

## South Carolina Department of Health and Human Services Income Trust

It appears the Medicaid applicant/beneficiary receives too much income to qualify for Medicaid in a nursing home or receive Home and Community Based Services. The current income limit for this program is \$\_\_\_\_\_ per month. However, if the applicant/beneficiary meets all other eligibility requirements, (s)he may qualify for Medicaid by establishing an Income Trust.

### What is an Income Trust?

An Income Trust is a special trust that an applicant/beneficiary funds by depositing their income each month. Income that flows through the Income Trust does not count toward the Medicaid Cap but is used to pay toward the cost of their Long Term Care Services.

The documents required to establish an Income Trust are attached. It is not required to use an attorney, but you may do so if you wish.

By signing the Income Trust Agreement, the applicant/beneficiary agrees to appoint a trustee and deposit his/her income into a trust account every month. The trust bank account must be a separately identifiable account. This means the only money that can be included in the trust bank account is the applicant/beneficiary's income. Once the Income Trust is established, none of the money in the account may be used for any purpose except to pay those expenses authorized by the Medicaid agency. When the Medicaid case is closed, any money that remains in the trust account **must** be used to repay the South Carolina Medicaid Program up to the amount the Medicaid Program spent for the applicant/beneficiary's medical expenses.

If you wish to establish an Income Trust so the applicant/beneficiary may receive Medicaid benefits, please complete the following pages and return them to the Medicaid office. Also, please read the attached information explaining how to fill the documents out and how to manage the trust account.

**Important: Eligibility cannot be established prior to the month the trust document is signed so it is important to complete the Income Trust document as soon as possible.**

## Establishing an Income Trust

To establish an Income Trust, several things are required:

- An Income Trust document must be properly completed and signed by the applicant/beneficiary or their legal representative.
- The South Carolina Department of Health and Human Services must review the completed trust document to ensure it meets legal criteria.
- The applicant/beneficiary must appoint a trustee to handle the trust. The applicant/beneficiary cannot serve as their own trustee. The trustee is responsible for having the applicant/beneficiary's income deposited into the account, ensuring only allowed deductions are withdrawn, and accounting for all funds deposited and withdrawn.
- The applicant/beneficiary must designate a separate account to be used with the Income Trust.
  - A separate bank account must be identified and income placed in the account.
  - An existing account may be designated or a new one established
  - The account does not have to be established with a Trust Department at a bank.
  - The account may only be in the name of the applicant/beneficiary and their trustee.

**Important: Eligibility cannot be established prior to the month the trust document is signed so it is important to complete the Income Trust document as soon as possible.**

The documents required to establish an Income Trust are enclosed. By signing the Income Trust Agreement, the applicant/beneficiary agrees to deposit his/her income into a trust account every month. The trust bank account must be a separately identifiable account. This means the only money that can be included in the trust bank account is the applicant/beneficiary's income. Once the Income Trust is established, none of the money in the account may be used for any purpose except to pay those expenses authorized by the Medicaid agency. When the Medicaid case is closed, any money that remains in the trust account must be used to repay the South Carolina Medicaid Program, but the Medicaid agency will not collect any more from the trust account than the Medicaid Program spent for the applicant/beneficiary's medical expenses.

It is important that you understand that, in the event that any bank account utilized by this Income Trust is designated as a joint account between the Grantor/Beneficiary and any other individual or entity, any funds present in the account at the death of the Grantor/Beneficiary constitute assets belonging to the Trust. As such, any such funds must be administered in accordance with the terms of the trust, and that any "survivorship" provisions of the said account shall be effective for any such remaining funds only after satisfaction of the Income Trust's obligations under the applicable statutes, regulations, policies, and procedures of the South Carolina Medicaid Program.

