

## CHAPTER 633C

## MEDICAL ASSISTANCE TRUSTS

[SP]

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**633C.1 Definitions.**

For purposes of this chapter, unless the context otherwise requires:

1. “*Available monthly income*” means in reference to a medical assistance income trust beneficiary, any income received directly by the beneficiary, not from the trust, that counts as income in determining eligibility for medical assistance and any amounts paid to or otherwise made available to the beneficiary by the trustee pursuant to section 633C.3, subsection 1, paragraph “b”, or section 633C.3, subsection 2, paragraph “b”.

2. “*Beneficiary*” means the original beneficiary of a medical assistance special needs trust or medical assistance income trust, whose assets funded the trust.

3. “*Institutionalized individual*” means an individual receiving nursing facility services, a level of care in any institution equivalent to nursing facility services, or home and community-based services under the medical assistance home and community-based services waiver program.

4. “*Maximum monthly medical assistance payment rate for services in an intermediate care facility for persons with mental retardation*” means the allowable rate established by the department of human services and as published in the Iowa administrative bulletin.

5. “*Medical assistance*” means medical assistance as defined in section 249A.2.

6. “*Medical assistance income trust*” means a trust or similar legal instrument or device that meets the criteria of 42 U.S.C. § 1396p(d)(4)(B)(i)-(ii).

7. “*Medical assistance special needs trust*” means a trust or similar legal instrument or device that meets the criteria of 42 U.S.C. § 1396p(d)(4)(A) or (C).

8. “*Special needs of the beneficiary attributable to the beneficiary’s disability*” means only those needs that would not exist but for the beneficiary’s disability, not including ordinary needs, such as ordinary support and maintenance, education, and entertainment, that would exist regardless of disability.

9. “*Statewide average charge for state mental health institute care*” means the statewide average charge for such care as calculated by the department of human services and as published in the Iowa administrative bulletin.

10. “*Statewide average charge for nursing facility services*” means the statewide average charge for such care, excluding charges by Medicare-certified, skilled nursing facilities, as calculated by the department of human services and as published in the Iowa administrative bulletin.

11. “*Statewide average charge to private-pay patients for psychiatric medical institutions for children care*” means the statewide average charge for such care as calculated by the department of human services and as published in the Iowa administrative bulletin.

12. “*Total monthly income*” means in reference to a medical assistance income trust beneficiary, income received directly by the beneficiary, not from the trust, that counts as income in determining eligibility for medical assistance, income of the beneficiary received by the trust that would otherwise count as income in determining the beneficiary’s eligibility for medical assistance, and income or earnings of the trust received by the trust.

94 Acts, ch 1120, §3

C95, §633.707

96 Acts, ch 1129, §106; 2004 Acts, ch 1086, §99; 2004 Acts, ch 1166, §1; 2005 Acts, ch 38, §52, 53, 55

CS2005, §633C.1

**633C.2 Disposition of medical assistance special needs trusts.**

Regardless of the terms of a medical assistance special needs trust, any income received or asset added to the trust during a one-month period shall be expended as provided for medical assistance income trusts under section 633C.3, on a monthly basis, during the life of the beneficiary. Any increase in income or principal retained in the trust from a previous month may be expended, during the life of the beneficiary, only for reasonable and necessary expenses of the trust, not to exceed ten dollars per month without court approval, for special needs of the beneficiary attributable to the beneficiary's disability and approved by the district court, for medical care or services that would otherwise be covered by medical assistance under chapter 249A, or to reimburse the state for medical assistance paid on behalf of the beneficiary.

94 Acts, ch 1120, §4

C95, §633.708

95 Acts, ch 68, §8; 2005 Acts, ch 38, §53, 55

CS2005, §633C.2

**633C.3 Disposition of medical assistance income trusts.**

1. Regardless of the terms of a medical assistance income trust, if the beneficiary's total monthly income is less than the average statewide charge for nursing facility services to a private pay resident of a nursing facility, then, during the life of the beneficiary, any property received or held by the trust shall be expended only as follows, as applicable, and in the following order of priority:

a. A reasonable amount may be paid or set aside each month for necessary expenses of the trust, not to exceed ten dollars per month without court approval.

