

For trusts established ON or AFTER 8-11-93:

If a trust meets all of the general criteria AND the criteria listed for 1 of the 2 types of Special Needs Trusts described below, the corpus (principal) is considered an excluded asset for MA purposes.

To be considered a Special Needs Trust, the trust must meet all of the following general criteria:

- < A Special Needs Trust must contain only the income and/or assets of the disabled client to be considered an excluded trust. If the trust contains the income or assets of the client and others, including the client's spouse, it can be treated as a Special Needs Trust if it is for the sole benefit of the disabled person.

Require the trustee to verify whether the trust allows for funding by other persons or allows the trustee the power to receive additions to the trust from any other source. The trustee must verify the source and amount of all additions to the trust at the time of the 6-month income or income and asset review. See §0905.09 (6-Month Reporting).

- < A Special Needs Trust must specify that upon termination of the trust, DHS will receive all amounts remaining in the trust up to an amount equal to the total medical expenses paid through MA on the client's behalf.

If the trust is revocable, it must contain a clause that certifies DHS is the primary recipient of the funds remaining in the trust upon the death of the client. If the trust is revoked prior to the death of the client, the corpus of the trust is no longer excluded. Review assets to determine the client's continued eligibility.

If the trust is irrevocable, it must contain a clause that certifies DHS is the primary beneficiary upon the death of the client.

The following do not meet the Special Needs Trust criteria:

- < A trust that allows for payment of debts or expenses before disbursement of the funds in the trust to DHS. Expenses that are not allowed to be paid first include expenses for last illness and funeral, and outstanding debts or expenses.

- < A trust that allows for payment of any other expenses before disbursement of the funds in the trust to DHS. Expenses that are not allowed to be paid first include expenses for last illness and funeral, outstanding debt, or any other types of payments.
  
- < A trust that allows for payment of any and all administrative expenses or attorney's fees and trustee's fees. Allow payment of administrative expenses and fees IF the trust contains a provision stating that the expenses and fees must be reasonable.

Administrative expenses or attorney's and trustee's fees related to termination of the trust before disbursement of the funds to DHS are permissible only if the trust clearly states that it will allow reasonable and necessary administrative expenses:

- Approved by DHS.
- OR
- Approved by the probate court with advance notice to DHS.

The trust must state that distributions from the trust are for the sole benefit of the client at the time the trust is established or any time in the future. Trusts that allow for payments to the spouse or dependents do NOT meet this criteria even if the client has no spouse or dependents. The trust may provide for payment of reasonable and necessary administrative expenses and fees as noted above.

To be considered an excluded Special Needs Trust, a trust must meet all the criteria of 1 of the following 2 types of trust in addition to the general criteria.

#### TRUST FOR DISABLED CLIENT UNDER AGE 65:

- < The client must be under age 65 when the trust is established. A trust established while a person is under 65 remains excluded when the person reaches 65. However, consider any addition to the trust after the client reaches age 65 as an asset transfer. See §0909.27 (Asset Transfers) and §0909.27.01 (MA Transfers--Cont.)
  
- < The client must be disabled according to Social Security or State Medical Review Team (SMRT) criteria. See §0906.15 (Disability Determinations). If the client was not receiving SSI or RSDI payments at the time the trust was established, SMRT must determine that the client was disabled at the time the trust was established.

- < The trust must be established by the client's parent, grandparent, legal guardian, or a court using the client's own funds or the funds of others, if it is for the sole benefit of the disabled person. It cannot be established by the client.

#### POOLED TRUST FOR DISABLED PEOPLE:

- < The trust must be managed by a non-profit association and contain separate trust accounts of more than 1 person. ||
- < A separate account within this pooled trust must be maintained for the client. However, the income or assets of all beneficiaries of the trust may be pooled for investment and management purposes.
- < The client's separate trust account must contain the income and/or assets of only the client.
- < The client must be disabled according to Social Security disability criteria at the time the trust is established. If the client was not receiving SSI or RSDI Disability benefits at the time the trust was established, SMRT must make a retroactive determination that the client was disabled at that time. See §0906.15 (Disability Determinations) and §0906.15.03 (Disability Determination/SMRT Referral).
- < The trust account must be established by the client, the client's parent(s), grandparent(s), legal guardian, or a court using the client's funds.

A 3rd type of Special Needs Trust, established solely with the regular income of the disabled person, is NOT an exempt trust for purposes of MA in Minnesota. This is often called a Miller Trust.

A Special Needs Trust is a Supplemental Needs Trust. However, some Supplemental Needs Trust may not meet the criteria for a Special Needs Trusts. Base the determination on whose income and/or assets were used to set up the trust. A Special Needs Trust must be set up with the client's own funds. It may also contain the assets of others, if it is for the sole benefit of the disabled person. Supplemental Needs Trusts may be set up by others. See §0909.21.03 (Supplemental Needs Trusts).