

MISSISSIPPI DIVISION OF MEDICAID  
LONG TERM CARE INCOME TRUST – HELP SHEET

The purpose of an Income Trust is to allow an individual with recurring excess monthly income who has exhausted all available resources to become eligible for Medicaid while in a nursing facility. Certain conditions apply which are outlined below. The federal authority for an Income Trust is found in Section 1917 (d) of the Social Security Act (42 U.S.C. §1396 p (d) (4)).

**Basic Income Trust Rules:**

1. A Long Term Care Income Trust is available for someone receiving an institutional level of care in a nursing facility. An Income Trust is not available for someone in an acute care hospital or Psychiatric Residential Care Facility (PRTF).
2. An individual requiring an Income Trust who has a court appointed conservator must furnish a copy of the Chancery Court Order authorizing the conservator to establish the Income Trust. The court must be made aware of the Income Trust requirement to pay the MS Division of Medicaid any accumulated trust funds up to an amount expended by Medicaid under the terms of the Income Trust.

**Income Trust Requirements – Please read carefully:**

3. Income that funds the Income Trust is all income due the individual from all sources such as Social Security, pension benefits, interest income and any/all other types and sources of income.
4. The Income Trust must specify the effective date of the trust. The effective date is the date the individual is determined eligible for Medicaid on all factors which may be up to three (3) months prior to the month of the Medicaid application provided the Income Trust is properly funded. Consultation with the Medicaid Regional Office is needed prior to the execution of the trust to confirm the effective date needed. Medicaid eligibility can begin in a month later than the stated effective date of an Income Trust but Medicaid eligibility cannot begin in any month prior to the stated effective date of an Income Trust. An executed Income Trust without an effective date will begin on the date the trust is signed and dated if the individual is otherwise eligible. It is important that you review #5 below to consider month of entry requirements for the individual's income.
5. In the month of entry to a nursing facility, income may be protected, which means the individual does not contribute toward the cost of care in the facility for any partial month of entry into the facility from the individual's home. For an individual eligible for Medicaid under the terms of an Income Trust, income that may be protected in the month of entry is limited to income that is \$1 less than the institutional limit in effect at the time of entry into the facility. Income above this amount is payable to the Division of Medicaid within thirty (30) days of the notice issued by the Division of Medicaid approving eligibility for the individual. The approval notice will specify the amount payable for the month of entry. **NOTE:** The individual has the option to request that Medicaid eligibility be delayed until the month following the month of entry to avoid paying the Division of Medicaid the excess income due in the month of entry. This option may be beneficial to the individual if entry into the facility is at the end of the month.

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**Income Trust Requirements (Continued) – Please read carefully:**

Paying the private pay rate to the facility for a late month admission may be less than the amount payable to Medicaid. If this option is chosen, the individual assumes full financial responsibility for the month of entry.

6. In all subsequent months or if income is not protected for the month of entry, the income that is payable to the nursing facility, referred to as Medicaid Income, and any income that funds the trust must be handled as follows:
  - If income of the individual is less than the per diem payment the Division of Medicaid will make to the facility for any month, all income of the individual (less authorized deductions) must be paid directly to the nursing facility as Medicaid Income. This determination is made based on the daily Medicaid rate payable to the facility, which varies depending on the facility and days in the month.
  - If income of the individual is more than the per diem payment the Division of Medicaid will make to the facility in any month, the income in excess of the Medicaid payment must fund the trust until such time that payment of the accumulated Income Trust funds is requested by the Division of Medicaid. A bank account that is separate from the account used for the individual's living expenses must be established for income that must fund the trust. The account does not have to be styled as a trust account; it only has to be a separate account for accumulated funding that will be electronically verified by the Division of Medicaid for compliance with the Income Trust provision. If electronic verification is not possible, the individual must verify the separate account and account balance at the time of application and at each annual review.
  - The Trustee will be notified in writing of the amounts payable to the nursing facility and of any amount of income that must fund the Income Trust for each month of Medicaid eligibility under the Income Trust.
7. A letter specifying the payment due from accumulated trust funds will be issued at each review of the individual's Medicaid eligibility, which is at least annually, while the Income Trust is in existence. **Failure by the Trustee to make the payment by the due date specified in the letter will result in the loss of Medicaid eligibility for the individual.**
8. When requested, the Trustee must provide an accounting to the Division of Medicaid to show all receipts and disbursements of the Income Trust during the prior calendar year. Any disbursements not approved by the Division of Medicaid or provided for by the Income Trust will result in the loss of Medicaid eligibility for the individual.

