



# Iowa Department of Human Services

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May 29, 2015

## GENERAL LETTER NO. 8-D-96

ISSUED BY: Bureau of Financial, Health and Work Supports  
Division of Adult, Children and Family Services

SUBJECT: Employees' Manual, Title 8, Chapter D, **RESOURCES**, pages 21 and 66,  
revised.

### Summary

Chapter 8-D is revised to reflect the name change of intermediate care facilities for the mentally retarded (ICF/MR) to intermediate care facilities for persons with an intellectual disability (ICF/ID), as mandated by 2012 Iowa Acts, Senate File 2247.

### Effective Date

Immediately.

### Material Superseded

This material replaces the following pages from Employees' Manual, Title 8, Chapter D:

<u>Page</u>	<u>Date</u>
21	January 9, 2015
66	June 15, 2012

### Additional Information

Refer questions about this general letter to your area income maintenance administrator.

### Appealing an Attribution

After the attribution is complete, Mr. J files an appeal to set aside additional resources to generate income equal to the difference between the couple's income and the MMMNA. The couple's available income is \$1,844 per month.  $\$2,980.50 - \$1,844 = \$1,136.50$  unmet need.

The average estimate of the cost of an annuity to generate \$1,136 per month is \$45,000, which is less than the \$119,220 attributed to Mr. J. The attribution remains the same.

### Determining Eligibility After the Appeal

After the appeal, Mr. J files an application for medical assistance for Mrs. J. The Js have the following resources at the time of application:

\$ 61,920	CDs
50,000	Bonds
10,000	Checking account
+ 35,000	Savings account
\$ 156,920	Total resources

The worker subtracts the community spouse allowance of \$119,220. This leaves \$37,700 in resources available to Mrs. J. She is ineligible for Medicaid payment for nursing facility care, because she is over the resource limit.

## Estate Recovery

**Legal reference:** 441 IAC 75.28(7)

The cost of medical assistance is subject to recovery from the estate of certain Medicaid members. Members affected by the estate recovery policy are those who:

- ◆ Are 55 years of age or older, regardless of where they are living; or
- ◆ Are under age 55 and:
  - Reside in a nursing facility, an intermediate care facility for persons with an intellectually disability, or a mental health institute, and
  - Cannot reasonably be expected to be discharged and return home. See [Establishing Whether a Member Under Age 55 Can Return Home](#).

Give a copy of Comm. 123 or Comm. 123(S), *Important Information for You and Your Family Members About the Estate Recovery Program*, to all Medicaid applicants at the time of the application.

### **Medicaid Qualifying Trusts**

**Legal reference:** 441 IAC 75.9(249A), P. L. 99-272, P. L. 99-509, section 9435(c)

A Medicaid qualifying trust is a trust or similar legal device which:

- ◆ Was established on or before August 10, 1993.
- ◆ Is not established by a last will and testament.
- ◆ Is established by an applicant or member, the applicant's or member's spouse, or someone acting for them.
- ◆ Is established from funds belonging to the applicant or member or the spouse.
- ◆ Allows or names the applicant or member to be the beneficiary of payments from the trust.
- ◆ Has one or more trustees determine the distribution of payments.
- ◆ Permits the trustees to exercise discretion with respect to the distribution of trust principal and income to the beneficiary.

When someone with power of attorney, a conservator, a guardian, a lawyer, or a court acts on behalf of the applicant or member to set up the trust, treat it as though the applicant or member set up the trust.

The amount of income and principal from a Medicaid qualifying trust that is considered available is the maximum amount that may be permitted under the terms of the trust, assuming the trustees exercise full discretion in the distribution of the income and principal.

EXCEPTION: Trusts or initial trust decrees established before April 7, 1986, solely for the benefit of a person with an intellectual disability who lives in an intermediate care facility for persons with an intellectual disability are exempt.

Evaluate an irrevocable trust established on or before August 10, 1993, under this policy. The terms of the trust that specify the available income and principal determine the amount counted as available to the applicant or member, regardless of whether any payments are actually being made. Treat a trust established for medical payments as a third-party resource.

1. Miss T established a trust in July 1985 as the result of a settlement of a malpractice suit. Since she has an intellectual disability and lives in an intermediate care facility for persons with an intellectual disability (ICF/ID), and since the trust was established before April 7, 1986, this is not a Medicaid qualifying trust.