South Carolina Department of Health and Human Services  
**Income Trust**

**Memorandum of Understanding**

Name of Medicaid Applicant/Beneficiary: \_\_\_\_\_

Name of Authorized Representative: \_\_\_\_\_

- I understand that the purpose of establishing an Income Trust is to allow me to receive Medicaid benefits, which would not be available to me without the trust because my income exceeds the Medicaid Cap, \$\_\_\_\_\_.
- I understand that the earliest month Medicaid eligibility can be established is the month the Income Trust document is signed.
- I understand that by signing an Income Trust Agreement, I agree to deposit my income into a trust account every month. The trust bank account must be a separately identifiable account. This means the only money that can be included in the trust bank account is the applicant/beneficiary's income. I further understand my income must flow through the account for any month for which I am seeking Medicaid coverage.
- I understand that I must not spend any of the money in the trust account except to pay the expenses authorized by my Medicaid worker.
- I understand that any money that remains in the trust account at the time that my Medicaid case is closed must be used to repay the South Carolina Medicaid Program, but the Medicaid agency will not collect any more from the trust account than the Medicaid Program spent for my expenses.
- I further understand and agree that, in the event that the trust account is a joint account between myself and any other individual or entity, any funds present in the account at my death are assets belonging to the Trust and will be administered in accordance with the terms of the Trust, and that any "survivorship" provisions of the said account shall be effective for any remaining funds only after satisfaction of the Income Trust's obligations under the applicable statues, regulations, policies, and procedures of the South Carolina Medicaid Program.

\_\_\_\_\_  
Signature of Applicant or Authorized Representative

\_\_\_\_\_  
Date Signed

## Completing the Income Trust Document

The Income Trust document has numbered blanks for information that must be entered. The information below is a guide to help you fill in each of those blanks.

- (1) County where the applicant/beneficiary lives
- (2) Date – Enter the date the Income Trust Document is being filled out and signed.
- (3) Name of Settlor – This should be the name of the person who is applying for Medicaid. This person's income is used to set up the Income Trust.
- (4) Principle Beneficiary – The applicant/beneficiary's name goes here. S/he is the one being benefited by the trust so his/her names goes here.
- (5) Name of Trust – The applicant/beneficiary's name should go here. It is his/her trust.
- (6) Trustee – The name of the person who will be handling the trust for the applicant/ beneficiary.
- (7) Signature of Settlor
  - a. The applicant/beneficiary should sign, if possible.
  - b. The Power of Attorney or conservator may sign for the applicant/beneficiary. For example, if John Doe is the Power of Attorney for Jane Doe, he may sign:  
*John Doe as POA for Jane Doe.*
- (8) & (9) The Signature of Settlor requires two witnesses
- (10) Signature of Trustee – The person acting as the trustee must sign.
- (11) & (12) –. The Signature of Trustee requires two witnesses.
- (13) Name of Trustee
- (14) Name of applicant/beneficiary
- (15) & (16) Signature of Trustee and Trustee's address
- (17) County – The State and County where the Trust is being notarized. If it is being notarized in another state, the notary may correct the state name and initial and date.
- (18) Witness as to trustee – an individual must sign stating they saw the trustee sign
- (19) The date the Notary Signs the document.
- (20) Notary Signature – The notary and witness (18) **must** be different individuals. A notary cannot notarize their own signature.

Schedule A – any income assigned to the Income Trust must be listed. The bank name and account number that will be used must be entered as well. The Trustee must sign this page.

**South Carolina Department of Health and Human Services  
Income Trust**

STATE OF SOUTH CAROLINA )  
 ) **TRUST AGREEMENT**  
 )

COUNTY OF \_\_\_\_\_(1)

This Trust Agreement is made this (2)\_\_\_\_\_ day of \_\_\_\_\_,  
 (month) (year)  
 by (3)\_\_\_\_\_, (hereinafter referred to as "the Settlor"),  
 regarding the establishment of a trust for the benefit of (4)\_\_\_\_\_,  
 (hereinafter referred to as "the Principal Beneficiary.")

**ARTICLE I - NAME OF TRUST**

This trust shall be known as "The (5)\_\_\_\_\_ Trust."

**ARTICLE II - APPOINTMENT OF TRUSTEE**

The Settlor hereby appoints (6)\_\_\_\_\_ as the trustee of this trust (hereinafter referred to as "the Trustee.")

**ARTICLE III - TRUST ESTATE**

The Settlor hereby deposits to the Trust account the income described in "Schedule A," attached hereto and incorporated herein by reference. The Trustee acknowledges receipt, in trust, of said property. *No property other than income shall be used to fund this trust. Attachment of a completed Schedule A is a requirement for this trust's validity.*

**ARTICLE IV - TRUST BENEFICIARIES**

In addition to the above-named Principal Beneficiary, the single state agency for the South Carolina Medicaid Program (currently the South Carolina Department of Health and Human Services, and hereinafter referred to as the "Secondary Beneficiary,") shall also be a beneficiary of this trust, and shall possess an interest in the corpus of this trust up to the amount paid for medical assistance for the benefit of the Principal Beneficiary by the Secondary Beneficiary. The estate of the Principal Beneficiary (hereinafter referred to as "Estate,") shall be the remainder beneficiary of any excess trust corpus over and above the amounts needed to reimburse the Secondary Beneficiary.

