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Title 22@ Social Security

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Division 3@ Health Care Services

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Subdivision 1@ California Medical Assistance Program

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Chapter 2@ Determination of Medi-Cal Eligibility and Share of Cost

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Article 9@ PROPERTY

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Section 50489.1@ Medicaid Qualifying Trusts

50489.1 Medicaid Qualifying Trusts

(a)

Pursuant to Title 42, U.S.C., Section 1396 a(k) as it existed prior to repeal, a Medicaid Qualifying Trust (MQT): (1) Is one which was established prior to August 11, 1993, other than by will, by an individual or the individual's spouse, or by the individual's guardian, conservator, or legal representative who is acting on the individual's behalf; and which (2) Provides that the individual or the spouse may receive all or part of the income or principal of the trust that is dispersed directly or to another person or entity on behalf of that individual; and which (3) Gives the trustee(s) discretion in distributing funds to the individual, to the spouse, or to another person or entity on behalf of that individual; and (4) Is not described in Section 50489.9, and (5) May be revocable or irrevocable, and (6) May be established to enable the individual or the spouse to qualify for Medi-Cal.

(1)

Is one which was established prior to August 11, 1993, other than by will, by an individual or the individual's spouse, or by the individual's guardian, conservator, or legal representative who is acting on the individual's behalf; and which

(2)

Provides that the individual or the spouse may receive all or part of the income or principal of the trust that is dispersed directly or to another person or entity on behalf of that individual; and which

(3)

Gives the trustee(s) discretion in distributing funds to the individual, to the spouse, or to another person or entity on behalf of that individual; and

(4)

Is not described in Section 50489.9, and

(5)

May be revocable or irrevocable, and

(6)

May be established to enable the individual or the spouse to qualify for Medi-Cal.

(b)

For purposes of this section, "individual" means a person or spouse who establishes an MQT and who is a beneficiary of the MQT.

(c)

Property in an MQT is available as specified below: (1) If the MQT is revocable, it shall be available. (2) If the MQT is irrevocable then: (A) Any amount distributed from the principal of the MQT to the individual, to the spouse, or to another person or entity on behalf of that individual or spouse shall be available property. (B) Any amount distributed from the income of the MQT to the individual, to the spouse, or to another person or entity on behalf of that individual or spouse shall be considered income and shall be subject to Article 10 of this chapter. (C) The maximum amount that the trustee(s) could distribute to the individual, to the spouse, or to another person or entity on behalf of that individual or spouse from trust principal shall be considered available property. The maximum amount is the amount the trustee(s) may distribute if the trustee(s) were to exercise full discretion under the terms of the MQT. (D) The maximum amount that the trustee(s) may distribute to the individual, to the spouse, or to another person or

entity on behalf of that individual or spouse from trust income if the trustee(s) were to exercise full discretion under the terms of the MQT is available income and is subject to Article 10 of this chapter. (E) Any amount of trust principal for which the trustee(s) has no discretion to release to the individual, to the spouse, or to another person or entity on behalf of that individual or spouse shall be considered transferred property. The date of the transfer shall be the date the trust was established, the date the trust receives the property, or the date disbursement is foreclosed, whichever is the most recent. (F) Any amount of trust income for which the trustee(s) has no discretion to release to the individual, to the spouse, or to another person or entity on behalf of that individual or spouse shall be considered transferred assets. The date of the transfer shall be the date trust disbursement is foreclosed, or the date the trust receives income, whichever is the most recent. Transfers of income occurring prior to August 11, 1993, shall not be considered.

(1)

If the MQT is revocable, it shall be available.

(2)

If the MQT is irrevocable then: (A) Any amount distributed from the principal of the MQT to the individual, to the spouse, or to another person or entity on behalf of that individual or spouse shall be available property. (B) Any amount distributed from the income of the MQT to the individual, to the spouse, or to another person or entity on behalf of that individual or spouse shall be considered income and shall be subject to Article 10 of this chapter. (C) The maximum amount that the trustee(s) could distribute to the individual, to the spouse, or to another person or entity on behalf of that individual or spouse from trust principal shall be considered available property. The maximum amount is the amount the trustee(s) may distribute if the trustee(s) were to

exercise full discretion under the terms of the MQT. (D) The maximum amount that the trustee(s) may distribute to the individual, to the spouse, or to another person or entity on behalf of that individual or spouse from trust income if the trustee(s) were to exercise full discretion under the terms of the MQT is available income and is subject to Article 10 of this chapter. (E) Any amount of trust principal for which the trustee(s) has no discretion to release to the individual, to the spouse, or to another person or entity on behalf of that individual or spouse shall be considered transferred property. The date of the transfer shall be the date the trust was established, the date the trust receives the property, or the date disbursement is foreclosed, whichever is the most recent. (F) Any amount of trust income for which the trustee(s) has no discretion to release to the individual, to the spouse, or to another person or entity on behalf of that individual or spouse shall be considered transferred assets. The date of the transfer shall be the date trust disbursement is foreclosed, or the date the trust receives income, whichever is the most recent. Transfers of income occurring prior to August 11, 1993, shall not be considered.

(A)

Any amount distributed from the principal of the MQT to the individual, to the spouse, or to another person or entity on behalf of that individual or spouse shall be available property.

(B)

Any amount distributed from the income of the MQT to the individual, to the spouse, or to another person or entity on behalf of that individual or spouse shall be considered income and shall be subject to Article 10 of this chapter.

(C)

The maximum amount that the trustee(s) could distribute to the individual, to the spouse, or to another person or entity on behalf of that individual or spouse from trust principal shall be considered available property. The maximum amount is the amount the trustee(s) may

distribute if the trustee(s) were to exercise full discretion under the terms of the MQT.

(D)

The maximum amount that the trustee(s) may distribute to the individual, to the spouse, or to another person or entity on behalf of that individual or spouse from trust income if the trustee(s) were to exercise full discretion under the terms of the MQT is available income and is subject to Article 10 of this chapter.

(E)

Any amount of trust principal for which the trustee(s) has no discretion to release to the individual, to the spouse, or to another person or entity on behalf of that individual or spouse shall be considered transferred property. The date of the transfer shall be the date the trust was established, the date the trust receives the property, or the date disbursement is foreclosed, whichever is the most recent.

(F)

Any amount of trust income for which the trustee(s) has no discretion to release to the individual, to the spouse, or to another person or entity on behalf of that individual or spouse shall be considered transferred assets. The date of the transfer shall be the date trust disbursement is foreclosed, or the date the trust receives income, whichever is the most recent. Transfers of income occurring prior to August 11, 1993, shall not be considered.