

In order to receive Long Term Services and Supports (LTSS) Medicaid, your income must be below the limit set by the State of Arkansas. LTSS programs include Programs of All-Inclusive Care for the Elderly (PACE), Home and Community-Based Waivers, Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) or Nursing Facility Medicaid. The income limit, which is based on three times the Supplemental Security Income (SSI) Standard Payment Amount, changes in January each year.



If your income exceeds the limit, you may meet the income eligibility criteria by setting up an Irrevocable Income Trust (also known as a Miller Income Trust or MIT.) An Irrevocable Income Trust is established by signing a legal document and setting up a special bank account to fund the trust. This account must **only** be used for your income trust. Income that exceeds the income limit for the LTSS program must be placed into the trust and your trustee must only make payments (disbursements) from the account according to Medicaid policy and procedures as shown on the Long-Term Care/Assisted Living Post Eligibility Income Worksheet (DHS-712.) At the time of your death, funds remaining in the account are paid to the Arkansas Department of Human Services for reimbursement of Medicaid expenses paid on your behalf.

## **The following are general guidelines in establishing and maintaining an Income Trust:**

### **Definitions**

**Income** is money you receive during the month that can be used to meet your needs. For example, a Social Security or retirement check is considered income in the month of receipt. Federal income tax refunds and certain Veterans Affairs (VA) payments (i.e. VA Aid and Attendance, Continuing or Unusual Medical Expense reimbursements) are disregarded as income and should NOT be placed in the trust account. VA Pensions and Compensation payments **are** countable income. Income received solely by your spouse is not counted as income to you.

**Resources** are generally defined as those assets, including both real and personal property, which you or your spouse own, have the right, authority, or power to convert to cash (if not already cash), and which are not legally restricted from use for your support and maintenance. For example, checking accounts, savings accounts, stocks, bonds, property, etc. are considered resources.

Income may go into a bank account this month and then become a resource the following month; however, money in an income trust account is **never** considered a resource. We are defining the meaning of income and resources to help you understand these words throughout the handout.

**Irrevocable** means that the trust remains in effect until you die, even if you no longer receive Medicaid. It may only be terminated if the Department of Human Services gives approval.

**Single Account** means there are not joint owners. For example, an acceptable trust bank account might be titled, "The John Doe Irrevocable Income Trust/Jane Smith Trustee."

**Trustee** is the person(s) or organization you choose to manage your Income Trust. If you choose to act as your own trustee, it is important to plan for a replacement trustee in case you are no longer able to act as your own trustee. See below for more information on Trustee Responsibilities.

### **Establishing an Income Trust**

Income Trust Policy is found at **MS H-110** through **MS H-116** – An online copy can be obtained at [https://humanservices.arkansas.gov/wp-content/uploads/Medical\\_Services\\_Policy\\_Manual.pdf](https://humanservices.arkansas.gov/wp-content/uploads/Medical_Services_Policy_Manual.pdf) or a paper copy of the policy is available from the caseworker upon request.

- The trust document can be prepared from guidelines set forth in the trust policy. You may ask the caseworker for an example of an Income Trust or download an example of an acceptable Income Trust at <https://humanservices.arkansas.gov/divisions-shared-services/aging-adult-behavioral-health-services/find-home-community-based-services-for-adults-seniors/long-term-services-and-supports-ltss-medicaid-assistance/> The Income Trust doesn't have to be prepared by an attorney.
- After the Income Trust Document has been prepared, have it signed and notarized.
- Return the dated, signed, and notarized Income Trust document to your caseworker as soon as possible. If the trust is signed on behalf of the applicant by a Guardian or Power of Attorney (POA), a copy of the Court Order or POA document must be attached to the trust document.

**NOTE:** The court order or POA cannot be dated later than the Income Trust document.

- Legal approval will be obtained from the Department of Human Services. If you use the example DHS provides, approval is faster.

