property Held In Trust.

Procedures RevisionDescription

Article 9J

This section provides information on how trusts and annuities are treated and valued in determining eligibility for Medi-Cal. This revision is meant to replace the existing Article 9J in full.

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Article 9J

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If you have any questions on this issue, please feel free to call either Sharyl Shanen-Raya at (916) 657-2942 or Kathy Harwell at (916) 657-0146.

Sincerely,

Original signed by

Frank S. Martucci, Chief
 Medi-Cal Eligibility Branch

Enclosures

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9 J - PROPERTY HELD IN TRUST

I. INTRODUCTION TO TRUSTS

This section is intended to clarify Medi-Cal policy regarding the establishment of trusts and their effect on eligibility (Title 22, California Code of Regulations, Section 50489). This section does not address burial trusts. The treatment of burial trusts is contained in Title 22, California Code of Regulations, Section 50479.

A trust is an obligation arising when a person holds legal title to property for the benefit of another.

In general, a valid trust includes:

- An intent by a person with a property right to create a trust (trustor).
- A person or entity appointed to manage the trust (trustee).
- An individual who will benefit from the trust (trust beneficiary).
- An original investment of income, property or property rights (principal).
- A valid purpose.

The trustee holds legal title while the trust beneficiary holds a beneficial interest in the trust.

The county shall examine the trust document in order to determine the way in which to treat the trust. The particular role of the Medi-Cal applicant or Medi-Cal beneficiary as either trustor, trustee, and/or trust beneficiary will determine to what extent the trust property is or is not available.

In accordance with Title 22, Section 50489, Section 9J divides trusts into three categories:

- "OBRA '93 TRUSTS, INCLUDING SIMILAR LEGAL DEVICES (SLDs) AND ANNUITIES, ESTABLISHED ON OR AFTER AUGUST 11, 1993 "
 - ✓ Established on or after August 11, 1993
 - ✓ Established with income, property and/or property rights of the individual or spouse
 - ✓ Not established by a will

- "MEDICAID QUALIFYING TRUSTS (MQTs) AND SLDs ESTABLISHED PRIOR TO AUGUST 11, 1993 "
 - ✓ Established prior to August 11, 1993
 - ✓ Established with income, property and/or property rights of the individual or spouse
 - ✓ Individual or spouse is the beneficiary(ies) of the trust
 - ✓ Trustee has discretion in distributing funds to, or for the benefit of the beneficiary
 - ✓ Not established by a will

- "TRUSTS THAT ARE NOT MQTs, SLDs, OR OBRA '93 TRUSTS"
(regardless of the date established)

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II. GENERAL DEFINITIONS

The following words are used within the context of "trusts". These definitions are not complete legal definitions; they are only included to assist in reviewing trust documents.

- A. "Beneficiary" - Any individual or individuals, designated in the trust instrument as benefiting in some way from the trust.
- B. "Established" - A trust is established on the date the trust documents are dated and signed. A trust is not considered to be established on the date it is merely amended.
- C. "Irrevocable" - A trust that cannot, in any way, be revoked or terminated by its own terms. A trust may be irrevocable even though it may be modified under the terms of the trust. The trust may state, for example, that the trustor may at any time during his/her lifetime amend any of the terms of the trust agreement by a notarized written instrument signed by the trustor and delivered to the trustee. A revocable trust is considered to be irrevocable whenever the trustor dies or becomes incompetent and the trust documents have not provided that the power to revoke the trust be passed on to the trustee or another person. The terms of a revocable trust could make the trust irrevocable if a triggering event takes place, such as entry into long term care.
- D. "Principal/Corpus" - The principal of the trust refers to the:
- original investments of income, property or property rights placed in the trust,
 - 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.
- E. "Property right" - The right of an individual to receive income or property. Any type of right to specific property whether it is personal or real, tangible or intangible. 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 for them.
- F. "Revocable" - A trust which can be revoked or terminated by its own terms. The trust principal is available property to anyone who can revoke the trust and who can use the principal thereafter, whether or not he/she actually does. If a trust is revocable, the right to revoke is usually reserved with the trustor. The trust beneficiary will not generally have authority to revoke the trust; however if the trust itself gives the beneficiary access to the property without trustee intervention, then the property will be considered the trust beneficiary's property. Occasionally a trustee will have the legal authority to revoke a trust; however he/she might not have the legal right to use the property to meet his/her own needs. In such cases the property would be considered unavailable to the trustee.

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Example:

An example of a revocable trust is a Totten trust established with the property of the trustor/trustee. The trustor and trustee are the same person and he/she deposits his/her own money into a trust for the benefit of another person. The trustor/trustee of this Totten trust has access to the income and property and the authority to revoke the trust at any time. An example of a Totten trust would be a passbook savings account established with a parent's or grandparent's own assets, in a trust for child or a grandchild.

- G. "Similar Legal Device (SLD)" - Any legal instrument, device or arrangement which may not be called a trust under State law but is similar to a trust. It involves the transfer of income, property or property rights from an individual or entity (transferor) to another individual (transferee) with the intent that the income, property or property rights are held, managed or administered by the individual or entity for the benefit of the transferor or another trust beneficiary. This also includes annuities if purchased on or after August 11, 1993.
- H. "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 original beneficiary. The term "trust" also includes any legal instrument or device similar to a trust. Refer to the definition of Similar Legal Device.
- I. "Trustee" - Any individual, individuals, or entity such as an insurance company, bank, a trust advisory committee, or a person with powers of appointment, who manages, holds, or administers a trust for the benefit of the trust beneficiary or beneficiaries. The person or entity who holds legal title and manages the property and income in the trust, according to the instructions in the trust agreement, for the benefit of another. The trustee of a trust, or SLD, has fiduciary (the duty to act primarily for another's benefit) responsibilities outlined in the trust to deal with the trust income or property in a way that carries out the wishes of the trustor for the benefit of the trust beneficiary.
- A trustee has a fiduciary responsibility to the beneficiaries of the trust to carry out the terms of the trust within applicable State law. If the trustee does not fulfill his/her fiduciary responsibilities, he/she could be held liable by the trust beneficiaries.
- J. "Trustor" - An individual with income, property or property rights who creates and whose income, property or property rights fund a trust. This person is also called the settlor or grantor.
- K. "Trust Income" - 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. (Payments made in the name of the individual or spouse and then transferred to the trust would be considered income of that individual and not considered trust income.)

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III. VERIFICATION

- A. Written Trusts - Obtain the trust documents and any other verification that substantiates investments and distributions. Affidavits shall be dated and signed under the penalty of perjury and shall specify the terms of the trust.
- B. Oral Trusts - Obtain written affidavits and other verification that substantiates any investments and distributions. Affidavits shall be dated and signed under the penalty of perjury and shall specify the terms of the oral agreement. Affidavits may be obtained from the individual or spouse, or any other person who knows the terms of the trust agreement, for example: brothers, sisters, stock brokers, ministers, etc.
- ✓ Real property cannot be held in an oral trust or SLD.
 - ✓ When an oral trust is held in a financial institution, determine property availability in accordance with draft Section 50402 (ACWDL 90-01). If the property is unavailable to the trustor in accordance with draft Section 50402 (ACWDL 90-01), then it shall be considered a transferred asset.
 - ✓ Additional documentation may be requested to clarify the terms of an oral trust.

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IV. EXEMPT INCOME OR PROPERTY HELD IN TRUST

Exempt assets, when transferred into a trust, such as the exempt home, remain exempt. Placement of an exempt asset in a trust does not change the exempt nature of the asset.

A transfer of property into an exempt burial trust shall not be considered a disqualifying transfer. Exempt burial trusts are not treated by the rules pertaining to MQTs, OBRA '93 Trusts, SLDs, or other trusts. (See Title 22, Section 50479 for information on the treatment of burial trusts and contracts.)

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V. OBRA '93 TRUSTS INCLUDING SLDs AND ANNUITIES, ESTABLISHED ON OR AFTER AUGUST 11, 1993

A. BACKGROUND

Section 13611 of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) amended Section 1917 of the Social Security Act by incorporating new requirements for the treatment of trusts and annuities.

B. IMPLEMENTATION

These procedures shall be effective in accordance with federal law (Section 1917 of the Social Security Act) for trusts established on or after August 11, 1993 and for Medi-Cal services received on or after October 1, 1993. Counties shall implement these procedures no later than March 1, 1996, at application and redetermination.

No potential overpayment shall be calculated as a result of a trust established on or after August 11, 1993 to and including February 29, 1996 due to the delay in implementation because these trust provisions were not implemented during that time. However, when these trusts and annuities are reviewed at application and redetermination, on or after March 1, 1996, and they result in an increase in the share of cost or ineligibility due to excess resources counties shall issue an adequate 10-day notice and take the action prospectively.

C. DEFINITIONS SPECIFIC TO OBRA '93

1. "Annuitant" - An annuitant means a person who has the right to receive payments from an annuity. The annuity shall be annuitized based upon the life expectancy of the annuitant.
2. "Annuitized" - An annuity shall be considered annuitized when the payment schedule results in fixed, equal payments to the annuitant on a periodic basis. Payments shall be no less frequently than monthly over a number of years equal to or less than the annuitant's life expectancy as indicated in life expectancy tables provided by the Secretary for the Department of Health and Human Services. The final annuity payment may be for an amount less than the previously fixed annuity payments in order to fully exhaust benefits under the annuity.



Note: An annuity will be considered annuitized even though it may provide a reasonable cost of living adjustment (i.e., of $\leq 5\%$ annual increase).

3. "Annuity" - Annuity is a contract to make periodic payments of a fixed or variable sum paid to an annuitant which are payable unconditionally. Annuity payments may continue for a fixed period of time or for as long as an annuitant lives. An annuitant purchases an annuity with his or her property or property rights. Annuities shall be established to provide the annuitant with payments representing principal and interest which are more than the fair market value of the property used to purchase the annuity. Annuities purchased prior to August 11, 1993, other periodic payment plans, or annuities that are purchased with property rights belonging to someone other than the Medi-Cal applicant/beneficiary or spouse shall continue to be treated in accordance with Title 22, Section 50402 and Article 10.
4. "Assets" - Income, property and property rights of the individual or spouse, including income or property which the individual or spouse is entitled to, but does not receive because of circumstances brought about by:
 - a. the individual or spouse,

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- b. any person or entity, including a court or administrative body, with legal authority to act in place of, or on behalf of, the individual or spouse, or
- c. any person or entity, including any court or administrative body, acting at the direction or upon the request of the individual or spouse.

Examples of actions which would cause income or resources not to be received are:

- ✓ Irrevocably waiving pension income,
- ✓ Waiving an inheritance, or
- ✓ Assigning annuity payments to a third party.

5. "Payment" - For purposes of this section, a payment from a trust is any disbursement from the trust. A payment from the trust income or trust principal to or for the benefit of the individual or spouse is to be considered income of that person in accordance with Article 10. A payment may include, but is not limited to:

- a. liquid or non-liquid disbursement,
- b. payments made to third parties or other entities for the benefit of the individual or spouse, or
- c. a disbursement to pay bills, purchase items, or pay for services.

D. TREATMENT OF ANNUITIES PURCHASED ON OR AFTER AUGUST 11, 1993



Note: If an annuity is contained within a trust, evaluate the trust first. The annuity would be evaluated as a trust asset.

Annuity is a contract to make periodic payments of a fixed or variable sum paid to an annuitant which are payable unconditionally. Annuity payments may continue for a fixed period of time or for as long as an annuitant lives. An annuitant purchases an annuity with his or her property or property rights. Annuities shall be established to provide the annuitant with payments representing principal and interest which are more than the fair market value of the property used to purchase the annuity. Annuities purchased prior to August 11, 1993, other periodic payment plans, or annuities that are purchased with property rights belonging to someone other than the Medi-Cal applicant/beneficiary or spouse shall continue to be treated in accordance with Section 50402 and Article 10.

Annuities may be purchased privately or commercially. Insurance companies may sell annuities once they are certified to do so by the Insurance Commissioner.

- ✓ Annuities are either deferred or immediate:
 - Deferred Annuities - Payments are available as either a cash lump sum, or fixed payments to begin after a period of time specified in the contract.
 - Immediate Annuities - Periodic payments beginning immediately after the purchase.
- ✓ Types of annuities that may be purchased include:

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- Lifetime Annuities - Periodic payments are made over the lifetime of the annuitant.
 - Period Certain Annuities - Periodic payments are made for a period of time specified in the contract.
 - Lifetime Annuities with Period Certain - Combines the characteristics of both lifetime and period certain annuities but guarantees payments over a specified number of years. If the annuitant happens to die before the expiration of the period certain the remainder of the payments will go to a designated beneficiary.
- ✓ Features that an annuity may contain include:
- A cash refund - A cash payment is paid to a designated individual upon the death of the annuitant if the annuitant dies before receiving payments equal to the purchase price of the annuity.
 - A death benefit - A portion of the purchase price has been set aside by the annuity company to fund death benefits of a specified, predetermined amount or specified number of payments to be paid to a beneficiary upon the death of the annuitant.
 - Cost-of-Living Increases - A portion of the purchase price has been set-aside by the annuity company to fund a periodic increase in the amount of the annuity payments.

Annuities acquired upon the death of the original annuitant, or established by will, periodic payment plans not within the definition of annuity, or established prior to August 11, 1993 shall continue to be treated in accordance with All County Welfare Directors Letter (ACWDL) 90-01, Section 50402 and Title 22, California Code of Regulations (CCR), Article 10. For example, a periodic payment plan resulting from a personal injury settlement paid from municipal funds rather than a commercial annuity contract would continue to be treated in accordance with, ACWDL 90-01, Section 50402 and Title 22, CCR, Article 10.

1. ANNUITIES PURCHASED ON OR AFTER AUGUST 11, 1993

Annuities purchased on or after August 11, 1993, and not subject to treatment under the undue hardship provisions (see procedures Section 9 V I) , shall be treated in accordance with this subsection.

- Payments from the annuity shall be considered income in accordance with Article 10.
- If payments are deferred at any time, the cash surrender value of the annuity shall be considered available property.

a. PERIOD CERTAIN ANNUITIES

- Once the individual or spouse receives, or takes steps to receive periodic payments of principal and interest the balance of the annuity shall be considered unavailable.
- Payments must be scheduled to exhaust any balance remaining in the annuity, at or before the end of the annuitant's life expectancy, based upon the life expectancy tables compiled by the Actuary of the Social Security

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Administration included in this section. To determine whether or not the balance of the annuity will be exhausted by the end of the annuitant's life expectancy, refer to the life expectancy tables compiled by the Office of the Actuary of the Social Security Administration, provided in this section. Enter the tables with the age of the annuitant as of the date the annuity was purchased or the date the payment plan was established, whichever is the most recent.

- If the years of expected life remaining for the annuitant based on the life expectancy tables compiled by the Actuary of the Social Security Administration, is less than the years of scheduled payments remaining under the terms of the annuity, and if the annuity cannot be restructured the payments in excess of the annuitant's life expectancy shall be considered a transfer of property that may be a disqualifying transfer. (See "Note" below.)
- Any predetermined specified amount or number of payments set aside for any other individual (other than for the sole benefit of the spouse) shall be considered a transfer of property that may be a disqualifying transfer. (See "Note" below.)
- After payments to the annuitant begin, if payments are later designated that payments are to be made to any other individual (other than for the sole benefit of the individual or spouse), the payments shall be considered a transfer of income that may be a disqualifying transfer in the future. (See "Note" below.)

See Transfer of Asset guidelines to determine whether or not a period of ineligibility for nursing facility level of care should be calculated. Do not treat transfers of income until guidelines have been issued to do so.



Note: Whenever an annuity has not been properly annuitized counties shall advise the individual that they must attempt to have the annuity annuitized in accordance with these procedures. When it is necessary to advise an applicant /beneficiary that they must annuitize their annuity in accordance with these procedures, provide the applicant/beneficiary with the annuitant's life expectancy by entering the Secretary's tables using the annuitant's current age. The balance of the annuity shall be considered unavailable once steps have been taken to annuitize the annuity in accordance with these procedures until the payment(s) are received. Counties shall also consider whether the undue hardship provisions apply before taking adverse actions. (See procedures Section 9 J V I) When undue hardship is considered and found not to apply the notice of action for the adverse action shall state that "the undue hardship provisions were considered and found not to apply."

- ✓ Undue Hardship: Among other undue hardship provisions which may apply there is an undue hardship exception for annuities purchased between August 11, 1993 and March 1, 1996 (see procedures Section 9 J V I). If such an annuity cannot be annuitized to a period equal to or less than the number of years of life expectancy on the following life expectancy tables established by the Actuary of the Social Security Administration, or if a lifetime annuity cannot be annuitized to a payment schedule based upon a life expectancy that is equal to or less than the number of years reflected on the life expectancy tables established by the Actuary of the Social Security Administration, then:

- ✓ no period of ineligibility for nursing facility level of care shall result, and

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- ✓ the annuity shall continue to be treated in accordance with ACWDL 90-01, draft regulation Section 50402.

If such an annuity cannot be restructured then written verification must be obtained from the agent or company who issued the annuity or the individual agent who sold the annuity.

b. LIFETIME ANNUITIES

In the case of a lifetime annuity purchased on or after August 11, 1996:

- (1). If the contract does not allow anyone to receive payments upon the death of the annuitant and the annuitant is receiving payments:
 - The individual or spouse must obtain the specific life expectancy table used by the annuity company to establish his/her specific annuity.
 - If the years of expected life, based upon the annuity company's tables for that individual or spouse, are equal to or less than the number of years indicated on the life expectancy tables compiled by the Actuary of the Social Security Administration for that individual or spouse, there is no transfer of property for less than fair market value. Count the payments as income, in accordance with Article 10, and consider the balance to be unavailable. To determine whether or not the balance of the annuity will be exhausted by the end of the annuitant's life expectancy, refer to the life expectancy tables compiled by the Office of the Actuary of the Social Security Administration, provided in this section. Enter the tables with the age of the annuitant as of the date the annuity was purchased or the date the payment plan was established, whichever is the most recent.
 - If the years of expected life based on the annuity company's tables for the annuitant are greater than the number of years indicated on the life expectancy tables compiled by the Actuary of the Social Security Administration, for the annuitant and if the annuity cannot be restructured, or the annuitant chooses not to restructure the annuity, there is a transfer of property for less than fair market value that may be a disqualifying transfer. (See "Note" below.)
 - After payments to the annuitant begin, if payments are later designated to any other individual (other than for the sole benefit of the individual or spouse), the payment shall be considered a transfer of income that may be a disqualifying transfer in the future. (See "Note" below.)

See Transfer of Asset guidelines to determine whether or not a period of ineligibility for nursing facility level of care should be calculated. Do not treat transfers of income until guidelines have been issued to do so.



Note: Whenever an annuity has not been properly annuitized counties shall advise the individual that they must attempt to have the annuity annuitized in accordance with these procedures. When it is necessary to advise an applicant /beneficiary that they must annuitize

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their annuity in accordance with these procedures, provide the applicant/beneficiary with the annuitant's life expectancy by entering the Secretary's tables using the annuitant's current age.

The balance of the annuity shall be considered unavailable once steps have been taken to annuitize the annuity in accordance with these procedures until the payment(s) are received. Counties shall also consider whether the undue hardship provisions apply before taking adverse actions. (See procedures Section 9 J V I.) When undue hardship is considered and found not to apply the notice of action for the adverse action shall state that "the undue hardship provisions were considered and found not to apply."

☆ Undue Hardship: Among other undue hardship provisions which may apply there is an undue hardship exception for annuities purchased between August 11, 1993 and March 1, 1996 (see procedures Section 9 J V I). If such an annuity cannot be annuitized to a period equal to or less than the number of years of life expectancy on the following life expectancy tables established by the Actuary of the Social Security Administration, or if a lifetime annuity cannot be annuitized to a payment schedule based upon a life expectancy that is equal to or less than the number of years reflected on the life expectancy tables established by the Actuary of the Social Security Administration, then:

- ✓ no period of ineligibility for nursing facility level of care shall result, and
- ✓ the annuity shall continue to be treated in accordance with ACWDL 90-01, draft regulation Section 50402.

If such an annuity cannot be restructured then written verification must be obtained from the agent or company who issued the annuity or the individual agent who sold the annuity.

(2). If the contract provides that a specified number of payments or a specified amount will go to someone upon the death of the individual, then the annuitant must restructure the annuity's payment schedule. When the annuitant takes steps to restructure the annuity the balance of the annuity shall be considered unavailable. The restructured annuity payment schedule must conform with the procedures for annuities purchased on or after August 11, 1993 as follows:

- Once the annuitant takes steps to annuitize the annuity in accordance with these procedures the balance of the annuity shall be considered unavailable until payment(s) are received.
- Payments must be scheduled to exhaust any balance remaining in the annuity, at or before the end of the annuitant's life expectancy, based upon the life expectancy tables compiled by the Actuary of the Social Security Administration included in this section. To determine whether or not the balance of the annuity will be exhausted by the end of the annuitant's life expectancy, refer to the life expectancy tables compiled by the Office of the Actuary of the Social Security Administration, provided in this section. Enter the tables with the age of the annuitant as of the date the annuity was purchased or the date the payment plan was established, whichever is the most recent. (See "Note" below.)

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- If the annuity cannot be restructured to one that is based upon a life expectancy that is equal to or less than the number of years reflected on the life expectancy table compiled by the Actuary of the Social Security Administration, for that annuitant, consider the amount set-aside or the specified payments for the beneficiary upon the death of the individual or spouse, as property transferred for less than fair market value that may be a disqualifying transfer. (See "Note" below.)
- After payments to the annuitant begin, if payments are later designated to any other individual (other than for the sole benefit of the spouse), they shall be considered a transfer of income that may be a disqualifying transfer in the future. (See "Note" below.)



Note. Whenever an annuity has not been properly annuitized counties shall advise the individual that they must attempt to have the annuity annuitized in accordance with these procedures. When it is necessary to advise an applicant /beneficiary that they must annuitize their annuity in accordance with these procedures, provide the applicant/beneficiary with the annuitant's life expectancy by entering the Secretary's tables using the annuitant's current age. The balance of the annuity shall be considered unavailable once steps have been taken to annuitize the annuity in accordance with these procedures until the payment(s) are received. Counties shall also consider whether the undue hardship provisions apply before taking adverse actions. (See Procedures Section 9 J V I.) When undue hardship is considered and found not to apply the notice of action for the adverse action shall state that "the undue hardship provisions were considered and found not to apply."

