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Special Needs Trusts | Elder Law | Long Term Care Planning | Medicaid | Probate  
Wills & Trusts | Incapacity Planning | Guardianship | Developmental Disabilities

## Pooled Trusts Planning Options for Disabled Individuals 65 Years Old and Older

Travis Finchum

- I. **Pooled Trusts ((d)(4)(C))**– 42 USC 1396 p (d)(4)(C)
  - A. Pooled Trusts can be used to shelter both assets and monthly income (like a QIT) to help qualify for Supplemental Security Income (SSI) as well as the SSI-Related Medicaid Programs in Florida.
  - B. SSI-Related Medicaid Programs include:
    - 1. SSI Eligible Individuals (SSI-DA),
    - 2. Institutional Care Program (ICP),
    - 3. Eligible Individuals under SOBRA - Aged or Disabled (MEDS-AD),
    - 4. Protected Medicaid (PM),
    - 5. Medically Needy (MN),
    - 6. Emergency Medicaid for Noncitizens (EMN),
    - 7. Hospice,
    - 8. Home and Community Based Services (HCBS),
    - 9. Modified Project Aids Care (MPAC),
    - 10. SSI-Related Programs for Refugees (RAP),
    - 11. Qualified Medicare Beneficiaries (QMB),
    - 12. Working Disabled (WD),
    - 13. Special Low Income Medicare Beneficiary (SLMB),
    - 14. Qualifying Individuals I (QI1), and
    - 15. Program of All Inclusive Care for the Elderly (PACE)
  - C. Pooled Trusts must be established by a non-profit organization. There is one trust with multiple beneficiaries.

D. Since the Trust is already in existence, a beneficiary “joins” the Trust, usually through a contractual arrangement called a Joinder Agreement. This contract can be signed by the disabled person’s parent, grandparent, guardian or by the court or by the individual himself or herself. Since the disabled person can sign personally their agent or representative is generally permitted to sign through a power of attorney.

E. The benefits of this trust over the (d) (4) (A) trust are that there is already a Trustee involved who should be familiar with administering these trusts and there is generally a money manager who handles the investments. Oftentimes these trusts do not have minimum fees to administer the accounts, thus making these trusts more cost effective, particularly for smaller accounts.

1. Since the Trustee is already designated you can check out the background and experience of the Trustee and ask questions.
2. You can also investigate the background of the investment advisor and the track record of the investments of the Trust. You have the right to ask these questions and you should be satisfied with the answers you receive. Use “BrokerCheck” at [www.finra.org](http://www.finra.org) to check the background of the financial advisor.
3. Sometimes the initial fees, or up-front costs, can be substantial (several thousand dollars), others charge nominal set-up fees. The costs should be considerably less than setting up your own trust from scratch.

F. How can funds be used? For anything that benefits the individual, but you need to be careful with SSI recipients when spending for food and shelter.

ETHICAL CONSIDERATION – Many of the strategies employed to qualify an individual for Medicaid remove the funds away from the individual and thus make the funds unavailable (income producing property, paying on a Personal Services Agreement, Annuities and Promissory notes). How is the Medicaid recipient better off once we have accomplished the planning? With a Pooled Trust, only the Medicaid recipient can benefit from the funds in the trust. This is much easier to convince a court or Adult Protective Services that the beneficiary is better off after the planning.

G. The Beneficiary can be any age, however, assets deposited into Trust are exempt and the funding event is not a transfer if the Beneficiary is under age 65. Florida presently does not differentiate if the beneficiary is under or over age 65 and does not impose a penalty.

H. Any income deposited into Trust does not count toward eligibility for Medicaid. See Florida ESS Manual 1640.0576.09

I. Any distributions paid to third parties are not counted as income, with the same limitations as the Under 65 Trust ((d) (4) (A) Trust).

J. Any funds remaining on death are retained by the Pooled Trust or they must pay back the Medicaid agency for medical services provided.

1. This means that these trusts are not inheritance vehicles (similar to the (d) (4) (A) trusts).
2. Because these trusts must be established by a non-profit organization, these “retained funds” are generally moved to the non-profit for its purposes or are retained in the Pooled Trust to assist other beneficiaries, either new or existing.
3. A properly utilized Pooled Trust will generally not have large amounts in the beneficiary’s account on death.

