

## GUIDELINES FOR REVIEWING INCOME TRUSTS

### **STEP 1: Was the trust executed on or after 10/1/93 (signed and dated)? (ES)**

Cite: 42 USC 1396p (d)

Background: Medicaid income trusts are considered “trusts for the primary purpose of paying debts” and therefore do not have to be executed with the formalities of a will. Effective January 1, 1997, two witnesses are no longer required to sign the trust.

\*\*If YES, go to Step 2.

\*\*If the document is not signed and dated, there is no trust. The eligibility specialist (ES) will return the document to the individual or his representative, advise him of the problem and proceed with the eligibility determination as with any other case.

\*\*If the trust was signed and dated prior to 10/1/93, the eligibility specialist must follow pre-October 1993 trust policy in Chapter 1600.

### **STEP 2: If the monthly amount of income designated to go into the trust is subtracted from (excluded) the individual’s gross income, is the individual’s remaining income (outside the trust) below the institutional care income limit? (The eligibility specialist must verify how much income is designated to go into the trust account each month.) (ES)**

Cite: 42 CFR 435.236 and 435.1005; and subsection 409.904 (3), Florida Statutes.

Background: The trust language does not have to indicate a specific amount of income will go into the trust account monthly; however, documentation must confirm that adequate funds are placed into the account each month to reduce the individual’s available income outside the account to within the Institutional Care Program limits.

Policy: Income cannot be excluded until it is placed into the trust. The individual is not eligible on the factor of income until his countable income (income outside the trust) is below the institutional care income limit. Trusts cannot be funded retroactively.

\*\*If YES, go to Step 3.

\*\*If NO, the eligibility specialist advises the individual or his representative of the problem and enrolls the individual in the Medically Needy Program (provided all other requirements are met) as he is ineligible for Medicaid institutional care services based on excess income.

**STEP 3: Is the trust comprised of the individual's income only?  
(ES)**

Cite: 42 USC 1396 p (d) (4) (B) (i)

**\*\*If YES, go to Step 4.**

**\*\*If the trust is comprised of the individual's income and assets, it is not a qualified income trust. The eligibility specialist will treat the trust in accordance with the policy in Chapter 1600. The income would count in determining eligibility.**

**\*\*If the trust is comprised of the individual's income and the assets or income of someone else, it is not a qualified income trust. The individual's income would count in determining Medicaid eligibility.**

**STEP 4: Who created the trust and what was their authority?  
(ES/DLC)**

Cite: 42 USC 1396 p (d) (2) (A)

**\*\*If the income trust was **established by an attorney** licensed to practice in the state in which it was set up, go to Step 5. We will assume that the attorney's participation in the trust's creation means that the party executing the trust did so with proper authority and that, if executed, it is a valid trust. The eligibility specialist will provide the DLC with the name and phone number of the attorney.**

**\*\*If the income trust was **not set up by an attorney** licensed to practice in the state, the eligibility specialist must provide the DLC with the name of the person who created the trust and the individual's authority (copies of the power of attorney or guardianship documents, if applicable, must be forwarded to the DLC along with the trust). No power of attorney is required if trust was executed by a spouse.**

**\*\*If the trust was **executed by one of the following persons in (a) through (d)** below, go to Step 5:**

- (a) the individual;
- (b) the individual's spouse;
- (c) a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or
- (d) a person, including a court or administrative body acting at the direction or upon the request of the individual or the individual's spouse.

**\*\*If **someone other than the above listed persons** executed the trust, the Region or Circuit Program Office responsible for Medicaid eligibility, in conjunction with the District Legal Counsel and ACCESS Headquarters, will review the trust to determine the appropriate action to follow.**

**STEP 5: Is the trust revocable?** (This must be determined by the District Legal Counsel.)  
(DLC)

Cite: 42 CFR 435.236 (formerly 435.231) and 20 CFR 416.1100, et seq.

Background: The trust can be considered an irrevocable trust if there is provision for amendment, providing provision for amendment does not include power to revoke.

\*\*If the trust is revocable, the eligibility specialist will follow the policy in Chapter 1640 to determine how to count the trust as an asset and how to count the disbursements.

\*\*If the trust is irrevocable, go to Step 6.

**STEP 6: What is the purpose and content of the trust?**  
(DLC)

Cite: 42 USC 1396p (d) (4) (B)

- (a) Is it composed only of the individual's income (and accumulated income in the trust)? and
- (b) Will the state receive all amounts remaining in the trust upon the individual's death, up to the total amount paid out by Medicaid for the individual? and
- (c) Was the trust established for the benefit of the individual?

\*\*If the trust meets **all** criteria listed in (a) through (c), go to Step 7.

\*\*If the trust does not meet all of the criteria in (a), (b) and (c), the eligibility specialist must treat it according to policies in Chapter 1600 for irrevocable trusts.

Policy: The trust does not have to indicate "State of Florida" as the beneficiary. Since the same income trust may be used in other states, it is better that trust use the generic "state" to indicate entity with beneficiary rights.

**STEP 7: Complete and sign the income trust review form submitted to you by the eligibility specialist. Attach the trust and applicable documents to the response and route back to the eligibility specialist via the appropriate Region or Circuit Program Office staff.**  
(DLC)

\*\*If a special written opinion is needed for a trust that is not covered by the standardized form, the DLC will use the special legal opinion form.

**STEP 8: Prior to approval, if the individual's computed patient responsibility will exceed the Medicaid cost of care rate, the eligibility specialist must follow policy in Chapter 1840 to examine the purpose of the trust and whether or not the individual will receive fair compensation for funds transferred into the trust. (If necessary, the eligibility specialist can request the Region or Circuit Program Office review the case.)**  
(ES)

Revised March 1997