

<b>Version History Table</b>			
<b>Date</b>	<b>Document</b>	<b>Changes Made</b>	<b>Impacted Pages</b>
2/2024	Trust and Annuity Process Guide	Majority of the document was updated.	Pgs. 2 - 10
1/2025	Trust and Annuity Process Guide	Moved item on Trust Distribution Chart from Countable to Non-Countable column.	Pg. 10
6/2025	Trust and Annuity Process Guide	Added link to the Deprivation of Resources Process Guide	Pg. 10

## Trust and Annuity Guide

**Purpose:** To provide assistance with cases where a trust or annuity is involved, the following guide has been created. The intent is to provide workers with tools and information to help up front with the collection of information, to cut down on review time, and limit errors. The following information outlines the types of trusts and annuities workers may run across and what actions to take or verifications to request while working on cases that involve these financial tools.

When an individual applies for Medicaid, trusts and annuities must be reported. Through the process below either the worker or central office staff will make a determination on whether the trust is a countable or not-countable asset to the applicant. A determination will also need to be made on if any monetary amount from an annuity payment or trust distribution or reimbursement is countable income to the applicant when determining their Medicaid eligibility.

This process **must** be followed prior to sending the case to [DHHS.MedicaidPolicyQuestions@nebraska.gov](mailto:DHHS.MedicaidPolicyQuestions@nebraska.gov) for a determination. This will aid in a faster review process from Medicaid Policy and will ensure a quicker turn around for workers to determine Medicaid eligibility. In addition, the following information must be included in the subject line of your email:

- Master Case Name and Number.
- If it is a Trust or Annuity.
  - o Include the type of trust if applicable; and - the word, **verified** (meaning all the items listed have been obtained).
- Attach all Trust or Annuity documentation and any other supporting documentation to the email for review.
- Workers must review Document Imaging (DI) and case narratives to determine if the Trust or Annuity has already been reviewed and approved.
  - o If it has already been reviewed and approved and there have not been any changes or amendments the Trust or Annuity does not need to be reviewed again.
  - o Workers must document this in the case narrative and proceed with the next steps in processing the case. See the [MLTC Change Management Guide](#) and the [MLTC Processing Guide](#) for additional information.
- Workers must review DI to determine if a copy of the complete Trust or Annuity is on file already. There is no need to request this information from the individual if the complete document is already on file.

### NOTE:

- For current pay SSI individuals, a copy of the trust is NOT required.
- If real property is included in a trust, a copy of the recorded deed is required.
- No IM-1 can be signed on property that is included in a trust.
- Property included in a trust cannot appear on an IM-73.

While policy staff, along with legal services, review trusts and annuities, not all trusts and annuities need central office review. Items listed below **do not** require central office review:

- ☑ Burial Trusts.
- ☑ Revocable Trusts (see the additional information in the *Revocable Trusts* section of this document).
- ☑ TIAA CREF retirement annuities (workers only need to determine the monthly amount received by the individual and include that amount as income in the budget).
  - ☐ The financial statements associated with these accounts can be complex if assistance is needed send the information to [DHHS.MedicaidPolicyQuestions@nebraska.gov](mailto:DHHS.MedicaidPolicyQuestions@nebraska.gov) for a determination.
- ☑ Civil Service annuities/pensions (workers only need to determine the monthly amount received by the individual and include that amount as income in the budget).
- ☑ Military annuities/pensions (workers only need to determine the monthly amount received by the individual and include that amount as income in the budget); and
- ☑ Recorded deeds are not required unless the property is a countable resource, or the property is owned by a trust.

## Trusts

### Useful Terms for Reviewing Trusts:

**Grantor:** The grantor is the person who provides the assets which make up the trust. It is usually, but not always, the same person who establishes the trust. The grantor is also sometimes called the Trustor, Settlor, Trust maker, etc.

**Trustee:** The trustee is the person who holds title to and administers the trust. The trustee cannot revoke a trust but is in charge of accepting and disbursing trust income and principal according to the terms of the trust. The trustee is sometimes also the grantor. There may be more than one trustee for a trust they would then be referenced as co-trustees.

**Beneficiary:** A beneficiary is a person who is entitled to receive either income or principal from a trust. They may receive this currently, or the trust may be holding either income or principal for their future benefit.

**Sole Benefit:** Trust distributions cannot be made for the benefit of other parties including a spouse, children, parents, or others that are living in the beneficiary's household.

