

IRREVOCABLE QUALIFYING INCOME TRUST

_____ (1) _____, **BENEFICIARY**

Qualifying Income Trust, dated

_____ (2) _____, 200

Trustee: _____ (3)

Trustee Address: _____ (4)

SAMPLE

Social Security Number of Grantor/Beneficiary : _____ (5)

Prepared by:

(6)

THE _____ (7)
Name of Beneficiary

QUALIFYING INCOME TRUST

This Declaration of Trust is made this ____ (8) ____ Day of _____ 200__, by
____ (9) _____, Grantor, and _____ (10) _____, Trustee,
to benefit _____ (11) _____, referred to here as the "Beneficiary."

ARTICLE ONE: Trust Purpose

1.1 For Medicaid Eligibility. The purpose of this trust is to enable the Beneficiary to qualify for Medicaid. In managing the trust, the Trustee shall do all that is needed to make and keep the Beneficiary eligible for Medicaid assistance, including, but not limited to, filing agency or court action on the Beneficiary's behalf, adjusting payments made to or on behalf of the Beneficiary, and taking any other action which the Trustee, in the Trustee's complete and sole discretion, believes will serve the trust purpose.

1.2 Legal Authority. This trust is created pursuant to Section 1917 (d) (4) (B) of the Social Security Act [42 USC 1396p] and 907 KAR 1:650E. If any provision of this trust is found to be contrary to the laws cited above or to other applicable law, that trust provision shall be deemed void and of no legal effect. Further, in the event this instrument is ruled to be non-compliant with legal requirements for a Qualifying Income Trust under the Kentucky Medicaid program, the Trustee, in the Trustee's sole discretion, can amend the trust document to effectuate its purpose and prevent the beneficiary from being denied Medicaid services.

ARTICLE TWO: Trust Fund

2.1 Grantor ' s Total Monthly Income. Beginning on and after the 1st day of _____ (12) _____ , 200__ Grantor will transfer to Trustee, by deposit to a bank account which has been established solely for receiving funds under this trust, the Grantor ' s total monthly income from all sources. At present the Grantor ' s total monthly income consists of the following amounts:

Source of Income	Monthly Amount
_____ (13)	_____ (14)

Total Monthly Income: **SAMPLE** (15)

2.2 No other assets in trust. No property other than the Beneficiary ' s income shall be placed in this trust account. The Trustee shall not place, nor allow anyone else to place, other assets in the trust.

2.3. Trust Cannot Be Revoked. Neither the Grantor nor the Beneficiary has or retains any power to modify, change, alter or revoke any part of the trust agreement. This trust is irrevocable.

ARTICLE THREE - Distributions From Trust

3.1 Money placed in the trust shall be distributed by the Trustee within thirty (30) days of receipt or by the last day of the month following receipt, whichever is later; except that

money for items awaiting approval by DMS shall be allowed to accumulate. Distributions from the trust shall be in the following order of priority:

a. Personal Needs Allowance. The Beneficiary's personal needs allowance as set by the Department for Medicaid Services.

b. Spouse and Family. Monthly maintenance needs allowance for spouse and dependent family members.

c. Health Insurance Premium. Health insurance premiums of the Beneficiary.

d. Patient Liability. The amount the Beneficiary is required to pay for nursing home or community-based health care, as set by the Department for Medicaid Services

e. Administrative Costs. If funds are available, a reasonable amount for trustee fees and administrative expenses of the account.

SAMPLE

3.2 Other needs of Beneficiary. Upon prior approval of the Department for Medicaid Services, the Trustee may pay for additional items or services which are needed for the Beneficiary's comfort, care or medical need, such as eyeglasses, dentures, hearing aids, and other necessities not covered by Medicaid, Medicare or other health insurance. If the Department for Medicaid Services does not reject a written request for approval of an expenditure within thirty (30) days of receiving the request, the Trustee may presume that the proposed expenditure is approved.

3.3 Excess. Excess income shall be paid toward any balance owing to the Commonwealth of Kentucky for unreimbursed Medicaid assistance it has provided to the Beneficiary.

ARTICLE FOUR - Administration and Modification of Trust

4.1. Timeliness; Modification. This trust shall be administered according to its terms in a timely manner without court approval or action. The trust may be modified only by the Trustee as herein provided (1.2).

4.2 Availability of Records. The records of the Trustee, including all trust documentation and annual accountings, shall be available to the Grantor, the Beneficiary, Department for Medicaid Services, or the legal representative of any of them, upon ten (10) days ' notice to the Trustee.

ARTICLE FIVE - Termination of Trust

SAMPLE

5.1 When trust terminates. This trust shall end at the death of the Beneficiary. [or upon written agreement of the Trustee and the Department for Medicaid Services.]