## II. What Has Happened Recently with Pooled Trusts

A. On or about April 12, 2021, DCF published the attached “January – March 2021 Summary of Changes” to the DCF Access Program Policy Manual (“the Manual”) purporting to report changes to several chapters, including chapter 1640 of the Manual which defines the requirements for determining eligibility based on assets for SSI-Related Medicaid, State Funded Programs. There was no prior notice or explanation for these purported changes. This Manual sets forth the Department’s policy on eligibility criteria, financial and non-financial, for all of Florida’s Medicaid and related programs including:

- Food Stamps
- Temporary Cash Assistance
- Family-Related Medicaid
- SSI-Related Medicaid, State Funded Programs
- Child in Care and
- Refugee Assistance

B. Specifically the purported change to chapter 1640 of the Manual would result in a change to how the Department treats Pooled Special Needs Trusts for individuals over the age of 64 years. This would adversely affect thousands of vulnerable and disabled Floridians over 64 years of age. There are ambiguities created with this proposed change and it would appear to violate both federal law and the Florida Administrative Procedures Act.

C. The Manual has been in place for many years and followed by the Department but has never been adopted as a “rule” as that term is defined in chapter 120.52 of the Florida Administrative Procedure Act. The attached purported change in policy, should it be followed by the Department, will likely result in a formal challenge by stakeholders including the Florida Bar’s Elder Law Section and the Academy of the Florida Elder Law Attorneys to the proposed policy change or to the entire Program Policy Manual of the Florida Department of Children and Families as an unadopted rule under 120.54.

**120.54 Rulemaking.—**

(1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN EMERGENCY RULES.—

(a) Rulemaking is not a matter of agency discretion. Each agency statement defined as a rule by s. 120.52 shall be adopted by the rulemaking procedure provided by this section as soon as feasible and practicable.

120.52 (definitions)

(16) “Rule” means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule. The term also includes the amendment or repeal of a rule. The term does not include:

- (a) Internal management memoranda which do not affect either the private interests of any person or any plan or procedure important to the public and which have no application outside the agency issuing the memorandum.
- (b) Legal memoranda or opinions issued to an agency by the Attorney General or agency legal opinions prior to their use in connection with an agency action.
- (c) The preparation or modification of:
  - 1. Agency budgets.
  - 2. Statements, memoranda, or instructions to state agencies issued by the Chief Financial Officer or Comptroller as chief fiscal officer of the state and relating or pertaining to claims for payment submitted by state agencies to the Chief Financial Officer or Comptroller.
  - 3. Contractual provisions reached as a result of collective bargaining.
  - 4. Memoranda issued by the Executive Office of the Governor relating to information resources management.

D. The Florida Administrative Code regarding SNT’s has not been changed since 3-25-20

65A-1.702

(13) Trusts.

(a) The Department applies trust provisions set forth in §1902 of the Social Security Act.

(b) Funds transferred into a trust or other similar device established other than by a will prior to October 1, 1993, by the individual, a spouse, or a legal representative are available resources if the trust is revocable or if the trustee has any discretion over the distribution of the principal. Such funds are a transfer of a resource or income, if the trust is irrevocable and the trustee does not have discretion over distribution of the corpus, or if the individual is not the beneficiary. No penalty can be imposed when the transfer occurs beyond the 60 month look-back period. Any disbursements which can be made from the trust to the individual or to someone else on the individual’s behalf shall be considered available income to the

individual. Any language which limits the authority of a trustee to distribute funds from a trust, if such distribution would disqualify an individual from participation in government programs, including Medicaid, shall be disregarded.

(c) Funds transferred into a trust, other than a trust specified in 42 U.S.C. §1396p(d)(4), by a person or entity specified in 42 U.S.C. §1396p(d)(2) on or after October 1, 1993, shall be considered available resources or income to the individual in accordance with 42 U.S.C. §1396p(d)(3) if there are any circumstances under which disbursement of funds from the trust could be made to the individual or to someone else for the benefit of the individual. If no disbursement can be made to the individual or to someone else on behalf of the individual, the establishment of the trust shall be considered a transfer of resources or income.

(d) The trustee of a qualified income trust, qualified disabled trust, or a pooled trust shall provide quarterly statements to the Department which identify all deposits to and disbursements from the trust for each month during the eligibility period.

