

Understanding Trusts

This guide is not meant to replace OAR [461-145-0540](#), Trusts, or OAR 461-140-0020(2)(e), Availability of Resources. Staff should always refer to the actual rules when making an eligibility determination. This is a guide to explain the more common trusts staff might encounter.

This guide will discuss trusts containing resources and/or income of the financial group (OAR 461-145-0540) as well as trusts containing resources and/or income of a third party such as the applicant's parent (OAR 461-140-0020[2][e]). In all cases, be sure to refer to the OAR for more detailed information.

There are many types of trusts. The first trust we will discuss will be a trust funded with income or resources of the financial group.

Trusts Funded With Income/Resources of the Financial Group

There are 5 kinds of trusts you might come across that contain resources and/or income of the financial group. These include:

- **Generic Trusts**
 1. Revocable
 2. Irrevocable
- **Medicaid-Specific Trusts**
 3. Under 65 Disability Trust
 4. Pooled Trust
 5. Income Cap Trust

1. Revocable Trust

The total value of this type of trust is considered a resource available to the client.

[461-145-0540\(8\)](#).

Note: If the home of the applicant or applicant's spouse is the resource in the trust: Since the home is an excluded resource if the client is living there, the client will not be over resources if the home is the resource in the trust.

2. Irrevocable Trust

There are three types of irrevocable trusts that are Medicaid-specific trusts. There are also irrevocable trusts that are non-Medicaid specific. First we will talk about the non-Medicaid specific irrevocable trusts.

Be sure to read the entire trust. **There must be no circumstances under which the trust can be revoked.**

- If the assets of the irrevocable trusts are available to the client, under any circumstances, the trust will be treated as an available resource.

For example, if Bill's trust says, "If Bill is ever elected president of the United States this trust can be revoked," then the trust is considered an available resource. Even though we know Bill will never (and I mean NEVER) be elected president of the United States, Bill put this clause in the trust when it was created. He could have written the trust with no provisions for revocation, and he elected not to do so. Therefore, it becomes an available resource.

OAR [461-145-0540\(9\)\(b\)](#).

- If the assets of the irrevocable trust are not available to the client then the assets in the trust are subject to the transfer of resources rules.

For example, most trusts would say "for the benefit of" your applicant. If the trust is for the benefit of someone other than the applicant, it may be a disqualifying transfer. [461-145-0540\(9\)\(a\)](#).

Now we will talk about the three Medicaid-specific trusts.

3. Under 65 Disability Trusts

This trust is set up by a parent, grandparent, guardian or conservator or the court system. The trust is set up for a person who meets the SSI disability criteria. It must have been created and funded before the person was 65. There must be a provision in the trust that any money remaining after the death of the client will be returned to the state. You would not count this type of trust as a resource to the client. Send a 647 Property Referral form to EAU so they can monitor any funds remaining in the trust when the client dies. [461-145-0540\(9\)\(a\)](#).

Note: the trust must be funded using the financial group's assets.

4. Pooled Trusts

A "pooled trust" is an umbrella trust that many people can join. A Pooled Trust must be established and managed by a non-profit association (e.g., The ARC of Oregon). For our purposes, the client, a parent, grandparent, legal guardian or the court system can join the pooled trust on behalf of the client. The trust is set up for a person who meets the SSI disability criteria and the trust must have been created and funded before the person was 65. There must be a provision in the trust that any money remaining after the death of the client will be returned to the state. You would not count this type of trust as a resource to the client. Send a 647 Property Referral form to EAU so they can monitor any funds remaining in the trust when the client dies. [461-145-0540\(11\)](#).

Note: You are unlikely to see the full trust. What you will see is the "joinder agreement."

5. Income Cap Trust

These trusts are for the benefit of a client whose income is above 300% of the SSI standard. It must contain all of the client's income. There must be a provision in the trust that any money remaining after the death of the client will be returned to the state. You would not count this type of trust as a resource to the client. Send a 647 Property Referral form to EAU so they can monitor any funds remaining in the trust when the client dies. According to federal guidelines, a client is able to use an ICT to meet the income limit because the client has given up direct access to and control over that income (State Medicaid Manual 3259.7). For this reason, the client **should not** be the trustee of his or her ICT.

An ICT is not considered a transfer of resources as long as the balance in the trust does not exceed the appropriate divisor from OAR 461-140-0296.

The income deposited in the trust may only be distributed as outlined in OAR [461-145-0540\(10\)\(c\)](#). The following is what is currently allowed by this rule:

- A. Personal-needs allowance and applicable room and board standard. If your client moves from a nursing facility to CBC be sure to adjust the personal needs allowance from the PIF standard to the OSIP maintenance standard.
- B. Reasonable administrative costs, not to exceed a total of \$50 per month (see the rule for further details).
- C. Community spouse and family monthly maintenance needs allowance (and *you* will have determined what these numbers are).
- D. Medicare and other private medical insurance premiums (as determined and verified by *you*).
- E. Other incurred medical (as determined and verified by *you*). Monitor this as expenses get paid off.
- F. Child support, alimony, and income taxes.
- G. Irrevocable burial plan with a maximum value of \$5,000.
- H. Home maintenance in the very few cases where this is allowed (see the rule for details).
- I. Patient Liability (not to exceed the cost of care).

Note: You have the discretion to make the determination that this trust is within the OAR. For instance, if you can verify OIM of \$200 and the trust has an OIM of \$500, you have the right to only allow \$200 OIM.

Note: If there is a change in the client's income, the applicable standards, etc it is not necessary to involve an attorney. You should re-evaluate what is allowed and recalculate the client liability accordingly. Be sure to send proper notice.

Note: If there's money left in the trust each month after the client pays their liability you must monitor the funds. The client may need to reimburse for past assistance, purchase needed medical equipment or go off of Medicaid for a month, if the funds in the trust exceed the amounts in [461-140-0296 \(2\)](#).

The effective date for an income cap trust is the first day of the month in which the trust document is signed. [461-180-0044](#).

Trusts Funded with Income/Resources of Someone Other than a Financial Group Member

6. Trusts Funded with Income/Resources of a Third Party

This is a type of trust that does not include the client's income/resources. It is often set up by a parent for the benefit of a child applicant.

This type of trust would be treated as an available resource to the client unless the trust is irrevocable or restricted and cannot be used to meet the basic monthly needs of the financial group. OAR [461-140-0020\(2\)\(e\)](#)

Here is an example of language that might indicate that the trust is restricted and therefore would not be considered an available resource:

"My son is disabled and is on public assistance. This trust is not for his basic needs, but only for his supplemental needs."

If you have any questions about trusts, please contact [Bill Brautigam](#). If you contact Bill, please be able to discuss the type of trust you are reviewing and specific questions or concerns that are not addressed in OAR [461-145-0540](#) or this worker guide. Most questions should be able to be answered by reviewing this guide.