INTERPRETIVE MEMO

[X] Medicaid Rule Interpretation **[ ] Procedural Instruction**

This memo remains effective statewide until it is specifically superseded – either by a subsequent memo or by a contradictory rule with a later date.

Please file in your manual facing the page indicated below.

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This memo: [ ] is new [X] Replaces one dated 7/1/08

The purpose of this interpretive memorandum is to clarify Medicaid regulations with respect to the application of the resource exclusion rules and application of the transfer of assets penalty provisions on pooled trusts established by individuals age 65 and older.

M440 Transfer Rule Interpretation A pooled trust established during the look back period by an individual age 65 and older is subject to a transfer penalty.

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Background
At the request of the Centers for Medicare and Medicaid Services, we have reviewed our regulations and policies on pooled trusts to assure they meet Federal statutory requirements. A pooled trust is a trust that can be established for a disabled individual under the authority of §1917(d)(4)(C) of the Social Security Act (the Act). A trust that meets the requirements of this section of the statute is exempt from being treated under the normal Medicaid trust rules in §1917(d) of the Act. A pooled trust is run by a non-profit organization. The trust (or more accurately, a sub-account within the trust) is established for each individual beneficiary. All the beneficiary sub-accounts are pooled for investment and management purposes. Upon the death of the disabled individual, the balance remaining in the account is paid back to the State Medicaid agency in an amount equal to the medical assistance paid on behalf of the beneficiary. The statute also allows the trust to retain some portion of the balance remaining after the death of the beneficiary.

Although a pooled trust may be established for beneficiaries of any age, funds placed in a pooled trust established for an individual age 65 or older may be subject to penalty as a transfer of assets for less than fair market value. When a person places funds in a trust, the person gives up ownership of those funds. Since the individual generally does not receive anything of comparable value in return, placing funds in a trust is usually a transfer for less than fair market value. The federal statute does provide an exception to imposing a transfer penalty for funds that are placed in a trust established for a disabled individual. However, only trusts established for a disabled individual age 64 or younger are exempt from application of the transfer of assets penalty provisions (see §1917(c)(2)(B)(iv) of the Act).