

## **50489.5 OBRA 93 Trusts Established On or After August 11, 1993**

### **(a)**

An OBRA 93 trust: (1) Is established, in part or in whole, with assets of an individual or individual's spouse, on or after August 11, 1993, other than by will; and (2) Is not described in Section 50489.9, and (3) Shall be treated in accordance with the remainder of this section.

#### **(1)**

Is established, in part or in whole, with assets of an individual or individual's spouse, on or after August 11, 1993, other than by will; and

#### **(2)**

Is not described in Section 50489.9, and

#### **(3)**

Shall be treated in accordance with the remainder of this section.

### **(b)**

The provisions of this section shall apply to OBRA 93 trusts without regard to: (1) the purposes for which the trust is established, (2) whether the trustee(s) has, or exercises, any discretion under the terms of the trust, (3) restrictions on when, or whether, distributions may be made from the trust, or (4) restrictions on the use of trust assets or distributions.

#### **(1)**

the purposes for which the trust is established,

**(2)**

whether the trustee(s) has, or exercises, any discretion under the terms of the trust,

**(3)**

restrictions on when, or whether, distributions may be made from the trust, or

**(4)**

restrictions on the use of trust assets or distributions.

**(c)**

The provisions of this section shall apply to any OBRA 93 trust if it was established by any of the following: (1) the individual, or (2) the individual's spouse, or (3) any other person or entity, including a court or administrative body, with legal authority to act in place of, or on behalf of, the individual or the individual's spouse, regardless of whether that person or entity claims to be acting in such a capacity at the time of the action, or (4) any other person or entity, including any court or administrative body, acting at the direction, or upon the request of, the individual or the individual's spouse.

**(1)**

the individual, or

**(2)**

the individual's spouse, or

**(3)**

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

**(4)**

any other person or entity, including any court or administrative body, acting at the direction, or upon the request of, the individual or the individual's spouse.

**(d)**

In the case of an OBRA 93 trust which includes the assets of someone other than the individual or the individual's spouse, the provisions of this section shall apply only to that portion of the trust containing the assets of the individual or the individual's spouse.

**(e)**

In the case of a revocable OBRA 93 trust: (1) trust income and principal shall be considered property available to the individual who has the right, power, and authority to revoke the trust and to use the proceeds, and (2) payments from the trust to, or for the benefit of, the individual or spouse shall be considered income of that individual or spouse in accordance with Article 10 of this chapter, and (3) if payments are made to any person or entity, other than the individual or spouse, for any purpose other than for the benefit of the individual or spouse, those payments shall be considered transferred assets as of the date of payment.

**(1)**

trust income and principal shall be considered property available to the individual who has the right, power, and authority to revoke the trust and to use the proceeds, and

**(2)**

payments from the trust to, or for the benefit of, the individual or spouse shall be considered income of that individual or spouse in accordance with Article 10 of this chapter, and

**(3)**

if payments are made to any person or entity, other than the individual or spouse, for any purpose other than for the benefit of the individual or spouse, those payments shall

be considered transferred assets as of the date of payment.

**(f)**

In the case of an irrevocable OBRA 93 trust: (1) if payment(s) can be made from the trust to, or for the benefit of, the individual or spouse at any time or under any circumstances, the portion of the trust income or principal from which payment(s) to the individual or spouse could be made shall be considered property available to that individual or spouse, (2) if payment(s) from the trust income or principal is made to, or for the benefit of, the individual or spouse, the payment(s) shall be considered income of that individual or spouse, in accordance with Article 10 of this chapter, (3) if payment(s) is made from the trust income or principal for any other purpose, the payment(s) shall be considered a transfer of assets by the individual or spouse as of the date of payment, and (4) if any portion of the trust income or principal from which payment cannot be made to, or for the benefit of, the individual or spouse, then that portion shall be considered a transferred asset. The value of the assets transferred shall include the amount of assets used to establish the trust and any assets added to that portion. Payments which have been made from that portion of the trust shall not be deducted from the value of the assets transferred. The date of transfer shall be the date the trust was established, the date the trust receives the asset or the date disbursement is foreclosed, whichever is most recent.