(e) Undue Hardship. A period of ineligibility shall not be imposed if the Department determines that the denial of eligibility based on counting funds in an irrevocable trust according to provisions in paragraph 65A-1.702(13)(b), F.A.C., would create an undue hardship on the individual. Undue hardship exists when application of a trust policy would deprive an individual of food, clothing, shelter or medical care such that their life or health would be endangered. This can be caused by legal restrictions or by illegal actions of a trustee. All efforts by the individual, or their legal spouse or representative, to access the resources or income must be exhausted before this exception applies.

E. So what did we do about all of this? We spoke with senior staff and attorneys at DCF and convinced them to back off of the change. They agreed to actually go through the motions of making a formal rule change. DCF held a public workshop on May 20<sup>th</sup> and took public commentary for several days after that. They received a lot of commentary and we have heard nothing since then.

ETHICAL CONSIDERATION: what is the State's responsibility to be transparent in their dealings with its citizens? With formal and proper requests for documentation and internal communications of state workers, what can rightly be claimed as attorney client privilege and what must be disclosed? If internal legal counsel is copied on all correspondence can the state then claim it is all privileged and not subject to disclosure?

F. We still do not know for certain the impetus for trying to make these changes. A Public Records request attempting to shed some light has produced nothing helpful yet. We can only surmise the reasoning was the 2008 CMS Memos regarding pooled trusts to the states. That or just a disdain for the use of Pooled Trusts with perhaps some anecdotes of abuse of this valuable tool. The problem with the CMS Memos is the

blanket statement within them that there is “generally nothing of comparable value received in return” for the trust funding. This presumption is coming under challenge; successfully.

G. Some other states and the federal Social Security Administration have taken the blanket approach that a deposit into a Pooled Trust after age 65 is a transfer and a penalty period must be calculated. The problem is the federal laws are not so clear.

H. Most should be familiar with the federal law that gives us the three exempt Special Needs Trusts: Section 1917 (d):

(4) This subsection shall not apply to any of the following trusts:

(A) A trust containing the assets of an individual under age 65 who is disabled (as defined in section 1614(a)(3)) and which is established for the benefit of such individual by the individual, a parent, grandparent, legal guardian of the individual, or a court if the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan under this title.

(B) A trust established in a State for the benefit of an individual if—

(i) the trust is composed only of pension, Social Security, and other income to the individual (and accumulated income in the trust),

(ii) the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan under this title, and

(iii) the State makes medical assistance available to individuals described in section 1902(a)(10)(A)(ii)(V), but does not make such assistance available to individuals for nursing facility services under section 1902(a)(10)(C).

(C) A trust containing the assets of an individual who is disabled (as defined in section 1614(a)(3)) that meets the following conditions:

(i) The trust is established and managed by a nonprofit association.

(ii) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts.

(iii) Accounts in the trust are established solely for the benefit of individuals who are disabled (as defined in section 1614(a)(3)) by the parent, grandparent, or legal guardian of such individuals, by such individuals, or by a court.

(iv) To the extent that amounts remaining in the beneficiary’s account upon the death of the beneficiary are not retained by the trust, the trust pays to the State from such remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under the State plan under this title.

I. The issue is whether the funding of a Pooled Trust (under section (C) above) results in a transfer for no value. The stretch that some states make and the Social Security Administration attempts to make is found in a section earlier in section 1917.

(c)(1)(A) In order to meet the requirements of this subsection for purposes of section 1902(a)(18), the State plan must provide that if an institutionalized individual or the spouse of such an individual (or, at the option of a State, a noninstitutionalized individual or the spouse of such an individual) disposes of assets for less than fair market value on or after the look-back date specified in subparagraph (B)(i), the individual is ineligible for medical assistance for services described in subparagraph (C)(i) (or, in the case of a noninstitutionalized individual, for the services described in subparagraph (C)(ii)) during the period beginning on the date specified in subparagraph (D) and equal to the number of months specified in subparagraph (E).

