

Income Trusts

Prior to 1989 many people who needed nursing home care were denied because their income was too high to qualify for Medicaid, even though it was not enough to pay nursing home costs. This situation is referred to as the "Utah Gap." In 1989, through a Colorado court decision in the case of Miller v. Ibarra, an Income Trust (also known as a Miller Trust) could be set up, allowing nursing home residents in the "Utah Gap" situation to qualify for Medicaid. The Income Trust permits an applicant with income over the eligibility amount to legally divert income into a trust bank account, allowing eligibility for Medicaid.

A Medicaid applicant must establish an Income Trust if gross income is over the maximum monthly income allowed at the time (\$2,022/ month in 2009), but below the average private pay rate for such care in the geographical area where the nursing home is located. The state is divided into four areas with different rates for each area.

In 2009 these Income Trust Maximum Eligibility Amounts (adjusted in January) are:

- Region I (Adams, Arapahoe, Boulder, Denver, Jefferson).....\$6,572.00
- Region II (Northeastern Colorado) \$5,932.00
- Region III (Southeastern Colorado) \$5,680.00
- Region IV Western Colorado – north and south) \$5,782.00

If the applicant's income is over the average pay rate amount in their area, Medicaid will be denied.

An Income Trust is used for Home and Community Based Services and Nursing Home Medicaid. This section discusses the differences in how the trust is managed for each program.

INCOME TRUST FORMS

If an Income Trust is necessary, the form should be requested from the county agency at the time an application for Medicaid is made. One of two forms is used – the short form or the long form. The short form and information can be found in Appendix 4 and 5. The short form is used if the Medicaid applicant is mentally competent and able to sign the trust papers. If not competent, a guardian, conservator, or agent with power of attorney may establish the trust. These papers are filed with the Medicaid application and court involvement is not required.

If the applicant is incapacitated and no guardian, conservator, or agent has been appointed, court approval is required. The long form is required in this instance. Because of the necessity for a court involvement, this is a complicated process, requiring the assistance of an elder law attorney. The process may take as long as a month or more, incurring attorney fees and court filing fees..

WHEN TO SET UP AN INCOME TRUST

If an Income Trust is required because the applicant's income is over the allowed amount, the trust papers must be completed and sent in with the application. The trust should be established before filing the application. If the long form is required, an elder law attorney should be contacted at least one month before Medicaid application. The Income Trust form and information are found in Appendix 4 and 5.

The papers for an Income Trust must be sent in with the application. The Income Trust forms and directions are also available in Appendix 4 – Income Trust Documents

THE TRUST PROCESS FOR NURSING HOME MEDICAID

An Income Trust is a bank account that is set up in the name of the Medicaid applicant, using his/her Social Security number. A family member, bank official, nursing home official, attorney, etc. can be designated as trustee. No IRS identification number is needed because this is a non-interest bearing account with a minimal amount remaining in the trust each month.

In many cases the trust account can be the existing checking account of the individual in which his/her Social Security and any other income are direct deposited. If this account is used the trustee's name will need to be added to the account. If there are other direct deposits made to this account, a new account will have to be opened with those deposits going to the new account.

If an existing checking account of the applicant is used as an income trust account, and there is a spouse whose income is going to this account, a new account should be opened for the spouse with their income going to the new account.

If a new account is being set up for the Income Trust, it is best to have the applicant's income direct-deposited to the trust bank account. In some cases this may require the spouse or a family member to contact Social Security to become the applicant's Representative Payee in order to have the Social Security income go directly to this account. This process will involve an appointment at the local Social Security office with medical documentation explaining why the individual is not able to handle his/her own affairs. Social Security does not recognize a Durable Power of Attorney, necessitating setting up someone to be the Representative Payee.

All of the individual's income is paid into this trust bank account at the beginning of each month. It can be transferred from another account, but it is preferable to have the income directly deposited into the trust account. **This is a dedicated account and the monies in this account are not available to the individual or the household.**

For Long Term Care institution clients in Nursing Home or Assisted Living situations, each month the trustee shall distribute the entire amount of income which is transferred into the trust. An amount not to exceed \$20.00 may be retained the first month for trust expenses such as bank charges if such charges are expected to be incurred by the trust. The trust is closed when the individual dies or is terminated from Medicaid.

Only three monthly payments are allowed from the Income Trust Account:

- The first \$50 is paid for the applicant's Personal Needs Allowance. This can be paid to the Personal Needs Account at the nursing home or managed by a family member. If a family member manages this money, records must be kept of expenses.
- If there is a Community Spouse, part or all of the income is paid to him/her as the Monthly Income Amount (MIA). The eligibility technician processing the application determines this amount using a set formula. The remaining income is paid to the nursing home as patient payment.
- If there is no spouse at home, \$20 remains in the account the first month, \$50 is paid to the Personal Needs Allowance, and the remaining income is paid to the nursing home as patient payment. In this case only two payments will be paid from the trust each month.

See an example of the ledger sheet for these situations in Appendix 5.