☆ Undue Hardship: Among other undue hardship provisions which may apply, there is an undue hardship exception for annuities purchased between August 11, 1993 and March 1, 1996 (see procedures Section 9 J V I). If such an annuity cannot be annuitized to a period equal to or less than the number of years of life expectancy on the following life expectancy tables established by the Actuary of the Social Security Administration, or if a lifetime annuity cannot be annuitized to a payment schedule based upon a life expectancy that is equal to or less than the number of years reflected on the life expectancy tables established by the Actuary of the Social Security Administration, then:

- ✓ no period of ineligibility for nursing facility level of care shall result, and
- ✓ the annuity shall continue to be treated in accordance with ACWDL 90-01, draft regulation Section 50402.

If such an annuity cannot be restructured then written verification must be obtained from the agent or company who issued the annuity or the individual agent who sold the annuity.

See Transfer of Asset guidelines to determine whether or not a period of ineligibility for nursing facility level of care should be calculated. Do not treat transfers of income until guidelines have been issued to do so.

- (3). If the contract provides for a beneficiary upon the death of the individual or spouse to some unspecified amount:

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- Once the annuitant takes steps to receive annuitize the annuity in accordance with these procedures the balance of the annuity shall be considered unavailable until payment(s) are received.
- The annuitant must obtain the specific life expectancy table used by the annuity company to establish their specific annuity if the annuity cannot be restructured.
- If the years of expected life, based upon the annuity company's tables for that annuitant, are equal to or less than the number of years indicated on the life expectancy tables compiled by the Actuary of the Social Security Administration for the annuitant, there is no transfer for less than fair market value. To determine whether or not the balance of the annuity will be exhausted by the end of the annuitant's life expectancy, refer to the life expectancy tables compiled by the Office of the Actuary of the Social Security Administration, provided in this section. Enter the tables with the age of the annuitant as of the date the annuity was purchased or the date the payment plan was established, whichever is the most recent.
- If the years of expected life based on the annuity company's tables for that annuitant are greater than the number of years indicated on the life expectancy tables compiled by the Actuary of the Social Security Administration for the annuitant then:
 - The county must advise the individual or spouse that they must take steps to restructure the annuity's payment schedule to one that is based upon a life expectancy that is equal to or less than the number of years reflected on the life expectancy table compiled by the Actuary of the Social Security Administration, for that individual or spouse. When the individual or spouse takes steps to restructure the annuity the balance of the annuity shall be considered unavailable until payment(s) are received.
 - If steps are not taken there is a transfer of property for less than fair market value that may be a disqualifying transfer. (See "Note" below.)
- After payments to the annuitant begin, if the payments are later designated to any other individual (other than for the sole benefit of the spouse), they shall be considered a transfer of income that may result in a disqualifying transfer in the future. (See "Note" below.)

See Transfer of Asset guidelines to determine whether or not a period of ineligibility for nursing facility level of care should be calculated. Do not treat transfers of income until guidelines have been issued to do so.



Note: Whenever an annuity has not been properly annuitized counties shall advise the individual that they must attempt to have the annuity annuitized in accordance with these procedures. When it is necessary to advise an applicant /beneficiary that they must annuitize their annuity in accordance with these procedures, provide the applicant/beneficiary with the

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annuitant's life expectancy by entering the Secretary's tables using the annuitant's current age. The balance of the annuity shall be considered unavailable once steps have been taken to annuitize the annuity in accordance with these procedures until the payment(s) are received. Counties shall also consider whether the undue hardship provisions apply before taking adverse actions. (See procedures 9 J V I.) When undue hardship is considered and found not to apply the notice of action for the adverse action shall state that "the undue hardship provisions were considered and found not to apply."

☆ Undue Hardship: Among other undue hardship provisions which may apply, there is an undue hardship exception for annuities purchased between August 11, 1993 and March 1, 1996 (see procedures Section 9 J V I). If such an annuity cannot be annuitized to a period equal to or less than the number of years of life expectancy on the following life expectancy tables established by the Actuary of the Social Security Administration, or if a lifetime annuity cannot be annuitized to a payment schedule based upon a life expectancy that is equal to or less than the number of years reflected on the life expectancy tables established by the Actuary of the Social Security Administration, then:

- ✓ no period of ineligibility for nursing facility level of care shall result, and
- ✓ the annuity shall continue to be treated in accordance with ACWDL 90-01, draft regulation Section 50402.

If such an annuity cannot be restructured then written verification must be obtained from the agent or company who issued the annuity or the individual agent who sold the annuity.

2. ANNUITY EXAMPLES:

 *Example # 1:* On January 30, 1996, at age 65, Mr. Baker purchases a \$20,000 period certain annuity to be paid over the course of 10 years. Fixed, equal, monthly payments begin March 1, 1996.

 *Discussion:* At age 65, Mr. Baker's life expectancy is 14.96 years according to the life expectancy table for males compiled by the Actuary of the Social Security Administration. Since Mr. Baker's life expectancy figure (14.96 years) exceeds the payout period of the annuity (10 years) by 4.96 years and Mr. Baker is receiving payments, the balance of the annuity is considered unavailable. The payments would be treated as income in accordance with Article 10.

 *Example # 2:* On March 10, 1996, at age 65, Mr. Baker purchases a \$100,000 period certain annuity to be paid over the course of 20 years. Fixed, equal, monthly payments are to begin April 15, 1996.

 *Discussion:* Based on the life expectancy table for males, compiled by the Actuary of the Social Security Administration, Mr. Baker has a life expectancy of only 14.96 years. The payout period exceeds Mr. Baker's life expectancy. Mr. Baker is unable to restructure the annuity's payment schedule. The payments scheduled to occur beyond Mr. Baker's life expectancy, (20 payment years - 14.96 life expectancy years = 5.04 years of payments) would be considered transferred property that may be a disqualifying transfer. (See "Note" below.)

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To calculate the amount that was transferred for less than adequate consideration, determine the percentage of the original purchase price which was transferred to fund those payments that exceed the life expectancy on the Secretary's tables. Total the payments within the life expectancy, then total the payments beyond the life expectancy. Divide each of the two sums by the sum of the total payments, this will result in the percentage of the total payments made within the life expectancy and the percentage of the total payments made beyond the life expectancy. Multiply the original purchase price by the percentage of payments to be paid beyond the life expectancy.

 *Example # 3:* Mrs. Baker purchases a \$50,000 period certain annuity on December 4, 1996 and makes her daughter the annuitant.

 *Discussion:* Mrs. Baker's purchase of the \$50,000 period certain annuity is considered a transfer of property to the daughter that may be a disqualifying transfer. (See "Note" below.)

 *Example # 4:* On June 10, 1996, Mrs. Baker purchases a \$50,000 lifetime annuity with 5 years worth of payments designated to go to her daughter upon the death of Mrs. Baker. Mrs. Baker is 79 years old and her life expectancy, based on the life expectancy tables for females compiled by the Social Security Administration, is 9.67 years.

 *Discussion:* Since the 5 years worth of payments were specified death benefits when the annuity was purchased the total amount of death benefit payments designated for the daughter shall be considered transferred property that may be considered disqualifying. Mrs. Baker's monthly payments are considered income in accordance with Article 10 and the balance of the annuity less the death benefits are considered unavailable.

 *Example # 5:* Mrs. Baker purchases a \$50,000 lifetime annuity on April 15, 1996 and designates her daughter as the beneficiary upon her death to receive a cash refund (an unspecified amount). Mrs. Baker is 79 years old and her life expectancy, based on the life expectancy tables for females compiled by the Social Security Administration, is 9.67 years. The life expectancy tables used by the annuity company to establish this specific annuity give Mrs. Baker a life expectancy of 8 years.

 *Discussion:* Since the cash refund (an unspecified amount) will pay the difference between the total amount of the payments made to Mrs. Baker during her lifetime and the \$50,000 purchase price to the daughter upon Mrs. Baker's death and the number of years of the company's life expectancy tables are less than those compiled by the Actuary of the Social Security Administration, the monthly payments are considered income in accordance with Article 10 and the balance of the annuity is considered unavailable.

 *Example # 6:* Mrs. Baker begins receiving payments from her properly annuitized annuity but designates her daughter as the annuitant after receiving payments for 1

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year. The daughter will receive the remaining four years worth of payments from the annuity.



Discussion: The 4 years of payments will be considered transferred income which may result in a disqualifying transfer in the future. (See "Note" below.)



Example # 7: Mrs. Baker begins receiving payments from her properly annuitized annuity but designates that her daughter is to receive the 4 years of payments remaining for the sole support of Mrs. Baker.



Discussion: There is no period of ineligibility for nursing facility level of care for Mrs. Baker. The payments will be considered income in accordance with Article 10.



Example # 8: Mrs. Baker, age 64, purchases a \$50,000 lifetime annuity on March 1, 1996 with a period certain of 15 years. Her life expectancy based on the life expectancy tables compiled by the Actuary of the Social Security Administration is 19.72 years. The life expectancy tables used by the annuity company to establish her specific annuity give Mrs. Baker a life expectancy of 18 years. She is receiving fixed, equal, monthly payments.



Discussion: Since the number of years of both the company's life expectancy table and the period certain are less than Mrs. Baker's life expectancy according to the life expectancy table for females compiled by the Social Security Administration, the monthly payments are considered income in accordance with Article 10 and the balance of the annuity is considered unavailable.



Note: Whenever an annuity has not been properly annuitized counties shall advise the individual that they must attempt to have the annuity annuitized in accordance with these procedures. When it is necessary to advise an applicant/beneficiary that they must annuitize their annuity in accordance with these procedures, provide the applicant /beneficiary with the annuitant's life expectancy by entering the Secretary's tables using the annuitant's current age. The balance of the annuity shall be considered unavailable once steps have been taken to annuitize the annuity in accordance with these procedures until the payment(s) are received. Counties shall also consider whether the undue hardship provisions apply before taking adverse actions. (See procedures 9 J V I.) When undue hardship is considered and found not to apply the notice of action for the adverse action shall state that "the undue hardship provisions were considered and found not to apply."

☆ Undue Hardship: Among other undue hardship provisions which may apply, there is an undue hardship exception for annuities purchased between August 11, 1993 and March 1, 1996 (see procedures Section 9 J V I). If such an annuity cannot be annuitized to a period equal to or less than the number of years of life expectancy on the following life expectancy tables established by the Actuary of the Social Security Administration, or if a lifetime annuity cannot be annuitized to a payment schedule based upon a life expectancy that is equal to or less than the number of years reflected on the life expectancy tables established by the Actuary of the Social Security Administration, then:

✓ no period of ineligibility for nursing facility level of care shall result, and

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- ✓ the annuity shall continue to be treated in accordance with ACWDL 90-01, draft regulation Section 50402.

If such an annuity cannot be restructured then written verification must be obtained from the agent or company who issued the annuity or the individual agent who sold the annuity.

3. ANALYSIS OF SAMPLE ANNUITY PAYMENT SCHEDULES

This subsection includes sample annuity payment schedules. The payment schedules represent some annuities that have been annuitized in accordance with the guidelines of the Secretary for the Department of Health and Human Services, as well as some that are not properly structured.



Note: Each row of the attached sample annuity payment schedules contains the **sum of the equal monthly payments** that would be paid in each year of the annuity.

When using the Secretary's Life Expectancy Tables in determining whether an annuity has been properly annuitized, enter those tables with the age of the annuitant as of the date the annuity was purchased or the date the payment plan was established, whichever is the most recent. When it is necessary to advise a Medi-Cal applicant/beneficiary that they must annuitize their annuity in accordance with these procedures, enter the Secretary's tables using the individual's current age.

a. PERIOD CERTAIN ANNUITIES

(1). Properly Annuitized Payment Schedules

The sample payment schedules on the following page represent annuities that are to be considered properly annuitized. The payment schedules are for 15-year, period certain annuities. The 15-year guarantee period coincided with the life expectancy of the annuitant based upon the Secretary's tables as of the date the annuity was purchased (or the date of annuitization, whichever was the most recent). Monthly payments are fixed, equal and monthly but may reflect reasonable, annual cost-of-living increases (i.e., less than or equal to 5%).

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(2). Improperly Structured Payment Schedules

The payment schedules on the following page represent period certain annuities that have not been properly annuitized. They are payment schedules for 20-year period certain annuities. The guarantee period of 20-years exceeded the 15-year life expectancy of the annuitant, as determined by the Secretary's tables as of the date the annuity was purchased or the date the payment plan was established, whichever was most recent. In these cases there may be a disqualifying transfer as of the date the annuity was purchased (or the date the payment plan was established, whichever was most recent). To determine whether or not the transfer is disqualifying, counties must review the transfer of property guidelines contained in ACWDL 90-01.

To determine the amount that was transferred for less than adequate consideration, determine the percentage of the original purchase price which was transferred to fund the payments that exceeded the life expectancy on the Secretary's tables as of the date of purchase or the date the payment plan was established, whichever was the most recent.



Note: Whenever an annuity has not been properly annuitized counties shall advise the individual that they must attempt to have the annuity annuitized in accordance with these procedures. The balance of the annuity shall be considered unavailable once steps have been taken to annuitize the annuity in accordance with these procedures until the payment(s) are received. Counties shall also consider whether the undue hardship provisions apply before taking any adverse actions. (See procedures Section 9 J V I.) When undue hardship is considered and found not to apply the notice of action for the adverse action shall state that "the undue hardship provisions were considered and found not to apply".

(A). Level Payment Sample

The sum of the payments within the life expectancy is \$120,363.88. The sum of the payments beyond the life expectancy is \$40,121.29. Dividing each of the two sums by the sum of the total payments (\$160,485.17) will result in the following, based upon the Secretary's tables: 75% of the payments will be made during the life expectancy of the annuitant; and 25% of the payments will be made beyond the life expectancy of the annuitant. Multiplying the original purchase price (\$100,000) by 25% will result in the percentage of the original purchase price which was transferred to fund the payments beyond the annuitant's life expectancy ($\$100,000 \times 25\% = \$25,000$).

(B). 3% Annual Increase Sample

The sum of the payments within the life expectancy is \$116,499.63. The sum of the payments beyond the life expectancy is \$51,810.67. Dividing each of the two sums by the sum of the total payments (\$168,310.30) will result in the following, based upon the Secretary's tables: 69.2% of the payments will be made during the life expectancy of the annuitant; and 30.8% of the payments will be made beyond the life expectancy of the annuitant. Multiplying the original purchase price (\$100,000) by 30.8% will result in the

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percentage of the original purchase price which was transferred to fund the payments beyond the annuitant's life expectancy ($\$100,000 \times 30.8\% = \$30,800.00$).

(C). 5% Annual Increase

The sum of the payments within the life expectancy is \$113,287.46. The sum of the payments beyond the life expectancy is \$60,308.80. Dividing each of the two sums by the sum of the total payments (\$173,596.26) will result in the following, based upon the Secretary's tables: 65.3% of the payments will be made during the life expectancy of the annuitant; and 34.7% of the payments will be made beyond the life expectancy of the annuitant. Multiplying the original purchase price (\$100,000) by 34.7% will result in the percentage of the original purchase price which was transferred to fund the payments beyond the annuitant's life expectancy ($\$100,000 \times 34.7\% = \$34,700.00$).

Amount Invested: \$100,000
 Rate of Return: 5.00%
 Guarantee Period: 20 Years

Level Payments

Year	Payment
1	\$8,024.26
2	\$8,024.26
3	\$8,024.26
4	\$8,024.26
5	\$8,024.26
6	\$8,024.26
7	\$8,024.26
8	\$8,024.26
9	\$8,024.26
10	\$8,024.26
11	\$8,024.26
12	\$8,024.26
13	\$8,024.26
14	\$8,024.26
15	\$8,024.26
16	\$8,024.26
17	\$8,024.26
18	\$8,024.26
19	\$8,024.26
20	\$8,024.26

Life
Expectancy

Sum: \$160,485.17

Sum <=LE:	\$120,363.88	75.0%
Sum >LE:	\$40,121.29	25.0%

\$ 25,000.00

3% Annual Increase

Payment
\$6,263.79
\$6,451.70
\$6,645.25
\$6,844.61
\$7,049.95
\$7,261.45
\$7,479.29
\$7,703.67
\$7,934.78
\$8,172.82
\$8,418.01
\$8,670.55
\$8,930.66
\$9,198.58
\$9,474.54
\$9,758.78
\$10,051.54
\$10,353.09
\$10,663.68
\$10,983.59

\$168,310.30

\$116,499.63	69.2%
\$51,810.67	30.8%

\$30,800.00

5% Annual Increase

5% Increase
\$5,250.00
\$5,512.50
\$5,788.13
\$6,077.53
\$6,381.41
\$6,700.48
\$7,035.50
\$7,387.28
\$7,756.64
\$8,144.47
\$8,551.70
\$8,979.28
\$9,428.25
\$9,899.66
\$10,394.64
\$10,914.37
\$11,460.09
\$12,033.10
\$12,634.75
\$13,266.49

\$173,596.26

\$113,287.46	65.3%
\$60,308.80	34.7%

\$34,700.00

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b. LIFETIME ANNUITIES

When considering whether a lifetime annuity has been annuitized in accordance with the Secretary's tables, the applicant must provide the life expectancy that the company used as of the date the annuity was purchased or the date the payment plan was established. The company's life expectancy for the annuitant is then compared to the life expectancy for the annuitant based upon the Secretary's tables. The age to use when entering the Secretary's table is the age of the annuitant as of the date the annuity was purchased or the date the payment plan was established, whichever is most recent.

(1). Properly Annuitized

The payment schedule on the following page represents a lifetime annuity. The life expectancy of the annuitant per the Secretary's tables coincides with the life expectancy of the annuitant based upon the company's tables. The purchase of the annuity is considered to be for adequate consideration and there is no disqualifying transfer of property even though payments are to be paid regardless of how long the annuitant may actually live. Monthly payments are fixed, equal and monthly but may reflect reasonable, annual cost-of-living increases (i.e., less than or equal to 5%).

Amount Invested: \$100,000
 Rate of Return: 5.00%
 Lifetime Annuity

Level Payments

Year	Payment
1	\$8,024.26
2	\$8,024.26
3	\$8,024.26
4	\$8,024.26
5	\$8,024.26
6	\$8,024.26
7	\$8,024.26
8	\$8,024.26
9	\$8,024.26
10	\$8,024.26
11	\$8,024.26
12	\$8,024.26
13	\$8,024.26
14	\$8,024.26
15	\$8,024.26
16	\$8,024.26
17	\$8,024.26
18	\$8,024.26
19	\$8,024.26
20	\$8,024.26

Life
 Expectancy
 Coincides

3% Annual Increase

Payment
\$6,263.79
\$6,451.70
\$6,645.25
\$6,844.61
\$7,049.95
\$7,261.45
\$7,479.29
\$7,703.67
\$7,934.78
\$8,172.82
\$8,418.01
\$8,670.55
\$8,930.66
\$9,198.58
\$9,474.54
\$9,758.78
\$10,051.54
\$10,353.09
\$10,663.68
\$10,983.59

5% Annual Increase

5% Increase
\$5,250.00
\$5,512.50
\$5,788.13
\$6,077.53
\$6,381.41
\$6,700.48
\$7,035.50
\$7,387.28
\$7,756.64
\$8,144.47
\$8,551.70
\$8,979.28
\$9,428.25
\$9,899.66
\$10,394.64
\$10,914.37
\$11,460.09
\$12,033.10
\$12,634.75
\$13,266.49

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(2). Improperly Structured Payment Schedules

The payment schedules on the following page represent lifetime annuities that have not been properly annuitized. The company's life expectancy for the annuitant exceeded the 15-year life expectancy of the annuitant, as determined by the Secretary's tables as of the date the annuity was purchased or the date the payment plan was established, whichever was most recent. In these cases there may be a disqualifying transfer as of the date the annuity was purchased (or the date the payment plan was established, whichever is most recent). To determine whether or not the transfer is disqualifying, counties must review the transfer of property guidelines contained in ACWDL 90-01.

To determine the amount that was transferred for less than adequate consideration, determine the percentage of the original purchase price which was transferred to fund the payments that may be paid between the company's life expectancy for the annuitant and the life expectancy in accordance with the Secretary's tables. When entering the Secretary's tables, use the age of the annuitant as of the date the annuity was purchased or the date the payment plan was established, whichever was the most recent.



Note: Whenever an annuity has not been properly annuitized counties shall advise the individual that they must attempt to have the annuity annuitized in accordance with these procedures. The balance of the annuity shall be considered unavailable once steps have been taken to annuitize the annuity in accordance with these procedures until the payment(s) are received. Counties shall also consider whether the undue hardship provisions apply before taking any adverse actions. (See procedures Section 9 J V I.) When undue hardship is considered and found not to apply the notice of action for the adverse action shall state that "the undue hardship provisions were considered and found not to apply".

(A). Level Payment Sample

The sum of the payments within the life expectancy based upon the Secretary's table is \$120,363.90. The sum of the payments between the company's life expectancy and the life expectancy based upon the Secretary's tables is \$24,072.78. Dividing each of the two sums by the sum of the total payments (\$144,436.68) will result in the following: 83.3% of the payments will be made during the life expectancy of the annuitant based upon the Secretary's tables; and 16.7% of the payments will be made between the two life expectancies. Multiplying the original purchase price (\$100,000) by 16.7% will result in the percentage of the original purchase price which was transferred to fund the payments beyond the annuitant's life expectancy ($\$100,000 \times 16.7\% = \$16,700$).

(B). 3% Annual Increase

The sum of the payments within the life expectancy based upon the Secretary's table is \$116,499.62. The sum of the payments between the company's life expectancy and the life expectancy based upon the Secretary's tables is \$30,163.41. Dividing each of

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the two sums by the sum of the total payments (\$146,663.03) will result in the following: 79.4% of the payments will be made during the life expectancy of the annuitant based upon the Secretary's tables; and 20.6% of the payments will be made between the two life expectancies. Multiplying the original purchase price (\$100,000) by 20.6% will result in the percentage of the original purchase price which was transferred to fund the payments beyond the annuitant's life expectancy ($\$100,000 \times 16.7\% = \$20,600$).

(C). 5% Annual Increase

The sum of the payments within the life expectancy based upon the Secretary's table is \$113,287.46. The sum of the payments between the company's life expectancy and the life expectancy based upon the Secretary's tables is \$34,407.56. Dividing each of the two sums by the sum of the total payments (\$147,695.02) will result in the following: 76.7% of the payments will be made during the life expectancy of the annuitant based upon the Secretary's tables; and 23.3% of the payments will be made between the two life expectancies. Multiplying the original purchase price (\$100,000) by 23.3% will result in the percentage of the original purchase price which was transferred to fund the payments beyond the annuitant's life expectancy ($\$100,000 \times 23.3\% = \$23,300$).