b. From the remaining principal or income of the trust, amounts may be paid for expenses that qualify as required deductions from income pursuant to 42 C.F.R. § 435.725(c) or 435.726(c) for purposes of determining the amount by which medical assistance payments under chapter 249A for institutional services or for home and community-based services provided under a federal waiver will be reduced based on the beneficiary's income.

c. If the beneficiary is an institutionalized individual or receiving home and community-based services provided under a federal waiver, the remaining principal or income of the trust shall be paid directly to the provider of institutional care or home and community-based services, on a monthly basis, for any cost not paid under paragraph "b", to reduce any amount paid as medical assistance under chapter 249A.

d. Any remaining principal or income of the trust may, at the trustee's discretion or as directed by the terms of the trust, be paid directly to providers of other medical care or services that would otherwise be covered by medical assistance, paid to the state as reimbursement for medical assistance paid on behalf of the beneficiary, or retained by the trust.

2. Regardless of the terms of a medical assistance income trust, if the beneficiary's total monthly income is at or above the average statewide charge for nursing facility services to a private-pay resident, then, during the life of the beneficiary, any property received or held by the trust shall be expended only as follows, as applicable, in the following order of priority:

a. A reasonable amount may be paid or set aside each month for necessary expenses of the trust, not to exceed ten dollars per month without court approval.

b. All remaining property received or held by the trust shall be paid to or otherwise made available to the beneficiary on a monthly basis, to be counted as income or a resource in determining eligibility for medical assistance under chapter 249A.

3. Subsections 1 and 2 shall apply to the following beneficiaries; however, the following amounts indicated shall be applied in lieu of the statewide average charge for nursing facility services:

a. For a beneficiary who meets the medical assistance level of care requirements for services in an intermediate care facility for persons with mental retardation and who either resides in an intermediate care facility for persons with mental retardation or is eligible for services under the medical assistance home and community-based services waiver except that the beneficiary's income exceeds the allowable maximum, the applicable rate is the

maximum monthly medical assistance payment rate for services in an intermediate care facility for persons with mental retardation.

b. For a beneficiary who meets the medical assistance level of care requirements for services in a psychiatric medical institution for children and who resides in a psychiatric medical institution for children, the applicable rate is the statewide average charge to private-pay patients for psychiatric medical institution for children care.

c. For a beneficiary who meets the medical assistance level of care requirements for services in a state mental health institute and who either resides in a state mental health institute or is eligible for services under a medical assistance home and community-based services waiver except that the beneficiary's income exceeds the allowable maximum, the applicable rate is the statewide average charge for state mental health institute care.

d. For a beneficiary who meets the medical assistance level of care requirements for services in a nursing facility and is receiving care or is receiving specialized care such as an adult receiving Alzheimer's care, a child receiving skilled nursing facility care, or an adult or child receiving skilled nursing facility care for neurological disorders, the applicable rate is the statewide average charge for nursing facility services for the services or specialized services provided.

94 Acts, ch 1120, §5

C95, §633.709

96 Acts, ch 1129, §113; 2004 Acts, ch 1086, §100; 2004 Acts, ch 1166, §2; 2005 Acts, ch 38, §53

CS2005, §633C.3

2007 Acts, ch 136, §1

#### **633C.4 Other powers of trustees.**

1. Sections 633C.2 and 633C.3 shall not be construed to limit the authority of the trustees to invest, sell, or otherwise manage property held in trust.

2. The trustee of a medical assistance income trust or a medical assistance special needs trust is a fiduciary for purposes of chapter 633A and, in the exercise of the trustee's fiduciary duties, the state shall be considered a beneficiary of the trust. Regardless of the terms of the trust, the trustee shall not take any action that is not prudent in light of the state's interest in the trust.

94 Acts, ch 1120, §6

C2005, §633.710

2005 Acts, ch 38, §53, 55

CS2005, §633C.4

2006 Acts, ch 1030, §78

#### **633C.5 Cooperation.**

1. The department of human services shall cooperate with the trustee of a medical assistance special needs trust or a medical assistance income trust in determining the appropriate disposition of the trust under sections 633C.2 and 633C.3.

2. The trustee of a medical assistance special needs trust or medical assistance income trust shall cooperate with the department of human services in supplying information regarding a trust established under this chapter.

94 Acts, ch 1120, §7

C2005, §633.711

2005 Acts, ch 38, §52, 53, 55

CS2005, §633C.5