

Qualified Income Trusts ("Miller" Trusts)

Tennessee and Mississippi have an "income cap" that disqualifies Medicaid applicants who have too much income, even though their income may be much less than the cost of nursing home care. The Income Cap is \$2,130.00 per month for 2013.

Fortunately, federal law does allow the Medicaid applicant's income to be placed into an irrevocable qualified income trust (QIT). The monthly income that is placed in the qualified income trust's bank account will not be counted for purposes of the income cap limit, and will permit the applicant to qualify for Medicaid for nursing home care for that month.

A qualified income trust is an irrevocable trust that contains only the regular monthly income of the individual. Elder lawyers developed these trusts, which were finally approved in a federal court case, *Miller v. Ibarra*. (The QIT is sometimes called a "Miller" trust for that reason.) Their use was incorporated into federal law in the 1993 revisions to the Social Security Act.

These trusts should be prepared by an experienced elder law attorney licensed in the state where the trust is to be used. The attorney the client selects should be one who understands these trusts and can explain to the trustee how they are used. This general explanation is written for Tennessee, but the rules are similar for Mississippi. This article is not intended to act as a substitute for competent legal advice about the client's particular situation and trust needs.

The trust must be signed by two people: the "trustee" and the "grantor." The grantor is the Medicaid applicant whose monthly income is to be paid into the trust. The trustee is responsible for paying the grantor's nursing home obligation by writing checks from the trust bank account to the nursing home. The trustee must make sure the grantor's income is placed into the trust bank account every month, and then paid out to the nursing home and for other qualified expenses.

If the Medicaid applicant is not mentally competent to sign the trust, his attorney-in-fact under a valid durable power of attorney (POA) can sign the trust for him. If the Medicaid applicant is incompetent to sign the trust and there is no POA, it will be necessary to have a conservator appointed by the probate or chancery court and authorized to sign for the incompetent grantor. The trustee can also be the attorney-in-fact or the conservator.

How the QIT Works in Tennessee

After the trust agreement is signed, the trustee must establish a new bank account in the name of the trust. The trust is a "grantor trust" for tax purposes, and the Tax Identification Number on the account should be the Social Security Number of the grantor.

A copy of the executed trust and proof of deposit of income into the new trust bank account must be sent to DHS before DHS will approve Medicaid. DHS will not approve Medicaid for any months before the QIT is funded.

Each month, after the trust is established, at least the minimum amount of the grantor's income must be deposited into the trust bank account. Every month, at least enough of the Medicaid recipient's "gross income" must be deposited into the trust so that the amount that is not put into

the trust is less than \$2,094.00. The trustee then is required to pay the money out of the trust to the approved payees.

Every month, the trustee should pay out all but \$20.00 of the income that was deposited into the trust that month. DHS allows \$20.00 per month to stay in the account each month to cover bank service charges. In other words, if the bank did not charge a monthly service charge, the QIT trust bank account would have only \$20.00 remaining in the account on the last day of the first month it was established, \$40.00 at the end of the second month, and so on.

The trustee is required to file an annual accounting with the DHS. The accounting will show all income received, checks written, and balance of the account. The trustee should save all bank statements for this purpose. The trustee holds the remaining balance of the trust account until the grantor dies.

Upon the death of the grantor, the trustee must notify DHS, and is not allowed to deposit any more money into the account or write any more checks out of it except TennCare will eventually send the family a letter stating the amount of Medicaid assistance that was paid for the grantor's nursing home care. The trustee is not liable for the full amount of the TennCare claim. The trustee must send whatever is remaining in the trust account to TennCare to close the bank account.

These materials are intended strictly as educational information about elder law subjects and should not be construed as legal advice. Each person's situation is unique and requires specific evaluation before advice can be given. Consult a reputable and competent elder law attorney regarding your own needs.

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