

## QUALIFIED INCOME TRUSTS

### A Qualified Income Trust can only be used for applications filed on or after [INSERT DATE].

The Division of Medical Assistance and Health Services (DMAHS) provides this information to assist prospective Medicaid applicants and their attorneys by describing basic information about the use of a qualified income trust (QIT) (sometimes referred to as a "Miller" Trust) to establish income eligibility for Managed Long-Term Services and Supports (MLTSS). A model instrument is included at the end of this document to provide an example of a QIT that meets DMAHS requirements when properly completed. This form meets the basic DMAHS requirements for a QIT; however, it is not the only acceptable QIT form, and it may have consequences beyond eligibility for Medicaid that an applicant would want to consider.

**DMAHS attorneys are prohibited from giving legal advice to the public. DMAHS, county and State vendor eligibility workers, supervisors and other DMAHS employees are prohibited from advising anyone by recommending specific actions to become eligible for Medicaid as doing so may constitute the unauthorized practice of law.**

This information is not intended as legal or tax advice, and persons seeking information on the legal or tax consequences of these documents are encouraged to consult a lawyer or other professional of their choosing. DMAHS and eligibility determination agencies will only review trust documents in connection with the processing of a Medicaid application. The review by DMAHS or an eligibility determination agency is limited to whether the trust meets the requirements for a Medicaid QIT. Other actions by the applicant and/or trustee may impact Medicaid eligibility and have consequences, including but not limited to termination, imposition of a transfer penalty and/or recovery of incorrectly paid benefits.

Persons with low or limited income may be able to obtain legal counsel through their local Legal Aid office or local bar association.

#### Caution

A QIT should not be confused with other types of trusts that are commonly used in connection with the receipt of Medicaid or other public benefits. The information here does not address these other types of trusts, such as a "Special Needs" trust that may be created for a person with a disability under age 65 who wishes to shelter resources in order to become or remain eligible for Medicaid or other public benefits.

Income that is properly diverted through a QIT is not counted in determining the eligibility for Medicaid for Managed Long Term Services and Supports (MLTSS), but this income is not disregarded in the post-eligibility treatment of income or in determining

eligibility for other Medicaid benefits. Such income also may not be disregarded in determining eligibility for non-Medicaid public benefits programs.

Although the use of a QIT can help when income that is above the special income limit for Medicaid eligibility, a QIT does not address other eligibility requirements for institutional and home and community-based waiver services, such as citizenship, residency, medical necessity and the applicant's countable resources. A person with more than \$2,000 in countable resources is not eligible for benefits, and this resource eligibility requirement is not affected by the use of a QIT.

This information is based in part on informal guidance by the federal Centers for Medicare & Medicaid Services (CMS). CMS has not adopted any federal regulations relating to QITs, and CMS' guidance and interpretations could therefore change without advance public notice or any opportunity for advance public comment.

**The \_\_\_\_\_ Irrevocable Qualified Income Trust**  
[full legal name of primary beneficiary]

Grantor, \_\_\_\_\_ [name of the person establishing the Trust], residing in \_\_\_\_\_ County, \_\_\_\_\_ [state], hereby creates a Trust, to be known as the \_\_\_\_\_ [name of primary beneficiary] Qualified Income Trust, (hereafter referred to as “the Trust”), created consistent with the requirements in 42 U.S.C. §1396p(d)(4)(B) and to be governed by the terms set out below:

Trust Purpose

The primary beneficiary of the Trust is \_\_\_\_\_, born on \_\_\_\_\_, residing in \_\_\_\_\_ County, New Jersey. The purpose of this Trust is to achieve income eligibility for the primary beneficiary for medical assistance under Title XIX of the federal Social Security Act (hereafter referred to as “Medicaid”). The primary beneficiary must meet the eligibility criteria under New Jersey Medicaid standards, including the standards applicable to Qualified Income Trusts. The Trustee must perform all acts necessary to maintain the primary beneficiary’s eligibility for Medicaid and comply with New Jersey’s standards for Qualified Income Trusts. This Trust must be presented to the Medicaid eligibility determining agency at time of application for benefits.

Trust Funding

The income to be placed in the Trust is the income received by \_\_\_\_\_ [primary beneficiary] from the following sources:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

No property may be placed in the Trust other than income from the primary beneficiary's pensions, Social Security, or other income sources. The Trust may receive any or all of the primary beneficiary's income. The entire amount of the income allocated to the Trust shall be deposited directly in the trust account or deposited in the trust account in the same month the income is received by the primary beneficiary.

### Trust Disbursements

No expenditures shall be made from the Trust except in accordance with this paragraph. The Trustee shall make distributions from the trust in amounts and for the purposes necessary to maintain the income eligibility of the primary beneficiary for Medicaid. Consistent with the requirements of the Medicaid program that require all income including any income that is not placed in the Trust be used for post eligibility expenses, the Trustee shall make payments from the Trust in the following priority, no later than the last day of the calendar month in which the income is received by the Trust:

1. A monthly personal or maintenance needs allowance for the primary beneficiary;
2. A sum to the spouse of the primary beneficiary, sufficient to provide but not exceed the minimum monthly maintenance needs allowance for the spouse as determined by the eligibility determination agency, and, if applicable, the maintenance needs deduction for family dependents;
3. Incurred medical expenses of the primary beneficiary as determined by the New Jersey Medicaid program;
4. The cost of medical assistance provided to the primary beneficiary;

The Trustee may expend not more than \$20 a month for banking costs to administer the trust. After payment of all of the above expenses, the Trustee may claim a fee of up to 6% of the income paid to the trust that month as compensation. Fees not taken during the month cannot be taken in a subsequent month.

