DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
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CMS

CENTERS for MEDICARE & MEDICAID SERVICES

Region VIII

February 20, 2009

Dr. Sandeep Wadhwa, MD, MBA
Medicaid Director
Colorado Department of Health Care Policy & Financing
1570 Grant Street
Denver, CO 80203

Dear Dr. Wadhwa:

The purpose of this is to clarify Medicaid policy with respect to the application of the transfer of assets penalty provisions on pooled trusts established by individuals age 65 and older. A pooled trust established by an individual age 65 and older is not exempt from the transfer of assets provisions.

A pooled trust is a trust that can be established for a disabled individual under the authority of section 1917(d)(4)(C) of the Social Security Act (the Act). A trust that meets the requirements of this section of the statute is exempt from being treated under the normal Medicaid trust rules in section 1917(d) of the Act. A pooled trust is run by a non-profit organization. The trust (or more accurately, a sub account within the trust) is established for each individual beneficiary. All the beneficiary sub accounts are pooled for investment and management purposes. Upon the death of the disabled individual the balance remaining in the account is paid back to the State Medicaid agency in an amount equal to the medical assistance paid on behalf of the beneficiary. The statute also allows the trust to retain some portion of the balance remaining after the death of the beneficiary.

Although a pooled trust may be established for beneficiaries of any age, funds placed in a pooled trust established for an individual age 65 or older may be subject to penalty as a transfer of assets for less than fair market value. When a person places funds in a trust the person gives up ownership of those funds. Since the individual generally does not receive anything of comparable value in return placing funds in a trust is usually a transfer for less than fair market value. The statute does provide an exception to imposing a transfer penalty for funds that are placed in a trust established for a disabled individual. However, only trusts established for a disabled individual age 64 or younger are exempt from application of the transfer of assets penalty provisions (see section 1917(c)(2)(B)(iv) of the Act).

If States are allowing individuals age 65 or older to establish pooled trusts without applying the transfer of assets provisions they are not in compliance with the statute.

We are asking that you review your policy on pooled trusts to assure that it meets Federal statutory requirements.

If you have any questions about this letter, please contact Diane Dunstan of my staff at either (303) 844-7040 or by email at diane.dunstan@cms.hhs.gov.

Sincerely,

Richard C. Allen
Associate Regional Administrator
Division of Medicaid & Children's Health Operations