Amount Invested: \$100,000
 Rate of Return: 5.00%
 Lifetime Annuity

Level Payments

Year	Payment
1	\$8,024.26
2	\$8,024.26
3	\$8,024.26
4	\$8,024.26
5	\$8,024.26
6	\$8,024.26
7	\$8,024.26
8	\$8,024.26
9	\$8,024.26
10	\$8,024.26
11	\$8,024.26
12	\$8,024.26
13	\$8,024.26
14	\$8,024.26
15	\$8,024.26
16	\$8,024.26
17	\$8,024.26
18	\$8,024.26
19	\$8,024.26
20	\$8,024.26

Life Expectancy
 Per Secretary
 Per Company

Sum: \$144,436.68

Sum <=LE: \$120,363.90 83.3%
 Sum >LE: \$24,072.78 16.7%

\$ 16,700.00

3% Annual Increase

Payment
\$6,263.79
\$6,451.70
\$6,645.25
\$6,844.61
\$7,049.95
\$7,261.45
\$7,479.29
\$7,703.67
\$7,934.78
\$8,172.82
\$8,418.01
\$8,670.55
\$8,930.66
\$9,198.58
\$9,474.54
\$9,758.78
\$10,051.54
\$10,353.09
\$10,663.68
\$10,983.59

\$146,663.03

\$116,499.62 79.4%
 \$30,163.41 20.6%

\$ 20,600.00

5% Annual Increase

5% Increase
\$5,250.00
\$5,512.50
\$5,788.13
\$6,077.53
\$6,381.41
\$6,700.48
\$7,035.50
\$7,387.28
\$7,756.64
\$8,144.47
\$8,551.70
\$8,979.28
\$9,428.25
\$9,899.66
\$10,394.64
\$10,914.37
\$11,460.09
\$12,033.10
\$12,634.75
\$13,266.49

\$147,695.02

\$113,287.46 76.7%
 \$34,407.56 23.3%

\$ 23,300.00

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c. LIFETIME WITH PERIOD CERTAIN ANNUITIES

A lifetime with period certain annuity combines the features of both the lifetime and the period certain annuities into one. When considering whether a lifetime with a period certain annuity has been annuitized in accordance with the Secretary's tables, the applicant must provide the life expectancy that the company used as of the date the annuity was purchased or the date the payment plan was established. The company's life expectancy for the annuitant is then compared to the life expectancy for the annuitant based upon the Secretary's tables. The guarantee period must also be less than or equal to the life expectancy based upon the Secretary's tables. The age to use when entering the Secretary's table is the age of the annuitant as of the date the annuity was purchased or the date the payment plan was established whichever is most recent.

(1). Properly Annuitized Payment Schedules

The sample payment schedules on the following page represent annuities that are to be considered properly annuitized. The payment schedules are for lifetime with 15-year, period certain annuities. The 15-year guarantee period AND THE the company's life expectancy coincided with the life expectancy of the annuitant based upon the Secretary's tables as of the date the annuity was purchased or the date of annuitization, whichever was the most recent. Monthly payments are fixed, equal and monthly but may reflect reasonable, annual cost-of-living increases (i.e., less than or equal to 5%).

Amount Invested: \$100,000

Rate of Return: 5.00%

Lifetime with 15-year Period Certain

Level Payments

Year	Payment
1	\$8,024.26
2	\$8,024.26
3	\$8,024.26
4	\$8,024.26
5	\$8,024.26
6	\$8,024.26
7	\$8,024.26
8	\$8,024.26
9	\$8,024.26
10	\$8,024.26
11	\$8,024.26
12	\$8,024.26
13	\$8,024.26
14	\$8,024.26
15	\$8,024.26
16	\$8,024.26
17	\$8,024.26
18	\$8,024.26
19	\$8,024.26
20	\$8,024.26

Life
Expectancy
Coincides

Guarantee
Period

3% Annual Increase

Payment
\$6,263.79
\$6,451.70
\$6,645.25
\$6,844.61
\$7,049.95
\$7,261.45
\$7,479.29
\$7,703.67
\$7,934.78
\$8,172.82
\$8,418.01
\$8,670.55
\$8,930.66
\$9,198.58
\$9,474.54
\$9,758.78
\$10,051.54
\$10,353.09
\$10,663.68
\$10,983.59

5% Annual Increase

5% Increase
\$5,250.00
\$5,512.50
\$5,788.13
\$6,077.53
\$6,381.41
\$6,700.48
\$7,035.50
\$7,387.28
\$7,756.64
\$8,144.47
\$8,551.70
\$8,979.28
\$9,428.25
\$9,899.66
\$10,394.64
\$10,914.37
\$11,460.09
\$12,033.10
\$12,634.75
\$13,266.49

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(2). Improperly Structured Payment Schedules

(A). *Company's Life Expectancy Exceeds Secretary's Life Expectancy - Guarantee Period Coincides*

The payment schedules on the following page represent lifetime with 15-year period certain annuities that have not been properly annuitized. Although the life expectancy for the individual based upon the Secretary's tables and the 15-year guarantee period coincide, the company's life expectancy for the annuitant exceeds the 15-year life expectancy of the annuitant, as determined by the Secretary's tables. This is determined as of the date the annuity was purchased or the date the payment plan was established, whichever was most recent. In these cases there may be a disqualifying transfer as of the date the annuity was purchased or the date the payment plan was established, whichever is most recent. To determine whether or not the transfer is disqualifying, counties must review the transfer of property guidelines contained in ACWDL 90-01.

To determine the amount that was transferred for less than adequate consideration, determine the percentage of the original purchase price which was transferred to fund the payments that may be paid between the company's life expectancy for the annuitant and the life expectancy in accordance with the Secretary's tables. When entering the Secretary's tables, use the age of the annuitant as of the date the annuity was purchased or the date the payment plan was established, whichever was the most recent.



NOTE: Whenever an annuity has not been properly annuitized counties shall advise the individual that they must attempt to have the annuity annuitized in accordance with these procedures. The balance of the annuity shall be considered unavailable once steps have been taken to annuitize the annuity in accordance with these procedures until the payment(s) are received. Counties shall also consider whether the undue hardship provisions apply before taking any adverse actions. When undue hardship is considered and found not to apply the notice of action for the adverse action shall state that "the undue hardship provisions were considered and found not to apply".

(i). Level Payment Sample

The sum of the payments within the life expectancy based upon the Secretary's table is \$120,363.90. The sum of the payments between the company's life expectancy and the life expectancy based upon the Secretary's tables is \$24,072.78. Dividing each of the two sums by the sum of the total payments (\$144,436.68) will result in the following: 83.3% of the payments will be made during the life expectancy of the annuitant based upon the Secretary's tables; and 16.7% of the payments will be made between the two life expectancies. Multiplying the original purchase price (\$100,000) by 16.7% will result in the percentage of the original purchase price which was transferred to fund

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the payments beyond the annuitant's life expectancy ($\$100,000 \times 16.7\% = \$16,700$).

(ii). 3% Annual Increase

The sum of the payments within the life expectancy based upon the Secretary's table is \$116,499.62. The sum of the payments between the company's life expectancy and the life expectancy based upon the Secretary's tables is \$30,163.41. Dividing each of the two sums by the sum of the total payments (\$146,663.03) will result in the following: 79.4% of the payments will be made during the life expectancy of the annuitant based upon the Secretary's tables; and 20.6% of the payments will be made between the two life expectancies. Multiplying the original purchase price (\$100,000) by 20.6% will result in the percentage of the original purchase price which was transferred to fund the payments beyond the annuitant's life expectancy ($\$100,000 \times 20.6\% = \$20,600$).

(iii). 5% Annual Increase

The sum of the payments within the life expectancy based upon the Secretary's table is \$113,287.46. The sum of the payments between the company's life expectancy and the life expectancy based upon the Secretary's tables is \$34,407.56. Dividing each of the two sums by the sum of the total payments (\$147,695.02) will result in the following: 76.7% of the payments will be made during the life expectancy of the annuitant based upon the Secretary's tables; and 23.3% of the payments will be made between the two life expectancies. Multiplying the original purchase price (\$100,000) by 23.3% will result in the percentage of the original purchase price which was transferred to fund the payments beyond the annuitant's life expectancy ($\$100,000 \times 23.3\% = \$23,300$).

Amount Invested: \$100,000
 Rate of Return: 5.00 %
 Lifetime with 15-year Period Certain

Level Payments

Year	Payment
1	\$8,024.26
2	\$8,024.26
3	\$8,024.26
4	\$8,024.26
5	\$8,024.26
6	\$8,024.26
7	\$8,024.26
8	\$8,024.26
9	\$8,024.26
10	\$8,024.26
11	\$8,024.26
12	\$8,024.26
13	\$8,024.26
14	\$8,024.26
15	\$8,024.26
16	\$8,024.26
17	\$8,024.26
18	\$8,024.26
19	\$8,024.26
20	\$8,024.26

Life
 Expectancy
 Per Secretary
 Per Company

Guarantee
 Period

Sum: \$144,436.68

Sum <=LE: \$120,363.90 83.3%
 Sum >LE: \$24,072.78 16.7%

\$ 16,700.00

3% Annual Increase

Payment
\$6,263.79
\$6,451.70
\$6,645.25
\$6,844.61
\$7,049.95
\$7,261.45
\$7,479.29
\$7,703.67
\$7,934.78
\$8,172.82
\$8,418.01
\$8,670.55
\$8,930.66
\$9,198.58
\$9,474.54
\$9,758.78
\$10,051.54
\$10,353.09
\$10,663.68
\$10,983.59

\$146,663.03

\$116,499.62 79.4%
 \$30,163.41 20.6%

\$ 20,600.00

5% Annual Increase

5% Increase
\$5,250.00
\$5,512.50
\$5,788.13
\$6,077.53
\$6,381.41
\$6,700.48
\$7,035.50
\$7,387.28
\$7,756.64
\$8,144.47
\$8,551.70
\$8,979.28
\$9,428.25
\$9,899.66
\$10,394.64
\$10,914.37
\$11,460.09
\$12,033.10
\$12,634.75
\$13,266.49

\$147,695.02

\$113,287.46 76.7%
 \$34,407.56 23.3%

\$ 23,300.00

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(B). *Life Expectancy's Coincide - Guarantee Period Exceeds the Life Expectancy*

The payment schedules on the following page represent lifetime with 20-year period certain annuities that have not been properly annuitized. Although the life expectancy for the individual based upon the Secretary's tables and the company's life expectancy for the annuitant coincide, the 20-year guarantee period exceeds the 15-year life expectancy of the annuitant as determined by the Secretary's tables. This is determined as of the date the annuity was purchased or the date the payment plan was established, whichever was most recent. In these cases there may be a disqualifying transfer as of the date the annuity was purchased or the date the payment plan was established, whichever is most recent. To determine whether or not the transfer is disqualifying, counties must review the transfer of property guidelines contained in ACWDL 90-01.

To determine the amount that was transferred for less than adequate consideration, determine the percentage of the original purchase price which was transferred to fund the payments that are guaranteed to be paid beyond the life expectancy in accordance with the Secretary's tables. When entering the Secretary's tables, use the age of the annuitant as of the date the annuity was purchased or the date the payment plan was established, whichever was the most recent.



Note: Whenever an annuity has not been properly annuitized counties shall advise the individual that they must attempt to have the annuity annuitized in accordance with these procedures. The balance of the annuity shall be considered unavailable once steps have been taken to annuitize the annuity in accordance with these procedures until the payment(s) are received. Counties shall also consider whether the undue hardship provisions apply before taking any adverse actions. When undue hardship is considered and found not to apply the notice of action for the adverse action shall state that "the undue hardship provisions were considered and found not to apply".

(i). Level Payment Sample

The sum of the payments within the life expectancy based upon the Secretary's table is \$120,363.88. The sum of the payments between the life expectancy and the end of the 20-year guarantee period is \$40,121.29. Dividing each of the two sums by the sum of the total payments (\$160,485.17) will result in the following: 75% of the payments will be made during the life expectancy of the annuitant based upon the Secretary's tables; and 25% of the payments will be made between the life expectancies and the end of the 20-year guarantee period. Multiplying the original purchase price (\$100,000) by 25% will result in the percentage of the original purchase price which was transferred to fund the payments beyond the annuitant's life expectancy ($\$100,000 \times 25\% = \$25,000$).

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(ii). 3% Annual Increase

The sum of the payments within the life expectancy based upon the Secretary's table is \$116,499.62. The sum of the payments between the life expectancy and the end of the 20-year guarantee period is \$51,810.67. Dividing each of the two sums by the sum of the total payments (\$168,310.30) will result in the following: 69.2% of the payments will be made during the life expectancy of the annuitant based upon the Secretary's tables; and 30.8% of the payments will be made between the life expectancy of the annuitant and the end of the 20-year guarantee period. Multiplying the original purchase price (\$100,000) by 30.8% will result in the percentage of the original purchase price which was transferred to fund the payments beyond the annuitant's life expectancy ($\$100,000 \times 30.8\% = \$30,800.00$).

(iii). 5% Annual Increase

The sum of the payments within the life expectancy based upon the Secretary's table is \$113,287.46. The sum of the payments between the life expectancy and the end of the 20-year guarantee period is \$34,740.84. Dividing each of the two sums by the sum of the total payments (\$173,596.26) will result in the following: 65.3% of the payments will be made during the life expectancy of the annuitant based upon the Secretary's tables; and 34.7% of the payments will be made between the life expectancy of the annuitant and the end of the 20-year guarantee period. Multiplying the original purchase price (\$100,000) by 34.7% will result in the percentage of the original purchase price which was transferred to fund the payments beyond the annuitant's life expectancy ($\$100,000 \times 34.7\% = \$34,700$).

Amount Invested: \$100,000
 Rate of Return: 5.00%
 Lifetime with 20-year Period Certain

Level Payments

Year	Payment
1	\$8,024.26
2	\$8,024.26
3	\$8,024.26
4	\$8,024.26
5	\$8,024.26
6	\$8,024.26
7	\$8,024.26
8	\$8,024.26
9	\$8,024.26
10	\$8,024.26
11	\$8,024.26
12	\$8,024.26
13	\$8,024.26
14	\$8,024.26
15	\$8,024.26
16	\$8,024.26
17	\$8,024.26
18	\$8,024.26
19	\$8,024.26
20	\$8,024.26

Life Expectancy
 Coincides
 Guarantee Period

Sum: \$160,485.17

Sum <=LE: \$120,363.88 75.0%
 Sum >LE: \$40,121.29 25.0%

\$ 25,000.00

3% Annual Increase

Payment
\$6,263.79
\$6,451.70
\$6,645.25
\$6,844.61
\$7,049.95
\$7,261.45
\$7,479.29
\$7,703.67
\$7,934.78
\$8,172.82
\$8,418.01
\$8,670.55
\$8,930.66
\$9,198.58
\$9,474.54
\$9,758.78
\$10,051.54
\$10,353.09
\$10,663.68
\$10,983.59

\$168,310.30

\$118,499.63 69.2%
 \$51,810.67 30.8%

\$ 30,800.00

5% Annual Increase

5% Increase
\$5,250.00
\$5,512.50
\$5,788.13
\$6,077.53
\$6,381.41
\$6,700.48
\$7,035.50
\$7,387.28
\$7,756.64
\$8,144.47
\$8,551.70
\$8,979.28
\$9,428.25
\$9,899.66
\$10,394.64
\$10,914.37
\$11,460.09
\$12,033.10
\$12,634.75
\$13,266.49

\$173,596.26

\$113,287.46 65.3%
 \$60,308.80 34.7%

\$34,700.00

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d. ANNUITIES WITH DEFERRED PAYMENTS

When annuities are paid out **within the life expectancy** established by the Secretary's tables but the payments are not fixed, equal, monthly payments (or vary because of reasonable cost of living increases, i.e., $\leq 5\%$ annually), payments shall be considered deferred. The cash surrender value of the annuity is to be counted.



Notes:

- ① Whenever an annuity has not been properly annuitized counties shall advise the individual that they must attempt to have the annuity annuitized in accordance with these procedures. The balance of the annuity shall be considered unavailable once steps have been taken to annuitize the annuity in accordance with these procedures until the payment(s) are received. Counties shall also consider whether the undue hardship provisions apply before taking any adverse actions. When undue hardship is considered and found not to apply the notice of action for the adverse action shall state that "the undue hardship provisions were considered and found not to apply".
- ② When payments extend **beyond the life expectancy** of the annuitant based upon the secretary's tables there has been a transfer of assets that may be disqualifying. The transfer issue must be addressed first. Counties must not count the case surrender value of the annuity in cases where a period of ineligibility for a disqualifying transfer has been assessed.

To determine whether or not the annuity has a cash surrender value, look to the policy provisions. If the policy provisions state that there is no cash surrender value, then there is nothing to count in the property reserve. The payments actually made, however, continue to be considered income in accordance with Article 10.

e. SAMPLE LANGUAGE WITH A CASH SURRENDER VALUE

The following paragraphs represent sample language of an annuity with a possible cash surrender value. In cases where there are penalties for surrendering a policy early, counties shall count only the amount the annuitant would actually receive.

- (1) Surrender of Policy – Except as provided herein, at any time prior to the Maturity Date, the Owner may surrender this policy for its Cash Value. Such surrender request shall be in writing on a form provided by the Company and signed by the Owner. This policy shall accompany the request form and be surrendered. If this policy shall have been previously assigned, any surrender request must be approved in writing by the assignee.
- (2) Withdrawal Charge – Any Withdrawal from this policy shall be subject to a Withdrawal Charge, exempt as otherwise provided herein. The Withdrawal Charge on this policy shall be an amount equal to 8% of such Withdrawal. After the policy has been in force 5 years, the Withdrawal Charge shall be reduced by 2%. It will be reduced by 2% on each

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policy anniversary thereafter. After the policy has been in force 8 years no Withdrawal shall be subject to a Withdrawal Charge.

- (3) Waiver of Withdrawal Charge – Beginning one calendar month after the Effective Date, up to 1% of the Premium may be withdrawn each month without a Withdrawal Charge. The unused portion of this Waiver of Withdrawal Charge provision is accumulative.
- (4) Surrender Charge – The Surrender Charge on this policy shall be an amount equal to 8% of the Accumulation Value. After the policy has been in force 5 years, the Surrender Charge shall be reduced by 2%. It will be reduced by 2% on each policy anniversary thereafter. The Surrender Charge shall also be reduced by any applicable Waiver of Withdrawal Charge. After the policy has been in force 8 years, no surrender shall be subject to a Surrender Charge.

F. SAMPLE LANGUAGE WITHOUT A CASH SURRENDER VALUE

The following paragraphs represent sample language of an annuity without a cash surrender value. In these cases there would be no amount to count. Payments actually made are continued to be considered income in accordance with Article 10.

- (1). Payments – The Payments shown in the Policy Schedule will begin on the Annuity Start Date. The Payments are payable to the Annuitant in the manner described on the Policy Schedule. In no event will less than the Number of Payments Certain be made. The Payments will not be subject to:

✓ Transfer, alteration, claims of creditors before any payment is due; or

✓ Encumbrance by creditors,

Once this Policy is issued you may not:

✓ Change the manner in which Payments are made;

✓ Surrender this Policy for the value of any remaining guaranteed Payments; or

✓ Take any cash withdrawals or loans from this Policy.

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Amount Invested: \$100,000
Rate of Return: 5.00%
Guarantee Period: 15 Years

Interest + .8% of Principal per year

	Year	Payment
	1	\$5,800.00
	2	\$5,760.00
	3	\$5,720.00
	4	\$5,680.00
	5	\$5,640.00
	6	\$5,600.00
	7	\$5,560.00
	8	\$5,520.00
	9	\$5,480.00
	10	\$5,440.00
	11	\$5,400.00
	12	\$5,360.00
	13	\$5,320.00
	14	\$5,280.00
Life	15	\$93,240.00
Expectancy	16	
	17	
	18	
	19	
	20	

Sum **\$170,800.00**

Sum < LE **\$170,800.00**
Sum > LE **\$0.00**

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G. SAMPLE IMPROPERLY ANNUITIZED PAYMENT SCHEDULE
REPRESENTING DEFERRED PAYMENTS

(1) Unreasonable Annual Increases

The sample payment schedule on the following page represents an improperly annuitized annuity with 25% annual cost of living increases. Unreasonable annual increases of this sort tend to push the majority of the payments toward the back-end of the payment phase. In these cases, Counties shall count the cash surrender value of the annuity as available property.



Note: Whenever an annuity has not been properly annuitized counties shall advise the individual that they must attempt to have the annuity annuitized in accordance with these procedures. The balance of the annuity shall be considered unavailable once steps have been taken to annuitize the annuity in accordance with these procedures until the payment(s) are received. Counties shall also consider whether the undue hardship provisions apply before taking any adverse actions. When undue hardship is considered and found not to apply the notice of action for the adverse action shall state that "the undue hardship provisions were considered and found not to apply".

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Amount Invested: \$100,000
Rate of Return: 5.00%
Guarantee Period: 15 Years

25% Annual Increase

Year	Payment
1	\$1,578.36
2	\$1,972.95
3	\$2,466.19
4	\$3,082.74
5	\$3,853.43
6	\$4,816.79
7	\$6,020.99
8	\$7,526.24
9	\$9,407.80
10	\$11,759.75
11	\$14,699.69
12	\$18,374.61
13	\$22,968.26
14	\$28,710.33
15	\$35,887.91
16	
17	
18	
19	
20	

Life
 Expectancy

Sum \$173,126.04

Sum < LE \$173,126.04

Sum > LE \$0.00

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H. Small Percentage of Principal Plus Interest Each Year

The sample payment schedule on the following page represents an improperly annuitized annuity that pays out only interest with .8% of the principal per year. Payment plans of this sort tend to push most of the principal of the annuity into a single payment at the end of the guarantee period. In these cases, Counties shall count the cash surrender value of the annuity as available property.



Note: Whenever an annuity has not been properly annuitized counties shall advise the individual that they must attempt to have the annuity annuitized in accordance with these procedures. The balance of the annuity shall be considered unavailable once steps have been taken to annuitize the annuity in accordance with these procedures until the payment(s) are received. Counties shall also consider whether the undue hardship provisions apply before taking any adverse actions. When undue hardship is considered and found not to apply the notice of action for the adverse action shall state that "the undue hardship provisions were considered and found not to apply".

