

MISSISSIPPI DIVISION OF MEDICAID

Eligibility Policy and Procedures Manual

304.04.03 SPECIAL NEEDS TRUST (SNT) AND POOLED TRUSTS GUIDELINES AND RESTRICTIONS

The MS Division of Medicaid has established guidelines and restrictions regarding payments and distributions from a Special Needs Trust or Pooled Trust that must be followed in order for either type of trust to meet or continue to meet the conditions for exception. A document entitled “Special Needs Trust and Pooled Trusts Guidelines & Restrictions” is located in the Appendix. This document must be given to each applicant or recipient who qualifies for Medicaid on the basis of a SNT or Pooled Trust. The document must be signed by the trustee and a copy provided to the trustee. File the original in the case record.

304.04.04 INCOME TRUSTS

The purpose of an Income Trust is to allow an institutionalized individual with excess income who has exhausted all available resources to become eligible for Medicaid. This type of trust established for the benefit of the individual is limited to institutionalized clients, not those in a hospital setting. A recipient participating in the Home and Community Based Waiver program (HCBS) may also utilize an Income Trust for eligibility purposes. An Income Trust document is required. The Income Trust must meet the following requirements:

- The trust is composed only of the pension(s), Social Security, and other income of the individual, including accumulated interest in the trust; and,
- Upon the death of the individual, the Division of Medicaid receives all amounts remaining in the trust, up to an amount equal to the total medical assistance paid on behalf of the individual. To qualify for this exception, the trust must include a provision to this effect.

The Income Trust provision is designed to assist individuals who have too much income to qualify for Medicaid institutional care, but not enough income to pay private pay for the long term care needed. It is intended for individuals with excess recurring monthly income that causes ineligibility. The Income Trust is a binding document that directs how income received each month will be obligated. As a result, an Income Trust will not be allowed on a temporary or intermittent basis with the following exception: an Income Trust for monthly excess income that will be reduced at a future date will be allowed during the period of time the monthly income exceeds the Medicaid institutional limit.

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Income Trusts (Continued)

For example, a nursing home applicant with excess income that includes a VA pension will be allowed an Income Trust until such time as the VA reduces the pension payment to \$90, thereby eliminating the need for an Income Trust. Income received once or twice per year or on a quarterly basis does not qualify for the use of an Income Trust. This type of irregular and infrequent income should be converted to monthly income before allowing an Income Trust to be established.

Income Included in an Income Trust

To qualify for this exception, the Income Trust must be composed only of income to the individual, from whatever source. The trust may contain accumulated income, i.e., income that has not been paid out of the trust. However, no resources, as defined by SSI, may be used to establish or augment the trust. Inclusion of resources voids this exception.

All individuals with an income Trust who receive a 13th check from State Retirement will be required to have the 13th check averaged over the 12-month period. The representative for the recipient can have this change made by contacting the State Retirement office.

Income Not Included in an Income Trust

An individual's total income must go into the Income Trust each month. The only exception is for the types of VA payments that are not considered income, i.e., VA Reduced Pension benefits, VA Aid & Attendance payments and VA Pension payments attributed to Unreimbursed Medical Expenses.

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Funding the Income Trust Account

All of a nursing home recipient's income, less deductions authorized by Medicaid, will be paid to the nursing home. In most cases no funds will be retained in the Income Trust account.

The recipient's cost of care, referred to as Medicaid Income, will be determined by the total gross income and the daily rate that Medicaid pays the nursing facility where the recipient resides. However, if the Medicaid rate for the facility is less than the recipient's income, the recipient's excess income will fund an income trust account.

Example: The recipient's countable income is \$3,800 per month. The Medicaid daily rate for the facility where the recipient resides is \$3,500 per month. The excess income of \$300 per month must fund an Income Trust account. This example applies if income for only one month exceeds the Medicaid daily rate or if the income for all the months exceeds the Medicaid daily rate.

However, when the Medicaid rate for the facility is more than the recipient's countable income, all of the recipient's income is payable to the facility and the Income Trust account will not be funded.

Example: The recipient's countable income is \$2,500 per month. The Medicaid daily rate for the facility where the recipient resides is \$4,500 per month. The recipient will pay the facility \$2,500, and the Income Trust account will not be needed. However, a trust document is still required.

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Home and Community Based Waiver (HCBS)

For individuals in the Home and Community Based Waiver (HCBS), the difference between an individual's total income and an amount that is \$1 less than the current institutional income limit should fund the Income Trust account. Bank charges associated with maintaining trust accounts are limited to \$10 per month.

Other Income Trust Issues

- Trusts that are not properly funded into an Income Trust account do not meet the criteria for a trust exception.
- When an Income Trust is no longer needed due to the client's death, ineligibility or some other change, the Division of Medicaid receives all amounts remaining in the trust account, up to an amount equal to the total medical assistance paid on behalf of the individual. To qualify for this exception, the trust must include a provision to this effect.
- Model Income Trust agreements for both LTC and HCBS are located in the Appendix and can be copied for execution by the recipient and trustee. The only changes to this legally binding document that the Division of Medicaid will accept will be to add language regarding a successor trustee or co-trustee. Changes must be approved by the Legal Bureau prior to execution.
- Income Trust cases have the same rules of timeliness as all other ABD cases. Unless establishing disability is involved, Income Trust cases are subject to the 45-day time limit. Work with someone who is making an effort to do what is required, but do not hold a case pending for them to establish the trust.
NOTE: The recipient cannot be the trustee.
- The Income Trust case cannot be approved any earlier than the effective date of the trust. If the recipient later decides that coverage in a retro period is needed, the document must be amended. If there is not an effective date, then the trust begins the month it is signed and dated.
- It is possible to have an Income Trust during a transfer period. The nursing home will be paid private pay by the client and all the income will be used to pay private pay. This allows the client to be Medicaid-eligible and the penalty period can begin.