### Special Needs Trust:

A special needs trust contains the assets of a client and was established solely for the benefit of a blind or disabled client. The trust must be established by the client's parent, grandparent, legal guardian, or a court. It must also include a recapture clause, stating; the State will receive all amounts remaining in the trust upon the death of the client or upon termination of the trust up to the amount of total medical assistance paid on behalf of the client.

These trusts are generally established to protect important public benefits for the person with a disability and thus must follow established criteria in order to be consistent with applicable federal and state requirements. It is also important to note that laws and regulations change over time and certain requirements, or criteria may change.

There are two types of Special Needs Trusts that can be established:

- **First Party Trusts:** also called Self-settled or Medicaid Payback trusts. These trusts are irrevocable and funded with assets or resources belonging to an individual with a disability such as from:
  - A personal injury settlement.
  - One or multiple inheritances that are directly for the disabled individual.
  - Social Security retroactive or back-payments; or
  - Conserved funds of the disabled individual.
- **Third-Party Trusts:** are funded with assets from a person other than the disabled individual. (Ex: a parent of the disabled individual can use their own resources to establish a Third-Party Trust).

**NOTE:** Third-Party Trusts do not have a Medicaid Recapture Clause. Instead, the remaining assets in the trust are distributed to named beneficiaries in the trust.

**Workers must ensure the following steps are completed before submitting the trust and supporting documentation (if applicable) via email to central office for review:**

- ☒ A complete copy of the trust including *all* amendments and attachments must be attached to the email sent for review.
- ☒ A copy of the most recent financial statement or current accounting record must be attached to the email sent for review.
  - More than just the current balance is needed, verification must include information on dispersals as well.
- ☒ Review the document and verify that it states this is a *Special Needs Trust*.
  - Some may be titled *Supplemental Needs Trusts* or *Irrevocable Trust for the Special Needs*.
  - Titles and language used throughout the document may vary. Workers cannot rely on them solely.
- ☒ Recorded deeds are not required unless the property is a countable resource, or the property is owned by a trust.
- ☒ Confirm the identity of the guardian of the client, when necessary; and
- ☒ Confirm the Trust is funded with the client's assets.
  - Additional documentation may be needed to identify this.

Once all the items above have been obtained *attach all relevant documents* and send an email to [DHHS.MedicaidPolicyQuestions@nebraska.gov](mailto:DHHS.MedicaidPolicyQuestions@nebraska.gov) requesting a determination of the treatment of the trust for budgeting purposes.

[Special Needs Trust Example](#) (Ctrl + Click)

### **Pooled Trust:**

A pooled trust is a trust containing the assets of a disabled individual, or individuals that is established and managed by a nonprofit association in a separate account solely for the benefit of a disabled individual.

Per **477 NAC 23-003.05(A)(vi)(2)(g)(iv)(1)(b)**, a pooled trust:

- Contains the assets of the client.
- Is established and managed by a non-profit association.
- A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of assets, the trust pools these accounts.
- Accounts in the trust are established solely for the benefit of individuals who are blind or disabled (receiving or eligible to receive SSI, RSDI, or AABD/MA); and
- The trust provides that to the extent any amounts remaining in the beneficiary's account upon his/her death are not retained by the trust, the trust shall pay to the State of Nebraska the amount remaining up to the amount of total Medicaid paid on behalf of the client (recapture clause).

**Workers must ensure the following steps are completed before submitting the trust and supporting documentation (if applicable) via email to central office for review:**

- ☒ Review the document and verify that it states this is a *Pooled Trust*.
  - This will be contained in the main body of the first paragraph.
- ☒ A complete copy of the Joinder Agreement must be attached to the email sent for review.
- ☒ A copy of the most recent financial statement or current accounting record must be attached to the email sent for review.
  - More than just the current balance is needed, verification must include information on dispersals as well.
- ☒ Recorded deeds are not required unless the property is a countable resource, or the property is owned by a trust; and
- ☒ Confirm the Trust is funded with the client's assets.
  - Additional documentation may be needed to identify this.

Once all of the items have been obtained *attach all relevant documents* and send an email to [DHHS.MedicaidPolicyQuestions@nebraska.gov](mailto:DHHS.MedicaidPolicyQuestions@nebraska.gov) requesting a determination of the treatment of the trust for budgeting purposes.

[Pooled Trust Example](#) (Ctrl + Click) and a [Joinder Agreement Example](#) (Ctrl + Click)

### **Revocable Trust:**

A revocable trust may be altered or terminated during the grantor's lifetime. Since the trust may be altered at any time until the grantor's death, it is considered part of the grantor's estate and is subject to taxation. The property is passed on to the beneficiaries only after the grantor's death, and the revocable trust then becomes irrevocable. Revocable trusts may be considered an available resource. See **477 NAC 23-003.05(A)(vi)(2)(f)**.

