

IRREVOCABLE QUALIFYING INCOME TRUST

_____, **BENEFICIARY**

Qualifying Income Trust, dated

_____, 200

Trustee:

Trustee Address:

Social Security Number of Grantor/Beneficiary:

Prepared by:

THE
QUALIFYING INCOME TRUST

This Declaration of Trust is made this _____ Day of _____ 200__, by _____, Grantor, and _____, Trustee, to benefit _____, 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 _____, 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 |
|-----------------------|----------------|
| _____ | |
| _____ | |
| _____ | |
| Total Monthly Income: | |

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.

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

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 _____ to be Trustee of the trust account. This appointment takes effect upon their acceptance by signing below. Grantor appoints _____ 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.

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.

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 _____ day of _____, 200 .

GRANTOR

TRUSTEE

COMMONWEALTH OF KENTUCKY
COUNTY OF

On this ____ Day of _____, 200 , before me personally
appeared _____, and _____,
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.

NOTARY PUBLIC
STATE AT LARGE
My commission expires:

COMMENTS REGARDING QIT DRAFT

9/9/03

The attached sample Kentucky Qualifying Income Trust combines the efforts and ideas of several Legal Services advocates and associates familiar with the Medicaid program. The short deadline for Medicaid recipients to submit their trust documents, and the compelling need to keep many nursing home residents from losing their medical benefits makes it necessary to promulgate a sample form before it has actually been used for creating a valid QIT. The first draft of this document was reviewed by the Department for Medicaid Services staff, and their suggestions have been incorporated herein.

In drawing up this QIT form we reviewed state-approved forms from Oregon, Texas, Florida, and Arkansas, all income-cap states like Kentucky. Because a QIT has no "corpus", as that term is generally understood in the trust field, the need for much of the standard trust language regarding management of the trust principal is eliminated

The language and format used here is intended to be as simple and readable as possible, since some Medicaid beneficiaries may have to complete this form without the direct benefit of legal counsel. For the benefit of persons without attorneys, there is a numbered instruction sheet, and an advisory letter to the person who will serve as trustee.

The date in the bottom left corner of each page is important and should be left in place to prevent confusion with probable revised versions of this form.

Comments on specific provisions

2.1 - The minimum amount that must be put in the QIT is that part of the Grantor's income which exceeds the income cap. The income cap is \$1656. We have been informally instructed by Kentucky DMS that it would also be acceptable for the QIT to receive the Grantor's total income each month. Since Grantor's total monthly income, not just the QIT income, is used to compute patient liability and expense allowances, see State Medicaid Manual 3259.7-C-5, and payments for spousal support and other expenses are legitimate deductions from the QIT, in most cases the simplicity of the "total income" approach outweighs its disadvantages. Medicaid applicants or beneficiaries whose monthly income is considerably higher than \$1656 may not mind the extra administrative burden of maintaining two bank accounts – one for receiving the patient's monthly income (Social Security, pension, etc.) and one for the QIT. If the recipient opts to place all of their monthly income into the QIT, it is important that the communication or legal directive by which the money is directed to the trust make it clear that the income remains the beneficiary's until it is deposited into the trust. (The right to

be paid must not be assigned to the trust; otherwise the money ceases to be the beneficiary 's, a circumstance which arguably would nullify the trust.)

There is an alternative Page 3 appended below, for use in cases where the Beneficiary 's total income will not be put into the trust.

3.1-a. - The personal needs allowance for nursing home residents is \$40. For persons receiving home and community-based services it is \$572.

3.1-e - However, DMS personnel have informed us that trustee and administrative fees are not allowable deductions from the QIT unless all other expenses have been met.

3.2 - The Department for Medicaid Services has informed us that their internal guidelines call for review of a Trustee 's proposal for extra expenditures within seven working days.

ALTERNATIVE PAGE 3 FOLLOWS

ARTICLE TWO: Trust Fund

2.1 Grantor 's Contribution. Beginning on and after the 1st day of _____ , 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.

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

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