



Ohio Administrative Code

Rule 5160:1-6-06.2 Medicaid: treatment of transfers involving a trust.

Effective: September 1, 2017

(A) This rule describes when transfers, by an institutionalized individual or his or her spouse, involving a trust are considered improper and subject to a restricted medicaid coverage period (RMCP) in accordance with rule 5160:1-6-06.5 of the Administrative Code.

(B) This rule does not affect whether the contents of the trust or payments or distributions from a trust are considered resources or income to the institutionalized individual for purposes of determining base eligibility under Chapters 5160:1-3, 5160:1-4, and 5160:1-5 of the Administrative Code.

(C) This rule applies to any revocable or irrevocable trust, as defined in rule 5160:1-3-05.2 of the Administrative Code, that contains assets of the institutionalized individual or his or her spouse, that was established (other than by will) on or after the look-back date by:

(1) The institutionalized individual; or

(2) The institutionalized individual's spouse; or

(3) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the institutionalized individual or his or her spouse; or

(4) A person, including any court or administrative body, acting at the direction or upon the request of the institutionalized individual or his or her spouse.

(D) In the case of a trust that meets the requirements of paragraph (C) of this rule, only the assets of the institutionalized individual or his or her spouse that are in the trust, are subject to the provisions of this rule.

(E) This rule shall apply without regard to:



(1) The purposes for which the trust was established;

(2) Whether the trustees have or exercise any discretion under the trust;

(3) Any restrictions on when or whether distributions may be made from the trust; or

(4) Any restrictions on the use of distributions from the trust.

(F) Unless otherwise permitted under this chapter, any payments or distributions from a revocable or irrevocable trust that are not made to the institutionalized individual or for the benefit of the institutionalized individual shall be considered improperly transferred and subject to an RMCP.

(G) In the case of an irrevocable trust:

(1) Unless otherwise permitted under this chapter, if no payment can be made to the institutionalized individual or for the institutionalized individual's benefit, the assets of the trust will be considered improperly transferred and subject to an RMCP in accordance with rule 5160:1-6-06.5 of the Administrative Code.

(2) When determining the date that the assets of the trust were improperly transferred, the date of transfer is the date of the establishment of the trust or the date that payments or distributions to the individual were prohibited, whichever date is later.

(3) When determining the value of the transferred asset under this provision, the value of the trust is its value on the date when the trust was established or the date that payments or distributions to the individual were prohibited, whichever date is later.

(4) If any additional assets of the institutionalized individual or his or her spouse are added to the trust, such transfers will be considered separate improper transfers subject to an RMCP.

(H) This rule shall not apply to any of the following trusts:



- (1) A special needs trust as described in rule 5160:1-3-05.2 of the Administrative Code, except when such a trust is added to or otherwise augmented after the individual reaches age sixty-five. Any such addition or augmentation by the individual, with his or her assets, after age sixty-five is considered an improper transfer and subject to a RMCP.

- (2) A qualified income trust (QIT) as described in rule 5160:1-3-05.2 of the Administrative Code.

- (3) A pooled trust as described in rule 5160:1-3-05.2 of the Administrative Code.

- (4) A supplemental services trust as described in rule 5160:1-3-05.2 of the Administrative Code.