## **ARTICLE V - DISPOSITION OF INCOME AND PRINCIPAL**

5.01 Required Distributions of Principal and Income: The entire corpus of the trust, or as much of the corpus as may be distributed each month without violating requirements for federal financial participation in the Title XIX (Medicaid) program of the federal Social Security Act, shall be distributed each month for expenses related to the Principal Beneficiary's care that are allowable under the terms of the South Carolina Medicaid Program. However, in no event shall the trust's payment for any such services on behalf of the Principal Beneficiary exceed the applicable Medicaid reimbursement rate.

5.02 Exceptions to Required Distributions: An amount reasonably necessary to maintain the existence of the trust (as set forth at paragraph 5.04 herein below) or to comply with state or federal requirements may be retained in the trust. Additionally, deductions may be made from the monthly trust distribution to the same extent that deductions from the income of a Medicaid recipient who is not a trust beneficiary are allowed under the terms of the South Carolina Medicaid Program. Such deductions may include the following, to the extent applicable under the policies of the South Carolina Medicaid Program: a monthly personal needs allowance; payment to the Principal Beneficiary's community spouse or dependent family members as provided for and in accordance with Title XIX of the federal Social Security Act at 42 U.S.C. §1396r-5, as amended; special health insurance costs and special medical services as provided for under Title XIX of the federal Social Security Act at 42 U.S.C. §1396a(r), as amended; and any other deduction allowed under the terms of the South Carolina Medicaid Program.

5.03 Excess Funds: If any funds remain after the required monthly distributions and allowable deductions from the trust, such funds shall be retained and accumulated in the trust.

5.04 Maintenance of the Trust: The sum of \$10 per month shall be retained in the trust from the income which is paid into the trust. These retentions may be used by the Trustee to pay those expenses which are reasonably necessary for maintaining the existence of the trust (e.g., bank charges, preparation of an annual income tax return, preparation of required periodic reports, compensation of the trustee if no family member or other person is available to serve without pay.) The Secondary Beneficiary may authorize more than \$10 per month for maintaining the trust, as long as the expenses are for necessary services which are reasonable in amount, considering the time and expertise required.

5.05 Termination of Trust and Distribution of Corpus Upon Death of the Principal Beneficiary: This trust shall terminate upon the death of the Principal Beneficiary. The Trustee may pay any outstanding, reasonable expenses for maintaining the existence of the trust, in such amount as is authorized by the Secondary Beneficiary. The Trustee shall then distribute and deliver any property remaining in the trust to the Secondary Beneficiary, up to an amount equal to the total of any previously un-reimbursed medical assistance by the Secondary Beneficiary. Any balance remaining in the trust after the Secondary Beneficiary has been reimbursed in full shall be distributed to the Estate of the Principal Beneficiary.

## **ARTICLE VI - DUTIES AND POWERS OF TRUSTEE**

6.01 Duties: The Trustee shall hold and manage the trust property, including the receipt and disposal of trust income, in accordance with the duties imposed upon trustees pursuant to South Carolina law and the requirements and directions contained in the terms of this Trust Agreement.

6.02 Powers: The Trustee shall have all of the powers granted to trustees pursuant to South Carolina law.

6.03 Distributions: The Trustee may make payments required under the terms of this Trust Agreement (1) directly to the Principal Beneficiary; (2) to the Principal Beneficiary's authorized attorney-in-fact under a valid power of attorney; (3) to the Principal Beneficiary's duly authorized and appointed guardian or conservator; (4) to the Principal Beneficiary's spouse or dependent family member(s) as provided for and in accordance with Title XIX of the federal Social Security Act at 42 U.S.C. Section 1396r-5, as amended; and/or (5) by direct payment of the Principal Beneficiary's expenses.

## **ARTICLE VII - TRUSTEE SUCCESSION AND ADMINISTRATIVE PROVISIONS**

7.01 Resignation or Death of the Trustee: A Trustee may resign by giving thirty days written notice to each beneficiary. Such resignation shall be effective 30 days from the date notice is given. In the event the trustee dies while holding office, resigns, or is otherwise removed, a successor trustee may be named by the agreement of the Principal Beneficiary (or his/her representative) and the Secondary Beneficiary. If no such agreement can be reached, any interested party may, with notice to all beneficiaries, petition the probate court for appointment of a successor trustee. If the Principal Beneficiary is a minor, notice shall be given to the guardian, parent or other person having the right of custody of the Principal Beneficiary.

