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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 50489.9@ Trusts Other than Those Described in 50489.1 or 50489.5

50489.9 Trusts Other than Those Described in 50489.1 or 50489.5

(a)

Trusts described in subsections (a)(1) through (a)(4) of this section, shall be considered available in accordance with subsection (b) of this section: (1) Trusts that are not described in Section 50489.1 or Section 50489.5. (2) Any trust established prior to April 7, 1986, which benefits no one other than a mentally retarded person who resides in an intermediate care facility for the mentally retarded. (3) A trust established on or after August 11, 1993, which meets all of the following conditions: (A) A trust, or portion of a trust, that contains the assets of an individual or spouse who was both disabled as verified in accordance with Section 50167(a)(1) and under the age of 65 when the trust was established and who is currently disabled whether or not he/she is age 65 or over, and (B) A trust that is established for the benefit of the disabled individual or disabled spouse in subsection (a)(1)(A) of this section by a parent, grandparent, legal guardian of the individual, or a court, and where (C) The State receives all remaining funds in the trust, or respective portion of the trust, upon the death of the individual or spouse or upon termination of the trust up to an amount equal to the total medical assistance paid on behalf of that individual by the Medi-Cal program. A trust, or respective portion of the trust, will still be considered for the benefit of the individual or spouse if the trust permits funds to be used for other purposes when

the trust's terms permit such use only after payment of the State's interest pursuant to this subsection. (4) A trust established on or after August 11, 1993, which meets all the conditions listed in subsections (a)(4)(A) through (a)(4)(F) of this section: (A) the trust contains the assets of the individual or spouse who is disabled as verified in accordance with Section 50167(a)(1), and (B) the trust is established and managed by a nonprofit association, and (C) a separate account is maintained for each trust beneficiary, but for purposes of investment and management of funds, the trust pools these accounts, and (D) the accounts in the trust are established, except for purposes of subsection (a)(4)(E) of this section, solely for the benefit of the disabled individual or disabled spouse, as defined in subsection (a)(4)(F) of this section, by the disabled individual or disabled spouse, his or her parents, his or her grandparents, or the legal guardian of that individual, or by a court, and (E) the State receives, upon the death of the disabled individual or disabled spouse, all funds remaining in the individual's account, up to an amount equal to the total amount of medical assistance paid on behalf of that individual by the Medi-Cal program. The State shall receive this amount only to the extent that funds remain in that individual's account and are not retained by the trust to cover management and investment fees associated with that account. (F) In determining whether an account may be considered solely for the benefit of the disabled individual or disabled spouse, both subsections (a)(4)(F)(1) and (a)(4)(F)(2) of this section shall apply. (1) Except in accordance with subsection (a)(4)(E) of this section, the account funds must benefit no one other than the disabled individual or disabled spouse for whose benefit the account was established before the State's interest has been satisfied pursuant to subsection (a)(4)(E) of this section. (2) If the trust permits funds to be used for any purpose other than for the sole benefit of the disabled individual or disabled spouse for

whose benefit the trust or account was established, before the State's interest has been satisfied pursuant to subsection (a)(4)(E) of this section, the account will not be considered solely for the benefit of that individual or spouse. Such accounts shall be treated pursuant to Section 50489.5. An account will still be considered for the sole benefit of the individual or spouse if the trust permits funds to be used for other purposes when the trust's terms permit such use only after payment of the State's interest pursuant to subsection (a)(4)(E) of this section.

(1)

Trusts that are not described in Section 50489.1 or Section 50489.5.

(2)

Any trust established prior to April 7, 1986, which benefits no one other than a mentally retarded person who resides in an intermediate care facility for the mentally retarded.

