

**2336 – TRUST PROPERTY, MEDICAID QUALIFYING
(Prior to OBRA '93)**

POLICY STATEMENT	<p>Effective January 1, 1988, a trust which meets the definition of a Medicaid Qualifying Trust (MQT) is a countable asset.</p> <p>NOTE: This policy applies ONLY to trusts created prior to 8-11-93 (OBRA '93). Refer to Section 2337, Trust Property – OBRA '93, for trusts created on or after 8-11-93. Also refer to Section 2338, Trust Property, for trusts created by a will.</p> <p>EXCEPTION: Not applicable in Family Medicaid.</p>
BASIC CONSIDERATIONS	<p>A MQT is a trust or similar legal device established by an <i>individual</i> (or his or her spouse) under which (a) the individual is the beneficiary of all or part of the payments from the trust, and (b) the amount of such distribution is determined by one or more trustees who are permitted to exercise any discretion with respect to the amount to be distributed to the individual. The distributable amount from a MQT has no <i>use</i> limitation, and MQTs include trusts that are irrevocable or revocable or which are for purposes other than to enable the individual to qualify for Medicaid.</p> <p>Because there are no <i>use</i> limits on the trust funds in a MQT, trusts such as irrevocable burial trusts, education trusts, and medical trusts could be MQTs, provided they meet the criteria as specified in the definition. For example, the terms of the trust may be written so that the trustee may make payments directly to the health care provider for medical services. Thus, although the payments from the trust are not directly paid to the beneficiary, s/he is in fact receiving benefits from payments.</p> <p>The <i>individual</i> is the person who both establishes the trust (or whose spouse establishes the trust) and is beneficiary of the trust. A trust that is established by an individual's guardian or legal representative, acting on the individual's behalf, falls under the definition of a MQT. If an individual is not legally competent, for example, a trust established by their legal guardian (including a parent) using the individual's assets can be treated as having been established by the individual, since the individual could not establish the trust for himself.</p>

**BASIC
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NOTE: A trust meeting the definition of a MQT established prior to April 7, 1986 for an individual residing in an intermediate care facility (ICF) for the mentally retarded is *not* considered a MQT. A trust established by a will is *never* treated as a MQT.

The distributable amount of the trust is the maximum amount considered *available* to be distributed to the beneficiary under the terms of the trust if the trustee exercises his full discretion.

Any portion of the available amount, principal or interest, that is distributed to the A/R for any purpose is income to the A/R for the month received and is a resource in the following month if retained.

Any portion of the available amount, principal or interest, that is not distributed to the A/R is a resource to the A/R.

Any portion of the trust assets, principal or interest, not considered available to the A/R under the terms of the trust is to be reviewed under the transfer of assets policy. Refer to [Section 2342](#), Transfer of Resources. Also, refer to [Section 2345, Undue Hardship Provision for ABD Medicaid](#).

Definitions

Definitions of common terms used in describing trusts:

Similar Legal Devices – any arrangements, instruments or devices which are established by the A/R or their spouse which are not called trusts or which do not qualify as trusts under state law, but which have all of the characteristics described in the definition of a MQT.

Trustee – a trustee is any individual, individuals, or entity (such as an insurance company or bank) that manages a trust or similar device and has fiduciary responsibilities.

Disbursements – Any money generated by the trust.

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Grantor – an individual who creates a trust. The term *grantor* includes:

- the individual
- the individual's spouse
- a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse
- a person, including a court or administrative body acting at the direction or upon the request of the individual, or the individual's spouse.

Beneficiary or grantee – the person on whom the money in the trust is to be spent, the person specified in the trust whose needs are to be met. In a MQT, the grantor and beneficiary are the same person (the A/R or a deemor).

Corpus or principal – the assets that make up the trust.

Encroach upon, or encroachment – the ability to access and use the assets in the trust. The trust document might say *the trustee shall have the right to encroach upon the corpus of the trust as deemed necessary for the benefit of the grantee*.

Proceeds – the money earned on the corpus, usually interest, dividends or rent.

PROCEDURES

Follow the steps below to determine the treatment of a MQT:

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| Step 1 | Obtain a copy of the trust document and any supporting information detailing any investments and a history of distributions made by the trustee. |
| Step 2 | Determine if the trust meets the definition of a MQT, such as who set up the trust and who is the beneficiary of the trust. Proceed to Step 3, if the trust is determined to be a MQT. |
| Step 3 | Obtain supporting information detailing investments and a history of distributions made by the trustee. |
| Step 4 | Determine the total amount considered available to the A/R, if any. Determine the amount(s) actually distributed to the A/R and at what interval(s). |

PROCEDURES (cont.)

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| Step 5 | Treat the amount the A/R actually receives as income in the month received and as a resource if retained in any month past the month of receipt. Treat any portion of the amount available to be distributed that is not actually distributed to the A/R as a resource to the A/R as a resource to the A/R. |
| Step 6 | Develop a transfer of assets penalty if a portion of the trust assets is not available to the A/R. |
| Step 7 | If AU is approved, attach a copy of the trust document to a completed Form DMA-285 and forward to: (signature of A/R or RP not required)
Third Party Liability Unit
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