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I. Guarantee Period Extends Beyond the Life Expectancy

The payment schedule on the following page represents a period certain annuity that has not been properly annuitized. It is a payment schedule for a 20-year period certain annuity. The guarantee period of 20-years exceeds the 15-year life expectancy of the annuitant, as determined by the Secretary's tables as of the date the annuity was purchased or the date the payment plan was established, whichever was most recent. In these cases there may be a disqualifying transfer as of the date the annuity was purchased or the date the payment plan was established, whichever was most recent. To determine whether or not the transfer is disqualifying, counties must review the transfer of property guidelines contained in ACWDL 90-01.

Even though the annuity also provides for an unreasonable 12% annual cost of living increase, the federal law requires that payments beyond the life expectancy of the annuitant are to be considered potentially disqualifying transferred assets. Counties must **FIRST** look to the transfer of property guidelines to determine whether or not there has been a disqualifying transfer. If the transfer to purchase the annuity was not a disqualifying transfer then, in these cases, Counties shall consider the cash surrender value of the annuity to be countable property.

To determine the amount that was transferred for less than adequate consideration, determine the percentage of the original purchase price which was transferred to fund the payments which exceed the life expectancy in accordance with the Secretary's tables as of the date of purchase or the date the payment plan was established, whichever was the most recent.



Note: Whenever an annuity has not been properly annuitized counties shall advise the individual that they must attempt to have the annuity annuitized in accordance with these procedures. The balance of the annuity shall be considered unavailable once steps have been taken to annuitize the annuity in accordance with these procedures until the payment(s) are received. Counties shall also consider whether the undue hardship provisions apply before taking any adverse actions. When undue hardship is considered and found not to apply the notice of action for the adverse action shall state that "the undue hardship provisions were considered and found not to apply".

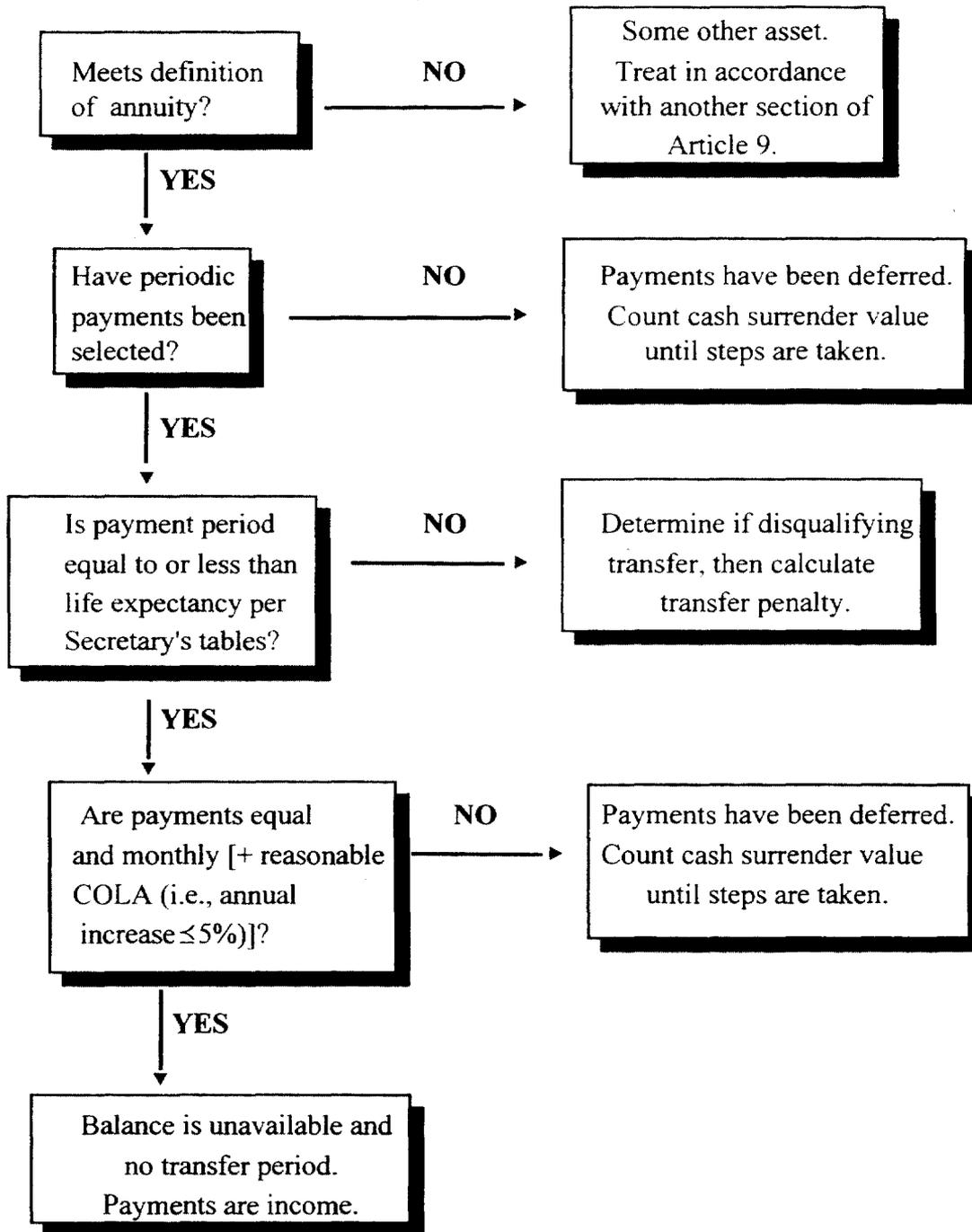
MEDI-CAL ELIGIBILITY PROCEDURES MANUAL

Amount Invested: \$100,000
Rate of Return: 5.00%
Guarantee Period: 20 Years

12% Annual Increase

	Year	Payment
	1	\$2,655.96
	2	\$2,974.68
	3	\$3,331.64
	4	\$3,731.44
	5	\$4,179.21
	6	\$4,680.72
	7	\$5,242.41
	8	\$5,871.50
	9	\$6,576.08
	10	\$7,365.21
	11	\$8,249.04
	12	\$9,238.92
	13	\$10,347.59
Life	14	\$11,589.30
Expectancy	15	\$12,980.02
	16	\$14,537.62
	17	\$16,282.13
	18	\$18,235.99
	19	\$20,424.81
	20	\$22,875.23
	Sum	\$191,369.00
	Sum < LE	\$99,013.72
	Sum > LE	\$92,355.28

**TREATMENT OF ANNUITIES
PURCHASED ON OR AFTER AUGUST 11, 1993**



MEDI-CAL ELIGIBILITY PROCEDURES MANUAL

MALES - LIFE EXPECTANCY TABLE #1 (Office of the Actuary of the Social Security Administration)

AGE	LIFE EXPECTANCY						
0	71.80	30	44.06	60	18.42	90	3.86
1	71.53	31	43.15	61	17.70	91	3.64
2	70.58	32	42.24	62	16.99	92	3.43
3	69.62	33	41.33	63	16.30	93	3.24
4	68.65	34	40.23	64	15.62	94	3.06
5	67.67	35	39.52	65	14.96	95	2.90
6	66.69	36	38.62	66	14.32	96	2.74
7	65.71	37	37.73	67	13.70	97	2.60
8	64.73	38	36.83	68	13.09	98	2.47
9	63.74	39	35.94	69	12.50	99	2.34
10	62.75	40	35.05	70	11.92	100	2.22
11	61.76	41	34.15	71	11.35	101	2.11
12	60.78	42	33.26	72	10.80	102	1.99
13	59.79	43	32.37	73	10.27	103	1.89
14	58.82	44	31.49	74	9.27	104	1.78
15	57.85	45	30.61	75	9.24	105	1.68
16	56.91	46	29.74	76	8.76	106	1.59
17	55.97	47	28.88	77	8.29	107	1.50
18	55.05	48	28.02	78	7.83	108	1.41
19	54.13	49	27.17	79	7.40	109	1.33
20	53.21	50	26.32	80	6.98	110	1.25
21	52.29	51	25.48	81	6.59	111	1.17
22	51.38	52	24.65	82	6.21	112	1.10
23	50.46	53	23.82	83	5.85	113	1.02
24	49.55	54	23.01	84	5.51	114	0.96
25	48.63	55	22.21	85	5.19	115	0.89
26	47.72	56	21.43	86	4.89	116	0.83
27	46.80	57	20.66	87	4.61	117	0.77
28	45.88	58	19.90	88	4.34	118	0.71
29	44.97	59	19.15	89	4.09	119	0.66

MEDI-CAL ELIGIBILITY PROCEDURES MANUAL

FEMALES - LIFE EXPECTANCY TABLE #2 (Office of the Actuary of the Social Security Administration)

AGE	LIFE EXPECTANCY						
0	78.79	30	50.15	60	22.86	90	4.71
1	78.42	31	49.19	61	22.06	91	4.40
2	77.48	32	48.23	62	21.27	92	4.11
3	76.51	33	47.27	63	20.49	93	3.84
4	75.54	34	46.31	64	19.72	94	3.59
5	74.56	35	45.35	65	18.96	95	3.36
6	73.57	36	44.40	66	18.21	96	3.16
7	72.59	37	43.45	67	17.48	97	2.97
8	71.60	38	42.50	68	16.76	98	2.80
9	70.61	39	41.55	69	16.04	99	2.64
10	69.62	40	40.61	70	15.35	100	2.48
11	68.63	41	39.66	71	14.66	101	2.34
12	67.64	42	38.72	72	13.99	102	2.20
13	66.65	43	37.78	73	13.33	103	2.06
14	65.67	44	36.85	74	12.68	104	1.93
15	64.68	45	35.92	75	12.05	105	1.81
16	63.71	46	35.00	76	11.43	106	1.69
17	62.74	47	34.08	77	10.83	107	1.58
18	61.77	48	33.17	78	10.24	108	1.48
19	60.80	49	32.27	79	9.67	109	1.38
20	59.83	50	31.37	80	9.11	110	1.28
21	58.86	51	30.48	81	8.58	111	1.19
22	57.89	52	29.60	82	8.06	112	1.10
23	56.92	53	28.72	83	7.56	113	1.02
24	55.95	54	27.86	84	7.08	114	0.96
25	54.98	55	27.00	85	6.63	115	0.89
26	54.02	56	26.15	86	6.20	116	0.83
27	53.05	57	25.31	87	5.79	117	0.77
28	52.08	58	24.48	88	5.41	118	0.71
29	51.12	59	23.67	89	5.05	119	0.66

MEDI-CAL ELIGIBILITY PROCEDURES MANUAL

E. OBRA '93 TRUST CHARACTERISTICS

Trusts, as classified under OBRA '93, include trusts, SLDs, and annuities established or purchased on or after August 11, 1993, other than by will. Trusts established under OBRA '93 are no longer called Medicaid Qualifying Trusts (MQTs); however, they retain many of the same characteristics.

1. TRUST CHARACTERISTICS

OBRA '93 trusts are established:

- In part or in whole with assets of the individual or spouse,
- On or after August 11, 1993, and
- With income, property or property rights of the individual or individual's spouse.

The following subsection applies to OBRA '93 trusts without regard to:

- ✓ the purposes for which the trust is established,
- ✓ whether the trustee(s) has, or exercises, any discretion under the terms of the trust,
- ✓ any restrictions on when, or whether, distributions may be made from the trust, or
- ✓ any restrictions on the use of the trust assets or distributions.

This means that any trust which meets the basic characteristics outlined above must be considered in accordance with the following procedures in determining eligibility for Medi-Cal. No clause or restriction in the trust, no matter how specifically it applies to availability for Medicaid, Medi-Cal, or other federal or State programs (i.e., special needs trusts, exculpatory clauses), precludes a trust from being considered under these provisions.

2. INCOME OR PROPERTY

- Funds held in OBRA '93 trusts (whether trust income or trust principal) are considered property regardless of when or whether distributions may be made.
- Payments made from OBRA '93 trusts, to or for the benefit of the individual or spouse, are considered income to the individual or spouse whether the payment is made from trust principal or trust income (unlike MQTs or SLDs established on or before August 10, 1993).

3. OBRA '93 EXCEPTIONS

Two types of trusts for disabled individuals, established on or after August 11, 1993 have been excepted from treatment under OBRA '93, and are to be treated in accordance with provisions contained in VII C of this Section.

MEDI-CAL ELIGIBILITY PROCEDURES MANUAL

F. TO WHOM THESE TRUST PROVISIONS APPLY

These provisions apply to any individual or spouse whose assets or property rights, regardless of how little, are used to establish a trust, on or after August 11, 1993, other than by will. An individual shall be considered to have established an OBRA '93 trust if any of the following individuals established the trust:

- ✓ the individual, or
- ✓ the individual's spouse, or
- ✓ a person or entity, including a court or administrative body, with legal authority to act in place of, or on behalf of, the individual or spouse, regardless of whether that person or entity claims to be acting in such a capacity at the time of the action, or
- ✓ a person or entity, including any court or administrative body, acting at the direction or upon the request of the individual or spouse.

G. INDIVIDUAL'S ASSETS FORM ONLY PART OF AN OBRA '93 TRUST

When a trust includes the assets of another person, or persons, as well as the assets of the individual or spouse, the provisions of this section will apply only to that portion of the trust containing the assets of the individual or spouse. In determining the amount of countable property, prorate the property held in the trust, in the month, based on the proportion of the individual's or spouse's assets that have been transferred to the trust.

H. TREATMENT OF OBRA '93 TRUSTS

Once the trust has been categorized as an OBRA '93 trust, review the trust document to determine if the trust is revocable or irrevocable. Depending upon the terms of the trust, the principal and income contained within the trust will be treated in one of three ways:

- ✓ as available property
- ✓ as income, or
- ✓ as a transferred asset.

1. REVOCABLE TRUSTS

- a. The entire amount of trust principal and trust income retained in the trust is treated as available property of the individual or spouse.
- b. Any actual payment from the trust (whether from trust income or trust principal) made to, or for the benefit of the individual or spouse is treated as income to the individual or spouse, in accordance with Article 10.
- c. Any actual payment from the trust which is not made to, or for the benefit of the individual or spouse is considered a transferred asset.



Example: Mr. Baker establishes a revocable trust, with a principal of \$100,000, on March 1, 1994, enters a nursing facility on November 15, 1994, and applies for Medi-Cal on February 15, 1995. Under the terms of the trust, the trustee

MEDI-CAL ELIGIBILITY PROCEDURES MANUAL

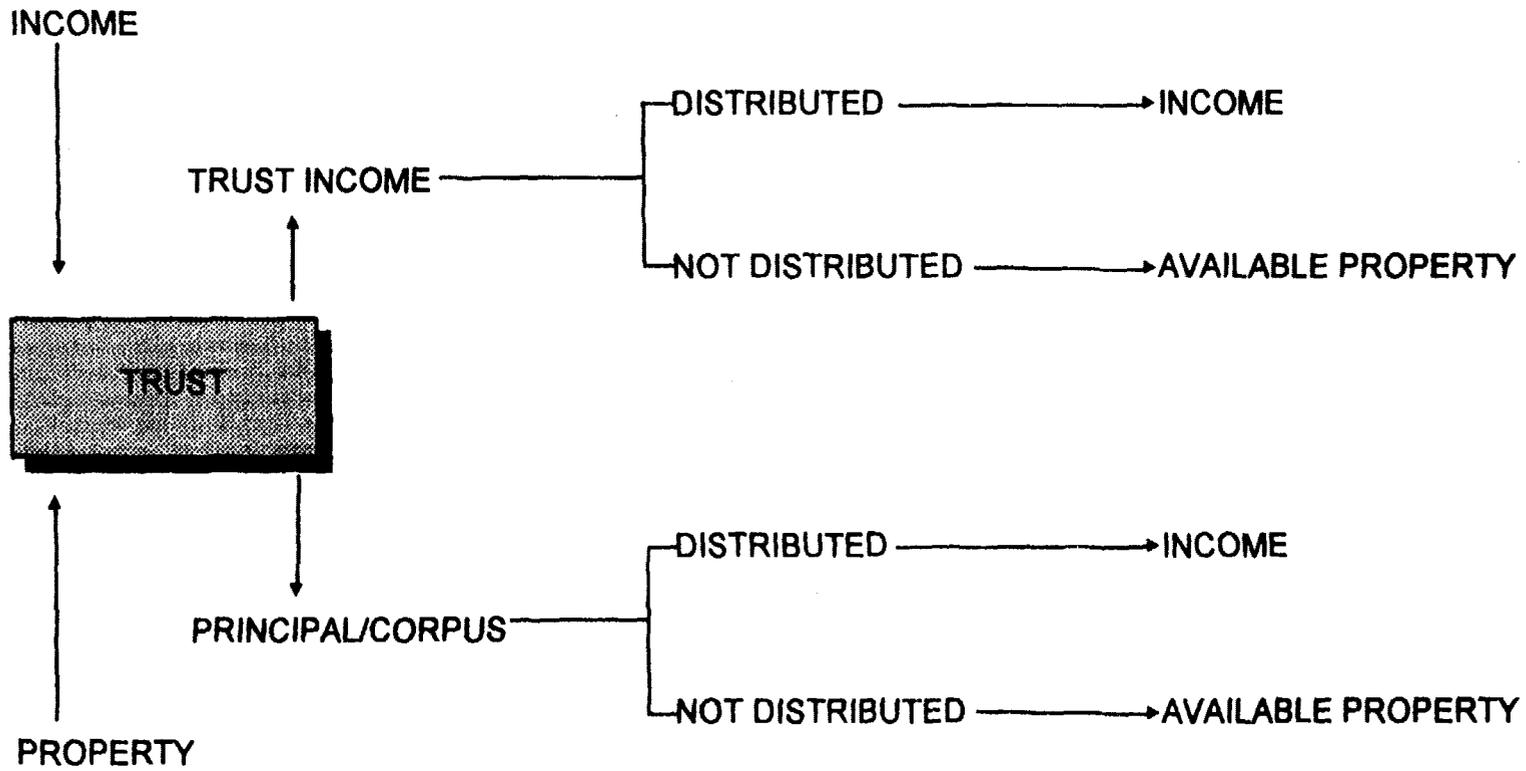
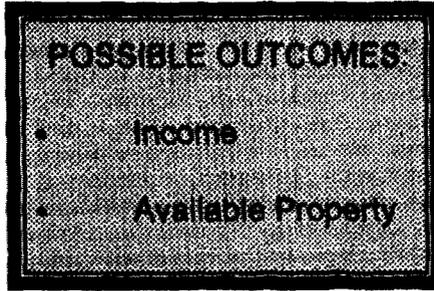
has complete discretion in disbursing funds from the trust. Each month, the trustee disburses \$100 as an allowance to Mr. Baker, and \$500 to a property management firm for the upkeep of Mr. Baker's home, from the trust income. On June 15, 1994, the trustee gives \$50,000 from the trust principal to Mr. Baker's brother.



Discussion:

In this example, the \$100 personal allowance, and the \$500 for upkeep of the house, would count as income each month to Mr. Baker. Because the trust is revocable, the entire value of the trust principal and trust income retained by the trust is considered available property to Mr. Baker. Originally, the trust principal was \$100,000, however, in June 1994 the trustee gave away \$50,000. Only the remaining \$50,000 plus the trust income accrued since the trust was established and which was not disbursed, is countable as available property to Mr. Baker. The \$50,000 would be considered a transferred asset.

OBRA 93: REVOCABLE TRUSTS



MEDI-CAL ELIGIBILITY PROCEDURES MANUAL

2. IRREVOCABLE TRUSTS

a. In the case of an irrevocable trust, where there is some circumstance under which payment **can** be made to, or for the benefit of the individual or spouse, regardless of when the distribution can be made, the following rules apply:

- (1) An actual payment of trust income made to, or for the benefit of the individual or spouse shall be treated as income to that person, in accordance with Article 10.
- (2) An actual payment from the trust principal made to, or for the benefit of the individual or spouse, shall be treated as income to that person, in accordance with Article 10.
- (3) Any portion of trust income that could be paid to, or for the benefit of the individual or spouse, but is not shall be treated in accordance with the following.
 - (a) If the terms of the trust state that undistributed trust income is principal/corpus, then review these procedures for the treatment for principal/corpus.
 - (b) If the terms of the trust state that undistributed trust income remains trust income, then treat as available property.
- (4) Any portion of trust principal that could be paid to, or for the benefit of the individual or spouse, but is not shall be treated as available property of that person.
- (5) Any portion of trust principal or trust income that must be paid in the future, to or for the benefit of the individual or spouse, shall be treated as available property of that person regardless of when payment is, or can be made.
- (6) Any actual payment of trust principal, which is not made to or for the benefit of the individual or spouse shall be treated as a transferred asset.
- (7) Any actual payment(s) of trust income, which is not made to, or for the benefit of the individual or spouse, shall be treated as a transferred asset.



Example:

Mr. Baker establishes an irrevocable trust, with a principal of \$100,000, on March 1, 1994, enters a nursing facility on November 15, 1994, and applies for Medi-Cal on February 15, 1995. Under the terms of the trust, the trustee has complete discretion in disbursing funds from the trust. Each month, the trustee disburses \$100 as an allowance to Mr. Baker, and \$500 to a property management firm for the upkeep of Mr. Baker's home, from the trust income. On June 15, 1994, the trustee gives \$50,000 from the trust principal to Mr. Baker's brother.



Discussion:

The \$50,000 trust principal is considered to be available property because the trustee has discretion to disburse the entire amount. Therefore, there is some circumstance under which payment can be made to, or for the benefit of the individual or spouse.

The \$100 personal allowance and \$500 for home upkeep are income to Mr. Baker. The \$50,000 left after the gift to Mr. Baker's brother is available property to Mr. Baker. The \$50,000 gift to Mr. Baker's brother would be

MEDI-CAL ELIGIBILITY PROCEDURES MANUAL

treated as a transferred asset. The \$50,000 gift was a payment made from the trust principal that was not for the benefit of Mr. Baker.

b. In the case of an irrevocable trust where:

- ✓ payments from all or some portion of the trust cannot, at any time or under any circumstance, be made to or for the benefit of the individual or spouse,
or
- ✓ payments to or for the benefit of the individual or spouse have been stopped,
or
- ✓ provisions for payments never existed,

the following rules apply.

- (1) When all, or a portion, of the trust principal cannot be paid to or for the benefit of the individual or spouse because provisions for distribution never existed or the provisions for distribution have been stopped, that portion of trust principal shall be treated as a transferred asset.
- (2) When all, or a portion, of the trust income cannot be paid to or for the benefit of the individual or spouse because provisions for distribution never existed, treat the trust income as principal/corpus and review the terms of the trust regarding the treatment of the trust principal/corpus.
- (3) When all, or a portion, of the trust income cannot be paid to or for the benefit of the individual or spouse because the provisions for distribution have been stopped treat in accordance with the following.
 - (a) If undistributed income becomes principal/corpus according to the terms of the trust, then review the terms of the trust regarding the treatment of principal/corpus.
 - (b) If undistributed trust income remains income under the terms of the trust then treat as a transfer of assets.