(3)

A trust established on or after August 11, 1993, which meets all of the following conditions: (A) A trust, or portion of a trust, that contains the assets of an individual or spouse who was both disabled as verified in accordance with Section 50167(a)(1) and under the age of 65 when the trust was established and who is currently disabled whether or not he/she is age 65 or over, and (B) A trust that is established for the benefit of the disabled individual or disabled spouse in subsection (a)(1)(A) of this section by a parent, grandparent, legal guardian of the individual, or a court, and where (C) The State receives all remaining funds in the trust, or respective portion of the trust, upon the death of the individual or spouse or upon termination of the trust up to an amount equal to the total medical assistance paid on behalf of that individual by the Medi-Cal program. A trust, or respective portion of the trust, will still be considered for the benefit of the individual or spouse if the trust permits funds to be used for other purposes when the trust's terms permit such use only after payment of the State's

interest pursuant to this subsection.

(A)

A trust, or portion of a trust, that contains the assets of an individual or spouse who was both disabled as verified in accordance with Section 50167(a)(1) and under the age of 65 when the trust was established and who is currently disabled whether or not he/she is age 65 or over, and

(B)

A trust that is established for the benefit of the disabled individual or disabled spouse in subsection (a)(1)(A) of this section by a parent, grandparent, legal guardian of the individual, or a court, and where

(C)

The State receives all remaining funds in the trust, or respective portion of the trust, upon the death of the individual or spouse or upon termination of the trust up to an amount equal to the total medical assistance paid on behalf of that individual by the Medi-Cal program. A trust, or respective portion of the trust, will still be considered for the benefit of the individual or spouse if the trust permits funds to be used for other purposes when the trust's terms permit such use only after payment of the State's interest pursuant to this subsection.

(4)

A trust established on or after August 11, 1993, which meets all the conditions listed in subsections (a)(4)(A) through (a)(4)(F) of this section: (A) the trust contains the assets of the individual or spouse who is disabled as verified in accordance with Section 50167(a)(1), and (B) the trust is established and managed by a nonprofit association, and (C) a separate account is maintained for each trust beneficiary, but for purposes of investment and management of funds, the trust pools these accounts, and (D) the accounts in the trust are established, except for purposes of subsection (a)(4)(E) of this section, solely for the benefit of the disabled individual or disabled spouse, as defined in

subsection (a)(4)(F) of this section, by the disabled individual or disabled spouse, his or her parents, his or her grandparents, or the legal guardian of that individual, or by a court, and (E) the State receives, upon the death of the disabled individual or disabled spouse, all funds remaining in the individual's account, up to an amount equal to the total amount of medical assistance paid on behalf of that individual by the Medi-Cal program. The State shall receive this amount only to the extent that funds remain in that individual's account and are not retained by the trust to cover management and investment fees associated with that account. (F) In determining whether an account may be considered solely for the benefit of the disabled individual or disabled spouse, both subsections (a)(4)(F)(1) and (a)(4)(F)(2) of this section shall apply.(1) Except in accordance with subsection (a)(4)(E) of this section, the account funds must benefit no one other than the disabled individual or disabled spouse for whose benefit the account was established before the State's interest has been satisfied pursuant to subsection (a)(4)(E) of this section. (2) If the trust permits funds to be used for any purpose other than for the sole benefit of the disabled individual or disabled spouse for whose benefit the trust or account was established, before the State's interest has been satisfied pursuant to subsection (a)(4)(E) of this section, the account will not be considered solely for the benefit of that individual or spouse. Such accounts shall be treated pursuant to Section 50489.5. An account will still be considered for the sole benefit of the individual or spouse if the trust permits funds to be used for other purposes when the trust's terms permit such use only after payment of the State's interest pursuant to subsection (a)(4)(E) of this section.

(A)

the trust contains the assets of the individual or spouse who is disabled as verified in accordance with Section 50167(a)(1), and

(B)

the trust is established and managed by a nonprofit association, and

(C)

a separate account is maintained for each trust beneficiary, but for purposes of investment and management of funds, the trust pools these accounts, and

(D)

the accounts in the trust are established, except for purposes of subsection (a)(4)(E) of this section, solely for the benefit of the disabled individual or disabled spouse, as defined in subsection (a)(4)(F) of this section, by the disabled individual or disabled spouse, his or her parents, his or her grandparents, or the legal guardian of that individual, or by a court, and

(E)

the State receives, upon the death of the disabled individual or disabled spouse, all funds remaining in the individual's account, up to an amount equal to the total amount of medical assistance paid on behalf of that individual by the Medi-Cal program. The State shall receive this amount only to the extent that funds remain in that individual's account and are not retained by the trust to cover management and investment fees associated with that account.