Any other payments from the Trust shall invalidate the Trust under 42 U.S.C. §1396p(d)(4)(B) and the income of the primary beneficiary placed in this Trust will be counted towards the Medicaid eligibility limit.

Trustee Appointment, Resignation or Removal

\_\_\_\_\_ [full legal name of initial trustee] shall serve as Trustee of the Trust. Trustee's contact information is:

Address \_\_\_\_\_

Phone number(s): \_\_\_\_\_

In the event the Trustee resigns, becomes legally incapacitated or dies while serving, \_\_\_\_\_ [name of successor trustee], whose current address is \_\_\_\_\_, shall serve as successor trustee. If there is no named Trustee eligible or willing to serve as Trustee, any interested person may apply to the primary beneficiary of the Trust in order to be appointed Trustee. The primary beneficiary may not serve as Trustee. If the primary beneficiary is incompetent and has no guardian or attorney-in-fact, then any interested person may petition the court for the appointment of a successor trustee. No bond shall be required for any Trustee. The Trustee shall have all powers given to a Trustee by New Jersey law.

No resignation by the Trustee shall be effective until he or she provides an informal accounting and a successor Trustee shall have accepted appointment and qualified to serve as Trustee. The eligibility determination agency must be notified by the resigning trustee of his resignation, and must immediately be provided with a final accounting and the contact information for the new trustee. The resigning trustee shall also provide this documentation and information to the remainder beneficiary, the Division of Medical Assistance and Health Services, Recovery Unit, Mail Code #6, PO 712, Trenton, NJ 08625-0712.

Accounting

The Trustee shall provide two copies of the accounting of the trust annually to the eligibility determination agency in conjunction with the redetermination of primary beneficiary's Medicaid eligibility. The informal accounting shall include a detailed listing (date, check number, amount, payee or payor) and explanation (as needed) of all trust receipts and trust disbursements, the balance remaining in the trust, and a copy of the bank statements for the trust.

The Trustee shall account in the same manner as described above whenever the primary beneficiary's Medicaid eligibility is reviewed due to a change in income, resources or other circumstances.

### Irrevocability

This Trust is irrevocable. The Trust's assets, income and distributions shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner. The primary beneficiary shall not have the power to anticipate or encumber the Trust's assets, income or distributions. The Trust's assets, income and distributions shall not, while in the possession of the Trust, be liable for, or subject to the debts, contracts, obligations, liabilities or torts of the primary beneficiary.

### Termination

The Trust shall terminate when the primary beneficiary ceases to receive Medicaid benefits provided by the State of New Jersey. Upon termination of the Trust, the Trustee shall notify the New Jersey Department of Human Services, Division of Medical Assistance and Health Services and shall distribute to the Division or its successor agency any remaining trust property up to an amount equal to the total Medicaid expenditures paid on behalf of the primary beneficiary by the Division, reduced by any previous recoveries made by the Division of such Medicaid expenditures. The Division shall not be required to take any action for this payment to be due and owing. Payment shall be made payable within 30 days of notification by the Division of the amount due, to "Treasurer, State of NJ" and mailed to:

Division of Revenue (NJDMAHS)  
Lockbox 656  
200 Woolverton Ave., Bldg 20  
Trenton, NJ 08646  
Attn: Processing Bureau.

No provisions in the trust shall permit the trustee to first repay other persons or creditors at the death of the beneficiary. The trust shall not pay for burial expenses after the death of the primary beneficiary. Only what remains in the trust after the distribution to the Division has been made shall be considered available for other trust expenses or beneficiaries of the estate. After any payment to the Division as specified in this section, the Trustee shall distribute any remaining trust property to \_\_\_\_\_ [name(s) of distributee(s)].

Note, if primary beneficiary is not competent at the time this trust is established, no contingent distributee can be named.

Signed the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

\_\_\_\_\_  
Grantor

\_\_\_\_\_  
Trustee

STATE OF NEW JERSEY  
COUNTY OF \_\_\_\_\_

I CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_ [Grantor], personally came before me and acknowledged under oath, to my satisfaction, that the person:

- (a) is named in and personally signed the attached document; and
- (b) signed, sealed and delivered this document as his act and deed.

\_\_\_\_\_  
Notary

STATE OF NEW JERSEY  
COUNTY OF \_\_\_\_\_

I CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_ [Trustee], personally came before me and acknowledged under oath, to my satisfaction, that the person:

- (a) is named in and personally signed the attached document; and
- (b) signed, sealed and delivered this document as his act and deed.

\_\_\_\_\_  
Notary

**SCHEDULE A**

Funds being deposited into Qualified Income Trust:

<u>Source</u>	<u>Amount</u>
Social Security	
Pension	
Other	

Total:

**Location of Trust Bank Account:**

Bank: \_\_\_\_\_

Bank Routing Number: \_\_\_\_\_

Account No. \_\_\_\_\_

Account Title: \_\_\_\_\_

Initial Deposit Amount: \$ \_\_\_\_\_

Initial Deposit Dated: \_\_\_\_\_

Monthly Bank Fee: \_\_\_\_\_