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**Completing the Income Trust:**

9. The Division of Medicaid provides a model Long Term Care Income Trust agreement for individuals in need of an Income Trust. The only change to this legally binding document that is acceptable is to add a successor Trustee or Co-Trustee. Any changes must be approved by the Division of Medicaid prior to execution of the trust. Once approved and accepted by the Division of Medicaid, the document cannot be modified without prior approval by the Division of Medicaid.
10. The individual requesting eligibility under an Income Trust is referred to as the “Settlor” in the Income Trust document. The Trustee is the individual or entity (such as a bank) that manages the trust and has fiduciary responsibilities. The Settlor and Trustee cannot be the same person.

**Income Trust Restrictions:**

11. A Long Term Care Income Trust is used only for income belonging to the individual. No resources (assets) may be used to establish or augment the Income Trust as this will void the trust exception, resulting in the loss of Medicaid eligibility.
12. No fees are allowed to be paid to the Trustee for their service. In the event funds are retained in the trust, administrative fees are limited to \$10 per month are intended to cover any bank charges required to maintain an Income Trust bank account.
13. An Income Trust is not allowed on a temporary or intermittent basis except in instances when recurring excess monthly income that does not exceed the facility’s private pay rate as outlined in #14 below will be reduced at a future date. In such a situation, an Income Trust will be allowed until such time as the excess income is reduced and an Income Trust is no longer required to allow eligibility.
  - Income received less often than monthly does not qualify as recurring excess monthly income that allows the use of an Income Trust.
  - Irregular or infrequent income must be converted into a monthly income before allowing an Income Trust to be established.
14. If the individual has total income that exceeds the monthly private pay rate for the facility in which he/she resides, Medicaid eligibility will be denied. The Division of Medicaid will use the facility’s daily private pay rate in effect for a 31-day month for the period of time under consideration for Medicaid eligibility to make this determination. If income exceeds the 31-day private pay rate for any month(s) after Medicaid eligibility is approved, Medicaid will be terminated. If eligibility cannot be terminated due to advance notice requirements, but income can be counted for Medicaid Income purposes, the excess income will be payable to the Division of Medicaid upon receipt of notice from the agency.

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**Termination of an Income Trust:**

15. An Income Trust terminates at the individual's death, when Medicaid eligibility terminates or when the trust is no longer necessary or the trust is otherwise terminated. The need to terminate an Income Trust prior to the individual's death may occur in the following situations:

- The individual's recurring monthly income increases to an amount above the private pay cost for the facility in which the individual resides which results in the disallowance of an Income Trust.
- The individual's recurring monthly income decreases to an amount below the Medicaid institutional limit, meaning an Income Trust is no longer needed in order for the individual to qualify for Medicaid based on income.
- Medicaid state or federal policy changes regarding how certain income must be counted resulting in the disallowance or the need for an Income Trust.
- The individual is discharged from the nursing facility resulting in the disallowance of a Long Term Care Income Trust in order to qualify for Medicaid

At the time an Income Trust is terminated, all amounts remaining in the Income Trust must be paid to the Division of Medicaid up to an amount equal to the total medical assistance paid by the Division of Medicaid on behalf of the individual that has not previously been paid to the Division of Medicaid. The Trustee will be notified in writing of any remaining trust funds that are due and payable to the Division of Medicaid.

An Income Trust is a very simple trust that accomplishes the specific goal of receiving income and disbursing it for the sole purpose of allowing an individual in a nursing facility with income in excess of Medicaid income limits to qualify for Medicaid. It is not intended to be a complex fiduciary trust. For more information, attorneys drafting an Income Trust may contact the Division of Medicaid's Legal Unit at (601) 359-6050.