7.02 Vacancy: If the trustee shall fail to qualify or cease to act, an alternate or successor Trustee may be chosen in accordance with the provisions of paragraph 7.01, above.

7.03 Representative of Beneficiary for Administrative Purposes: The conservator of a Principal Beneficiary under legal disability or, if none, the guardian of such person or, if none, a holder of a valid power of attorney for the Principal Beneficiary, or if none, the spouse of the Principal Beneficiary, or if none, the person having the right of custody of a minor Principal Beneficiary, may act for the Principal Beneficiary in all administrative matters under the provisions of this trust.

7.04 Rights of Successors: Every successor Trustee shall have all the title, rights, powers, privileges and duties conferred on or imposed upon the original Trustee, without any conveyance or transfer. No successor Trustee shall be responsible for any act or omission to act on the part of any previous Trustee.

7.05 No Bond: No Trustee, or any successor, shall be required to give any bond in any jurisdiction, and if, notwithstanding this direction, any bond is required by any law, statute or rule of court, no sureties shall be required.

7.06 Compensation: If no person is available to serve without pay, the Trustee shall be entitled to reasonable compensation for necessary services and expenses in maintaining the existence of the trust, in such amounts as are approved by the Secondary Beneficiary. Such compensation shall be commensurate with the time and expertise required. [Also see Paragraph 5.04, "Maintenance of the Trust."]

## **ARTICLE VIII - TRUST ADMINISTRATIVE AND PROTECTIVE PROVISIONS**

8.01 Jurisdiction: This trust shall be administered expeditiously consistent with its terms, free of any judicial intervention and without order, approval or other action by any court, subject only to the jurisdiction of a court which is invoked by the Trustee or other interested party or as otherwise provided by law.

8.02 Modification or Termination: During the Principal Beneficiary's lifetime, this trust may be modified or terminated by the agreement of the Principal Beneficiary (or his/her representative), the trustee, and the Secondary Beneficiary. If no such agreement can be reached, any interested party may, with notice to all beneficiaries, petition the probate court for a modification or termination of the trust, and any such modification or termination must be consistent with the provisions and the purposes of applicable federal or state statutes and regulations governing the Title XIX (Medicaid) program of the federal Social Security Act, or its successor or any related program. Otherwise, this trust shall be irrevocable and may not be altered, amended, revoked, or terminated, in whole or in part, by the Settlor.

8.03 Trust Property Not Subject to Probate: Any property payable to this trust shall not be subject to claims against the estate of the Principal Beneficiary following death, nor shall such trust property be subject to the control of the personal representative of the Principal Beneficiary nor be included in the property administered as part of the probate estate of the Principal Beneficiary, except for any balance paid over to the Estate after the Secondary Beneficiary has been reimbursed in full.

8.04 Inalienability: No beneficiary shall have any right to anticipate, sell, assign, mortgage, pledge or otherwise dispose of or encumber all or any part of the trust estate, nor shall any part of the trust estate including income, be liable for the debts or obligations, including alimony, of any beneficiary or be subject to attachment, garnishment, execution, creditor's bill or any other legal or equitable process. This provision shall not bar any remedy sought by either beneficiary for the purpose of obtaining trust distributions in accordance with this Trust Agreement or applicable federal or state laws and administrative regulations.

8.05 Reports: Periodic reports shall be made by the Trustee as may be required by the South Carolina Medicaid Program or its successor. The trust records shall be open at all reasonable times to inspection by the beneficiaries of the trust and their accredited representatives.



8.06 Trust Bank Account: In the event that any bank account utilized by this Income Trust is designated as a joint account between the Grantor/Beneficiary and any other individual or entity, the Trustee specifically acknowledges and agrees that any funds present in the account at the death of the Grantor/Beneficiary constitute assets belonging to the Trust. The Trustee agrees that he/she shall administer any such funds in accordance with the terms of the trust, and that any "survivorship" provisions of the said account shall be effective for any such remaining funds only after satisfaction of the Income Trust's obligations under the applicable statutes, regulations, policies, and procedures of the South Carolina Medicaid Program.

**ARTICLE IX - DEFINITIONS**

Except as otherwise provided, definitions of terms in this trust shall be in accordance with the terms of the South Carolina Probate Code in existence as of the date of this Trust Agreement. Any reference in this trust to the South Carolina Medicaid Program, or to the single state agency for the South Carolina Medicaid Program, shall include any successor public agency or program.