Example:

Mr. Baker establishes an irrevocable trust, with a principal of \$100,000, on March 1, 1994, enters a nursing facility on November 15, 1994, and applies for Medi-Cal on February 15, 1995. Under the terms of the trust, the trustee has complete discretion in disbursing income from the trust; however the trustee is precluded by the terms of the trust from disbursing any of the principal of the trust to, or for the benefit of Mr. Baker. Each month, the trustee disburses \$100 as an allowance to Mr. Baker, and \$500 to a property management firm for the upkeep of Mr. Baker's home, from the trust income. On June 15, 1994, the trustee gives \$50,000 from the trust principal to Mr. Baker's brother.



Discussion:

The \$100 and \$ 500 are disbursed from trust income and counted as income to Mr. Baker. Because none of the principal can be disbursed to Mr. Baker, the entire value of the principal at the time the trust was created (\$100,000 in March, 1994) is treated as a transferred asset.

MEDI-CAL ELIGIBILITY PROCEDURES MANUAL

c. Determination of available property contained in an irrevocable trust:

Refer to the trust document to determine whether payments can, under any circumstances, be made from the trust, to or for the benefit of the individual or spouse, regardless of when payments may be made.



Example #1: An irrevocable trust provides that only \$1,000 of the trust principal contained in a \$20,000 trust can be paid out when the individual reaches the age of 18.



Discussion: If the trust document provides for no other payments, only the \$1,000 would be treated as available property. The remaining \$19,000, (which cannot under any circumstances be paid to, or for the benefit of that individual) would be considered a transferred asset.



Example #2: An irrevocable trust provides that \$40,000 of the trust principal contained in a \$100,000 trust can be paid by the trustee only in the event that the trustor needs a heart transplant.



Discussion: There is a circumstance, however remote, when a payment can be made from \$40,000 of the trust principal. Therefore, the full \$40,000 would be considered available property to the trustor, regardless of when or whether the payment is made. The remaining \$60,000 cannot, under any circumstances, be paid to, or for the benefit of that individual, and is considered a transferred asset.

OBRA 93: IRREVOCABLE TRUSTS

Possible outcomes

- Income
- Available Property
- Transfer of Assets

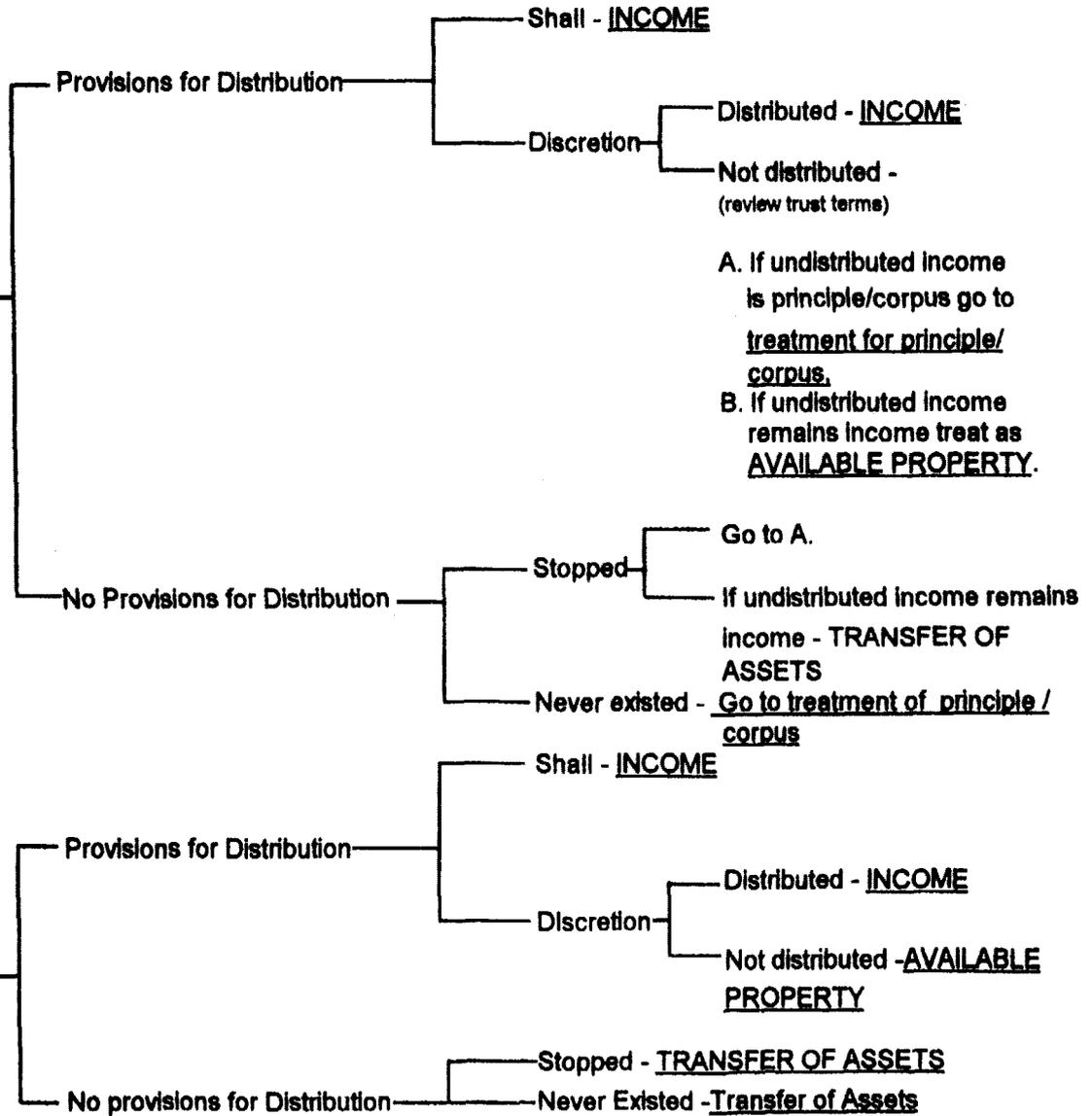
INCOME

TRUST INCOME



**PRINCIPAL/
CORPUS**

PROPERTY



MEDI-CAL ELIGIBILITY PROCEDURES MANUAL

I. UNDUE HARDSHIP

Eligibility cannot be denied or discontinued without first considering whether or not undue hardship exists. In considering the undue hardship provisions the individual must demonstrate that the application of the OBRA '93 trust provisions would result in undue hardship. Undue hardship does not exist when application of the trust provisions merely causes the individual, parent or spouse inconvenience.

1. For undue hardship to exist, all of the conditions in a-d (below) must be present except that subsection 1d does not apply in the case of an annuity.
 - a. The trust assets cannot, under any circumstances, be used to provide for health care or medical needs of the individual, and
 - b. Health care cannot be obtained from, and medical needs cannot be met by, any source other than Medi-Cal without depriving the individual of food, clothing, shelter, or other necessities of life, and
 - c. The individual's parents (if the individual is under 21) or the individual's spouse, do not have assets to provide for health care and medical needs, or health care coverage for the individual without depriving themselves of food, health care or medical needs, clothing, shelter, or other necessities of life, and
 - d. The courts have denied a good faith petition to release the trust assets to pay for the required medical care. A petition to release the trust assets shall not be considered a valid good faith petition if the petition contains language that suggests or requests the courts do anything other than release the trust assets needed to pay for the required medical care. The County must verify the petition by viewing both the petition and the court order.
2. **No person shall be made ineligible to the extent otherwise exempt income or property is held in trust.**
3. Annuities purchased between August 11, 1993 and March 1, 1996, which cannot be annuitized to comply with treatment under OBRA '93, shall continue to be treated in accordance with ACWDL 90-01, Section 50402. Written verification must be obtained from the entity that issued the annuity verifying that the annuity cannot be restructured.

If undue hardship does apply, only the treatment of the trust under OBRA '93 is waived. The trust must then be considered and eligibility determined under Title 22, Section 50489.9 (a) and (c).

If undue hardship is found not to apply, the applicant/beneficiary must receive notice of any adverse actions. This notice must include a statement indicating that the provisions of undue hardship were considered and found not to exist.

J. CONSIDERATIONS FOR TRANSFER OF ASSETS

To calculate the period of ineligibility for making a disqualifying transfer of assets, the date of transfer and the uncompensated value must be determined. To determine whether a period of ineligibility for such a transfer should be assessed, see the Transfer of Asset guidelines.

MEDI-CAL ELIGIBILITY PROCEDURES MANUAL

1. DATE OF TRANSFER

The date of the transfer is considered to be one of the following depending on the situation. One or more of the following may occur in a single trust.

- a. The date the trust was established (the date the original trust document was dated and signed).
- b. The date on which payment to the individual or spouse stopped.
- c. The date assets were made unavailable by a transfer into an already existing trust.
- d. The date available trust assets were transferred to someone or some entity not for the benefit of the individual or spouse.



Example #1: A revocable trust has a triggering clause making it irrevocable and the trust assets unavailable if the beneficiary enters an institution.



Discussion: The date of transfer would be the date of institutionalization since that is when the trust became irrevocable and the date trust disbursement was stopped.



Example #2: An "income only trust" may have a clause to dissolve the trustees' power to make distributions after the date the individual or spouse enters into an institution.



Discussion: There may be two transfers. If the income only trust were established with assets or property rights of the individual or spouse then the date of the first transfer would be the date the trust was established. The date of the second transfer of the income would be the date the individual entered the institution since that is the date trust disbursement stopped.



Note: In situations where trust principal or trust income is considered transferred as a result of a "trigger" when an individual enters a nursing facility and the individual is discharged, the trust principal and trust income may once again be considered available.

See Transfer of Property/Asset guidelines for voiding all or part of a period of ineligibility and calculating a potential overpayment for any month where there would have been excess property had the trust principal and/or trust income not been considered transferred.

2. UNCOMPENSATED VALUE DETERMINATION

In treating a trust or portions of a trust that cannot at any time, or under any circumstances, be distributed to the individual or spouse, the value of the transferred amount shall be its value on the date of establishment, the date that disbursement to the individual or spouse was stopped, or the date the assets were transferred into an already existing trust, depending upon the situation. One or more situations may apply in a single trust.

- a. In determining the value of the trust or the portions of the trust that cannot, under any circumstances, be distributed to or for the benefit of the individual or spouse, do not subtract from the trust the value of any payment made (this refers to a payment made to someone else, not for the benefit of the individual or spouse), for whatever purpose, after the date the trust was established.

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- b. If disbursement to the individual or spouse was stopped, then the uncompensated value of the portions of the trust described in a (above) shall be the value of the trust assets on the day disbursement was stopped.
- c. If funds were added to that portion of the trust described in a (above), after the date the trust was established or disbursement was stopped, the transfer of those funds is considered another transfer of assets.



Example:

Mr. Baker establishes an irrevocable trust, with a principal of \$100,000, on March 1, 1994, enters a nursing facility on November 15, 1994, and applies for Medi-Cal on February 15, 1995. Under the terms of the trust, the trustee has complete discretion in disbursing income from the trust; however the trustee is precluded by the terms of the trust from disbursing any of the principal of the trust to, or for the benefit of Mr. Baker. Each month, the trustee disburses \$100 as an allowance to Mr. Baker, and \$500 to a property management firm for the upkeep of Mr. Baker's home, from the trust income. On June 15, 1994, the trustee gives \$50,000 from the trust principal to Mr. Baker's brother.



Discussion:

The trust is irrevocable and none of the trust principal can be distributed. Therefore, the transfer of the entire value of the principal at the time the trust was created (\$100,000 in March 1994) is treated as a transferred asset. The trust income can be distributed. Therefore, the \$100 and \$500 disbursed from trust income are counted as income to Mr. Baker.

The date of transfer would be the date the trust was established, March 1994, the date the funds were transferred. The term unavailable, as used herein, refers to the portion of the trust that cannot be disbursed to the individual or spouse. The fact that \$50,000 was actually transferred out of the trust, to Mr. Baker's brother, does not alter the amount of assets transferred by Mr. Baker. The transfer to Mr. Baker's brother was not made to, or for the benefit of Mr. Baker. The transfer amount remains \$100,000, even after the gift to Mr. Baker's brother.

If, at some point after the establishment of the trust, Mr. Baker placed another \$50,000 in the trust, none of which could be disbursed to him, the transfer of that \$50,000 would be treated as another transfer of assets.

MEDI-CAL ELIGIBILITY PROCEDURES MANUAL

VI. TRUSTS ESTABLISHED PRIOR TO AUGUST 11, 1993

A. BACKGROUND

Section 50489.1 describes the treatment of trusts established prior to August 11, 1993 and complies with federal law as it existed for those trusts [42 U.S.C., Section 1396 a(k)]. That section defined Medicaid Qualifying Trusts (MQTs) and Similar Legal Devices (SLDs) and provided that trust principal and income may be considered available even though they may not be actually available, or even though the terms of the MQT or SLD limit the usage of funds to specific items or services.

B. IMPLEMENTATION

Counties were instructed to implement these procedures no later than May 1, 1993, at application and redetermination, per ACWDL 93-07. No potential overpayment was to be calculated due to a delay in implementation; however, in cases where the revised rules resulted in an increase in the share of cost, ineligibility due to excess resources or a period of ineligibility for nursing facility level of care, counties were instructed to issue an adequate 10-day notice and take the action prospectively.

C. DEFINITIONS SPECIFIC TO SIMILAR LEGAL DEVICES (SLDs) AND MEDICAID QUALIFYING TRUSTS (MQTs)

1. "Individual" - For purposes of this section, the term individual means a person or spouse who establishes (or on whose behalf is established) an MQT or SLD with his/her property or property rights and who is a beneficiary of that MQT or SLD.
2. "Medicaid Qualifying Trust (MQT)" - An MQT is a trust that meets ALL of the following conditions:
 - a. Was established, prior to August 11, 1993, other than by will, by the individual who is a beneficiary of the MQT or SLD, by the individual's spouse, or by a person who is appointed to act as guardian or conservator, or by a person who is the legal representative of that individual.



Note: Persons listed above, other than the individual, shall be considered to be acting, on behalf of that individual, as long as their actions involve funds originating with that individual, awarded to that individual, or involve that individual's MQT or SLD.

- b. Provides that the individual or spouse receives all or part of the payments of the trust dispersed either directly or to another person or entity on behalf of that individual regardless of the limitations contained in the trust documents on the use of the funds.
- c. Gives the trustee any discretion in distributing funds.

An MQT may also be:

- Revocable or irrevocable, and

MEDI-CAL ELIGIBILITY PROCEDURES MANUAL

- Established with the intent of enabling the individual to qualify for Medi-Cal (see "Note" below) or for another purpose.



Note: The term "Medicaid Qualifying Trust" does not mean that the individual is automatically eligible for Medi-Cal. An individual with a trust which meets the definition of an MQT **IS LIKELY TO BE INELIGIBLE FOR MEDI-CAL** due to excess property.

3. "Similar Legal Device (SLD)" - An SLD is any legal instrument, device, or arrangement (written or oral) that involves the transfer of property or property rights from an individual or entity (transferor) to another individual or entity (transferee) with the intent that the property or property rights be held, managed, or administered by an individual or entity for the benefit of the transferee. An SLD must meet all of the conditions specified in the definition of an MQT however, an arrangement may be considered an SLD even if it is not called a trust and does not qualify as a trust under state law.

D. TREATMENT OF AN MQT OR SLD

The characteristics of the MQT or SLD will determine how the MQT or SLD is to be considered for eligibility purposes. Review the MQT or SLD to determine whether it is revocable or irrevocable. Depending on the terms of the trust, the principal and income contained in the trust will be treated in one of three ways:

- ✓ as available property.
- ✓ as income, or
- ✓ as a transfer of property or assets.

1. REVOCABLE MQT OR SLD -

- a. The entire amount of principal contained in an MQT or SLD is available property.
- b. The entire amount of MQT or SLD income is available income and is subject to treatment under Article 10.



Example: Ann Jones is applying for Medi-Cal on behalf of her husband Bob who is in long-term care. She declares that she and her husband placed all of their property into a living trust on September 20, 1992. Ann and Bob are both trustors and both are named as trustees. The trust document has been set up to be revocable and contains approximately \$100,000 in personal property, as well as the principal residence, and one other piece of non-income producing real property. Note: The \$100,000 will produce trust income.



Discussion: A living trust is usually established to avoid probate and to minimize estate taxes. When establishing a living trust, titles of real estate and/or other property or property rights are transferred to a trustee and held in trust while the transferors are still alive. The trust document specifies how the property is to be managed and distributed during the trustor's lifetime and after death. Usually the individual who creates a living trust makes the trust revocable and names him/herself as trustee thereby, retaining control over his/her property

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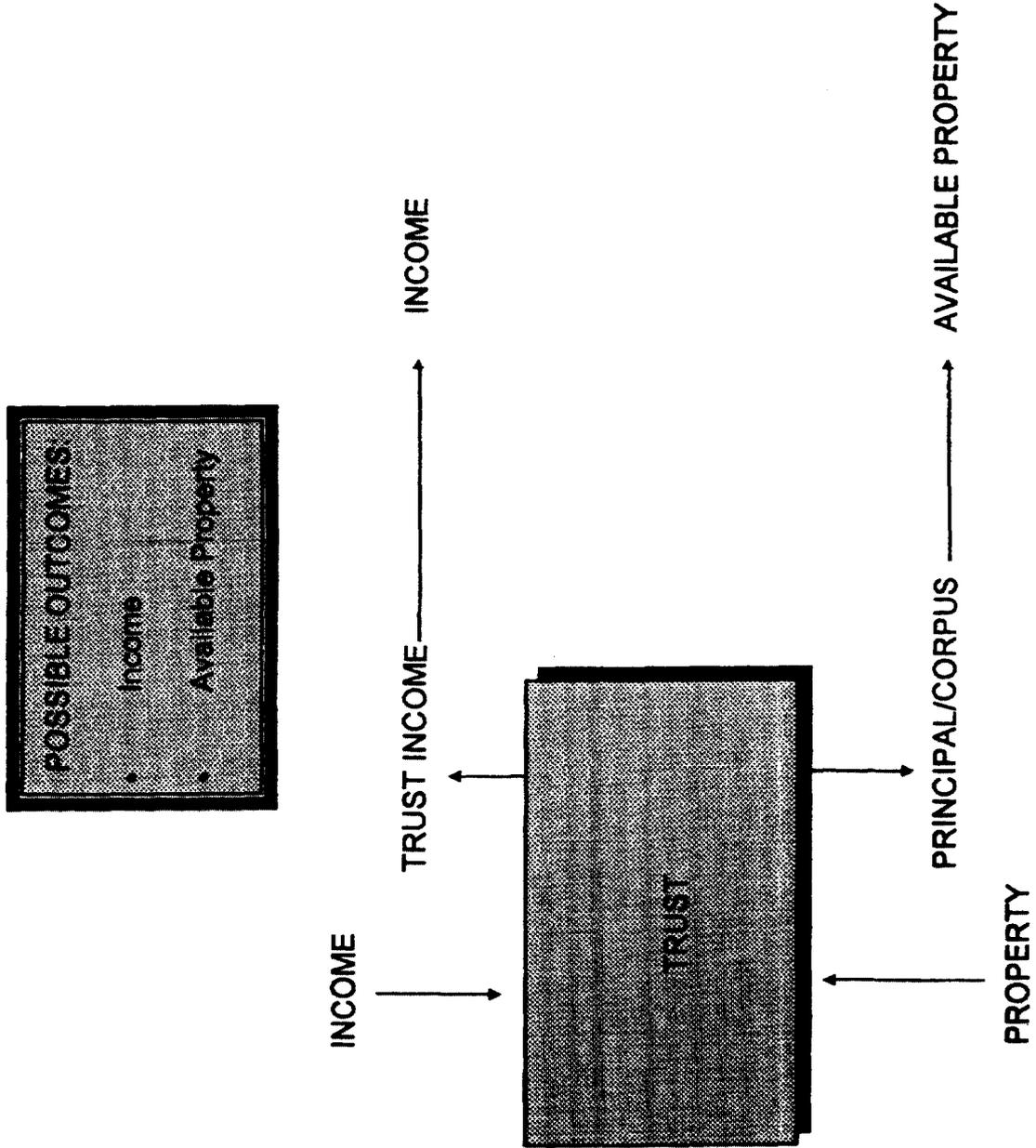
during his/her lifetime. A living trust established by the individual or spouse prior to August 11, 1993 is considered an MQT as long as the trustee has any discretion in distributing funds and as long as the trustor is also a beneficiary of at least some payments from the trust.

In this example, the living trust is an MQT because it meets the following requirements:

- ✓ the trust was established prior to August 11, 1993, and
- ✓ the trust was established by the applicant and his/her spouse, the trustors, and
- ✓ the trustees, (the applicant and spouse) have at least some discretion over the trust principal and/or trust income contained in the trust, and
- ✓ the applicant and spouse are trust beneficiaries to all or a part of the payments from the trust.

Since the trust is revocable by the applicant and he/she has the right to the proceeds, the entire amount of principal in the trust is considered available property and trust income is available income.

MEDICAID QUALIFYING TRUSTS: REVOCABLE TRUSTS



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2. IRREVOCABLE MQT OR SLD -

The maximum amount of trust principal and trust income that the trustee may distribute either directly or to another person or entity on behalf of the individual, if the trustee were to exercise full discretion under the terms of the MQT or SLD, is considered available:

- ✓ Whether or not the trustee is actually releasing it, and
- ✓ Regardless of any limitations on the use of the funds that may be contained in the MQT or SLD.

a. Principal

- (1) Any amount distributed from the principal of the MQT or SLD to the individual or spouse, or to another person or entity on behalf of that individual is available property.
- (2) The maximum amount from the principal that the trustee may distribute to the individual or spouse, or to another person or entity on behalf of that individual, if the trustee were to exercise full discretion under the terms of the MQT or SLD, but which is not distributed, is available property.
- (3) Any amount of trust principal that the trustee has no discretion to release to the individual or spouse, or to another person or entity on behalf of that individual, shall be considered transferred property as of the date the trust was established or the date disbursement is discontinued.

b. Income

- (1) Any amount distributed from the income of the MQT or SLD to the individual or spouse, or to another person or entity on behalf of that individual, is treated as available income and is subject to treatment under Article 10.
- (2) The maximum amount that the trustee may distribute to the individual or spouse, or to another person or entity on behalf of that individual, from trust income, if the trustee were to exercise full discretion under the terms of the MQT, but which is not distributed, is determined in accordance with (A) or (B) below.