Examples of Income Trust Payout for Nursing Home Medicaid

Example 1 Individual in a nursing home (or Assisted Living) with no spouse

Mr. Utah Gap's Social Security and Pension total \$2,150 a month, requiring a trust account.

\$2,150 is deposited into Income Trust each month.

\$ 50 deducted for Personal Needs Allowance

\$2,100 patient payment to the nursing home each month after the first month

\$ 20 left in the trust account the first month to cover expenses

Example 2 Individual in a nursing home (or Assisted Living) with a community spouse

Mr. Gap's Social Security and Pension total \$2,150.

\$2,150 is deposited into the Income Trust each month.

\$ 50 deducted for Personal Needs Allowance

\$ 600 MIA amount paid to Mrs. Gap for her expenses

\$1,500 patient payment to the nursing home each month after the first month

\$ 20 left in the Trust account the first month to cover expenses

THE TRUST PROCESS FOR HOME AND COMMUNITY BASED SERVICES (HCBS)

There are several differences in the eligibility and administration of an Income Trust for individuals and spouses who are applying for HCBS. The documents and bank account information are the same as for a person applying for nursing home Medicaid.

● If an individual on HCBS is single **all the income** is put into the trust each month. Only the income eligibility amount for that year can be paid out of the trust (\$2,022 in 2009). A separate account for the individual must be set up which the allowed income payment (\$2,022) can be transferred into. The excess income over this amount remains in the trust each month and will be required to be paid to the State of Colorado. The eligibility technician at the county Human Services office will determine if this accrued amount will be paid, monthly, quarterly, or once a year. The technician may require an accounting of the trust funds each month, which can be verified by a bank statement. The technician's ruling must be followed in order for the recipient to remain on HCBS and continue services. Any amount remaining in the trust account after the individual dies, is also required to be paid to the State.

● If an individual on HCBS is married, only his/her income is put into the trust account with the trust account and the spouse's account set up as discussed under nursing home and assisted living situations requiring a trust.

Examples of Income Trust Payout for HCBS

Example 1 Individual on HCBS with no spouse (2009 figures)

Mr. Utah Gap receives total income of \$2,150 a month from Social Security and a pension, requiring an Income Trust.

\$2,150 is deposited into the Income Trust account each month.

\$2,022 paid to Mr. Gap from the Trust account

\$ 128 remains in the trust each month.

This amount is not available to the household and is required to be paid to the State of Colorado as directed by the county technician.

Example 2 Individual on HCBS with a spouse (2009 figures)

Mr. Utah Gap receives a total income of \$2,150 a month from Social Security and a pension, requiring an Income Trust. His wife receives \$500 from Social Security, for a total of \$2,650. Mr. Gap's entire \$2,150 is deposited in the Income Trust account each month.

\$2,022 paid to Mr. Gap each month from the Trust account.

\$ 128 remains in the Income Trust each month.

The total income for the household in this situation will be \$2,522 (\$2,022 + \$500) rather than \$2,650. The accrued amount of money left in the trust each month will be paid to the state of Colorado as directed by the county technician.

NOTE: An amount above the \$2,022 can be allowed when there is a spouse, using the Spousal Protection computations which will be determined by the eligibility technician.

See an example of the ledger sheets for these payouts in Appendix 5.

Setting up an Income Trust for HCBS

The procedure is the same as setting up an Income Trust for a nursing home individual. A bank account is opened in the name of the Medicaid applicant, using his/her Social Security number. Or the existing account may be used. A family member, bank official, nursing home official, attorney, etc. can be designated as trustee, with their name on the account. No IRS identification number is needed for this account because it is a non-interest bearing account and the amount remaining in the trust each month is minimal.

All of the individual's income is paid into this trust bank account at the beginning of each month. It can be transferred from another account, but it is preferred to have income direct-deposited into the trust account. The only amount that is available to the Medicaid applicant is the current income figure for that year (\$2,022 in 2009). If there is a spouse, however, the spouse may be allowed some or all of the excess amount. This amount is determined by the eligibility technician.

Cost of Home and Community Based Services when an Income Trust is required.

Because of the income not allowed the household when an income trust is required for Home and Community Based Services, families should look at how much money over the income eligibility amount (\$2,022 in 2009) they will not have available. If an applicant's income is only one or two hundred dollars over that amount, the loss of income to the household may be offset by the Medicaid services provided. However, if the applicant has a pension or pensions, with income \$2,000 or more over that amount, the loss of income to the household may be problematic. Each family has to look at their situation and weigh the loss of available income to the services provided.

NOTE: Income Trusts should not be confused with Revocable or Living Trusts and Irrevocable Trusts which are used for estate planning purposes. Such trusts may be considered a transfer of resources and will trigger a five-year look-back period for Medicaid qualification. The resources in such a trust are considered by Medicaid to be non-exempt resources. Irrevocable trusts are considered to be a transfer of assets with a penalty period imposed. Before setting up any kind of trust, other than an Income Trust, it is best to consult an elder law attorney knowledgeable in Medicaid and estate planning.