**Workers must ensure the following steps are completed before reviewing the trust.**

- ☑ A complete copy of the trust, including all amendments and attachments must be attached to the email sent for review.
- ☑ A copy of the legal documents establishing the trust must be attached to the email sent for review.
- ☑ Confirm the identity of the person or persons who is/are funding the trust.
- ☑ A copy of the most recent financial statement or current accounting record.
  - More than just the current balance is needed, verification must include information on dispersals as well.
- ☑ Review the document and verify that it states this is a *Revocable Trust*.
  - Titles and language used throughout the document may vary. Workers cannot rely on them solely.
- ☑ Review to determine what was deposited into the trust.
- ☑ If real property is included in the trust the deed(s) to the property is required.
 

**NOTE:** any asset that is held by a revocable trust does not have the same exclusions that a client owned asset does (Ex: a house is not an exempt resource if it is owned by a trust).
- ☑ Recorded deeds are not required unless the property is a countable resource, or the property is owned by a trust; and
- ☑ The Grantor / Trustee relationship must be documented in the trust.
 

**NOTE:** if the applicant or their spouse is a Grantor, the trust is a countable resource.

Once all of the items have been obtained the worker must review the information and make a determination on the trust. Workers must document this in the case narrative and proceed with the next steps in processing the case. See the [MLTC Change Management Guide](#) and the [MLTC Processing Guide](#) for additional information.

[Revocable Trust Example](#) (Ctrl + Click)

**Irrevocable Trust:**

An irrevocable trust is a trust that cannot be modified or terminated without the permission of the beneficiary. The grantor, having transferred assets into the trust, effectively removes all of his or her rights of ownership to the assets and the trust. See **477 NAC 23-003.05(A)(vi)(2)(g)**.

**Workers must ensure the following steps are completed before submitting the trust and supporting documentation (if applicable) via email to central office for review:**

- ☑ A complete copy of the trust, including all amendments and attachments must be attached to the email sent for review.
- ☑ A copy of the legal documents establishing the trust must be attached to the email sent for review.
- ☑ Review the document and verify that it states this is an *Irrevocable Trust*.

- Titles and language used throughout the document may vary. Workers cannot rely on them solely.
- ☑ Confirm the identity of the person or persons funding the trust.
- ☑ Recorded deeds are not required unless the property is a countable resource, or the property is owned by a trust; and
- ☑ A copy of the most recent financial statement or current accounting record must be attached to the email sent for review.
  - More than just the current balance is needed, verification must include information on dispersals as well.

Once all of the items have been obtained *attach all relevant documents* and send an email to [DHHS.MedicaidPolicyQuestions@nebraska.gov](mailto:DHHS.MedicaidPolicyQuestions@nebraska.gov) requesting a determination of the treatment of the trust for budgeting purposes.

[Irrevocable Trust Example](#) (Ctrl + Click)

### **Testamentary Trust:**

A testamentary trust is a legal arrangement created as specified in a person's will and is occasioned by the death of that person. A testamentary trust can be created to oversee such assets. A trustee is appointed to direct the trust until a set time when the trust expires, such as when minor beneficiaries reach a specified age or accomplish a deed such as completing a set educational goal or achieving a specified matrimonial status. See **477 NAC 23-003.05(A)(vi)(2)(g)(vi)**.

**NOTE:** Due to how this trust is established there may not be a separate trust document that is created; the information needed by the worker may be found in the deceased person's will. Due to this only a copy of the will is needed in certain cases.

**Workers must ensure the following steps are completed before submitting the trust and supporting documentation (if applicable) via email to central office for review:**

- ☑ A complete copy of the Will and Trust, including all amendments and attachments must be attached to the email sent for review; and
- ☑ A copy of the most recent financial statement or current accounting record.
  - More than just the current balance is needed, verification must include information on dispersals as well.
- ☑ Recorded deeds are not required unless the property is a countable resource, or the property is owned by a trust.

Once all of the items have been obtained *attach all relevant documents* and send an email to [DHHS.MedicaidPolicyQuestions@nebraska.gov](mailto:DHHS.MedicaidPolicyQuestions@nebraska.gov) requesting a determination of the treatment of the trust for budgeting purposes.

[Testamentary Trust Example](#) (Ctrl + Click)

**Promissory Note:**

A promissory note is a financial instrument that contains a written promise by one party to pay another party a definite sum of money, either on demand or at a specified future date. See **477 NAC 23-001**.