5.2 Distribution of proceeds. Upon the termination of this trust the Trustee shall wind up the affairs of the trust, pay all administrative costs and tax bills of the trust, and distribute the remaining trust property as follows:

(a) The Commonwealth of Kentucky shall be paid an amount equal to the total cost of medical assistance paid on behalf of the Beneficiary under the Medicaid program, to the extent such medical assistance has not already been reimbursed from any other source.

(b) Any money remaining after the Commonwealth ' s claim has been paid shall pass to persons named in the Beneficiary ' s will, or, if there is no will, to the Beneficiary ' s heirs according to the Kentucky law of intestate succession.

ARTICLE SIX: The Trustee

6.1. Definition. The term "Trustee" means the original trustee and any or all successor trustees.

6.2. Appointment. Grantor appoints _____ (16) _____ to be Trustee of the trust account. This appointment takes effect upon their acceptance by signing below. Grantor appoints _____ (17) _____ as Successor Trustee, to serve if the first-named Trustee is or becomes unable or unavailable to so act.

6.3. Trustee's Discretion. The making and the amount of any payment from the trust shall be totally and solely within the discretion of the Trustee. Neither the Beneficiary nor the Grantor nor any person acting on their behalf, except the Trustee alone, shall have any right or authority to liquidate the trust, in whole or in part, or to require payments from the trust for any purpose.

SAMPLE

6.4. Resignation; Removal; Replacement.

(a). The Trustee may resign the trusteeship at any time. The resignation shall be in writing, with written notice to the Grantor, the Beneficiary, the Successor Trustee, and the Department for Medicaid Services. The Trustee's resignation shall become effective only when the above-named Successor Trustee or another Successor Trustee is notified and accepts the position of Trustee in writing.

(b) Any interested person may petition a Kentucky Circuit Court for removal of the Trustee for cause, and the court shall have complete discretion in deciding the issue of removal. Unless the court rejects the proposed Successor Trustee for cause and appoints someone else, the Successor Trustee shall become the new Trustee upon the Successor Trustee's written acceptance of the position.

(c) A current Trustee may nominate and appoint a Successor Trustee to serve if another is unavailable or unwilling to serve.

(d) Any Successor Trustee shall have all the rights and powers of the original trustee, and title to the trust fund shall vest in the Successor Trustee by virtue of the Successor Trustee's appointment and written acceptance, without the need for any further instrument of transfer or conveyance.

6.5 Powers of Trustee. The Trustee shall have all powers granted to trustees by Kentucky law, except to the extent those powers are limited or prohibited by the terms of this Trust.

6.6. Bonds and accounts. The Trustee shall not be required to give bond, or, if bond is required by a court of law, no surety on the bond shall be required.

6.7. Reporting Responsibility. The Trustee shall report to the Cabinet for Medicaid Services, the Cabinet for Families and Children Community Based Services, and any court of competent jurisdiction as required by regulation or court order.

SAMPLE

6.8. Indemnification. Trustee is entitled to be indemnified, at the cost of the trust, against liability incurred as the result of actions taken in good faith for administration of this trust.

ARTICLE SEVEN - Governing Law and Construction

7.1. Spendthrift / Nonassignment. No interest in the holdings of this trust shall be subject to any creditor's claim or to legal process. The Beneficiary shall have no power to sell, assign, transfer, or in any other way affect the payment or allocation of the proceeds of the trust, which shall not be liable for debts of the Beneficiary except as set forth in this trust agreement.

7.2. Income Tax Treatment. It is the intent of the parties hereto that this trust be construed as a "grantor trust" under Internal Revenue Code Section 677(a). All income received,

distributed, held, or accumulated by this trust shall be taxable to the Grantor. The Trustee may distribute directly to the taxing authority such amounts as are necessary to satisfy the Beneficiary's tax obligations.

7.3. Governing Law. This agreement shall be construed, governed, and administered in accordance with Kentucky law.

DATED this (18) of _____, 2003.

SAMPLE

_____(19)
GRANTOR

_____(20)
TRUSTEE

SAMPLE

COMMONWEALTH OF KENTUCKY
COUNTY OF

On this ____ Day of _____, 2003, before me personally

appeared _____(21)_____, and _____(22)_____,

who are known to me to be the persons described in the foregoing Trust as

"Grantor" and "Trustee", respectively, and who signed, or acknowledged that

they had signed, the foregoing instrument, and that the same was their free
act

and deed.

(23)

NOTARY PUBLIC
STATE AT LARGE
My commission expires:

SAMPLE

INSTRUCTIONS FOR FILLING IN THE BLANKS OF THE "QUALIFYING INCOME TRUST" FORM

Please refer to the numbers in the blanks of the SAMPLE form in reading the instructions below.

