

Income Cap Trusts: Can I use the Same Trust for Every Client? Elder Law
Section Newsletter

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Income Cap Trusts are not "one size fits all." Well, actually, the Trust itself is pretty much one size fits all. This is because the clients who need Income Cap Trusts all have the same problem; their gross income exceeds the \$1590 cap and without an Income Cap Trust, they will not be eligible for the Medicaid program. Unlike most Trusts that lawyers write, the trust document itself requires little work to suit it to an individual client. You can download the trust form from the Seniors and Persons With Disabilities website. However, if you simply plug in the effective dates and the client and trustee names, you are not doing the entire job.

Each client is different and comes to us with an individual set of circumstances. Some clients may earn \$1,591.00, other clients may earn as much as \$3,000.00. Some clients apply for assistance in community base care, others apply to live in a nursing home. Some clients may have a spouse at home that they need to support, others may not. Some clients may still have taxes withheld from their income, others may not. Also, some clients may have health insurance premiums, or they may have medical bills yet to be reimbursed by the health insurance provider, and others may not. So, as you can see, not every circumstance is the same, although each client may have the same basic "income cap" problem to solve before they qualify for Medicaid benefits.

The service we do for our clients in preparing an Income Cap Trust is in knowing the questions to ask and the rules that apply to the distribution of their income. The Schedule B, or Distribution Plan, is the aspect of the trust most individual to a client. Be certain that you know in what type of facility the trust beneficiary will be living. The personal needs allowance and room and board amounts are different for community based care as opposed to nursing homes. If the Medicaid applicant has a spouse at home, calculate the community spouse income allowance and allow for the correct amount (remember that your calculation will differ if the applicant resides at home with their spouse). Be sure to inquire as to whether any medical bills that remain unpaid and negotiate with the worker to allow them as a distribution. Check to see if the client has a burial plan, they may not volunteer the information.

As you can see, there are many variables to a distribution plan. Determining the distribution categories and calculating the amounts to allow for each of them is the most important task to be done by the Elder Law attorney in preparing a Medicaid Income Cap Trust and distribution plan. This work is not supposed to be done by the Medicaid caseworker, it is the lawyers duty. By treating the income cap trust as one size fits all,

you not only do a disservice to your client, but become less credible with the Medicaid caseworkers.

Also important is educating the trustee. The trustee is most often a family member who is dealing with a very difficult transition in their loved one's life. They are under an incredible amount of stress and need your help in understanding the confusing income cap trust distribution scheme. Write a detailed letter to the trustee that describes exactly what they should do in the first month.

The Elder Law section of the Oregon State Bar held a CLE on October 26, 2001, called "Problem Prevention in Elder Law". The income cap trust material found in that CLE material contains detailed explanations of the distribution plan categories as well as advice from the field provided by the Medicaid caseworkers.

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