

MISSISSIPPI DIVISION OF MEDICAID

LONG TERM CARE INCOME TRUST HELP SHEET

Section 1917 (d) of the Social Security Act (42 U.S.C. §1396 p (d) (4)) defines certain provisions that qualify as an exception for the purpose of an individual qualifying for Medicaid benefits. One such exception is an "Income Trust". This type of trust, established for the benefit of an individual in a nursing facility, must meet the following requirements.

1. The purpose of the trust is to allow an individual with excess income who has exhausted all available resources to become eligible for Medicaid. The trust may be used only for income belonging to the individual. No resources (assets) may be used to establish or augment the trust. Inclusion of resources voids the trust exception.
2. Funds subject to the trust are all income due the individual from all sources such as Social Security, pension benefits, interest and any and all other types/sources of income.
3. 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.
4. Income Trusts, once accepted by Medicaid, cannot be modified without Medicaid's approval. Trusts must specify that the trust will terminate at the individual's death, when Medicaid eligibility is terminated, when the trust is no longer necessary or in the event the trust is otherwise terminated. Trusts may need to be terminated prior to an individual's death due to changes in the client's income or changes in Medicaid policy regarding how certain income must be counted or in the event the individual is discharged from the nursing facility.
5. In the month of entry into long term care, the individual's income may be protected, which means there is no cost of care payable to the nursing facility. Income above the amount that is \$1 less than the Medicaid institutional income limit in effect for the month of entry is payable to the Division of Medicaid within 30-days after receipt of the notice issued by the Division of Medicaid approving eligibility. The approval notice will provide the amount payable.

6. In all subsequent months or if income is not protected for the month of entry the following rules apply. If the income of the Settlor is less than Settlor's cost of care at the nursing facility, all income of the Settlor, less authorized deductions, must be paid directly to the nursing facility. In that case no funds will be retained in the Trust. If the income of the Settlor exceeds the cost of care at the nursing facility, the Trust must retain the income in excess of the cost of care.
7. At the dissolution or termination of the trust, the death of the Settlor, loss of the Settlor's Medicaid eligibility or in the event that the Settlor's income no longer exceeds the current Medicaid income limits, the trust agreement must provide that all amounts remaining in the trust up to an amount equal to the total medical assistance paid by Medicaid on behalf of the individual that has not previously been repaid will be paid to the Division of Medicaid.
8. In addition the trust agreement must provide that at the time of each review of the Settlor's Medicaid eligibility (at least annually) while this trust is in existence, when notified by Medicaid, the Trustee must pay to the Division of Medicaid the amount that should be accumulated in the trust up to the amount expended by the Division of Medicaid on behalf of the Settlor that has not previously been repaid. Failure to make the requested payments may result in the loss of Medicaid eligibility for the Settlor.
9. The trust agreement must provide for an accounting to be sent to the Division of Medicaid when requested to show all receipts and disbursements of the trust during the prior calendar year when requested by Medicaid.
10. 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 and are intended to cover any bank charges required to maintain the trust account.
11. Any disbursements not approved by Medicaid or provided for by the trust agreement will result in a loss of the trust exemption.
12. The trust instrument must specify an effective date. Unless the applicant is requesting retroactive eligibility of up to 90 days (which will require that the applicant have the funds necessary to fund the trust for that period) the effective date will be the date of execution. If a retroactive date is being sought the effective date will be determined through consultation with the Medicaid Regional Office. In that case the Regional Office should be consulted to determine the effective date prior to execution of the agreement.

13. An applicant or recipient 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 trust.

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.