**ARTICLE X - CONSTRUCTION**

The trust created herein shall be governed and regulated in accordance with the laws of the State of South Carolina. In case of ambiguity, this trust should be construed in such a manner as to comply with the provisions of the Title XIX (Medicaid) program of the federal Social Security Act (including any successor program), including any state or federal statutes or regulations pertaining thereto, and the provisions of the South Carolina Probate Code in existence as of the date of this Trust Agreement.

IN WITNESS WHEREOF, this Trust Agreement has been signed and sealed by the Settlor and the Trustee as of the day, month and year first above written.

(7) \_\_\_\_\_  
SETTLOR

(8) \_\_\_\_\_  
WITNESS #1 AS TO SETTLOR

(9) \_\_\_\_\_  
WITNESS #2 AS TO SETTLOR

(10) \_\_\_\_\_  
TRUSTEE

(11) \_\_\_\_\_  
WITNESS #1 AS TO TRUSTEE

(12) \_\_\_\_\_  
WITNESS #2 AS TO TRUSTEE

**STATEMENT OF TRUSTEE**

I, (13) \_\_\_\_\_ attest that I am willing to serve as Trustee of the Income Trust created for the benefit of (14) \_\_\_\_\_. I further attest that the duties and responsibilities of a Trustee have been explained to me and that I understand these duties and responsibilities. In addition, I understand that income going into the trust can be used only as outlined on the worksheet provided by the Department of Health and Human Services worker. I understand that any excess funds must be retained by the trust. I understand that if I use these funds in any other way, I will be violating the terms of the trust, that I will be removed as the Trustee, and that I will be held personally liable for any misuse of the trust funds.

By executing this Trust Agreement, I accept my appointment as Trustee and agree to perform the duties of Trustee in accordance with the terms and conditions set forth in this Trust Agreement. I understand that at the death of the Principal Beneficiary, any funds remaining in the trust may be subject to repayment to the South Carolina Medicaid Program, as required by 42 U.S.C. 1396(d)(4)(B), and I agree to comply with these requirements. I agree to promptly notify the South Carolina Department of Health and Human Services (or its successor agency) of the death of the Principal Beneficiary, and understand that no funds held in the trust may be used or distributed until any reimbursement claim by the South Carolina Medicaid Program is resolved.

I agree to make appropriate modifications to the Trust Agreement as may be required to maintain the Principal Beneficiary's eligibility for continued medical assistance from the South Carolina Medicaid Program or any successor program of medical assistance.

(15) \_\_\_\_\_  
SIGNATURE OF TRUSTEE

(16) \_\_\_\_\_

\_\_\_\_\_  
MAILING ADDRESS OF TRUSTEE

=====

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF (17) \_\_\_\_\_ ) **PROBATE**

Personally appeared the undersigned witness and made oath that (s) he saw the Trustee sign, seal, and as the Trustee's act, deliver the within Trust Agreement and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

(18) \_\_\_\_\_  
WITNESS AS TO TRUSTEE

SWORN TO before me this (19) \_\_\_\_\_ day of  
\_\_\_\_\_  
(month) (year)

(20) \_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_

**SCHEDULE A**

Income deposited to the “ \_\_\_\_\_ Trust.”

The Settlor irrevocably deposits the following income to this trust during each month that the Principal Beneficiary shall otherwise be eligible for benefits under the Title XIX (Medicaid) program of the federal Social Security Act (or benefits under any successor program of medical assistance):

<b>Source of Income</b>	<b>Amount of Income</b>	<b>Frequency of Payment</b> <small>(e.g., weekly, monthly)</small>

<b>Name of Bank</b>	<b>Designated Account #</b>	<b>Type of Account</b>
		<input type="checkbox"/> New <input type="checkbox"/> Existing

SIGNATURE OF TRUSTEE:

DATE: \_\_\_\_\_

**THIS TRUST IS TO BE FUNDED SOLELY WITH INCOME (Social Security benefits, pension benefits, etc.) THE PLACEMENT OF ASSETS (stocks, bonds, certificates of deposit, real or personal property) INTO THIS TRUST WILL RENDER THIS TRUST INVALID FOR THE “INCOME TRUST” EXCEPTION TO THE MEDICAID TRUST RULES. [See 42 U.S.C. 1396p (d).]**