Depending on the terms of the trust any undistributed income will either remain trust income or become trust principal/corpus. To evaluate undistributed income, first review the terms of the trust to determine whether undistributed income remains trust income or if the undistributed income becomes principal. Then determine the maximum extent of trustee discretion over these funds and apply (A) or (B) below.

(A) If undistributed trust income remains trust income, count as income in the first month distribution was possible and available property the month following. If a payment is made at a later time, consider this a conversion of property.

(B) If undistributed trust income becomes principal, count as income in the first month distribution was possible, and review the terms of the

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trust to determine treatment of principal for following months. Then follow the procedures for counting trust principal.

- (3) If the trust document does not address the distribution of trust income at all trust income immediately becomes trust principal/corpus. Review the terms of the trust to determine the maximum extent of the trustee's discretion over trust principal and treat in accordance with the procedures for evaluating trust principal/corpus.
- (4) Any amount of trust income that the trustee has no discretion to release to the individual or spouse, or to another person on behalf of that individual, shall be treated in accordance with (A) and (B) below after reviewing the terms of the trust.
 - (A) If undistributed trust income remains trust income under the terms of the trust it shall be considered a transfer of assets, if a transfer of income to the trust occurred on or after August 11, 1993. (See Section F Consideration for Transfer of Assets)
 - (B) If undistributed trust income is principal/corpus under the terms of the trust, review the trust to determine how principal/corpus may be distributed and follow the procedures for evaluating principal/corpus.



Example:

Ann Jones is applying for Medi-Cal on behalf of her husband Bob who is in long-term care. She declares that she and her husband placed all of their property into a living trust on September 20, 1992. Ann and Bob are both trustors and both are named as trustees. The trust document has been set up to be irrevocable and provides the trustees with full discretion regarding the distribution of principal/corpus and trust income. The trust contains approximately \$100,000 in personal property, as well as the principal residence, and one other piece of non-income producing real property. Note: the \$100,000 will produce trust income.



Discussion:

A living trust is usually established to avoid probate and to minimize estate taxes. When establishing a living trust, titles of real estate and/or other property or property rights are transferred to a trustee and held in trust while the transferors are still alive. The trust document specifies how the property is to be managed and distributed during the trustor's lifetime and after that individual's death. Usually the individual who creates a living trust names themselves as trustee; thereby, retaining control over their property during their lifetime. When property or property rights are placed into an **irrevocable living trust**, the trust documents must be examined to determine the maximum extent of the trustee's discretion to make disbursements to the individual or spouse, or to another person or entity on behalf of that individual, in order to determine the amount that may be considered available property or income. A living trust established by the individual or spouse prior to August 11, 1993 is considered an MQT as long as the trustee has any discretion in distributing funds and as long as the trustor is also a beneficiary of at least some payments from the trust.

In this example, the living trust is an MQT because it meets the following requirements:

- ✓ the trust was established prior to August 11, 1993, and

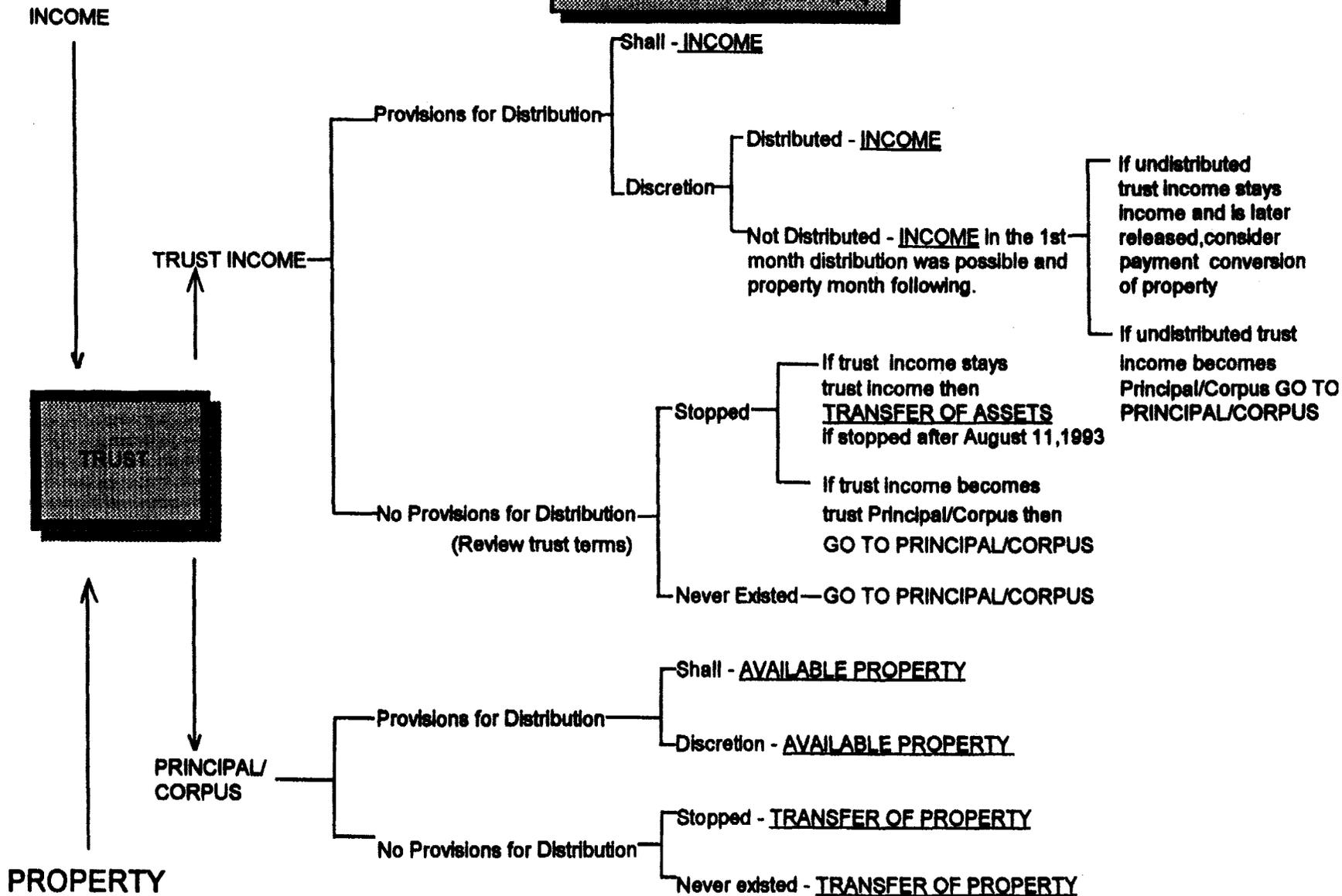
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- ✓ the trust was established by the applicant and his/her spouse, the trustors, and
- ✓ the trustees, (the applicant and spouse) have at least some discretion over the trust principal and/or trust income contained in the trust, and
- ✓ the applicant and spouse are trust beneficiaries to all or a part of the payments from the trust.

Even though the trust is irrevocable, the applicant has discretion over the full amount of trust principal and trust income, therefore the entire amount in the trust is considered available property and available income.

MEDICAID QUALIFYING TRUST : IRREVOCABLE

Possible outcomes:
 Income
 Available Property
 Transfer of Assets/Property



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E. TRANSFERS OF PROPERTY/ASSETS CONSIDERATIONS

To calculate the period of ineligibility for making a transfer of property/assets, the date of transfer and the uncompensated value must be determined. To determine whether or not a period of ineligibility for such a transfer should be assessed, see the Transfer of Property/Asset guidelines.

1. DATE OF TRANSFER

The date of the transfer is considered to be one of the following depending upon the situation. One or more of the following may occur in a single trust.

- a. The date the MQT or SLD was established (the date the original document was dated and signed).
- b. The date on which disbursement to the individual or spouse was discontinued.
- c. The date trust principal or trust income is made unavailable to the individual or spouse by a subsequent transfer into an already existing MQT or SLD.

For example, a revocable MQT or SLD may have a triggering clause making it irrevocable and unavailable if the beneficiary enters an institution. The date of transfer would be the date of institutionalization since that is when the MQT or SLD became irrevocable and the date trust disbursement was stopped. Another example would be when an income only MQT or SLD with a clause that terminates the trustee's power to make distributions after the date the individual or spouse enters into an institution.



Note: In situations where trust principal or trust income is considered transferred as a result of a "trigger" when an individual enters a nursing facility and the individual is discharged, the trust principal and trust income may once again be considered available.

See Transfer of Property/Asset guidelines for voiding all or part of a period of ineligibility and calculating a potential overpayment for any month where there would have been excess property had the trust principal and/or trust income not been considered transferred.

2. UNCOMPENSATED VALUE DETERMINATION

In treating an MQT or SLD or portions of an MQT or SLD, which cannot at any time or under any circumstances be paid to the individual or spouse, the value of the transferred amount its value on the date of establishment of the trust or the date that disbursement to the individual or spouse was stopped, or the date funds were transferred into an already existing trust.

- a. To determine the value of the MQT or SLD, or the portions of the MQT or SLD which cannot be paid to the individual or spouse, do not subtract from the trust the value of any payment made, (this refers to a payment made to someone else not for the benefit of the individual or spouse) for whatever purpose, after the date that the MQT or SLD was established.
- b. If disbursement to the individual or spouse was stopped, then the uncompensated value of the portion of the trust described in a (above) shall be the value of trust property/assets on the day disbursement was stopped.
- c. If funds were added to that portion of the MQT or SLD which could not be distributed to the individual or spouse, after the date the trust was established or the date

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disbursement was stopped. The transfer of those funds is considered another transfer of property/assets.



Example:

Mr. Baker established a \$100,000 irrevocable income-only trust in March 1993 with his own funds. The trustee is precluded by the MQT from disbursing any of the principal of the MQT to, or for the benefit of Mr. Baker but \$50,000 was distributed to Mr. Baker's brother. The trustee can disburse income from the MQT. The \$100 personal allowance and the \$500 payment for upkeep of Mr. Baker's home are disbursed from the MQT income is counted as income to Mr. Baker.



Discussion:

Because none of the principal can be disbursed to Mr. Baker, the entire value of the principal at the time the MQT was created (\$100,000 in March, 1993) is treated as transferred property.

The date of transfer would be the date the MQT was established (March 1993) since that is the date that the funds were made unavailable to Mr. Baker. The fact that \$50,000 was actually transferred out of the trust, to Mr. Baker's brother, does not alter the uncompensated value to Mr. Baker. The transfer of \$100,000 to the trust in March 1993, was not made to, or for the benefit of Mr. Baker. The uncompensated value remains \$100,000, even after the gift to Mr. Baker's brother.

If, at some point after the establishment of the MQT, Mr. Baker placed an additional \$50,000 in the trust, none of which could be disbursed to him, the transfer of that \$50,000 would be treated as another transfer of property/assets.

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VII. TRUSTS THAT ARE NOT MQTs, SLDs, OR OBRA '93 - REGARDLESS OF THE DATE ESTABLISHED

A. OVERVIEW

Trusts or SLDs that do not meet the characteristics for treatment in accordance with OBRA '93, and that are not MQTs or SLDs established prior to August 11, 1993, shall be treated in accordance with Section 50489.9. Such trusts may include, but are not limited to those contained in the list below.

- Trusts or SLD's established by a will. (The Medi-Cal applicant/beneficiary is an heir.)
- Certain trusts established for disabled individuals on or after August 11, 1993.
- Blocked accounts established prior to August 11, 1993, which cannot be distributed until a minor reaches age 18.
- Trusts established prior to April 7, 1986, solely for the benefit of a mentally retarded person who resides in an intermediate care facility for the mentally retarded.
- Trusts established by a grandparent with his/her own property for a grandchild's college education, etc.
- Trusts established by the community for the medical and social service needs of an individual.
- Trust accounts opened under the California Uniform Transfers to Minors Act (CUTMA or UTMA) for a child with an adult named as custodian. (California Probate Code, Section 3900 et seq.)

B. AVAILABILITY AND TREATMENT

Review the trust document to determine if the trust is revocable or irrevocable. Depending on the terms of the trust, it may be treated in one of five ways:

- ✓ un/available property, or
- ✓ un/available income, or
- ✓ transfer of assets.



Note: Any trust established by the community designated for medical and social service needs of an individual shall be considered unavailable. The individual has no legal right, power, or authority to use the funds for his/her support.

MEDI-CAL ELIGIBILITY PROCEDURES MANUAL

1. REVOCABLE TRUSTS

The entire amount of funds held in a revocable trust shall be considered totally available to the Medi-Cal applicant, beneficiary, his/her spouse or member(s) of the MFBU as long as they have the legal right, power and authority to revoke the trust and the right to use the funds.

- a. Trust principal is available property
- b. Trust interest is income and is treated in accordance with Article 10. If the trust income is not distributed in the month of receipt, the trust income is considered income in the month received and is treated as available property in the month following receipt.
- c. Trust assets (income and principal) are not available until distributed when the individual does not have the legal right, power, and authority to revoke the trust and to use trust proceeds.

2. IRREVOCABLE TRUSTS

The funds in an irrevocable trust shall be considered available only if they are actually distributed.

- a. Funds distributed from trust income shall be considered income in accordance with Article 10.
- b. Funds distributed from trust principal shall be considered available property.

C. TRUSTS ESTABLISHED ON OR AFTER AUGUST 11, 1993 FOR DISABLED INDIVIDUALS

Two types of trusts established on or after August 11, 1993, specifically for disabled individuals, have been excepted from treatment under the OBRA '93 provisions. These two types, Individual Trusts and Pooled Trusts, are established with the assets or property rights of disabled individuals and are to be treated in accordance with Section 50489.9 described in B above. Treatment is effective no earlier than October 1, 1993 at application and redetermination.



Note: Transfer of asset provisions do not apply to Individual and Pooled Trusts for Disabled Individuals established on or after August 11, 1993 unless there is an addition or augmentation to that trust after the individual or spouse reaches age 65 [refer to Section C(3) below].

If a trust is established on or after August 11, 1993 for a disabled individual or disabled spouse, with his/her assets or property rights, which meets the criteria for an **Individual Trust** except that the disabled individual or disabled spouse is age 65, or older, it shall be treated as an OBRA '93 trust pursuant to Section 50489.5 and the exceptions discussed in this subsection shall not apply. If a trust is established on or after August 11, 1993 for a disabled individual or disabled spouse, with his/her assets, which meets the criteria for a **Pooled Trust** except that the disabled individual or disabled spouse is age 65, or older, the transfer may be considered a disqualifying transfer of assets. The Pooled Trust shall continue to be treated under the following procedures.

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1. INDIVIDUAL TRUST CHARACTERISTICS

Individual trusts must have all of the following conditions:

- a. Was established on or after August 11, 1993, and
- b. Was established for the benefit of the disabled individual or disabled spouse, by a parent, grandparent, legal guardian of the individual, or court, and
- c. Contains the assets or property rights of the disabled individual or disabled spouse who was both:
 - (1) under the age of 65 when the trust was established whether or not he/she is currently age 65 or over, and
 - (2) who, at the time the trust was established, was determined to be disabled as verified in accordance with Title 22, Section 50167(a) and who is currently determined to be disabled, and
- d. Provides that, upon the death of the disabled individual or disabled spouse or upon termination of the trust, DHS shall receive all assets remaining in the trust up to an amount equal to the total medical assistance paid on behalf of that individual by Medi-Cal.

In addition, there is no requirement in State or federal law that DHS is obligated to submit any type of claim in order to be reimbursed, nor is the State required to include reimbursement from this type of trust as part of its estate recovery process. It is the responsibility of the trustee to contact DHS to obtain the dollar amount of medical assistance provided by DHS and then submit that amount, or the amount remaining in the trust, whichever is less, to DHS Recovery Branch. Any trust which contains provisions allowing reimbursement of medical assistance provided only upon submission of a "claim" or a "proper claim", shall not be considered an "Other" trust and shall be treated as an OBRA '93 trust under Procedures Section 9JV.



Note: When a disabled individual or disabled spouse has resided in more than one state, the trust must provide that the funds remaining in the trust be distributed to each state in which the individual received Medicaid, based on the state's proportionate share of the total amount of Medicaid benefits paid by all of the states on behalf of the individual.

2. POOLED TRUST CHARACTERISTICS

Pooled trusts must have all the following conditions:

- a. Established on or after August 11, 1993, and
- b. Established and managed by a non-profit association, and
- c. Contains the assets of the individual or spouse who is determined to be currently disabled as verified in accordance with Title 22, Section 50167 (a)(1), and
- d. Maintains a separate account for each beneficiary of the trust (but for purposes of investment and management of funds, the trust pools these accounts), and

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- e. Provides that DHS, upon the death of the disabled individual or disabled spouse, receive all amounts remaining in that individual's account, equal to the amount of medical assistance paid on behalf of that individual to the extent that amounts remain in that individual's account and are not retained by the trust to cover the costs of that individual's remaining management and investment fees, outstanding bills that fall within the terms of the trusts, and burial/funeral expenses.

In addition, there is no requirement in State or federal law that DHS is obligated to submit any type of claim in order to be reimbursed, nor is the State required to include reimbursement from this type of trust as part of its estate recovery process. It is the responsibility of the trustee to contact DHS to obtain the dollar amount of medical assistance provided by DHS and then submit that amount, or the amount remaining in the trust, whichever is less, to DHS Recovery Branch. Any trust which contains provisions allowing reimbursement of medical assistance provided only upon submission of a "claim" or a "proper claim", shall not be considered an "Other" trust and shall be treated as an OBRA '93 trust under Procedures Section 9JV.



Note: When a disabled individual or disabled spouse has resided in more than one state, the trust must provide that the funds remaining in the trust be distributed to each state in which the individual received Medicaid, based on the state's proportionate share of the total amount of Medicaid benefits paid by all of the states on behalf of the individual.

- f. Each account is established solely for the benefit of the disabled individual or the disabled spouse by the disabled individual, disabled spouse, his or her parents or grandparents, the legal guardian of that individual, or by a court.

- (1) The account assets are to benefit no one other than the disabled individual or disabled spouse for whose benefit the account was established, from the time the account was established until DHS' interest has been paid. If the account assets are not solely for the benefit of the disabled individual or disabled spouse, then the trust is to be treated as an OBRA '93 trust pursuant to Section 50489.5. (See Procedure Section 9 J V).



Note: A beneficiary may be named in the trust, to receive amounts remaining in the trust upon the death of the primary beneficiary, however, the terms of the trust must be clear that the transfer to the secondary beneficiary occurs only after DHS has been reimbursed for the medical assistance provided.

- (2) If funds are to be retained by the trust upon the death of the disabled individual or disabled spouse, for whose benefit the trust was established, for any purpose other than:

- ✓ the cost of the individual's remaining management and investment fees, or
- ✓ outstanding bills for the benefit of the disabled individual or disabled spouse that fall within the terms of the trust, or
- ✓ burial/funeral expenses of the disabled individual or disabled spouse,

the account will not be considered solely for the benefit of the disabled individual or disabled spouse and shall be treated as an OBRA '93 trust pursuant to Section 50489.5. (See Procedure Section 9 J V).

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3. ADDITION OR AUGMENTATION OF INDIVIDUAL OR POOLED TRUSTS

When an Individual or Pooled trust is established for a disabled individual or disabled spouse under the age of 65, the exception from treatment under OBRA '93 continues after that individual or spouse becomes age 65. However, Individual and Pooled trusts cannot be added to, or otherwise augmented with assets of the individual spouse, after that individual or spouse reaches age 65. Any such addition or augmentation may be considered a disqualifying transfer of assets.



Note: Parents of a disabled son(s) or daughter(s), regardless of age, may make transfers of assets to their disabled son(s) or daughter(s) directly or to the son's or daughter's Individual or Pooled Trust. Such a transfer by a parent of a disabled son or daughter would not be considered a disqualifying transfer of assets in determining the eligibility of the parents for Medi-Cal.

4. RECOVERY OF COSTS

To ensure that recovery of the costs of medical care occurs, counties shall notify Department of Health Services Third Party Liability (TPL) Branch whenever either one of these two types of trusts is discovered. The TPL Branch should also be notified whenever the county finds out that the disabled individual or disabled spouse has died or the trust is being terminated. Send the beneficiary's name, Social Security number, Medi-Cal I.D. number, and photocopies of the trust documents to:

Department of Health Services
Third Party Liability Branch
P.O. Box 225
Sacramento, CA 95814

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D. INDIVIDUAL AND POOLED TRUST CHARACTERISTIC TABLE

INDIVIDUAL TRUST	POOLED TRUST	CONDITION
X	X	1. Established on or after 8/11/93.
X		2. Established by the parent, the grandparent, the legal guardian, or by a court.
X		3. Established for, and contains the assets of an individual or spouse who was both disabled and <u>under age 65</u> when the trust was established, and who is currently disabled whether or not he/she is age 65 or over. Any addition to, or augmentation of the trust after the disabled individual or disabled spouse reaches age 65, may be considered a disqualifying transfer of assets. Note: a transfer shall not be disqualifying if made by a parent to a disabled son's/ daughter's trust - regardless of the son's/daughter's age.
X		4. Provides that the Department of Health Services receive all remaining amounts in the trust upon the death of the disabled individual or disabled spouse or upon termination of the trust up to an amount equal to the total medical assistance paid on behalf of that individual by Medi-Cal.
	X	5. Established for, and contains the assets of an individual or spouse who was disabled when the trust was established and who is determined to be currently disabled. If added to, or augmented after the individual reaches age 65, the transfer may be considered a disqualifying transfer of assets. Note: a transfer shall not be disqualifying if made by a parent to a disabled son's/daughter's trust - regardless of the son's/daughter's age.
	X	6. Established <u>solely</u> for the benefit of the disabled individual or disabled spouse.
	X	7. Established by the <u>individual</u> , the parent, the grandparent, the legal guardian, or by a court.
	X	8. Provides that the Department of Health Services receives all amounts remaining in that individual's account, equal to the total amount of medical assistance paid on behalf of that individual to the extent that amounts remain in that individual's account and are not retained by the trust to cover the costs of that individual's remaining management and investment fees.
	X	9. Maintains a separate account established solely for the benefit of each beneficiary of the trust (but for purposes of investment and management of funds, the trust pools these accounts).
	X	10. Established and managed by a non-profit association.

