

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF EMERGENCY AMENDMENTS

information.

- 3) If the restriction is continued, a review will be conducted in accordance with subsection (g)(2) of this Section, subsequent to the additional eight quarter period.
- 4) A recipient who has been restricted under this Section, is released and then is restricted under this Section a subsequent time, shall be restricted for a period of eight full quarters. Subsequent to this eight quarter period, a review will be conducted in accordance with subsection (g)(2) of this Section.
- h) Recipients have the right to appeal inclusion in the program. (See 89 Ill. Adm. Code 102.80 through 102.84.)
- i) Any recipient in the RRP who subsequently enrolls in a full risk MCO will be released from the RRP.

(Source: Emergency amendment at 36 Ill. Reg. 10253, effective July 1, 2012 through June 30, 2013)

SUBPART H: MEDICAL ASSISTANCE – NO GRANT (MANG) ELIGIBILITY FACTORS

Section 120.347 Treatment of Trusts and Annuities**EMERGENCY**

- a) This Section applies to trusts established on or after August 11, 1993.
- b) A trust is any arrangement in which a grantor transfers property to a trustee or trustees with the intention that it be held, managed or administered by the trustee or trustees for the benefit of the grantor or designated beneficiaries. A trust also includes any legal instrument or device that is similar to a trust, including an annuity.
- c) A person shall be considered to have established a trust if resources of the person were used to form all or part of the principal of the trust and the trust is established (other than by will) by any of the following:
 - 1) the person;

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- 2) the person's spouse; or
 - 3) any other person, including a court or administrative body, with legal authority to act on behalf of or at the direction of the person or the person's spouse.
- d) This Section does not apply to the following trusts:
- 1) an irrevocable trust containing the resources of a person who is determined disabled (as provided in Section 120.314) and under age 65 that is established by a parent, grandparent, legal guardian or court for the sole benefit (as defined in Section 120.388(m)(2)) of the person, if language contained in the trust stipulates that any amount remaining in the trust (up to the amount expended by the Department on medical assistance) shall be paid to the Department upon the death of the person. This exclusion continues after the person reaches age 65 as long as the person continues to be disabled but any additions made by the person to the trust after age 65 will be treated as a transfer of assets under Sections 120.387 and 120.388. If the trust contains proceeds from a personal injury settlement, any Department charge (as described at 89 Ill. Adm. Code 102.260) must be satisfied in order for the trust to be excluded under this subsection; or
 - 2) an irrevocable trust containing the resources of a person who is determined disabled (as provided in Section 120.314) that is established and managed by a non-profit association that pools funds but maintains a separate account for each beneficiary that is established by the disabled person, a parent, grandparent, legal guardian or court for the sole benefit of the disabled person, if language contained in the trust stipulates that any amount remaining in the trust (up to the amount expended by the Department on medical assistance) that is not retained by the trust for reasonable administrative costs related to wrapping up the affairs of the subaccount shall be paid to the Department upon the death of the person. After a person reaches age 65, any funding by or on behalf of the person to the trust shall be treated as a transfer of assets for less than fair market value unless the person is a ward of a county public guardian or the State guardian pursuant to Section 13-5 of the Probate Act of 1975 or Section 30 of the Guardianship and Advocacy Act and lives in the community or the person is a ward of a county public guardian or the State guardian pursuant to Section 13-5 of the Probate Act of 1975 or Section 30 of the

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Guardianship and Advocacy Act and a court has found that any expenditures from the trust will maintain or enhance the person's quality of life. This exclusion continues after the person reaches age 65 as long as the person continues to meet the definition of disabled (to the extent permitted under federal law). Any funding of a subaccount in a pooled trust by a person over age 64 will be treated as a transfer for fair market value under Section 120.388 so long as the person meets the definition of disabled. If the trust contains proceeds from a personal injury settlement, any Department charge (as described at 89 Ill. Adm. Code 102.260) must be satisfied in order for the trust to be excluded under this subsection (d).