**Workers must ensure the following steps are completed before submitting the trust and supporting documentation (if applicable) via email to central office for review:**

- ☒ A signed copy and complete of the Promissory note must be attached to the email sent for review.
- ☒ Any attached agreement to the Promissory note must be obtained from the individual or their representative and must be attached to the email sent for review.
- ☒ Any legal documents associated with the Promissory note must be obtained from the individual or their representative and must be attached to the email sent for review; and
- ☒ A copy of repayment and amortization schedule must be obtained from the individual or their representative and must be attached to the email sent for review.

Once all of the items have been obtained *attach all relevant documents* and send an email to [DHHS.MedicaidPolicyQuestions@nebraska.gov](mailto:DHHS.MedicaidPolicyQuestions@nebraska.gov) requesting a determination of the treatment of the trust for budgeting purposes.

If workers determine that an amendment has been made to the trust or that the trust appears to be terminating obtain all information about this change in circumstance and submit and send an email to [DHHS.MedicaidPolicyQuestions@nebraska.gov](mailto:DHHS.MedicaidPolicyQuestions@nebraska.gov) requesting a determination of the treatment of the trust for budgeting purposes.



## Annuities

An annuity is a right to receive periodic payment, either for life or a term of years. An immediate annuity is usually purchased with assets. See **477 NAC 20.003.04**.

**Workers must ensure the following steps are completed before submitting the trust and supporting documentation (if applicable) via email to central office for review:**

- ☒ Confirm if the annuity is a pension annuity. If yes, an annuity verification form is not needed.
  - If unsure of the annuity type this form can be used to obtain the information, but again is not a requirement if the annuity is indeed a pension annuity.
  - Additionally, a pension annuity does not need to be sent in for review to central office staff.
- ☒ A complete Annuity Verification form is required for all immediate annuities and must be attached to the email sent for review.
  - However, these are not needed on “pension” annuities.
- ☒ A complete copy of the annuity contract must be obtained and must be attached to the email sent for review; and
  - This includes the issuance letter and application form.
- ☒ Review for the issue date, this is needed to determine if any promissory notes were backed dated.

Once all of the items have been obtained *attach all relevant documents* and send an email to [DHHS.MedicaidPolicyQuestions@nebraska.gov](mailto:DHHS.MedicaidPolicyQuestions@nebraska.gov) requesting a determination of the treatment of the trust for budgeting purposes.

*\*\*All immediate annuities (Ex: ELCO annuities) must be submitted to central office for review.*

## Trust Distribution Chart

The following chart provides general guidelines for countable and not-countable trust distribution and reimbursements. Anything under the countable list would be considered income to the client because it is not an allowable distribution from the trust. Anything under the not-countable list is not considered income to the client because it is an allowable distribution from the trust. This is not a comprehensive list and is not a guarantee that DHHS will allow the trust distribution or reimbursement.

Countable	Not Countable
<ul style="list-style-type: none"> <li>• Rent or mortgage payments.</li> <li>• Basic utilities (heating, cooling, water, garbage-not phone, cable, or internet).</li> <li>• Room and board or base rate for a residential facility.</li> <li>• Cash or payment to the beneficiary.</li> <li>• Charitable donations or gifts to others (may not be countable, but may be a deprivation); or</li> <li>• Anything covered by another funding source (Medicaid, Medicare, SNAP, etc.).</li> </ul>	<ul style="list-style-type: none"> <li>• Clothing.</li> <li>• <u>Groceries, food items, or dining out.</u></li> <li>• Purchase or maintenance of a pet.</li> <li>• Phone, cable, or internet.</li> <li>• Transportation expenses and community outings (for the individual and required companion only).</li> <li>• Necessary supplemental or support service costs not paid by Medicaid or Medicare (co-pays, chore services, etc.).</li> <li>• Furniture or household items.</li> <li>• Basic household items such as: cleaning supplies and toothpaste.</li> <li>• Necessary home modifications for accessibility or equipment for home care.</li> <li>• Communication or other assistive devices not covered by Medicaid.</li> <li>• Expenses to visit family for vacations (for the individual and required companion only); or</li> <li>• Education expenses for the individual; or</li> <li>• Interests or hobbies for the individual; or</li> <li>• Pre-paid funeral or burial plan items that are within state Medicaid and SSA requirements. (Must be non-refundable, non-transferable and cannot be converted to cash.).</li> </ul>

For additional information on deprivation see the <a href="#">Deprivation of Resources Process Guide</a> .
--