MEDI-CAL ELIGIBILITY PROCEDURES MANUAL

E. **CALIFORNIA UNIFORM GIFT TO MINORS ACT (CUTMA)/UNIFORM GIFT TO MINORS ACT (UTMA) TRUSTS**

This Act provides that a person may make an **irrevocable gift to a child** that is managed by a **custodian** for the **benefit of the child**. The duties imposed on the custodian are similar to a trustee; to manage and prudently invest custodial property solely in the interest of a trust beneficiary. A custodian, unlike a trustor however, does not hold legal title to the property and has no ownership interest. The transferor, who is also the custodian of such property, may choose to restrict his/her custodial powers. In that case, none of the funds could be spent before the time of distribution except by court order "upon a showing that the expenditure is necessary for the support, maintenance, or education of the minor." If there is no indication that the transferor/custodian has restricted the custodial powers, the custodian is free to use the funds **for the child's benefit** without a court order.

1. When a child has an account of this type and is to be included in the MFBU, the value of the account is considered **available** when no restrictions have been placed on the property.
2. When the custodian's powers have been restricted, preventing access to the funds except by court order, the funds shall be considered **unavailable**. If funds are distributed from trust income, they shall be considered income, in accordance with Article 10. If funds are distributed from trust principal they shall be considered available property.

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VIII. OTHER CONSIDERATIONS REGARDING TRUSTS

A. SPECIAL NEEDS LANGUAGE

1. OVERVIEW

A trust may contain "special needs" or "supplemental needs" exculpatory language. An example of "special needs" or "exculpatory language" is as follows:

"The trustee shall pay to or apply for the benefit of John Smith for his lifetime, such amount from the principal or income of the trust estate, up to the whole thereof, as the trustee in its sole and absolute discretion may deem necessary or advisable for the satisfaction of Joseph's special needs."

In addition the trust document may state that:

"No part of the principal or income of the trust shall be used to supplant or replace public assistance benefits of any County, State, Federal, or other governmental entity which has a legal responsibility to serve the beneficiary herein".

2. TREATMENT

Trusts that contain specific language indicating that funds shall only be used to ensure the individual's health and safety and to supplement public benefits for services and equipment that public programs do not provide may be referred to as a special needs trust (SNT). There are no provisions in Federal law that allow an exemption of trust assets based solely on the exculpatory language.

An SNT may meet the definition of an MQT, an OBRA '93 trust, or can be included in any other trust. SNTs that are established by will are not MQTs or OBRA '93 trusts. SNTs established as a result of a personal injury settlement at the request of the victim's attorney or parent/guardian prior to August 11, 1993, are considered to be established with the individual's property rights and if the other criteria are also met (individual is the beneficiary and the trustee has discretion over distributions) it is considered to be an MQT and may result in excess property. SNTs established on or after August 11, 1993, are considered OBRA '93 trusts, if all other conditions are met, unless it is an excepted Individual or Pooled Trust for a disabled individual (see Procedures Section 9 J VII C).



Example:

Martha Smith is applying for Medi-Cal on behalf of her father, Joseph Jones, who is in long-term care. She declares that her father has \$70,500 placed in an irrevocable "SNT" on June 21, 1991. The money placed in the trust was awarded to him as the result of a personal injury settlement. Martha is the named trustee and according to the terms of the trust document, *"the trustee shall pay or apply for the benefit of Joseph Jones for his lifetime, such amount from the principal or income of the trust estate, up to the whole thereof, as the trustee in its sole and absolute discretion may deem necessary or advisable for the satisfaction of Joseph's special needs."* In addition, the trust document states that *"no part of the corpus of the trust shall be used to supplant or replace public assistance benefits of any County, State, Federal, or other governmental entity that has a legal responsibility to serve the beneficiary herein."* The \$70,500 is considered **available property** and is included in the Medi-Cal property reserve.

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Discussion: In this example the SNT meets all of the conditions of an MQT for Joseph Jones.

- ✓ It was established prior to August 11, 1993, and
- ✓ It was established with Joseph Jone's assets, (his property right awarded to him as the result of a personal injury settlement), and
- ✓ The trustee, Martha Smith, has discretion to distribute the entire amount of trust income and trust principal to or for the benefit of her father, Joseph Jones, and
- ✓ The individual is a beneficiary of all, or a part of the payments of the trust.

3. NOTIFICATION REQUIREMENTS

Probate Code requires State departments, including the Department of Health Services, be notified whenever there is a petition to the court to establish a trust containing "special needs" or "supplemental needs" exculpatory language as a part of a personal injury settlement. The State departments then have an opportunity to oppose the establishment of the trust for various reasons, e.g., if the person has special needs but cannot reasonable be expected to benefit from the trust funds, if the amount being placed in the trust is exorbitant, etc.

When DHS receives notification of a petition to establish such a trust, the Attorney General may be called upon to represent DHS in court. In each case the petitioner is informed by a DHS legal representative that although DHS is called upon to participate in the hearing to establish such a trust, its participation in, and/or non-opposition of, the establishment of this type of trust may enable an individual to be eligible for services and benefits provided by other State departments, but not Medi-Cal.

B. SNEEDE TREATMENT

If the MFBU is ineligible due to excess property in a trust or annuity owned by a child, unmarried parent, stepparent, or a non-parent caretaker relative, the county shall complete a Sneede property determination to establish if there is eligibility for other family members.

JOE SMITH SPECIAL NEEDS TRUST

DECLARATION OF TRUST

Trustor / Settlor → This trust forms a part of the *settlement arrived at between Joe Smith, by and through his Guardian ad Litem, Sally Smith et al., Plaintiffs, and ABC Hospital et al., Defendants, in Case No. 123456, in the Superior Court of the State of California, County of Stanislaus.*

Beneficiary → The settlement provides in part for establishment of a special needs trust in accordance with California Probate Code Section 3604 and 3605 and for certain payments by or on behalf of *Joe Smith*

Exculpatory Language → The intent of this trust is to provide a *discretionary, spendthrift trust, to supplement public resources and benefits when such resources are unavailable or insufficient to provide for the Special Needs of the Beneficiary.* As used in this instrument, the term "Special Needs" means the requisites for maintaining the Beneficiary's good health, safety, and welfare, when in the *absolute discretion of the Trust Advisory Committee* such requisites are not being provided by any public agency, office, or department of the State of California, or of any other state, or of the United States of America.

Discretion → The *settlement and all payments*thereunder are the result of a compromise and settlement of disputed claims, wherein no party is acknowledging any liability. With the approval and order of the Court in the above-described action, this Joe Smith Special Needs Trust is established, *ABC Bank is appointed as Trustee thereof, Sally Smith, Jane Doe, and John Jones are appointed as members of the Trust Advisory Committee* and those parties are authorized by the Court in the above-described action to execute this trust.

Principal / Corpus →

Trustee(s) →

ARTICLE I

Trustee → *ABC Bank is appointed initial Trustee* of the trust. Any Trustee shall have the right to resign at any time. ABC Bank shall for any reason cease to act as Trustee, a successor corporate Trustee shall be appointed by the Trust Advisory Committee.

Trustee(s) → The term "trustee" as used in this instrument shall include any Trustee or Trustees named herein or appointed pursuant to the provisions hereof. *Sally Smith, Jane Doe, and John Jones are appointed the initial members of the Trust Advisory Committee.* There shall always be a minimum of 3 members of the Trust Advisory Committee. All action of the Trust Advisory Committee shall be by majority vote.

Discretion → The *Trust Advisory Committee shall have the power and the authority, in its absolute discretion, to determine and direct the Trustee concerning payments to be made to or for the benefit of the Beneficiary during his lifetime.*

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ARTICLE II
DISTRIBUTION OF INCOME AND PRINCIPAL

All property now or hereafter subject to this trust shall constitute the trust estate and shall be held, allocated, administered, and distributed as hereinafter provided.

Treatment of income and principal →

The *income shall be added to and become principal, forming a common fund* The Trustee may distribute from such common fund to or for the benefit of the Beneficiary during his lifetime, such sums and at such times as the Trust Advisory Committee, in its absolute discretion, determines appropriate for the Beneficiary's Special Needs.

Payment to State →

Upon the death of Joe Smith, the Trustees shall *give notice of Joe Smith's death to the directors of the Departments of Health Services and Developmental Services*, and to any county or city and county that has made a written request to the Trustees for such notice, addressed to that county or city and county at the address specified in the request. The Trustees shall *first distribute from the remaining principal and income of the trust to the State Department of Health Services for all medical assistance paid for or reimbursed by the Department up to the amount remaining in the trust* The State Department of Mental Health, the State Department of Developmental Services, and any county or city and county in the State of California shall be reimbursed *after the State Department of Health Services* for the purpose of reimbursing it for costs and expenses of medical, health vocational, or other services provided to the plaintiff, and other assistance for such services paid by it to the plaintiff, to the full extent to which it may be so entitled pursuant to law or regulation, and shall distribute any sums remaining thereafter to the plaintiffs's surviving children in equal shares or to their issue by right of representation.

Note: THE FOLLOWING LANGUAGE DOES NOT PROVIDE THAT THE STATE DEPARTMENT OF HEALTH SERVICES IS THE FIRST PAYOR AS REQUIRED FOR INDIVIDUAL AND POOLED TRUSTS.

Upon the death of Joe Smith, the *Trustees shall pay all preferred claims of government agencies as set forth in Probate code 3605, the Trustees shall give notice of Joe Smith's death to the directors of the Departments of Health Services and Developmental Services*, and to any county or city and county that has made a written request to the Trustees for such notice, addressed to that county or city and county at the address specified in the request. *The Departments of Health Services and Developmental Services, and any other state agency which has provided benefits on behalf of Joe Smith during his lifetime, shall be reimbursed and receive all assets remaining in the Trust up to the amount of total medical assistance and other benefits paid, for Joe during his lifetime.* If the trust property is insufficient to pay all claims, then the Trustees shall petition the court for instructions and claims shall be paid from

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the trust property as the Court deems just. The remainder, if any, shall be distributed to Joe's heirs at law.



Exculpatory language →

No part of the interest earned by or the corpus of the trust created herein shall be used to supplant or replace public assistance benefits of any county, state, federal or other governmental agency which has a legal responsibility to serve persons with disabilities.

For the purposes of determining the beneficiary's Veterans Administration, Medi-Cal, or any other public benefits programs eligibility, no part of the principal or income of the trust estate shall be considered available to said beneficiary. In the event the trustee is requested by any department or agency administering Medi-Cal or any other benefits to release principal or income of the trust to or on behalf of the beneficiary to pay for equipment, medication, or services which Medi-Cal or any other government benefit program is authorized to provide, the trustee is authorized to deny such request and is authorized to defend, at the expense of the trust estate, any such request.

Irrevocable →

ARTICLE III
TRUST IRREVOCABLE

This Trust may not be modified or revoked except by order of the appropriate Court. In no event, shall the beneficiary of this Trust have any right to revise, amend, or modify this Trust or to exercise any power whatsoever with respect to this Trust, except by Order of the appropriate jurisdiction and only by the Trustee.

ARTICLE IV
GENERAL PROVISIONS

This trust has been accepted by the Trustee in the State of California and its validity, construction, and all rights under it shall be governed by the law of that State. This provision shall apply regardless of any change in the place of the administration of the trust, or the change of residence of any Trustee or beneficiary.

Date Established →

Executed at Modesto, California, this *12th day of August, 1994*, pursuant to that certain Order Approving Compromise of Disputed Claim dated July 10, 1994 in Case No. 1234546, Superior Court of the State of California, for the County of Stanislaus.

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Background: The county has already determined that Mr. Smith was 50 years old and disabled on August 12, 1994. He is still disabled.



Discussion: If Mr Smith and/or his spouse is applying for Medi-Cal the trust shown above should be considered as an **Individual Trust**, established for a disabled individual excepted from treatment in accordance with OBRA '93 provisions. (See procedures section 9 J VII)

- ✓ The trust was established on August 12, 1994 (on or after August 11, 1993),
- ✓ With the assets of Joe Smith, who was under the age of 65 and disabled when the trust was established,
- ✓ By Sally Smith, Mr. Smith's guardian, who had the legal authority to act in place of, or on behalf of, Joe Smith,
- ✓ For the benefit of Joe Smith, a disabled individual,
- ✓ Who is determined to be currently disabled in accordance with Title 22, Section 50167(a).
- ✓ The trust provides that DHS shall be the first to receive all assets remaining in the trust up to an amount equal to the total medical assistance paid on behalf of that individual by Medi-Cal.
- ✓ The trust is irrevocable.

Funds distributed from trust income shall be considered income in accordance with Article 10. Funds distributed from trust principal shall be considered available property.



Note: If Mr Smith, age 50, and/or his spouse is applying for Medi-Cal with the trust shown above, except that the trust did not meet all of the criteria for an Individual Trust, the trust should be considered as an **OBRA '93 Trust** and treated in accordance with Procedures section 9 J V H 3 for the following reasons.

- ✓ The trust was established on August 12, 1994 (on or after August 11, 1993),
- ✓ With the assets of Joe Smith,
- ✓ By Sally Smith, Mr. Smith's guardian, who had the legal authority to act in place of, or on behalf of, Joe Smith, and
- ✓ It is irrevocable.

The trust provisions provide the trustees with full discretion to release any amount of trust income and trust principal. Payments can be made to or for the benefit of Joe Smith and/or his spouse. Therefore:

- ✓ Actual payment(s) of trust income made to, or for the benefit of Joe Smith or his spouse shall be treated as income in accordance with Article 10.

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- ✓ Actual payment(s) from the trust principal made to, or for the benefit of Joe Smith or his spouse shall be treated as income in accordance with Article 10.
- ✓ Any portion of trust principal or trust income that could be paid to, or for the benefit of Joe Smith or his spouse, but is not, shall be treated as available property.
- ✓ Any actual payment(s) of trust principal or trust income that is not made to, or for the benefit of Joe Smith or his spouse, shall be treated as a transferred asset.



Note:

If Mr. Smith and/or his spouse is/are applying for Medi-Cal and the trust above was established on August 12, 1992 the above trust would be considered an MQT and treated in accordance with Procedures section 9 J VI D 3 for the following reasons.

- ✓ The trust was established prior to August 11, 1993,
- ✓ With the assets of Joe Smith, the beneficiary,
- ✓ By Sally Smith, Mr. Smith's guardian, who had the legal authority to act in place of, or on behalf of, Joe Smith.
- ✓ The trustees have discretion to release any amount of trust income and trust principal.
- ✓ The trust is irrevocable.

Even though the trust is not revocable because the trustees have full discretion to distribute trust income and trust principal, the total trust income and trust principal contained in the trust are available whether or not the trustee is actually releasing it.

- ✓ Any amount distributed from the trust principal to Joe Smith or his spouse, or to another person or entity on behalf of Joe Smith is available property.
- ✓ The maximum amount from the trust principal that the trustee may distribute to Joe Smith or his spouse, or to another person or entity on behalf of Joe Smith, but which is not distributed, is available property.
- ✓ Any amount distributed from the trust income to Joe Smith or his spouse, or to another person or entity on behalf of Joe Smith, but which is not distributed, is available income and subject to treatment under Article 10.
- ✓ The maximum amount from the trust income that the trustee may distribute to Joe Smith or his spouse, or to another person or entity on behalf of Joe Smith, but which is not distributed, is considered income in the first month and available property thereafter since the terms of the trust provides that income shall be added to and become trust principal.

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SAMPLE : BLOCKED ACCOUNT

San Francisco County Superior Court

1 ABCK A LAW CORPORATION BY: Jerry Jones, Deputy Clerk
2 222 FRONT STREET
3 SAN FRANCISCO, CALIFORNIA
4 TELEPHONE : (415) 123-4567
5 Attorneys for the Plaintiff and
6 Cross-defendant

7
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

BENEFICIARY →

10
11 *Jane Doe, a minor* by } NO. 123456A
12 Joyce Doe, Guardian }
13 } ORDER TO
14 Plaintiff, } DEPOSIT MONEY
15 v. }
16 AAACD Corporation, Defendants }

TRUSTOR →

17
18
19
20 On approval of a petition of *Guardian Joyce Doe, for Jane Doe*
21 *Compromise of Disputed Claim of Minor, and such compromise*
22 *having been approved*

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IRREVOCABLE
BLOCKED →
ACCOUNT

TRUSTEE →

CIRCUMSTANCE UNDER
WHICH PAYMENTS
FROM THE →
TRUST MAY BE
MADE TO THE INDIVIDUAL

DATE →
ESTABLISHED

1 IT IS ORDERED that Joyce Doe, Guardian for Jane Doe, a minor, shall
2 deposit the monies belonging to the minor in Play 3 Savings and Loan, a
3 *federally insured depository in a federally insured blocked*
4 *interest-bearing savings account having no maturity date and that*
5 account be in name of the *guardian as trustee* for the above minor.

6 The Court finds the minor was born on June 3, 1983. When said
7 *minor attains the age of eighteen years the depository*
8 *without further order of the Court is authorized and directed to pay by*
9 *check or by draft upon proper demand all monies, including*
10 *interest, hereby ordered to be deposited directly to the former*
11 *minor. Except for majority, no withdrawals of principal or interest shall be*
12 made from the account without the prior written Court order therefore
13 bearing the impression seal of this Court.

14 It is the intention of this court that the funds deposited to this account
15 be used for the payment of Jane Doe's future medical expenses, if any.

17 Dated: January 12, 1993

Stanley A. Smith

JUDGE OF THE SUPERIOR COURT



Discussion:

If Jane Doe's parents apply for Medi-Cal for themselves and Jane, the trust shown above should be treated in accordance with Procedures section 9 J VII for the following reasons.

- ✓ The trust was established on January 12, 1993 (prior to August 11, 1993),
- ✓ With the assets of Jane Doe,
- ✓ By Joyce Doe, Jane Doe's guardian, who had the legal authority to act in place of, or on behalf of, Jane Doe, and
- ✓ The trustee does not have discretion to release any amount of trust income or trust principal.

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- ✓ The trust is irrevocable.

The trust principal and trust income shall be considered unavailable if they are not distributed.

- ✓ Funds distributed from trust income shall be considered income in accordance with Article 10.
- ✓ Funds distributed from trust principal shall be considered available property.



Note:

If Jane Doe's Blocked Account was established on August 12, 1993 it would be considered an OBRA '93 trust and treated in accordance with Procedures section 9 J V H 2 for the following reasons.

- ✓ Jane Doe's blocked account was established August 12, 1993 (on or after August 11, 1993),
- ✓ With the assets of Jane Doe,
- ✓ By Joyce Doe, Jane Doe's guardian, who had the legal authority to act in place of, or on behalf of, Jane Doe, and
- ✓ Trust income and trust principal is to be paid to Jane Doe, the beneficiary, when she attains the age of eighteen years.
- ✓ The blocked account is irrevocable.

Therefore, since the provisions in the trust provide for payment of principal and income at some time in the future, the entire amount of the trust principal and trust income is to be considered available property, regardless of the fact that the funds cannot be released until Jane Doe reaches the age of 18.



Note:

A blocked account would never be considered an MQT. To be an MQT the trustee must have some discretion. A blocked account does not give the trustee any discretion in distributing trust principal or trust income.

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LAST WILL and TESTAMENT

of

JANE DOE

TRUSTOR →

I, *JANE DOE* a resident of the County of Sacramento, State of California, declare this is my will, and I hereby revoke all wills and codicils previously made by me.

FIRST: I am a widow. I have one child, namely, SUE DOE. I have no other children, living or deceased.

BENEFICIARY →

SECOND: I give my entire estate IN TRUST to *SUE DOE* to be distributed or retained in trust as hereinafter provided.

A. The primary beneficiary of this trust is to be SUE DOE, who has a disability that substantially impairs her ability to provide for her own care and custody, and constitutes a substantial handicap. The trustee shall hold, administer, and distribute all trust property allocated to the trust for the benefit of the beneficiary during the beneficiary's lifetime unless the trust is earlier terminated.

TRUSTEE →

B. In accordance with the purpose of this trust and subject to the guidelines provided below, the trustee (*EMMA JOHNSON*) may pay to or apply for the benefit of the beneficiary as much of the trust net income and, if that income is insufficient, the trust principal, as the trustee determines, in the trustee's sole discretion, to be necessary or desirable to meet the beneficiary's needs.

DISCRETION →

C. The trustee may, in the trustee's discretion, pay last illness and funeral expenses, any death taxes attributable to any part of the trust estate, and expenses from the administration or distribution of the trust estate.

DISCRETION →

D. No interest in the principal or income of this trust may be anticipated, assigned, encumbered, or subject to any creditor's claim or to legal process before actual receipt by the beneficiary.

E. Upon the death of SUE DOE or the termination of this trust, the balance of the trust assets shall be distributed as follows:

90% to: AAA Foundation
1 Telegraph Avenue
Oakland, CA 94612

10% to: The AAA Society
Monterey Bay Region
1 Highway 9
Boulder Creek, CA 95006

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THIRD: If any provision of this will is unenforceable, the remaining provisions shall nevertheless be carried into effect.

FOURTH: As used in this will, the masculine, feminine or neuter gender, and the singular or plural number shall each be deemed to include the others whenever the context so indicates.

FIFTH: If any beneficiary or legatee under this, my Last Will and Testament, or any person who, if I died intestate, would be entitled to any part of my estate, either in his or her name or in the name of another, contests, controverts, disputes or calls into question the validity of this, my Last Will and Testament, or any provisions contained therein, or any codicils thereto, but shall forfeit any right or claim thereunder and any portion of my estate to which any person opposing my will would in and contingency be entitled, and if in said case any person or persons whomsoever shall be lawfully determined to have a share of my estate, I give, devise and bequeath to such person or persons the sum of One Dollar (\$1.00) and no more, in lieu of any other share or interest in my estate.

SIXTH: I nominate *JOHN J. JOSEPHS* as the executor of this will. The term "my executor", as used in this will, shall include any personal representative of my estate.

I subscribe my name to this will on May 1, 1994 at Sacramento, California.

Jane Doe
Jane Doe

On the date written below, JANE DOE declared to us, the undersigned that this instrument consisting of three pages, including the page signed by us as witnesses, was her will, and she requested us to act as witnesses to it. She thereupon signed this will in our presence, all of us being present at the same time. We now, at her request, in her presence and in the presence of each other, subscribe our names as witnesses. It

is our belief that JANE DOE is of sound mind and memory and is under no constraint or undue influence whatsoever. We declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on May 1, 1994, at Sacramento, California.

Jane Smith

Jane Smith

Address: 1234 Second Street
Sacramento, CA 94234

Sarah Strong
Sarah Strong

Address: 1555 Sutter
Sacramento, CA 94234

EXECUTOR →

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Discussion:

After the death of Jane Doe, Sue Doe applied for Medi-Cal. The trust, established by the above will, should be treated in accordance with Procedures section 9 J VII for the following reasons.