### Establishing an Income Trust Account

- While you are waiting on approval you need to open an Income Trust Account at the bank of your choice. The account must be a single (not joint) account. A new account can be opened as the trust account or you may remove resources that are in an existing account and place those resources in a new account. It is important not to keep or place resources into the account you designate as the income trust account.
- **IMPORTANT** Income and Resources CANNOT be co-mingled in an Income Trust Account. **ONLY INCOME CAN BE IN AN INCOME TRUST ACCOUNT.**
- Your income may be direct deposited into the trust account or placed into the account as soon as you receive it. Only income belonging to **you** should be put into the trust account.
- While the application is pending the trustee can make only allowable payments (such as your personal needs allowance, payments to the LTSS Provider or facility, Community Spouse or Dependent Family Member Allowances, and/or certain approved medical expenses not covered by Medicaid.)
- It is important to have the trust signed and the account set up as soon as possible, as eligibility cannot begin prior to the first day of the month that **all** these factors are met:
  - ✓ the approved trust was signed,
  - ✓ the trust bank account was set up,
  - ✓ All countable income that exceeds the current income limit for the LTSS program was placed into the trust account
  - ✓ no unauthorized payments were made, and
  - ✓ all other eligibility requirements are met.

### Trustee Responsibilities

Each month, the Trustee must only make payments listed on the DHS-712. Each payment must be made directly to the designated party (e.g. to you for your personal needs allowance (PNA); to your community spouse and/or dependent(s) for their allowances; to you for your non-covered medical expenses; and to the facility or provider for your share of cost.)

The Trustee must notify the caseworker of any fees, income taxes, or other payments which need to be made from the trust and wait to receive approval from the caseworker on the DHS-712 prior to making the payments. Any unauthorized payments your trustee makes may result in your ineligibility and a penalty period may be applied.

The trustee must maintain the trust records which shall be open to inspection and for copying by DHS, and periodic reporting may be required at the discretion of DHS.

### Maintaining an Income Trust Account

- Each month deposit only countable income that exceeds the income limit for the LTSS program into the Income Trust Account. **Do not make any payments** from the Trust Account until a caseworker gives you a DHS-712. Your caseworker can provide you with a provisional DHS-712 while your application is being processed so your trustee can start making payments out of the account. Your trustee should then make payments as indicated on the form for your personal needs allowance, to the LTSS provider or facility, and for any other applicable allowances (Community Spouse, Dependent Family Member, and/or certain approved medical expenses not covered by Medicaid.) Remember, this account is **only** for the Income Trust and is not a regular account.
- After your caseworker receives the legal approval and has verified all information, the LTSS Medicaid Case will be processed, and if approved, you will be given a finalized DHS-712 and advised of the monthly patient liability to be paid to the provider or facility.
- Countable income that exceeds the income limit for the LTSS program must be put into the trust EACH MONTH and all approved expenses, including the personal needs allowance, must be paid out EACH MONTH. Any month the trust is not maintained correctly will result in ineligibility for LTSS Medicaid services for that month.
- Fees for trustees, preparation of income tax returns and attorneys will **NOT** be allowed as disbursements from income trusts. The **ONLY** fees allowed will be the bank service charges for maintaining the bank account and commercially reasonable administrative fees that are charged by the commercial institution as trustee fees.
- You or your trustee must report any changes in income, resources, medical expenses, or other circumstances to your LTSS Caseworker within 10 days because changes could affect your eligibility for assistance. This includes changes that your spouse living in the community may have and changes that occur while your application is being processed.
- Your or your trustee must notify the caseworker if in any month the funds are not paid according to the DHS-712 or if the balance in the trust account exceeds the maximum



allowed in the MIT account. Contact your worker for the current maximum amount.

If you have any questions, please contact your LTSS caseworker or call toll free 1-866-801-3435 or email [choicesinliving@arkansas.gov](mailto:choicesinliving@arkansas.gov).

**NOTE:** The Medicaid staff is allowed to answer only general information questions regarding the MIT. This includes what is required to fill in the blanks and how the trust relates to Medicaid eligibility policy. Medicaid staff is not allowed to give advice on legal and/or tax issues regarding the trust. Should you require legal information, contact an attorney.

**If you need this material in a different format, such as large print, contact your DHS County Office.**