

MISSISSIPPI DIVISION OF MEDICAID

HOME & COMMUNITY BASED SERVICES WAIVER 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 participating in a Home and Community Based Services (HCBS) waiver, 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 must be composed only of income belonging to the individual. No resources may be used to establish or augment the trust. Inclusion of resources voids the trust exception.
2. The trust must be composed only of income due the individual from all sources such as Social Security, pension benefits, interest and any and all other types/sources of income. The individual's right to receive income should not be transferred to the trust; instead, the individual must first receive the income and then place it into the Income Trust.
3. Income Trusts, once qualified, cannot be modified without the approval of the Division of Medicaid. 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.
4. The Trust must distribute to the Settlor, or for his/her benefit, an amount equal to not more than \$1 less than the then current Medicaid income limit as approved by Medicaid. The trust should not specify the amount of the individual's income as this amount may change each year and the amount to be released from the trust will change to an amount equal to \$1 less than the current Medicaid income limit.
5. 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.

6. 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.
7. 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.
8. No fees are allowed to be paid to the Trustee for their service. Administrative fees are limited to \$10 per month intended to cover any bank charges required to maintain the trust account.
9. Any disbursements not approved by Medicaid or provided for by the trust agreement will result in a loss of the trust exemption.
10. 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.

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 participating in a Home and Community Based Services (HCBS) waiver 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.