

# MEDICAID POLICY INFORMATION SHEET

**Policy Analyst:** Bridget Heffron

**Phone Number:** 517-284-1210

Initial

Public Comment

Final

## Brief description of policy:

A transfer of assets by the applicant or the applicant's spouse to an irrevocable trust "solely for the benefit of" should be evaluated as a divestment.

## Reason for policy (problem being addressed):

To align Michigan Department of Health and Human Services (MDHHS) policy language with the United States Code (42 USC 1396p[c][2]). Current policy does not distinguish between a trust established solely for the benefit of a spouse and trusts established solely for the benefit of a disabled child or individual.

## Budget implication:

budget neutral

will cost MDHHS \$ , and (select one) budgeted in current appropriation

will save MDHHS \$

## Is this policy change mandated per federal requirements?

Yes - 42 USC 1396p(c)(2).

## Does policy have operational implications on other parts of MDHHS?

Yes, the Trust and Annuity Unit within the Bureau of Legal Affairs will need to review trusts using correct standards.

## Does policy have operational implications on other departments?

No

## Summary of input:

controversial

acceptable to most/all groups

limited public interest/comment

## Supporting Documentation:

State Plan Amendment Required: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Public Notice Required: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If Yes, please provide status: <input type="checkbox"/> Approved <input type="checkbox"/> Pending <input type="checkbox"/> Denied	If yes, Submission Date:
Date: Approval	Date:

<b>DRAFT FOR PUBLIC COMMENT</b>  <b>Michigan Department of Health and Human Services</b>		
	<b>Project Number:</b> 2011-Eligibility	<b>Date:</b> July 30, 2020

**Comments Due:** September 3, 2020  
**Proposed Effective Date:** November 1, 2020  
**Direct Comments To:** Bridget Heffron

**Address:**  
**E-Mail Address:** [heffronb@michigan.gov](mailto:heffronb@michigan.gov)  
**Phone:** 517-284-1210

**Fax:**

<p><b>Policy Subject:</b> Supplemental Security Income (SSI)-Related Medicaid Asset Policy Trusts</p> <p><b>Affected Programs:</b> SSI-Related Medicaid Programs</p> <p><b>Distribution:</b> Bridges Eligibility Manual (BEM) Holders</p> <p><b>Summary:</b> A transfer of assets by the Medicaid applicant or the applicant's spouse to an irrevocable trust "solely for the benefit of" should be evaluated as a divestment.</p> <p><b>Purpose:</b> To bring into alignment the Michigan Department of Health and Human Services (MDHHS) BEM policy and the United States Code (42 USC 1396p[c][2]).</p> <p><b>Cost Implications:</b> Budget neutral</p> <p><b>Potential Hearings &amp; Appeal Issues:</b> Limited</p>
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<b>State Plan Amendment Required:</b> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, date submitted:	<b>Public Notice Required:</b> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Submitted date:
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**Tribal Notification:** Yes  No  - Date:

**THIS SECTION COMPLETED BY RECEIVER**

<input type="checkbox"/> <b>Approved</b>	<input type="checkbox"/> <b>No Comments</b>
<input type="checkbox"/> <b>Disapproved</b>	<input type="checkbox"/> <b>See Comments Below</b>
	<input type="checkbox"/> <b>See Comments in Text</b>

<b>Signature:</b>	<b>Phone Number</b>
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**Signature Printed:**

<b>Bureau/Administration</b> <i>(please print)</i>	<b>Date</b>
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# Proposed Policy Draft

Michigan Department of Health and Human Services  
Medical Services Administration

**Distribution:** Bridges Eligibility Manual (BEM) Holders

**Issued:** October 1, 2020 (Proposed)

**Subject:** Supplemental Security Income (SSI)-Related Medicaid Asset Policy Trusts

**Effective:** November 1, 2020 (Proposed)

**Programs Affected:** SSI-Related Medicaid Programs

This bulletin will align the Michigan Department of Health and Human Services (MDHHS) BEM with the United States Code (42 USC 1396p[c][2]). Current MDHHS policy does not distinguish between a trust established "solely for the benefit of" a spouse and a trust established "solely for the benefit of" a blind or disabled child, or a disabled individual under age 65.

All SSI-related Medicaid categories incorporate an asset limit into the needs test for eligibility. When an applicant gives away assets in order to become eligible for Medicaid it is called divestment or divesting of resources. When the applicant has given away the resources within the 60 months prior to applying for and being found eligible for home help, home health, waiver services, or long-term care, the divestment triggers a period of time during which the Medicaid program will not pay for the covered services (i.e., a divestment penalty period). Certain transfers involving the client's spouse, blind or disabled child, or disabled individual under age 65 are not divestment. It is not a divestment to transfer resources directly to a blind or disabled child, to a trust solely for the benefit of a child who is blind or disabled, or to a trust solely for the benefit of a disabled person under age 65. Transfers from the client directly to the client's spouse, or to another solely for the benefit of the client's spouse, are also not divestment.

Transfers to a trust that are not for the sole benefit of a child who is blind or disabled, or for the benefit of a disabled person under age 65 will be evaluated for a divestment.

Effective November 1, 2020, all transfers by the applicant or the applicant's spouse to a trust established solely for the benefit of the client's spouse will be evaluated for divestment, which will bring the MDHHS BEM 405 policy in alignment with 42 USC 1396p(c)(2).

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**TRANSFERS THAT  
ARE NOT  
DIVESTMENT****Transferring  
Excluded Income**

Transferring income that is not countable income for SSI-related MA according to BEM 500 is not divestment.

**Transfers  
Involving Spouse**

It is not divestment to transfer resources from the client to:

- The client's spouse.
- Another SOLELY FOR THE BENEFIT OF the client's spouse.

Transfers from the client's spouse to another SOLELY FOR THE BENEFIT OF the client's spouse are not divestment. This does not apply to trusts established SOLELY FOR THE BENEFIT OF the client's spouse.

**Transfers  
Involving Child**

A transfer to the client's blind or disabled (see BEM 260) child, regardless of the child's age or marital status, are not divestment. This includes transfers to a trust established SOLELY FOR THE BENEFIT OF the child.

**Transfer to Funeral  
Plan**

See Life Insurance Funded Funeral in BEM 400 when a person has irrevocably transferred ownership in life insurance or a similar device designated for funeral expenses.

**Transfer to Trust**

Transfers to a trust established SOLELY FOR THE BENEFIT OF a disabled (see BEM 260) person under age 65 are not divestment.

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**SOLELY FOR THE  
BENEFIT OF**

~~All of the following conditions must be met for a transfer or for a trust to be solely for the benefit of a person.~~ All of the following conditions must be met for a transfer to be solely for the benefit of a blind or disabled child, or a spouse; or for a trust to be solely for the benefit of a blind or disabled child, or a disabled individual under age 65:

- The arrangement must be in writing and legally binding on the parties.
- The arrangement must ensure that none of the resources can be used for someone else during the person's lifetime, except for trustee fees.
- The arrangement must require that the resources be spent for the person on an actuarially sound basis. This means that spending must be at a rate that will use up all the resources during the person's lifetime. Life expectancies are in Exhibit I in this item.

**PENALTY PERIOD****No Maximum  
Penalty**

There is no maximum limit on the penalty period for divestment. There is no minimum amount of resource transfer before incurring a penalty, determine a penalty on any amount of resources that are transferred and meet the definition of a divestment even if the penalty is for one day. Divestment is a type of transfer not an amount of transfer.

Any penalty period established under previous policy continues until it ends.

Apply the penalty policy in place at the time of transfer for any transfers made before February 8, 2006.