

APPENDIX B

TREATMENT OF MEDICAID ASSETS PRIOR TO 8/11/93

Medicaid for AFDC Recipients - Prior to 8/11/93: A trust is treated as an asset to the extent that it is available to the client or for his benefit. Clauses included in a trust which limit the trustee's use of the funds (i.e., exculpatory clauses) are recognized and the amount of funds affected by such exculpatory clauses, excluded as an asset. Irrevocable trusts are also excluded, regardless of the amount. There is no penalty for the placement of funds in an irrevocable trust.

SSI-Related Medicaid Only - Prior to 8/11/93: An irrevocable trust, i.e., a trust that is recognized by State law and cannot be legally revoked is excluded as an asset.

Any trust agreement that restricts the client's access to the trust funds (e.g., only the trustee or court, etc., can invade the principal), the principal does not count as an asset. This is true even when the trust arrangement: (a) can be revoked by someone other than the client; (b) provides a regular specified payment from the principal to the client for the use of the client; (c) designates a representative payee or legal guardian as the trustee for treatment of bank accounts which use the form of "in trust for". When payments are made to the client from the trust, these payments are counted as income and not an asset.

In general, if the client has unrestricted access to the principal of the trust, it is an asset.

Trusts containing exculpatory clauses are treated as if the exculpatory clauses were not contained in the trust. Exculpatory clauses are those which in any way limit the trustee's discretion to disburse funds for services or items covered by Medicaid or any other government aid or assistance program.

The following examples illustrate the type of clauses disregarded when examining a trust fund:

- It is the intention of the Grantor that no trust income or principal shall be paid to or be expended for the benefit of . . . so long as there are sufficient monies available to them for their care, comfort and welfare from federal, state and local government agencies and departments.
- It is the intention of the Grantor that in no event should trust income or principal be paid to or for the benefit of a

governmental agency or department, and the trust estate shall at all times be free of the claims of such governmental bodies.

- The Trustee shall pay, apply or expend so much of the net income and so much of the principal of the trust to or for the use and benefit of . . . however, that such Trustee shall first take into consideration any other resources available to them including any benefits from federal, state and local governmental agencies and departments.
- The authority of the Trustee to distribute income and principal is expressly restricted to purchasing goods and services which are not available free from any federal, state and local government agencies and departments.