



## OPERATIONAL MEMO

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<b>Title:</b> Income Trusts - Revised Forms and Additional Guidance	<b>Topic:</b> Trust Policy
<b>Audience:</b> Stakeholders	<b>Sub-Topic:</b> Eligibility Site Responsibilities
<b>Supersedes Number:</b> HCPF 16-001	<b>Division:</b> Legal Division
<b>Effective Date:</b> Aug. 10, 2024	<b>Office:</b> Policy, Communication & Administration
<b>Expiration Date:</b> Aug. 10, 2026	<b>Program Area:</b> Long-Term Care Medical Assistance Eligibility
<b>Key Words:</b> Income Trust, Long-Term Care Medical Assistance Eligibility, Special Income Standard, Home and Community-Based Services, PACE, Nursing Facility	
<b>Legal Authority:</b> C.R.S. § 15-14-412.7 and C.C.R. 2505-10, Section 8.100.7.E.6.a.	
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<b>Approved By:</b> Rachel Reiter	

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### **Purpose and Audience:**

The purpose of this Operational Memo is to inform eligibility sites and other stakeholders of revisions to the income trust packet, including a revised standard income trust agreement and supplemental documents. This Memo also provides additional guidance on income trusts and eligibility site responsibilities regarding income trusts.

### **Information:**

For Long-Term Care medical assistance eligibility, an individual must meet the 300% Institutionalized Special Income category. C.C.R. 2505-10, Sections 8.100.7.A.1 and 8.100.7.B.1.b. Under this category, an individual must establish an income trust if their gross income exceeds 300% of the current individual SSI benefit level. C.C.R.

2505-10, Section 8.100.7.A.2.e. The Department must review each income trust established to confirm it meets the requirements for a valid income trust under C.R.S. § 15-14-412.7 and C.C.R. 2505-10, Section 8.100.7.E.6.a. This review is required prior to determining eligibility, and the Department will issue a determination letter denying or approving the income trust upon completion of its review. See C.C.R. 2505-10, Section 8.100.5.E.8.

#### Revised Income Trust Agreement

The attached form entitled “Irrevocable Income Trust Agreement” replaces the prior “Declaration of Income Trust,” which was included as an attachment to Agency Letter Number HCPF 16-001. Effective thirty (30) days from the issue date of this Memo, the “Declaration of Income Trust” may no longer be utilized to establish an income trust. Notwithstanding the foregoing, any prior established and approved income trust that utilized the old form shall remain valid for the purpose of maintaining medical assistance eligibility unless and until there is a loss of medical assistance eligibility.

#### Eligibility Site Responsibilities

Eligibility sites are required to submit all income trusts to the Department for review via any of the following:

Email (preferred method): [medicaid.trusts@state.co.us](mailto:medicaid.trusts@state.co.us)

Fax: (303) 866-3552

Mail: Colorado Department of Health Care Policy and Financing

Attn: Trust Policy and Recoveries Section

303 E. 17th Avenue

Denver, CO 80203

In addition to submitting the documents for initial review, eligibility sites should inform the member or their authorized representative of the amount that is required to accrue monthly by completing the attached “Income Trust Ledger.” A copy of the completed “Income Trust Ledger” should be provided to the member or their authorized representative and the Department annually or upon any change in income. At redetermination, the eligibility site should request copies of any account statements for the income trust, and the member may lose eligibility if the eligibility site determines that the income trust is not properly funded. However, prior to

making any determination regarding the impact of an underfunded income trust on eligibility, the eligibility site should consult with the Trust Policy & Recoveries Section for a final determination on how to proceed. In the notes of the Colorado Benefits Management System (CBMS), or the appropriate place in any successor case management system, the eligibility site shall document the last reported balance of the bank account(s) for the income trust, the amount required to accrue monthly, including any changes in income, and funding concerns, if any. The eligibility site should also inform the Department if they become aware that a case with an income trust is referred to Adult Protective Services or if criminal charges are filed against the individual serving as trustee of the income trust.

If a case with an income trust is transferred, then the transferring eligibility site is responsible for providing the new eligibility site with a copy of the income trust, approval or denial letter from the Department, and the applicable ledgers and accountings. If this documentation is not provided, then the new eligibility site must contact the Department to obtain a copy of the approval or denial letter and ledgers. However, if the original ledger(s) were not previously provided to the Department by the transferring eligibility site, then the new eligibility site will need to recreate the income trust ledger(s) to confirm that the trust is properly funded.

Pursuant to Colorado law, an income trust shall be closed upon the earlier of the death of the member or when the trust is no longer necessary for Medicaid eligibility in Colorado (e.g. loss of eligibility for Long-Term Care services or change in gross income). The eligibility site is responsible for notifying the Department of a required income trust closure by completing and submitting the attached "Notice of Income Trust Closure Form," and should include with the submission copies of the member's 5615 forms, trust ledgers, any trust accountings or bank statements received, and a copy of the trust agreement. The eligibility site can send this documentation to the Department using any of the contact options listed above, with email being the preferred method. The eligibility site may also notify the trustee of record that a request for closure has been sent to the Department and the trustee is required to remit the trust balance, up to the total amount of medical assistance paid on behalf of the member, to the Colorado Department of Health Care Policy and Financing. Despite the foregoing, eligibility sites may not collect or retain any portion of income trust balances, these amounts must be remitted to the Department. Any trustee questions or concerns should be directed to the Department.

### **Action To Be Taken:**

- When an income trust is received or required, the eligibility site must submit the income trust to the Department for review prior to determining eligibility for that individual.

- Annually or upon any change in income, eligibility sites should inform the member, or their authorized representative, of the amount required to accrue in the income trust by completing the attached “Income Trust Ledger.”
- The eligibility site should provide a copy of the Income Trust Ledger to the Department.
- At redetermination, the eligibility site should request copies of any account statements for the income trust to confirm that the income trust is properly funded, and if not, the eligibility site should inform the Department.
- The eligibility site should forward copies of account statements received for an income trust to the Department for its records.
- If a case with an income trust is transferred, then the transferring eligibility site is responsible for providing the new eligibility site with a copy of the income trust, approval or denial letter from the Department, and the applicable ledgers and accountings.
- Upon the earlier of the death of the member or when the trust is no longer necessary for Medicaid eligibility in Colorado (e.g. loss of eligibility for Long-Term Care services or change in gross income), the eligibility site should complete the attached “Notice of Income Trust Closure Form” and submit it to the Department.

**Attachment(s):**

Irrevocable Income Trust Agreement Form (English and Spanish)

Instructions for Completing the Income Trust Form (English and Spanish)

Notice of Income Trust Closure Form

Income Trust Ledger

Resignation of Trustee and Acceptance of Successor Trustee Form

**HCPF Contact:**

[Medicaid.trusts@state.co.us](mailto:Medicaid.trusts@state.co.us)