**(1)**

if payment(s) can be made from the trust to, or for the benefit of, the individual or spouse at any time or under any circumstances, the portion of the trust income or principal from which payment(s) to the individual or spouse could be made shall be considered property available to that individual or spouse,

**(2)**

if payment(s) from the trust income or principal is made to, or for the benefit of, the individual or spouse, the payment(s) shall be considered income of that individual or spouse, in accordance with Article 10 of this chapter,

**(3)**

if payment(s) is made from the trust income or principal for any other purpose, the payment(s) shall be considered a transfer of assets by the individual or spouse as of the date of payment, and

**(4)**

if any portion of the trust income or principal from which payment cannot be made to, or for the benefit of, the individual or spouse, then that portion shall be considered a transferred asset. The value of the assets transferred shall include the amount of assets used to establish the trust and any assets added to that portion. Payments which have been made from that portion of the trust shall not be deducted from the value of the assets transferred. The date of transfer shall be the date the trust was established, the date the trust receives the asset or the date disbursement is foreclosed, whichever is most recent.

**(g)**

In the case of an annuity: (1) Payments shall be considered income in accordance with Article 10 of this chapter, and (2) Section 50402 shall apply only to the extent that it is not inconsistent with subsections (g)(2)(A)-(g)(2)(D) of this section. (A) The undistributed balance of the annuity shall be considered unavailable if the annuity contract is annuitized upon the life expectancy of the individual or spouse or for a shorter period of time. (B) The life expectancy of the annuitant shall be determined in accordance with life expectancy tables specified by the Secretary of the Department of Health and Human Services, contained in Section 3258.9 (Revision 64), Part 3 of the Health Care Financing Administration's State Medicaid

Manual and titled "Life Expectancy Table--Males and Life Expectancy Table--Females". (C) Any payment scheduled to occur beyond the life expectancy of the individual or spouse as determined in accordance with subsection (g)(2)(B) of this section shall be considered a transfer of assets. (D) Any payment made to, or set aside for, another individual (other than for the sole benefit of the spouse), shall be considered a transfer of assets.

**(1)**

Payments shall be considered income in accordance with Article 10 of this chapter, and

**(2)**

Section 50402 shall apply only to the extent that it is not inconsistent with subsections (g)(2)(A)-(g)(2)(D) of this section. (A) The undistributed balance of the annuity shall be considered unavailable if the annuity contract is annuitized upon the life expectancy of the individual or spouse or for a shorter period of time. (B) The life expectancy of the annuitant shall be determined in accordance with life expectancy tables specified by the Secretary of the Department of Health and Human Services, contained in Section 3258.9 (Revision 64), Part 3 of the Health Care Financing Administration's State Medicaid Manual and titled "Life Expectancy Table--Males and Life Expectancy Table--Females". (C) Any payment scheduled to occur beyond the life expectancy of the individual or spouse as determined in accordance with subsection (g)(2)(B) of this section shall be considered a transfer of assets. (D) Any payment made to, or set aside for, another individual (other than for the sole benefit of the spouse), shall be considered a transfer of assets.

**(A)**

The undistributed balance of the annuity shall be considered unavailable if the annuity contract is annuitized upon the life expectancy of the individual or spouse or for a shorter period of time.

**(B)**

The life expectancy of the annuitant shall be determined in accordance with life expectancy tables specified by the Secretary of the Department of Health and Human Services, contained in Section 3258.9 (Revision 64), Part 3 of the Health Care Financing Administration's State Medicaid Manual and titled "Life Expectancy Table--Males and Life Expectancy Table--Females".

**(C)**

Any payment scheduled to occur beyond the life expectancy of the individual or spouse as determined in accordance with subsection (g)(2)(B) of this section shall be considered a transfer of assets.

