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**COMMONWEALTH of VIRGINIA**  
**DEPARTMENT OF SOCIAL SERVICES**  
December 20, 1999

Clarence H. Carter  
Commissioner

I am writing in response to your letter of September 27, 1999, requesting a clarification regarding the transfer of assets to a "pooled trust" and the impact on Medicaid eligibility. I shared your correspondence with our legal counsel and we agreed there are two major issues, the resource evaluation and the transfer of assets. The trust provisions in OBRA '93, permitting the exclusion of assets, at 42 U.S.C. §1396p(d)(4)(A) and (d)(4)(C), deal with the evaluation of trusts as a resource. Transfer of assets rules are treated under 12 VAC 30-40-300.E. The transfer of assets rules are stated under §E.2 and resources assessment issues for determining eligibility are set out under §E.3.

The June 1, 1999 letter from \_\_\_\_\_ stated a specific understanding that transfers into a (d)(4)(C) trust is a transfer exempt from OBRA '93 transfer rules in accordance with the Virginia Medicaid Manual M1120.202 and 12 VAC 30-40-300(E)(3)(G). Your letter of September 27, 1999 made reference to the same provisions in the manual and the state regulations. Both of these provisions address the resource evaluation, not the transfer of assets.

By definition, a pooled trust is one containing the "assets of an individual who is disabled." We agree that for Medicaid eligibility purposes, the assets of a "pooled trust" are not deemed available resources to either the beneficiary or the grantor.

The actual transfer of assets and the impact on the Medicaid eligibility for payment of long-term care services is a separate issue. We have to identify the source of the funds. The transfer of the disabled individual's own assets into the trust does not present a transfer of assets question because it is an exemption specifically allowed in the resource assessment language permitting the exclusion of this kind of trust. The disabled individual, a court, or other specified person such as a grandparent or legal guardian may place the assets of the disabled person, who would also be the beneficiary of the trust, in the trust.

**VSSit**  
FOR LEGAL RECORD

December 20, 1999

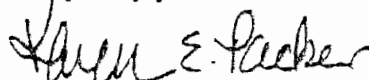
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The question that remains is the treatment of another Medicaid applicant's assets transferred into a pooled trust for the benefit of a disabled individual. Our legal counsel explained that the transfer of assets provision at 42 U.S.C. § 1396p(c)(2)(B)(iv) permits a transfer [to a trust] established solely for the benefit of an individual under 65 years of age who is disabled. The state provision is set out in the Virginia regulation at E.(2)(d). By contrast, the federal statute at § 1396p(c)(2)(B)(iii), and the Virginia regulation at E.2. (c), permit transfer to a (d)(4)(C) trust established solely for the benefit of the individual's disabled child. The "individual" is not the disabled individual whose assets are in the trust, but the parent of the disabled beneficiary. No other individuals, such as grandparents are listed as persons who may make exempted transfers of their own assets into a pooled trust. If the intent of the law and the regulations is to allow transfers into pooled trusts to the same extent as transfers into special needs trusts to persons under age 65, there would be no reason to state a separate rule for transfers into a (d)(4)(A) special needs trust.

The concern that the Commonwealth Community pooled trust is over broad goes to transfers by another person of their own assets into a pooled trust for a disabled beneficiary and the potential impact on the first person's eligibility for Medicaid payment of long-term care services. For example, Uncle Joe transfers his (Uncle Joe's) assets into a pooled trust for his disabled niece. The trust is not a countable resource for Uncle Joe or for his niece. For the purposes of Uncle Joe's Medicaid eligibility, it appears he could not make an exempted transfer into a (d)(4)(C) trust because the beneficiary is not his child. Therefore, the transfer could have an impact on Uncle Joe's Medicaid eligibility. The grandparent who transfers his own assets to a (d)(4)(C) trust for his grandchild is not exempt from the transfer of assets provision.

I hope this clarifies the treatment of transfer of assets to a (d)(4)(C) trust, such as the Commonwealth Community Trust Endowment Fund. The assets of a "pooled trust" are not countable resources to the beneficiary or the grantor for Medicaid eligibility purposes. Transfers of the disabled individual's assets or the assets of the disabled individual's parents are exempted transfers and would not impact Medicaid eligibility of the beneficiary or the grantor. Transfer of assets of anyone else would not be exempt and could impact the grantor's Medicaid eligibility. Please feel free to contact me if you have any additional questions.

Very truly yours,

  
Karen E. Packer  
Program Consultant  
Medical Assistance Unit