

CHAPTER 75-02-02.1
ELIGIBILITY FOR MEDICAID

SECTION 1. Subsection 3 of section 75-02-02.1-31 is amended as follows:

75-02-02.1-31. Trusts.

3. Trusts may be categorized in many ways, but the revocability of a trust is a fundamental characteristic. A revocable trust is a trust that the grantor, or someone acting at the request, direction, or influence of the grantor, has the power to revoke, remove from, or otherwise end the trust. An irrevocable trust is a trust that may not be revoked in any way by the grantor or anyone acting at the request, direction, or influence of the grantor. The determination of trust revocability is not based solely on trust terms stating the trust is irrevocable. A trust is treated as revocable, regardless of its terms, if:
- a. The trust reserves a power to amend to the grantor, or grants a power to amend to some other person, unless the power to amend is limited to authority to terminate the trust for impossibility of administration, and the trust also provides for distribution of the trust assets to the primary beneficiary, free of trust;
 - b. The grantor and the beneficiaries consent to the revocation;
 - c. The grantor is also the sole beneficiary of the trust;
 - d. The grantor of a trust and all trust beneficiaries are part of a medicaid unit;
 - e. The grantor is a parent, and beneficiaries of the trust include only the grantor, the grantor's spouse, or the grantor's minor children;
 - f. The trust has been amended subsequent to its establishment, unless the trust was amended under North Dakota Century Code section 59-12-11;
 - g. The trust provides for termination and disbursement to the grantor upon conditions relating to the grantor during the grantor's lifetime;
or
 - h. The trust provides for revocation or amendment only upon order of a court.

History: Effective December 1, 1991; amended effective December 1, 1991; October 1, 1993; July 1, 2003; April 1, 2008; April 1, 2010.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02; 42 USC 1396a(k)