And particularly section (2):

(2) An individual shall not be ineligible for medical assistance by reason of paragraph (1) to the extent that—

(A) the assets transferred were a home and title to the home was transferred to—

(i) the spouse of such individual;

(ii) a child of such individual who (I) is under age 21, or (II) (with respect to States eligible to participate in the State program established under title XVI) is blind or permanently and totally disabled, or (with respect to States which are not eligible to participate in such program) is blind or disabled as defined in section 1614;

(iii) a sibling of such individual who has an equity interest in such home and who was residing in such individual's home for a period of at least one year immediately before the date the individual becomes an institutionalized individual; or

(iv) a son or daughter of such individual (other than a child described in clause (ii)) who was residing in such individual's home for a period of at least two years immediately before the date the individual becomes an institutionalized individual, and who (as determined by the State) provided care to such individual which permitted such individual to reside at home rather than in such an institution or facility;

(B) the assets—

(i) were transferred to the individual's spouse or to another for the sole benefit of the individual's spouse,

(ii) were transferred from the individual's spouse to another for the sole benefit of the individual's spouse,

(iii) were transferred to, or to a trust (including a trust described in subsection (d)(4)) established solely for the benefit of, the individual's child described in subparagraph (A)(ii)(II), or

(iv) were transferred to a trust (including a trust described in subsection (d)(4)) established solely for the benefit of an individual under 65 years of age who is disabled (as defined in section 1614(a)(3));

(C) a satisfactory showing is made to the State (in accordance with regulations promulgated by the Secretary) that (i) the individual intended to dispose of the assets **either at fair market value, or for other valuable consideration**, (ii) the assets were transferred exclusively for a purpose other than to qualify for medical assistance, or (iii) all assets transferred for less than fair market value have been returned to the individual; or

J. It is this part iv that causes all the confusion. Is the reference to those under age 65 meant to apply to the parenthetical “including a trust described in subsection (d)(4)” or just to any trust established for an individual under 65 years of age. To get around this interpretation the argument is focusing on section (c)(1) and proving that the beneficiary is receiving “fair market value” or “other valuable consideration.”

### III. What is Fair Market Value and Other Valuable Consideration:

#### A. The POMS at SI 01150.005 discusses Fair Market Value.

##### B. Definitions

The following definitions apply for purposes of determining whether an individual has received FMV in exchange for a transferred resource.

##### 1. Fair market value

FMV is the current market value (CMV) of a resource at the time the resource transfers. The CMV of a resource is the going price that it can be reasonably expected to sell on the open market in the geographic area involved.

##### 2. Compensation

Compensation is the cash or other valuable consideration provided in exchange for the resource. Compensation can include real or personal property the individual received in exchange for the resource. Compensation also may include in-kind support and maintenance or services to be provided to the individual because of the transfer. Compensation also may include assumption of the transferor's legal debt.

B. The procedure the Social Security worker is to use to do the analysis is also set for in the same POM.

#### E. Procedure For Determining Whether Individual Received FMV

Take the following steps to determine whether the individual received FMV for the transferred resource:

1. Determine whether transfer is valid and document the determination per [SI 01150.001](#).
2. Determine the CMV of the transferred resource and document the determination per [SI 01150.005C](#).
3. Determine the amount of compensation the individual received and document the file per [SI 01150.005C](#).
4. Determine whether the individual received FMV or uncompensated value (UV) by comparing the CMV of the transferred resource with the amount of compensation.
  1. If the amount of the compensation equals or exceeds the CMV, the individual has received FMV.
  2. If the compensation is less than the CMV, the difference is the uncompensated value.
5. Document the file with the adjudicator's determination; for example, "Valid transfer of real property on 03/05/00 by sale on open market. Received FMV." On non-MSSICS cases use an SSA-5002 (Report of Contact). On MSSICS, record this in the File Documentation Notes section of the Property/Cash Given or Sold (RGIV) page or the DROC screen.

If the individual received FMV for the transferred resource, the issue of the transfer is closed and the period of ineligibility does not apply. Process the case normally.

If uncompensated value exists, we require further development to determine whether a period of ineligibility for SSI is applicable. In MSSICS, you also need to indicate "Yes" or "No" in the "Ineligibility Period" question. If a period of ineligibility:

- applies, enter the start and end dates for the period of ineligibility.
  - does not apply, select the appropriate reason ineligibility does not apply.
- To determine if the individual meets one of the exceptions to the period of ineligibility refer to [SI 01150.120](#).

#### C. Florida ESS Manual

##### **1640.0407      Definition of Actual Value (MSSI, SFP)**

For assets that are in cash, or payable in cash on demand, the actual value is the cash value. For other forms of assets, the actual value is the fair market value (the amount of cash that could be received by selling or converting the asset).

#### **1640.0408     Determining Asset Value (MSSI, SFP)**

The countable value of an asset is the equity an individual or couple has in the asset. In some cases, the asset value counted toward the applicable asset limit is first reduced by an allowable excluded amount.