- ✓ The trust was established at the direction of the will,
- ✓ With the assets of Jane Doe,
- ✓ By, Jane Doe, who had the legal authority to act in place of, or on behalf of, Sue Doe, and
- ✓ The trustee, Emma Johnson has discretion to release any amount of trust income or trust principal.

Because the trust is irrevocable:

- ➔ trust principal and trust income shall be considered unavailable if not distributed.
- ➔ funds distributed from trust income shall be considered income in accordance with Article 10.
- ➔ funds distributed from trust principal shall be considered available property.



Note:

The trust above would not be considered an MQT or an OBRA '93 trust for the following reasons.

- ✓ The trust was not established with the assets of Sue Doe.
- ✓ The trust was established by will.

THE ADDAMS FAMILY TRUST

I. Trust Name

This trust shall be known as THE ADAMMS FAMILY TRUST.

II. TRUST PROPERTY

**Trustor(s) /
Settlor(s)** →

(A) **Roger and Ruth Addams**, called the "settlers" declare that they have set aside and hold in the ADDAMS FAMILY TRUST, all their interest in the property described in the attached Schedules A, B, and C.

The trust property shall be used for the benefit of the trust beneficiaries, and shall be administered and distributed by the trustee in accordance with this trust instrument.

(B) Either settlor, or both, may add additional or after acquired property to the trust at any time by listing it on the appropriate schedule.

(C) All trust property listed on Schedule A shall remain the community property of settlers, Roger and Ruth Addams. The trust property listed on Schedule B shall remain the separate property of Ruth Addams. The trust property listed on Schedule C shall remain the separate property of Roger Addams.

Revocable →

(D) As long as both settlers live, either settlor may **revoke** THE ADDAMS FAMILY TRUST in writing, at any time, without notifying the beneficiary.

(E) As long as both settlers live, THE ADDAMS FAMILY TRUST may be altered, amended or modified only by joint action in writing by both Roger and Ruth Addams.

III. TRUSTEES

Trustee →

(A) The trustee of THE ADDAMS FAMILY TRUST shall be **Ruth Addams**. The trustee may act for, and represent, the trust in any transaction.

(B) The first settlor to die shall be called the "deceased spouse." The living settlor shall be called the "surviving spouse."

(C) Upon the death of the deceased spouse, the trust shall continue in effect as before, with the property of the deceased spouse remaining in the trust for the benefit of the **surviving spouse**, until the death of the surviving spouse, and then distributed to the beneficiary, the trustor's daughter **Rose Addams**, with the rest of the trust assets.

Beneficiary(ies) →

(D) Upon the death or incapacity of the surviving spouse, the successor trustee for THE ADDAMS FAMILY TRUST shall be Robert Robin.

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Date
Established →

Executed at Sacramento, CA on December 5, 1993

Ruth Addams

Roger Addams

We certify that we have read this Declaration and Instrument of Trust and that is correctly states the terms and conditions under which the trust property is to be held, managed, and disposed of by the trustees, and we approve the Declaration and Instrument of Trust.

Dated: December 5, 1993

Ruth Addams

Roger Addams

Settlers and Trustees

State of California
County of Sacramento

On December 5, 1993, before me, a notary public for the State of California, personally appeared Roger and Ruth Addams known to me to be the settlors and trustees of the trust created by the above instrument, and to be the persons whose names are subscribed to the instrument, and they acknowledged and executed the same as settlors and trustees.

Janice John



Discussion:

Roger and Ruth Addams apply for Medi-Cal on September 10, 1995. The above trust should be treated as an OBRA '93 trust in accordance with Procedures section 9 J V H 1 for the following reasons.

- ✓ The trust was established on December 5, 1993 (on or after August 11, 1993),
- ✓ With the assets of Roger and Ruth Addams, and
- ✓ By Roger and Ruth Addams.
- ✓ The trust is revocable.

Since the trust is revocable:

- ✓ The entire value of the trust principle and trust income retained by the trust is considered available property to Roger and Ruth Addams.
- ✓ Any actual payments from the trust (whether from trust income or trust principle) made to, or for the benefit of Roger and Ruth Addams is treated as income in accordance with Article 10.

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- ✓ Any actual payment from the trust which is not made to, or for the benefit of Roger and Ruth Addams is considered a transfer of assets.



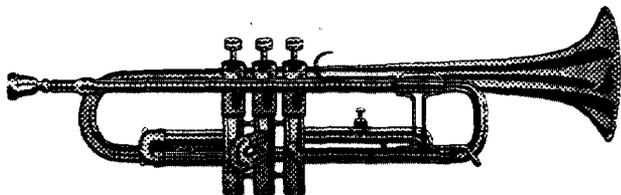
Note:

If Roger and Ruth Addams were applying for Medi-Cal and the trust above was established on **August 12, 1992** the above trust would be considered an **MQT** and treated in accordance with Procedure Section 9 J VI D for the following reasons.

- ✓ The trust was established prior to August 11, 1993,
- ✓ With the assets of Roger and Ruth Addams,
- ✓ By Roger and Ruth Addams.
- ✓ The trust is revocable.

Since the trust is revocable:

- ✓ The entire amount of the principal contained in the trust is available property to Roger and Ruth Addams.
- ✓ The entire amount of income is available income to Roger and Ruth Addams and subject to treatment under Article 10.



**TREATMENT OF TRUSTS AND
ANNUITIES FOR MEDI-CAL
ELIGIBILITY
TRAINING SUMMARY**

All County Welfare Directors Letter, Number 95-75 released DHS's proposed regulations for a March 1, 1996 California implementation of OBRA '93. A public hearing was held January 10, 1996 prior to implementation. Minor post-hearings were made and have been reflected in this training summary and procedures. Counties will be receiving another ACWDL with the final regulatory language.

PLEASE NOTE: This is intended to be a SUMMARY ONLY. Do not rely upon this document when you are dealing with a trust or annuity. Instead, find and apply the regulations and procedures.

★ **ANNUITIES**

ANNUITIES PURCHASED ON OR AFTER 8/11/93

Proposed Section 50489.5 sets forth the treatment of funds held in an annuity. It says that,

The undistributed balance of an annuity shall be considered unavailable property, if the annuity contract is annuitized (payments are fixed, equal and monthly) upon the life expectancy of the annuitant (the purchaser of the annuity who is also the recipient of the monthly payments) in accordance with the life expectancy tables developed by the Secretary for the Department of Health and Human Services or if it is annuitized for an even shorter period of time.

- ① The life expectancy of the annuitant shall be determined based on tables specified by the Secretary of the Department of Health and Human Services (see procedures 9J pages 17/18). Remember, if eligible part of the month, then eligible for a full month. For example, if the Secretary's tables give a life expectancy of 7.22 years (7 years and 2.64 months) and the guarantee period for a period certain annuity or life expectancy of the annuity company for an annuitant is 7.25 years, even though the life expectancy or guarantee period for the annuity exceeds the Secretary's life expectancy, both of the life expectancies take the annuitant into the for part of the 7th year, third month.
- ② If any payment may be made beyond the life expectancy of the annuitant (determined as above), there has been a transfer of property (from purchase date of the annuity) and may be considered a disqualifying transfer (see ACWDL 90-01). The percentage of the purchase price used to fund the payments that may be made beyond the life expectancy of the annuitant would be the amount transferred for less than fair market value. (See attached sample payment schedules.)
- ③ All payments distributed from the annuity are to be considered as gross unearned income in accordance with Title 22, Section 50507.

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- ① Annuitization is required. This means that the annuitant (the recipient of payments from the annuity and the one upon who's life the annuity has been annuitized) must be receiving fixed, equal, monthly payments. (An annuity shall also be considered to be annuitized if it is paying reasonable cost of living increases, i.e., annual increases of less than or equal to 5%.)
- ② If the annuity has not been annuitized, payments are considered to be deferred. The provisions of ACWDL, No. 90-01, draft regulation Section 50402 will apply to the extent they are not inconsistent, which means that we will count the cash surrender value in the property reserve until steps are taken to surrender or annuitize the annuity. Do not count the cash surrender value of the annuity in the property reserve if a period of ineligibility has been assessed for a disqualifying transfer of assets.

 **NOTE:** This means that the value of an annuity can no longer be made unavailable just because arrangements have been made to take periodic payments of principal and interest. Rather, the payment period (lifetime or period certain) must be less than or equal to the remaining life expectancy of the annuitant based upon the life expectancy tables of the Secretary. If the payment period for period certain annuities, or the life expectancy tables used by the company in establishing a lifetime annuity results in a length of time greater than the expected life given on the Secretary's tables, then there is a transfer of assets for less than fair market value. Once the individual takes steps to receive fixed, equal, monthly payments in accordance with the Secretary's tables, then the balance will be considered unavailable and no period of ineligibility shall be assessed.

ANNUITIES PURCHASED ON OR AFTER 8/11/93 AND BEFORE 3/1/96

Individuals who purchased annuities between the effective date of the law (8/1/93) and the implementation date in California (3/1/96) will be requested at application or redetermination to attempt to have their annuity annuitized (restructured to make fixed, equal, monthly payments) in accordance with the Secretary's tables. Counties shall provide the applicant/beneficiary with the life expectancy of the annuitant based upon the annuitant's current age for their use in restructuring the annuity.

- ① The annuity will be considered unavailable as soon as the individual takes steps to surrender or annuitize the annuity (see number 4 and 5 above) in accordance with the Secretary's tables.
- ② If the annuity cannot be restructured and the annuitant provides verification of that fact from the agent or company who sold them the annuity, undue hardship shall be determined to exist.

 **NOTE:** If undue hardship is determined to exist, the annuity will continue to be treated in accordance with the Section 50402 in ACWDL 90-01 (as long as the individual is receiving periodic payments of principal and interest, the balance shall be considered to be unavailable).

ANNUITIES PURCHASED PRIOR TO 8/11/93

- ① Annuities purchased prior to 8/11/93 shall be considered unavailable as long as the individual is receiving periodic payments of principal and interest in accordance with ACWDL 90-01 draft regulation Section 50402.

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- Ⓣ Annuitants who purchased annuities prior to the effective date of OBRA '93 shall not be required to contact their agent to have their annuities restructured.

☆ TRUSTS - MQTs, SLDs and OBRA '93 TRUSTS

There are three major differences between OBRA '93 Trusts and MQTs / SLDs. They are:

OBRA '93 Trusts

If there are **any circumstances** when trust assets (principal or trust income) can be distributed, to or for the benefit of the individual, regardless of when or whether they may be distributed, then the trust assets are considered currently available.

All available **trust assets** (principal and trust income) are considered **property**.

All **distributions** to or for the benefit of individual are considered **income**.

MQTs / SLDs

If the trustee has **any discretion** to release trust assets to, or for the benefit of the individual, then **all the trust assets** over which the trustee has discretion are considered available, regardless of whether or not they actually are available.

All available trust **principal** is considered **property**. All available trust **income** is considered **income**.

All **distributions of principal** to or for the benefit of the individual are considered property.

All **distributions of trust income** to or for the benefit of the individual are considered **income**.

 **NOTES:**

If trust documents do not state whether the trust is revocable or irrevocable, the trust is revocable in accordance with Probate Code Section 15400.

When the term individual is used it means the person who's income or property is being evaluated. Although the "individual" may be the Medi-Cal applicant/beneficiary, it may not be. The "individual" may be someone who does not want, or who is ineligible for Medi-Cal, but who is financially responsible for an applicant/beneficiary.

For revocable trust assets to be counted, the individual who has the right to revoke the trust must also have the right, power and authority to use the trust proceeds for his/her benefit or for the benefit of someone else in the MFBU.

OBRA '93 TRUSTS ESTABLISHED ON OR AFTER 8/11/93

Proposed Section 50489.5 describes an OBRA '93 Trust as a trust (revocable or irrevocable)

- ✓ established other than by will,

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- ✓ on or after 8/11/93,
- ✓ with assets of the individual or spouse,
- ✓ by the individual, spouse or some other person or entity, or court on his/her behalf.

The OBRA '93 trust regulations are applicable without regard to:

- the purpose of the trust,
- whether the trustees have or exercise any discretion under the trust,
- any restrictions on when or whether distributions may be made from the trust, and
- any restrictions on the use of distributions from the trust.

REVOCABLE OBRA '93 TRUSTS

- ① The principal and undistributed income of the trust shall be considered property available to the applicant or spouse. (Interest could cause an individual to be over the property limit in the month it accrues in the trust.)
- ② Payments from the trust made to, or for the benefit of the applicant or spouse are considered available income.
- ③ Payments made to some other person or entity for a purpose other than to, or for the benefit of the applicant or spouse shall be considered a transfer of assets.

IRREVOCABLE OBRA '93 TRUSTS

- ① Payments from the trust made to, or for the benefit of the applicant or spouse are considered available income.
- ② Any portion of the trust income or principal which could be paid under any circumstance to, or for the benefit of the applicant or spouse (but is not actually distributed) shall be considered available property.
- ③ Any portion of the trust principal or trust income which cannot be distributed to, or paid for the benefit of our applicant or spouse is to be considered a transfer of assets, the value of which shall include the amount of assets used to set up the trust or any subsequently added assets. Payments already made to someone else not for the benefit of the individual or spouse from that "undistributable" portion shall not be deducted from the computed value of assets transferred.
- ④ Any payments made from the trust income or principal for a purpose other than to benefit our client or spouse are considered a transfer of assets.

 **NOTE:** The transfer of trust income would be considered a transfer of assets only if the transfer occurred on or after 8/11/93 and to the extent set forth in guidelines on transfers still to be developed.

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UNDUE HARDSHIP

OBRA '93 Trusts shall be treated as "Other Trusts" if the OBRA '93 requirements are shown to work an "undue hardship".

- ① For undue hardship to exist, all of the conditions in a-d (below) must be present except that subsection 1d does not apply in the case of an annuity.
 - a. The trust assets cannot, under any circumstances be used to provide for health care or medical needs of the individual, and
 - b. Health care cannot be obtained from, and medical needs cannot be met by, any sources other than Medi-Cal without depriving the individual of food, clothing, shelter, or other necessities of life, and
 - c. The individual's parents (if the individual is under 21) or the individual's spouse, do not have assets to provide for health care and medical needs, or health care coverage for the individual without depriving themselves of health care or medical needs, food, clothing, shelter, or other necessities of life, and
 - d. The courts have denied a good faith petition to release the trust assets to pay for the required medical care. A petition to release the trust assets shall not be considered a valid good faith petition if the petition contains language that suggests or requests the courts do anything other than release the trust assets needed to pay for the required medical care. The County must verify the petition by viewing both the petition and the court order.
- ② **No person shall be made ineligible to the extent otherwise exempt income or property is held in trust.**
- ③ Annuities purchased between August 11, 1993 and March 1, 1996, which cannot be annuitized to comply with treatment under OBRA '93, shall continue to be treated in accordance with ACWDL 90-01, Section 50402. Written verification must be obtained from the entity that issued the annuity verifying that the annuity cannot be restructured.

If undue hardship is found not to apply and this results in an adverse action, the notice of action for the adverse action must contain a statement indicating that the undue hardship provisions were considered and found not to apply.

MEDICAID QUALIFYING TRUSTS (MQTs) ESTABLISHED PRIOR TO 8/11/93

Proposed Section 50489.1 says an MQT is a trust established

- prior to August 11, 1993,
- other than by will,
- by our applicant or the spouse or by someone acting on their behalf,

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- which provides that he/she/they may receive directly or indirectly trust income or principal from the trust, and
- which gives the trustee(s) discretion in distributing principal and/or trust income.

 **NOTE:** An MQT may have been established expressly for the purpose of qualifying for Medi-Cal although it may actually result in ineligibility.

REVOCABLE MQT

- ① Property in a revocable MQT is considered to be available.
- ② Income of an MQT is also considered to be available.

IRREVOCABLE MQT

- ① Any amount distributed from the principal of an irrevocable MQT to the applicant or the spouse, or to anyone on his/her/their behalf shall be considered available property.
- ② Any amount distributed from the income of the MQT to the applicant or the spouse, or to anyone on his/her/their behalf shall be considered available income and treated in accordance with the income regulations.
- ③ Any amount of principal retained by the trust that the trustees could, at his/her/their discretion, distribute to, or for the benefit of the applicant or spouse, shall be considered available property.
- ④ Any amount of trust income that the trustee(s) could, at his/her/their discretion, distribute to, or for the benefit of the applicant or spouse, shall be considered available income.
- ⑤ Any amount of trust principal for which the trustee(s) has no discretionary power to release to, or for the benefit of our applicant or the spouse shall be considered a transfer of property. The date of the transfer shall be the date the trust was established or the date disbursement is discontinued, whichever is applicable.

 **NOTE:** The transfer of trust income would be considered a transfer of assets only if the transfer occurred on or after 8/11/93 and to the extent set forth in guidelines on transfers still to be developed.

☆ OTHER TRUSTS

The following are some of the most common "Other" trusts you might encounter.

- ✓ Trusts that are not MQTs, SLDs, or OBRA '93 trusts.
- ✓ Trusts that are established prior to April 7, 1986, solely for the benefit of a mentally retarded person who resides in an intermediate care facility for the mentally retarded.
- ✓ Trusts that are established by will.

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- ✓ Certain trusts established for disabled individuals on or after August 11, 1993. (See ACWDL 94-01.)
- ✓ Blocked accounts established prior to August 11, 1993, which cannot be distributed until a minor reaches ages 18.
- ✓ Trusts established by a grandparent with his/her own property for a grandchild's college education, etc.
- ✓ Trusts established by the community for the medical and social service needs of an individual.
- ✓ Trust accounts opened under the California Uniform Transfers to Minors Act (CUTMA or UTMA) for a child with an adult named as custodian.

Treatment of an "Other" trust would be in one of five ways.

- ① and ② Un/Available Property
- ② and ① Un/Available Income
- ⑤ Transferred Asset

The key points to determining how to treat an "Other" trust are:

- Was the Medi-Cal applicant/beneficiary's or spouse's property or property rights used to establish the trust? Is the person disabled?
- Was the Medi-Cal applicant/beneficiary's or spouse's property or property rights transferred into a trust established by someone else?
- Was the trust established by and with funds belonging to someone else?
- Is the trust revocable, and if so, does the individual have both the legal right, power and authority to use the funds for his/her own support?

 **NOTE:** Any trust established by the community designated for medical and social service needs of an individual shall be considered unavailable. The individual has no legal right, power, or authority to use the funds for his/her support.

REVOCABLE "OTHER" TRUSTS

If the individual or spouse has the right to revoke the trust and to use the proceeds for his/her support and maintenance, then the entire amount held in trust is available.

- ✓ Trust income is income.
- ✓ Trust principal is property.

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If the individual or spouse does not have the legal right, power and authority to revoke the trust and to use the proceeds for his/her support and maintenance then the trust is unavailable until distributions are actually made to him/her. (Even though a trustee may have the power to revoke a trust, he/she may not have the legal right to use the funds for his/her own support and maintenance.)

IRREVOCABLE "OTHER" TRUSTS

The funds in the trust are unavailable until they are actually distributed to the individual or spouse for his/her support and maintenance.

TRUSTS ESTABLISHED ON OR AFTER 8/11/93 FOR DISABLED INDIVIDUALS

Two types of trusts established with the property or property rights of disabled individuals are excepted from the OBRA '93 treatment but must be treated in accordance with these rules. The two types are

- ① Individual Trusts and
- ② Pooled trusts.

The characteristics of those two types of trusts are contained on the chart in the Procedures manual.

 **NOTE:** Transfer of assets provisions do not apply to transfers of the disabled individual's or disabled spouse's property or property rights to an Individual or Pooled trust. Although augmentations or additions to such trusts by that individual or spouse after he/she reached the age of 65 may result in a disqualifying transfer.

To ensure that recovery of the costs of medical care occurs, counties shall notify the Department of Health Services, Third Party Liability Branch whenever such a trust is encountered, the disabled individual or disabled spouse dies, or the trust is terminated. Send photocopies of the trust, the Medi-Cal beneficiary's name and Social Security number and Medi-Cal I.D. number to:

Department of Health Services
Third Party Liability Branch
P. O. Box 225
Sacramento, CA 95814

CALIFORNIA UNIFORM GIFT TO MINORS ACT (CUTMA) / UNIFORM GIFT TO MINORS ACT (UTMA)

This is an **irrevocable gift** to a minor (minor is owner). The gift is property of the minor even though the person making the gift is often the custodian of the trust. The custodian does not hold legal title like a trustee does. The custodian only manages and invests the gift for the child until the child reaches the age of majority. Many times the custodian chooses to restrict his/her access to the funds by making them available only by an order of the court "upon a showing that the expenditure is necessary for the support, maintenance, or education of the minor".

- ✓ Unless such a restriction appears on the trust, the trust funds are available to the child.

- ✓ If such a restriction is present, the funds are considered unavailable. When made, distributions of trust principal are property, distributions of trust income are income.

★ OTHER CONSIDERATIONS

SPECIAL NEEDS LANGUAGE

A trust may contain special needs or other exculpatory language. If such a trust was established with the individual's or spouse's property or property rights and falls within the parameters of an MQT, SLD or OBRA '93 trust, that language is ignored because under those rules, the trust is **deemed available whether or not it is made actually available**.

Special needs and exculpatory language may look like this:

"The trustee shall pay to or apply for the benefit of John Smith for his lifetime, such amount from the principal or income of the trust estate, up to the whole thereof, as the trustee in its sole and absolute discretion may deem necessary or advisable for the satisfaction of Joseph's special needs.

No part of the principal or income of the trust shall be used to supplant or replace public assistance benefits of any County State, Federal or other governmental entity which has a legal responsibility to serve the beneficiary herein."

 **NOTE:** If the trust was established as a result of a personal injury settlement, the Department is to be notified of the proposed establishment by the plaintiff's attorney. The Department legal staff review the trust to ensure that the individual can reasonably be expected to benefit from the trust and to ensure that amounts contained in the trust are reasonable given the individual's needs. Although the Department may not oppose the **establishment** of the trust, the special needs and exculpatory language contained in the trust do **not** make the individual eligible for Medi-Cal and do **not** mean that the trust funds will be considered unavailable. **Unless the individual is determined to be disabled and the trust meets all the other characteristics for an excepted individual or Pooled trust, the trust funds will be considered under the OBRA '93 or MQT provisions.**

SNEEDE TREATMENT

If the MFBU is ineligible due to excess property in a trust or annuity owned by a child, unmarried parent, stepparent, or a non-parent caretaker relative, the county shall complete a Sneede property determination to establish if there is eligibility for other family members.