**(D)**

Any payment made to, or set aside for, another individual (other than for the sole benefit of the spouse), shall be considered a transfer of assets.

**(h)**

The county must consider whether undue hardship exists before eligibility may be denied under this section. Eligibility shall not be denied based upon the provisions of this section if undue hardship is found to exist. The provisions of this section shall be waived if the application of these provisions would work an undue hardship. If undue hardship, in accordance with the provisions of this subsection, is considered and found not to apply, the county shall state that on the notice of action. For purposes of this section, undue hardship exists when all of the conditions in subsections (h)(1) through (h)(4) of this section exist or when the conditions in subsections (h)(5) or (h)(6) of this section exists. The county shall notify the individual that undue hardship is being considered prior to denying eligibility to any individual under this section. (1) The trust assets cannot, under any circumstances, be used to provide for the health care or medical needs of the

Medi-Cal applicant or Medi-Cal beneficiary, and (2) 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 or shelter or other necessities of life, and (3) The individual's parents (if the individual is under 21) or the individual's spouse, cannot provide for the health care and medical needs or health care coverage of the individual without depriving themselves of food, clothing or shelter or other necessities of life, and (4) The courts have denied a good faith petition to release the trust assets to pay for the required medical care.(A) A petition to release the trust assets shall not be considered a valid good faith petition if the petition contains language which suggests or requests that the courts do anything other than release the trust assets needed to pay for the required medical care. (B) The counties shall verify that the criteria contained in subsections (h)(4) and (h)(4)(A) of this section, concerning a valid good faith petition and court order exist by examining the petition and the court order. (C) Subsection (h)(4) of this section does not apply to an annuity. (5) No person shall be made ineligible to the extent the trust contains otherwise exempt income or property. (6) No person shall be made ineligible due to the application of subsection (g) of this section, concerning an annuity purchased prior to March 1, 1996 when the annuity cannot be annuitized to comply with the provisions of subsection (g) of this section. Any annuity purchased prior to March 1, 1996 which cannot be annuitized to comply with the provisions of subsection (g) of this section, shall continue to be considered in accordance with Section 50402.

**(1)**

The trust assets cannot, under any circumstances, be used to provide for the health care or medical needs of the Medi-Cal applicant or Medi-Cal beneficiary, and

**(2)**



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 or shelter or other necessities of life, and

**(3)**

The individual's parents (if the individual is under 21) or the individual's spouse, cannot provide for the health care and medical needs or health care coverage of the individual without depriving themselves of food, clothing or shelter or other necessities of life, and

**(4)**

The courts have denied a good faith petition to release the trust assets to pay for the required medical care. (A) A petition to release the trust assets shall not be considered a valid good faith petition if the petition contains language which suggests or requests that the courts do anything other than release the trust assets needed to pay for the required medical care. (B) The counties shall verify that the criteria contained in subsections (h)(4) and (h)(4)(A) of this section, concerning a valid good faith petition and court order exist by examining the petition and the court order. (C) Subsection (h)(4) of this section does not apply to an annuity.

**(A)**

A petition to release the trust assets shall not be considered a valid good faith petition if the petition contains language which suggests or requests that the courts do anything other than release the trust assets needed to pay for the required medical care.

**(B)**

The counties shall verify that the criteria contained in subsections (h)(4) and (h)(4)(A) of this section, concerning a valid good faith petition and court order exist by examining the petition and the court order.

**(C)**

Subsection (h)(4) of this section does not apply to an annuity.

**(5)**

No person shall be made ineligible to the extent the trust contains otherwise exempt income or property.

**(6)**

No person shall be made ineligible due to the application of subsection (g) of this section, concerning an annuity purchased prior to March 1, 1996 when the annuity cannot be annuitized to comply with the provisions of subsection (g) of this section. Any annuity purchased prior to March 1, 1996 which cannot be annuitized to comply with the provisions of subsection (g) of this section, shall continue to be considered in accordance with Section 50402.