

**MISSISSIPPI DIVISION OF MEDICAID**  
**LONG-TERM CARE INCOME TRUST**

**THE \_\_\_\_\_ INCOME TRUST**

WHEREAS, \_\_\_\_\_, hereinafter referred to as the Settlor, now has a monthly income that exceeds the current Medicaid income limits, and;

WHEREAS, the total monthly income received by Settlor is not sufficient to pay for expenses associated with long-term care services and related services, and;

WHEREAS, Settlor's other assets have been exhausted by Settlor's long-term care expenses, and;

WHEREAS, the principal purpose of this Trust is to receive all income payments due Settlor in excess of the Settlor's cost of care, including Social Security benefits, retirement benefits, interest, dividends, or other income. The Settlor's cost of care will be determined by the daily rate that Medicaid pays the nursing facility in which the Settlor resides. If the rate for the facility is less than the Settlor's income, the excess income will be used to fund the income trust. If the rate for the facility is more than the Settlor's income, the Settlor's total income, less authorized deductions, will be paid to the nursing facility. Any income in excess of the Settlor's cost of care will be retained as part of the Trust. Income cannot exceed the private pay rate for the nursing facility in which the Settlor resides. If total income is determined to be in excess of the private pay rate for a 31-day month for any month, Medicaid eligibility will be denied or terminated for the month(s) under determination.

**WITNESSETH:**

This \_\_\_\_\_ Income Trust Agreement is entered into between

\_\_\_\_\_, "Settlor", and \_\_\_\_\_, "Trustee", who agree as follows:

(A) A portion of the Settlor's income may be protected in the month of entry into long term care. When income protection is applicable, there is no cost of care payable to the nursing facility. However, income above the amount that is \$1 less than the Medicaid institutional income limit 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 inform the Trustee of the amount payable.

(B) In all subsequent month(s) or if income protection for the month of entry does not apply, the Trustee shall place all income in excess of the Settlor's cost of care into the Trust, and the Trustee shall hold such income under the following terms and conditions:

(1) Trustee shall retain the income in excess of the Settlor's cost of care in the Income Trust Account.

(2) At the time of each review of the Settlor's Medicaid eligibility (at least annually) while this trust is in existence, if the Settlor's income exceeds the cost of care, the Division of Medicaid will notify the Trustee of the amount that should be accumulated in the trust. The Trustee will then be requested to make payment of this amount to the Division of Medicaid up to the total amount expended by the Division of Medicaid on behalf of the Settlor that has not previously been repaid to Medicaid. Failure to make the requested payments will result in the loss of Medicaid eligibility for the Settlor.

(3) This trust will terminate upon the death of the Settlor; when the Settlor's Medicaid eligibility is terminated; when the Settlor's income no longer exceeds the current Medicaid income limits; or when the trust is otherwise terminated. At that time, any income amounts accumulated in the trust shall be paid over to the Division of Medicaid, State of Mississippi, up to the total amount expended by the Division of Medicaid on behalf of the Settlor that has not previously been repaid to Medicaid.

(C) When requested, the Trustee shall furnish to the Division of Medicaid, State of Mississippi, an annual accounting to show all receipts and disbursements of the trust during the prior calendar year.

(D) The Trustee shall maintain the trust funds on deposit in a federally insured banking institution.

(E) No Trustee shall receive a Trustee's fee for services rendered to the trust, however, reasonable bank charges will be allowed.

(F) The Trustee shall give written notice to the Division of Medicaid, State of Mississippi when the Settlor dies or when the trust is otherwise terminated.

(G) The provisions of this Trust shall be interpreted under the laws of the State of Mississippi.

The effective date of this trust shall be \_\_\_\_\_.

IN WITNESS WHEREOF, this \_\_\_\_\_ Income Trust Agreement

has been executed on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Trustee

\_\_\_\_\_  
Settlor

**STATE OF** \_\_\_\_\_

**COUNTY OF** \_\_\_\_\_

Personally appeared before me, the undersigned authority in and for said county and state, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, within my jurisdiction, the within named \_\_\_\_\_, who acknowledged that (he) (she) executed the above and foregoing instrument.

\_\_\_\_\_  
(NOTARY PUBLIC)  
MY COMMISSION EXPIRES:  
**STATE OF** \_\_\_\_\_

**COUNTY OF** \_\_\_\_\_

Personally appeared before me, the undersigned authority in and for said county and state, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, within my jurisdiction, the within named \_\_\_\_\_, who acknowledged that (he) (she) (they) executed the above and foregoing instrument.

\_\_\_\_\_  
(NOTARY PUBLIC)  
MY COMMISSION

**TRUSTEE INFORMATION:**

NAME: \_\_\_\_\_ SSN: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_  
RELATIONSHIP TO SETTLOR: \_\_\_\_\_

(Rev 6/08)

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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)).

1. 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.
2. A Long Term Care Income Trust is available for someone receiving an institutional level of care in a nursing facility. For eligibility purposes, a nursing facility includes a Skilled Nursing Facility (SNF), Intermediate Care Facility (ICF) or an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID). An Income Trust is not available for someone in an acute care hospital or Psychiatric Residential Care Facility (PRTF).
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. 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.
5. 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.
6. 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.

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7. 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. 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.
8. 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.
9. 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.
  - 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.
10. 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.**
11. 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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- 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 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.
- 14.** 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 #3 above 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.
- 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 income 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 an 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.