

Medicaid Qualified Income Trust

This Trust Agreement is made by _____, a resident of the State of Tennessee, as Grantor (herein referred to as "Grantor"), for the benefit of _____, Beneficiary. The Trustee is _____.

This is a qualifying income trust as authorized by amendment to 42 U.S.C. § 1396p(d)(4)(B), known as "OBRA '93." The trust shall be known as the "_____ Medicaid Qualifying Income Trust."

1. Trust Purpose. The purpose of this trust is to enable the Grantor, (also referred to herein as the "Beneficiary"), to qualify for Medical Assistance ("Medicaid"). In the administration of the trust, the Trustee shall do all acts necessary to establish and maintain the Beneficiary's eligibility for Medicaid.

2. Trust Funding. Grantor hereby undertakes to convey and to transfer to the Trustee either (i) his/her entire Social Security, pension, and any other monthly income he/she may receive, or (ii) so much of his/her income as shall in any month exceed the prevailing Tennessee Medicaid Income Cap. (The Beneficiary's entire income presently consists of the payments set forth on Schedule "A" at the end of this document.) Such payments as are made into the trust from the Beneficiary's income shall constitute the trust fund. No other money or property shall be placed in the trust bank account (unless required by the banking institution where the trust's account is maintained, to avoid bank charges). Once the trust is funded, it will be effective as of the first day of the month of the Grantor's Medicaid eligibility.

3. Distributions During Beneficiary's Lifetime.

A. During the Beneficiary's lifetime, the trust fund shall be held, disposed of and administered by the Trustee in a separate trust account for the Beneficiary so that all of the income placed in the trust each month is disbursed by the Trustee in accordance with federal law and Tennessee law and administrative regulations that presently provide that (1) all of the income placed in the trust be disbursed in the month received, and (2) that the only disbursements from the trust shall be for

- (a) the Beneficiary's Personal Needs Allowance (\$50, unless changed by the State),
- (b) fees (not to exceed \$20) for necessary expenses for management of the trust, such as bank charges,
- (c) a spousal income allocation in favor of a community spouse, if any,
- (d) health insurance premiums for health insurance coverage of the Grantor other than Medicaid,
- (e) expenses for qualifying or remedial care as permitted by the Department of Human Services not subject to third-party or Medicaid payment (Item D), and
- (f) payment to the Bureau of TennCare or the nursing facility or HCBS provider (Patient Liability Amount).

4. *Irrevocability.* The trust shall be irrevocable. The Trustee or a court of competent jurisdiction shall have the right to amend the trust to the extent necessary to maintain the eligibility of the Grantor for medical assistance.

5. *Termination.* The trust shall terminate at the death of the Beneficiary; or earlier if the Trustee determines that the existence of the trust is no longer necessary to establish Medicaid eligibility for the Beneficiary, nursing facility or HCBS is no longer medically necessary for the Grantor, or the Grantor is no longer receiving such services.

Upon the termination of the trust, the remaining trust assets, if any, shall be distributed as follows:

A. To the State of Tennessee, Bureau of TennCare, if it has provided Medical Assistance to the Beneficiary up to an amount equal to the total Medical Assistance paid on behalf of the Beneficiary by Tennessee's State Plan for Medical Assistance or other approved waiver programs. This provision is intended to meet the requirements of 42 U.S.C. 1396(p) as amended by OBRA '93.

B. Any remainder after the State of Tennessee's claim has been paid, to the Beneficiary's heirs at law.

6. *Trustee's Powers.* The Trustee shall have all of the powers that may be granted by law with respect to the trust, to be exercised in the Trustee's discretion, in accordance with the best interests of the Beneficiary.

7. *Annual Accounting.* The Trustee shall submit, if requested by the Tennessee Department of Human Services, an annual accounting to the Tennessee Department of Human Services or its designee, and in a form agreeable to the Department of Human Services, all income placed in the trust, all funds distributed, the purpose for the distribution, and the total amount of funds remaining.

8. *Law to Govern; Construction.* The construction of this instrument, the validity of the trust, and the administration of the trust shall be governed by the laws of the State of Tennessee.

_____ by Grantor or Grantor's Attorney-in-Fact

_____, Trustee

State of Tennessee
County of _____

On _____, personally appeared before me
_____, with whom I am personally acquainted or who
proved to me on satisfactory evidence to be the person who executed the
foregoing instrument, and who acknowledged that s/he executed it as his/her
free act and deed.

Notary Public

My commission expires: _____

OR

State of Tennessee
County of _____

On _____, personally appeared before me,
_____, with whom I am personally acquainted or
who proved to me on satisfactory evidence, to be the person who executed the
foregoing instrument as attorney-in-fact for _____,
Grantor, and who acknowledged that s/he executed the same as the free act and
deed of _____.

Notary Public

My commission expires: _____

State of Tennessee
County of _____

On _____, before me personally appeared _____, **Trustee**, who is known by me or who proved to me on the basis of satisfactory evidence to be the person described in this instrument, and who executed the foregoing instrument and acknowledged that she executed it as her free act and deed.

Notary Public

My commission expires: _____

Title to Property Held in Trust

Title to the trust fund should be held by the Trustee in substantially the following format: _____, Trustee under the Medicaid Qualifying Income Trust for the benefit of _____, dated _____.

Schedule “A”: Minimum Monthly Income of Grantor Transferred into the Qualified Income Trust Account

(Minimum amount may vary depending upon actual amount received monthly, due to changes in cost of living adjustments, Medicare premiums and other adjustments. Additional amounts may be deposited into the account as needed.)

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

Completion of the Medicaid Qualified Income Trust document does not imply that an attorney/client relationship has been formed with Takacs McGinnis Elder Care Law, PLLC.