

## 2615.75.05 TRUST FUNDS ESTABLISHED PRIOR TO AUGUST 11, 1993

The date on which a trust fund was established is a determining factor as to how the trust will be treated for Medicaid eligibility purposes. A change in federal law (OBRA-93) governs the treatment of trusts established on and after August 11, 1993 and is explained in next Section 2615.75.20.

A trust which was established prior to 8-11-93 by the applicant/recipient or his/her spouse as grantor with the applicant/recipient or spouse as the beneficiary is referred to as a "Medicaid qualifying trust". Unless such a trust was created in a will (i.e., a testamentary trust) or was created prior to 4-7-86 solely for the benefit of an intellectually disabled individual residing in an ICF/~~MRI~~ID, the principal of the trust is a countable resource. The amount to be counted as a resource is the maximum amount available to the beneficiary if the trustee were to exercise full discretion for distribution of the funds according to the terms of the trust. The trust is counted as a resource regardless of whether it is revocable or irrevocable, and whether or not the trustee actually exercises their full discretionary authority as allowed by the trust. A trust established by the individual's guardian or legal representative, who is acting on behalf of the individual, falls under the definition of a Medicaid qualifying trust.

In reviewing trust funds established prior to August 11, 1993, which do not meet the definition of a Medicaid qualifying trust, including testamentary trusts and those created prior to 4-7-86 for an intellectually disabled individual residing in an ICF/~~MRI~~ID, the DFR must determine the "availability" of the trust. Refer to Section 2605.15.00 for the definition of availability.