1. Fill in the name of the person who is on Medicaid and has been told they need a trust. This is the BENEFICIARY.

2. Today's date.

3-4. The person who will be the trustee for the trust, and their address. There is a legal question whether Medicaid would approve the QIT if the Trustee is someone who is a guardian or who holds a Power of Attorney for the Medicaid recipient. The Department for Medicaid Services has said it is willing to work with people and allow them to correct their trust documents rather than rejecting them outright, so a wrong choice of trustee should not have a drastic effect on the Medicaid benefits.

5. Grantor/Beneficiary's Social Security Number. This is a "Grantor trust" under IRS rules, meaning that the trust income will be reported as the Grantor/Beneficiary's income, so the Grantor/Beneficiary's Social Security Number is the tax identification number. A separate tax identification number for the trust should ***not*** be needed. It is best to avoid putting a separate tax identification number (called an Employer Identification Number) on the trust, because it will mean extra paperwork for the trustee each tax time. The federal regulation stating that a trust identification number is not needed is: 26 CFR Sec. 301.6109-1(a)(2). If your bank insists on your obtaining the separate identification number even after they know about this law, and you do not want to find a different bank, you may obtain a number one of two ways: 1) At the IRS website at <http://www.irs.gov/businesses/index.html> click on "Employer

id numbers" under the Topics listed at the left of the page; or 2) Call the IRS at 1-800-829-4933.

6. The attorney preparing the document should provide their name and address. If a Medicaid recipient is unable to obtain legal help, they should give their own name and address, or a person holding their Power of Attorney may give the POA 's name and address. A person with POA is the only non-lawyer who can prepare this document on behalf of someone else.

7. The name of the person who is receiving Medicaid and wants to continue getting benefits (the BENEFICIARY, as above.)

8. Today 's date. Give the month second and the day first.

9. The GRANTOR will in most cases be the Medicaid recipient (the same person as the Beneficiary). However, if the Beneficiary is incompetent, then "Grantor" will be the person who is legally in charge of the Medicaid recipient 's income, for example a court-appointed guardian in charge of the Medicaid recipient 's finances, or a person holding a durable power-of-attorney for the Medicaid recipient.

10. The TRUSTEE is the person who will be in charge of the trust fund, overseeing the bank account, writing checks for the Beneficiary 's expenses, and filing any needed reports..

11. Again, the Beneficiary 's name, as in A1" and A7" above.

12. Next month; the next time the beneficiary receives their Social Security and other income, they will put it into this trust.

13. In this column, list every type of income the person on Medicaid gets. For example, "Social Security" could be on the first line, followed by "Veterans Benefits" on the second line, followed by "Pension " on the third line. Only the Medicaid recipient 's income should be listed. A spouse 's income will *not* be put into the trust.

14. Across from each type of income, put the amount of that income the Medicaid recipient, but not the spouse, gets each month.

15. Add up the amounts of income for the total monthly income.

Alternative Page 3 - After these instructions there is a different version of Page 3, for those who choose not to put the Beneficiary's entire income into the trust. If that page is used, there are no blanks (14) and (15) for specific income information.

16. The name of the Trustee again.

17. The name of a second choice for trustee, if the first person later is not able or willing to serve.

18. Today's date again.

19. The signature of the GRANTOR (see above).

20. The signature of the TRUSTEE (see above).

21. The name of the GRANTOR (see above).

22. The name of the TRUSTEE (see above)..

23. Both the Grantor and the Trustee must sign the trust in front of a Notary Public, or go to a notary together and state that the signatures are theirs. The notary will fill in the remaining blanks.

ALTERNATIVE PAGE 3 FOLLOWS

ARTICLE TWO: Trust Fund

2.1 Grantor 's Contribution. Beginning on and after the 1st day of ____ (12) _____, 200__ Grantor will transfer to Trustee, by deposit to a bank account which has been established solely for receiving funds under this trust, all monthly income of the Grantor which exceeds the special needs standard. (The current special needs standard is \$1656).

2.2 No other assets in trust. No property other than the Beneficiary 's income shall be placed in this trust account. The Trustee shall not place, nor allow anyone else to place, other assets in the trust.

SAMPLE

2.3. Trust Cannot Be Revoked. Neither the Grantor nor the Beneficiary has or retains any power to modify, change, alter or revoke any part of the trust agreement. This trust is irrevocable.

ARTICLE THREE - Distributions From Trust

3.1 Money placed in the trust shall be distributed by the Trustee within thirty (30) days of receipt or by the last day of the month following receipt, whichever is later; except that money for items awaiting approval by DMS shall be allowed to accumulate. Distributions from the trust shall be in the following order of priority: