

Department of Health and Human Services  
Health Care Financing Administration  
7500 Security Boulevard  
Baltimore, MD 21244-1850

August 9, 2001

Clifton B. Kruse, Jr.  
Kruse & Lynch, P.C.  
2 North Cascade, Suite 1050  
Colorado Springs, CO 80903-1652

Dear Mr. Kruse:

This is in response to your letter asking for copies of correspondence from the Health Care Financing Administration (HCFA) to inquiring attorneys or other individuals concerning treatment of trusts under the Medicaid program. You are requesting this material because you are preparing a new edition of a text on trusts under Medicaid and believe inclusion of correspondence to attorneys and individuals would be instructive to both counsel and clients. You provided a copy of an appendix to an earlier edition of your book, which lists a number of similar letters included in that edition. Also, you ask for any information we may have as to why certain trusts for the disabled (specifically those cited at 42 U.S.C. 1396p(c)(2)(B)(iv), and 1396p(d)(4)(A) and (C)) are limited to individuals under age 65.

With regard to your request for copies of correspondence, we cannot provide you with copies of correspondence between HCFA and private attorneys and other individuals. We realize that you have already published a number of similar letters. However, those letters were presumably obtained by you from a source or sources other than directly from this agency. We recognize that letters to private attorneys and other individuals can constructively enter the public domain once they are in the hands of the individual to whom they are addressed, but this happens because of actions taken by the addressee, not HCFA. HCFA has no control over what happens to correspondence once it is released to the individual for whom it is intended, and that individual, particularly if he or she is an attorney, can and often does disseminate such correspondence to others in the profession. However, we believe that privacy and other concerns preclude HCFA from unilaterally releasing for general distribution copies of correspondence to private individuals without the express knowledge and consent of each individual involved.

With regard to your question about why certain trusts for the disabled are subject to an age limit, the conference report accompanying the enabling legislation (OBRA 93) provided very little insight into why Congress elected to write the legislation (including those portions that apply an age limit to the trusts in question) as it did. In the absence of any explanation from the Congress itself as to why it imposed an age limit on those trusts, we hesitate to speculate on Congress' motivations in imposing such a limit. As a technical point, however, we would note that while an age limit does apply to two of the trusts you cite, the statute does not impose an age limit on the trust cited at 42 U.S.C. 1396p(d)(4)(C).

If you have any questions, please contact Roy Trudel of my staff at 410-786-3417.

Sincerely,

Thomas E. Hamilton  
Director  
Disabled and Elderly Health Programs Group