Equity value is the amount that an asset can expect to sell for on the open market in the particular geographic area involved (that is the fair market value of the asset), less any legal debt on the asset.

Debts are any form of legal indebtedness against the asset in question, such as:

1. mortgages,
2. liens,
3. loans,
4. purchase contracts, or
5. security interests.

Only the amount of the principal owed and any prepayment penalty required by such a debt is deducted from the fair market value in establishing the equity value of the asset.

Any future interest owed as a result of the asset is not considered in establishing equity value.

Outstanding checks that have not cleared the bank yet are considered a form of legal indebtedness against the asset.



Policy Memo	
<b>KDHE-DHCF POLICY NO: 2022-02-01</b>	<b>From: Erin Kelley, Senior Manager</b>
<b>Date: February 07, 2022</b>	<b>Medical KEESM Reference(s): 5621(2), 5721(9), 5722(1), 5722(2), and 5723.2</b>
<b>RE: Transfer to an Exempt Pooled Disability Payback Trust After Age 64</b>	<b>Program(s): LTC Programs</b>

This memo sets forth instructions for implementation of policy changes concerning the application of an inappropriate transfer penalty when funding an exempt pooled disability payback trust after age 64. The Medical KEESM manual will be updated with the next scheduled revision.

## I. BACKGROUND

A properly structured irrevocable pooled disability payback trust is exempt as a resource for eligibility purposes. See Medical KEESM 5621(2). By policy, the trust may be created and funded by a grantor/beneficiary of any age and still qualify for exempt status. However, any assets transferred to the trust after age 64 are subject to an inappropriate transfer penalty for long-term care coverage purposes. See Medical KEESM 5722(1). While the trust itself may be an exempt resource, funding of the trust at age 65 or older may still be subject to a disqualifying penalty period for long term care coverage.

In general, an inappropriate transfer penalty may be negated by showing that the transfer was made either for adequate consideration or with the intent to receive adequate consideration. See Medical KEESM 5721(9) and 5723.2 respectively. These provisions have previously not been routinely applied to transfers to pooled trusts after age 64. Such transfers were generally simply penalized as inappropriate since adequate consideration was deemed to have not been received. However, recent judicial decisions have prompted a revisit of existing policy.

## II. POLICY

Effective with the issuance of this memo, a potentially otherwise disqualifying inappropriate transfer penalty imposed due to funding of an exempt pooled disability payback trust after age 64 may be negated by a satisfactory showing that the trust grantor/beneficiary received, or intended to receive, adequate consideration for the transferred assets. To negate/rebut the agency assumption that the transfer was uncompensated, the applicant/recipient must thoroughly demonstrate either of the following:

### A. ACTUARIALLY SOUND

Evidence must be presented that the value of all assets transferred to the trust after age 64 will be used for the benefit of the trust beneficiary within his/her life expectancy. In other words, the transfer must be actuarially sound. Life expectancy shall be established according to the T-4 Life Expectancy Table in the Medical KEESM Appendix based on the beneficiary's age at the time of the transfer(s). If the applicant/recipient fails to provide documentation that the transfer(s) is/are actuarially sound in this manner, the transfer(s) in full is/are considered an inappropriate transfer subject to penalty.

Example 1: An 85-year old woman with a life expectancy of 6.91 years transfers \$20,000 to a pooled trust with the stated intent to use the funds to pay the difference between the cost of a shared vs private room in the nursing home once she qualifies for Medicaid coverage. Since the difference in the shared vs private room rate for the facility she is residing is a \$500 per month, the funds she transferred to the trust are anticipated to be fully expended on her behalf in 40 months, which is well within her agency-established life expectancy. Therefore, the transfer is considered actuarially sound with adequate consideration to be received in her lifetime in return for the transfer, and no inappropriate transfer penalty would be applied.

Example 2: A 75-year old man with a life expectancy of 11.8 years transfers \$10,000 to a pooled trust with the stated intent to use the funds for non-covered out-of-pocket medical expenses. The grantor/beneficiary provides verification that these expenses have averaged about \$1,000/year over the last several years. Since it is anticipated that the transferred funds will be fully expended on his behalf in the next 10 years, which is within his agency-established life expectancy, the transfer is considered actuarially sound. No inappropriate transfer penalty would be applied.