(F)

In determining whether an account may be considered solely for the benefit of the disabled individual or disabled spouse, both subsections (a)(4)(F)(1) and (a)(4)(F)(2) of this section shall apply. (1) Except in accordance with subsection (a)(4)(E) of this section, the account funds must benefit no one other than the disabled individual or disabled spouse for whose benefit the account was established before the State's interest has been satisfied pursuant to subsection (a)(4)(E) of this section. (2) If the trust permits funds to be used for any purpose other than for the sole benefit of the disabled individual or disabled spouse for whose benefit the trust or account was established, before the State's interest has been satisfied pursuant to subsection (a)(4)(E) of this section, the account will not be considered solely for the benefit of that individual or spouse. Such accounts shall be treated pursuant to Section 50489.5. An

account will still be considered for the sole benefit of the individual or spouse if the trust permits funds to be used for other purposes when the trust's terms permit such use only after payment of the State's interest pursuant to subsection (a)(4)(E) of this section.

(1)

Except in accordance with subsection (a)(4)(E) of this section, the account funds must benefit no one other than the disabled individual or disabled spouse for whose benefit the account was established before the State's interest has been satisfied pursuant to subsection (a)(4)(E) of this section.

(2)

If the trust permits funds to be used for any purpose other than for the sole benefit of the disabled individual or disabled spouse for whose benefit the trust or account was established, before the State's interest has been satisfied pursuant to subsection (a)(4)(E) of this section, the account will not be considered solely for the benefit of that individual or spouse. Such accounts shall be treated pursuant to Section 50489.5. An account will still be considered for the sole benefit of the individual or spouse if the trust permits funds to be used for other purposes when the trust's terms permit such use only after payment of the State's interest pursuant to subsection (a)(4)(E) of this section.

(b)

Trusts described in subsections (a)(1) of this section through (a)(4) of this section, shall be considered available as specified in subsections (b)(1) and (b)(2) of this section. (1) If the trust is revocable, trust income and principal shall be considered available to the person who has the right, power, and authority to revoke the trust and to use the proceeds. (A) Trust income is income, and is subject to Article 10 of this chapter. If trust income is not distributed in the month of receipt, it is available property. (B) Trust principal is available property. (2) If the trust is irrevocable, the trust assets are not available until distributed.

(1)

If the trust is revocable, trust income and principal shall be considered available to the

person who has the right, power, and authority to revoke the trust and to use the proceeds. (A) Trust income is income, and is subject to Article 10 of this chapter. If trust income is not distributed in the month of receipt, it is available property. (B) Trust principal is available property.

(A)

Trust income is income, and is subject to Article 10 of this chapter. If trust income is not distributed in the month of receipt, it is available property.

(B)

Trust principal is available property.

(2)

If the trust is irrevocable, the trust assets are not available until distributed.

(c)

Any augmentations or additions made to a trust described in subsection (a)(3) of this section or subsection (a)(4) of this section after the disabled individual or disabled spouse for whose benefit the trust was established reaches the age of 65 shall be considered a transfer of assets for less than adequate consideration; earlier augmentations or additions shall not be considered transferred for less than adequate consideration.

(d)

In the case of a trust described in subsection (a)(3) of this section or (a)(4) of this section, to ensure that the Department recovers the costs of medical care it provided, the Department's Third Party Liability Branch shall be notified (1) by the county, whenever the county becomes aware of a Medi-Cal applicant or Medi-Cal beneficiary who is a trust beneficiary, and (2) by the trustee, upon death of the trust beneficiary, termination of the trust, or change of trustee.

(1)

by the county, whenever the county becomes aware of a Medi-Cal applicant or Medi-Cal beneficiary who is a trust beneficiary, and

(2)

by the trustee, upon death of the trust beneficiary, termination of the trust, or change of trustee.