- e) Subsections (f) and (g) of this Section apply to the portion of the trust attributable to the person and without regard to:
- 1) the purpose for establishment of the trust;
 - 2) whether the trustee has or exercises any discretion under the trust; or
 - 3) whether there are any restrictions on distributions or use of distributions from the trust.
- f) For revocable trusts, the Department shall:
- 1) treat the principal as an available resource;
 - 2) treat as income payments from the trust that are made to or for the benefit of the person; and
 - 3) treat any other payments from the trust as transfers of assets by the person (subject to the provisions of, and depending on the date of the payment, Section 120.387 or 120.388).
- g) For irrevocable trusts, the Department shall:
- 1) treat as an available resource the amount of the trust from which payment to or for the benefit of the person could be made;
 - 2) treat as income payments from the trust that are made to or for the benefit of the person;

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- 3) treat any other payments from the trust as transfers of assets by the person (subject to the provisions of Section 120.387 or 120.388, as applicable); and
 - 4) treat as a transfer of assets by the person the amount of the trust from which no payment could be made to the person under any circumstances (subject to the provisions of Section 120.387 or 120.388, as applicable). The date of the transfer is the date the trust was established or, if later, the date that payment to the person was foreclosed. The amount of the trust is determined by including any payments made from the trust after the date that payment to the person was foreclosed.
- h) Trust Income. For married couples, income from trusts shall be attributed to each spouse as provided in the trust, unless:
- 1) payment of income is made solely to one spouse, in which case the income shall be attributed to that spouse;
 - 2) payment of income is made to both spouses, in which case one-half of the income shall be attributed to each spouse; or
 - 3) payment of income is made to either spouse, or both, and to another person or persons, in which case the income shall be attributed to each spouse in proportion to the spouse's interest, or, if payment is made to both spouses and no such interest is specified, one-half of the joint interest shall be attributed to each spouse.
- i) Annuities are treated similar to trusts.
- 1) Revocable and assignable annuities are considered available resources.
 - 2) Any portion of an annuity from which payment to or for the benefit of the person or the person's spouse could be made is an available resource. An annuity that may be surrendered to its issuing entity for a refund or payment of a specified amount or provides a lump-sum settlement option is an available resource valued at the amount of any such refund, surrender or settlement.
 - 3) Income received from an annuity by an institutionalized person is considered non-exempt income. Income received by the community

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spouse of an institutionalized person is treated as available to the community spouse for the purpose of determining the community spouse income allowance under Section 120.379(e).

- 4) An annuity that fails to name the State of Illinois as a remainder beneficiary as required under Section 120.385(b) shall result in denial or termination of eligibility for long term care services.
- j) The principal of a trust fund established under the Self Sufficiency Trust Fund Program (see 20 ILCS 1705/21.1) is an exempt resource.

(Source: Emergency amendment at 36 Ill. Reg. 10253, effective July 1, 2012 through June 30, 2013)

Section 120.379 Provisions for the Prevention of Spousal Impoverishment**EMERGENCY**

- a) The provisions for the prevention of spousal impoverishment apply only to an institutionalized person (as defined in Section 120.388(c)) whose spouse resides in the community. For purposes of this Section, those persons shall be referred to as the institutionalized spouse and the community spouse.
- b) Income. In determining the financial eligibility of an institutionalized spouse, only non-exempt income attributed to the institutionalized spouse shall be considered available. The following rebuttable presumptions shall apply in determining the income attributed to each spouse:
 - 1) if payment of income is made solely in the name of one spouse, the income will be considered available only to that spouse;
 - 2) if payment of income is made in the names of both spouses, one-half of the income shall be considered available to each spouse;
 - 3) if payment of income is made in the names of either spouse, or both, and to another person or persons, the income shall be considered available to each spouse in proportion to the spouse's interest (or, if payment is made to both spouses and no other interest is specified, one-half of the joint interest shall be considered available to each spouse);