Example 3: A 73-year old man with a life expectancy of 12.33 years transfers \$12,000 to a pooled trust with the stated intent to use the funds for non-covered out-of-pocket medical expenses. The grantor/beneficiary provides verification that these expenses have averaged \$500/year over the last several years. Since it is not anticipated that the transferred funds will be fully expended on his behalf in the next 12.33 years, which is within his agency-established life expectancy, the transfer is not considered actuarially

sound. This transfer would be considered an inappropriate transfer subject to a transfer of property penalty.

**Note:** In example 3, because the transfer did not intend to receive adequate consideration at the time of the transfer, the entire \$12,000 is subject to the transfer of property penalty.

## **B. INTENT**

The applicant/recipient must demonstrate that when the trust was funded, there was an intent to receive adequate consideration. Evidence must be presented that based on the non-covered medical needs of the grantor/beneficiary at the time the pooled trust was funded after age 64, the funds were anticipated to be fully expended within his/her life expectancy. Should unforeseen circumstances change after funding of the trust which subsequently makes expenditure of all transferred funds unlikely or impossible within his/her life expectancy, adequate consideration is still considered to have been received if the original demonstrated intent would have been actuarially sound.

Note that a simple affidavit, without other compelling documentation, indicating the grantor/beneficiary intended to fully use the funds for a stated purpose within his/her life expectancy does not constitute sufficient evidence for purposes of this policy. In general, to be compelling, the evidence presented must be documented rather than attested.

Example 4: Same 85-year old woman as in Example 1 above. If she unexpectedly transitions from the nursing home to HCBS after 6 months, she will have \$17,000 remaining in the trust that will likely not be expended on her behalf within her remaining lifetime. But, since her original intent was to fully spend the funds within her life expectancy, she will not be penalized due to an unanticipated change in circumstances. No transfer penalty would be applied.

However, if it had been known at the time of the funding that the nursing home stay was indeed only temporary and not permanent, then the transition to HCBS could be foreseen, negating any claim that the intent was to make the transfer actuarially sound. In that instance, a transfer penalty would be appropriate.

Example 5: A 65-year old man with a life expectancy of 17.81 years transfers \$15,000 to a pooled trust with the stated intent to use the funds to travel out-of-state to visit his younger brother once a year. The documented cost of the annual excursion is approximately \$1,500. It is anticipated the funds will be fully expended in 10 years. After 3 years, his brother unexpectedly passes away. He applies for long term care coverage at age 69 with \$10,500 remaining in the trust account, which will likely never be expended within his lifetime. Since the intent at the time of funding was to expend all the funds within his life expectancy, the transfer is considered actuarially sound. He will not be penalized for the unanticipated change in circumstances. No transfer penalty would be applied.

Example 6: An 81-year old woman with a life expectancy of 9.04 years transfers \$5,500 to a pooled trust. Upon review, the worker finds that there is no stated intent for how the funds would be used, other than the joinder agreement stating these monies are excess resources. As the funds were transferred to a pooled trust after she turned 65-years old, the entire \$5,500 is considered an inappropriate transfer subject to a transfer of property penalty.

Note: When multiple transfers to the trust occur after age 64, each transfer is evaluated separately based on the date of the transfer and how the funds are/were intended to be used. This may result in some transfers being considered actuarially sound, or intended to be actuarially sound, while others are penalized as an inappropriate transfer. When multiple transfers are to be penalized, see Medical KEESM 5724.3.

### III. PROCESS

The process for eligibility staff has not changed. All trusts, including pooled disability payback trusts (i.e. ARCare Trust, Midwest Special Needs Trust, and Northview Developmental Disabilities Trust), along with all supporting documentation, shall continue to be sent to KDHE Eligibility Policy for review. See Medical KEESM 5600. KDHE Eligibility Policy will determine the availability of the trust as a resource and whether an inappropriate transfer has occurred. If additional information is needed, eligibility staff may be directed to request the information from the applicant/recipient and forward to KDHE Eligibility Policy upon receipt for further review.

### IV. QUESTIONS

For questions or concerns related to this document, please contact the KDHE Medical Policy Staff at [KDHE.MedicaidEligibilityPolicy@ks.gov](mailto:KDHE.MedicaidEligibilityPolicy@ks.gov).

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Questions regarding any KEES issues are directed to the KEES Help Desk at [KEES.HelpDesk@ks.gov](mailto:KEES.HelpDesk@ks.gov).